

SENATE BILL No. 38

By Committee on Elections and Local Government

1-14

9 AN ACT concerning public records not subject to subpoena, discovery
10 or other legal process; amending K.S.A. 22a-243, 44-510j, 65-1,113,
11 65-2836, 65-4922 and 65-4925 and K.S.A. 2004 Supp. 44-714 and 44-
12 817 and repealing the existing sections.
13

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

15 Section 1. K.S.A. 22a-243 is hereby amended to read as follows: 22a-
16 243. (a) There is hereby established a state child death review board,
17 which shall be composed of:

18 (1) One member appointed by each of the following officers to rep-
19 resent the officer's agency: The attorney general, the director of the Kan-
20 sas bureau of investigation, the secretary of social and rehabilitation serv-
21 ices, the secretary of health and environment and the commissioner of
22 education;

23 (2) three members appointed by the state board of healing arts, one
24 of whom shall be a district coroner and two of whom shall be physicians
25 licensed to practice medicine and surgery, one specializing in pathology
26 and the other specializing in pediatrics;

27 (3) one person appointed by the attorney general to represent ad-
28 vocacy groups which focus attention on child abuse awareness and pre-
29 vention; and

30 (4) one county or district attorney appointed by the Kansas county
31 and district attorneys association.

32 (b) The chairperson of the state review board shall be the member
33 appointed by the attorney general to represent the office of the attorney
34 general.

35 (c) The state child death review board shall be within the office of
36 the attorney general as a part thereof. All budgeting, purchasing and re-
37 lated management functions of the board shall be administered under the
38 direction and supervision of the attorney general. All vouchers for ex-
39 penditures and all payrolls of the board shall be approved by the chair-
40 person of the board and by the attorney general. The state review board
41 shall establish and maintain an office in Topeka.

42 (d) The state review board shall meet at least annually to review all
43 reports submitted to the board. The chairperson of the state review board

1 may call a special meeting of the board at any time to review any report
2 of a child death.

3 (e) Within the limits of appropriations therefor, the state review
4 board shall appoint an executive director who shall be in the unclassified
5 service of the Kansas civil service act and shall receive an annual salary
6 fixed by the state review board.

7 (f) Within the limits of appropriations therefor, the state review board
8 may employ other persons who shall be in the classified service of the
9 Kansas civil service act.

10 (g) Members of the state review board shall not receive compensa-
11 tion, subsistence allowances, mileage and expenses as provided by K.S.A.
12 75-3223 and amendments thereto for attending meetings or subcommit-
13 tee meetings of the board.

14 (h) The state review board shall develop a protocol to be used by the
15 state review board. The protocol shall include written guidelines for cor-
16 oners to use in identifying any suspicious deaths, procedures to be used
17 by the board in investigating child deaths, methods to ensure coordination
18 and cooperation among all agencies involved in child deaths and proce-
19 dures for facilitating prosecution of perpetrators when it appears the
20 cause of a child's death was from abuse or neglect. The protocol shall be
21 adopted by the state review board by rules and regulations.

22 (i) The state review board shall submit an annual report to the gov-
23 ernor and the legislature on or before October 1 of each year, com-
24 mencing October 1993. Such report shall include the findings of the
25 board regarding reports of child deaths, the board's analysis and the
26 board's recommendations for improving child protection, including rec-
27 ommendations for modifying statutes, rules and regulations, policies and
28 procedures.

29 (j) Information acquired by, and records of, the state review board
30 shall be confidential, shall not be disclosed and shall not be subject to
31 subpoena, discovery or introduction into evidence in any civil or criminal
32 proceeding, except that such information and records may be disclosed
33 to any member of the legislature or any legislative committee which has
34 legislative responsibility of the enabling or appropriating legislation, car-
35 rying out such member's or committee's official functions. The legislative
36 committee, in accordance with K.S.A. 75-4319 and amendments thereto,
37 shall recess for a closed or executive meeting to receive and discuss in-
38 formation received by the committee pursuant to this subsection.

39 (k) The state review board may adopt rules and regulations as nec-
40 essary to carry out the provisions of K.S.A. 22a-241 through 22a-244 and
41 amendments thereto.

42 Sec. 2. K.S.A. 44-510j is hereby amended to read as follows: 44-510j.
43 When an employer's insurance carrier or a self-insured employer disputes

1 all or a portion of a bill for services rendered for the care and treatment
2 of an employee under this act, the following procedures apply:

3 (a) (1) The employer or carrier shall notify the service provider
4 within 30 days of receipt of the bill of the specific reason for refusing
5 payment or adjusting the bill. Such notice shall inform the service pro-
6 vider that additional information may be submitted with the bill and re-
7 consideration of the bill may be requested. The provider shall send any
8 request for reconsideration within 30 days of receiving written notice of
9 the bill dispute. If the employer or carrier continues to dispute all or a
10 portion of the bill after receiving additional information from the pro-
11 vider, the employer, carrier or provider may apply for an informal hearing
12 before the director.

13 (2) If a provider sends a bill to such employer or carrier and receives
14 no response within 30 days as allowed in subsection (a) and if a provider
15 sends a second bill and receives no response within 60 days of the date
16 the provider sent the first bill, the provider may apply for an informal
17 hearing before the director.

18 (3) Payments shall not be delayed beyond 60 days for any amounts
19 not in dispute. Acceptance by any provider of a payment amount which
20 is less than the full amount charged for the services shall not affect the
21 right to have a review of the claim for the outstanding or remaining
22 amounts.

23 (b) The application for informal hearing shall include copies of the
24 disputed bills, all correspondence concerning the bills and any additional
25 written information the party deems appropriate. When anyone applies
26 for an informal hearing before the director, copies of the application shall
27 be sent to all parties to the dispute and the employee. Within 20 days of
28 receiving the application for informal hearing, the other parties to the
29 dispute shall send any additional written information deemed relevant to
30 the dispute to the director.

31 (c) The director or the director's designee shall hold the informal
32 hearing to hear and determine all disputes as to such bills and interest
33 due thereon. Evidence in the informal hearing shall be limited to the
34 written submissions of the parties. The informal hearing may be held by
35 electronic means. Any employer, carrier or provider may personally ap-
36 pear in or be represented at the hearing. If the parties are unable to reach
37 a settlement regarding the dispute, the officer hearing the dispute shall
38 enter an order so stating.

39 (d) After the entry of the order indicating that the parties have not
40 settled the dispute after the informal hearing, the director shall schedule
41 a formal hearing.

42 (1) Prior to the date of the formal hearing, the director may conduct
43 a utilization review concerning the disputed bill. The director shall de-

1 velop and implement, or contract with a qualified entity to develop and
2 implement, utilization review procedures relating to the services ren-
3 dered by providers and facilities, which services are paid for in whole or
4 in part pursuant to the workers compensation act. The director may con-
5 tract with one or more private foundations or organizations to provide
6 utilization review of service providers pursuant to the workers compen-
7 sation act. Such utilization review shall result in a report to the director
8 indicating whether a provider improperly utilized or otherwise rendered
9 or ordered unjustified treatment or services or that the fees for such
10 treatment or services were excessive and a statement of the basis for the
11 report's conclusions. After receiving the utilization review report, the di-
12 rector also may order a peer review. A copy of such reports shall be
13 provided to all parties to the dispute at least 20 days prior to the formal
14 hearing. No person shall be subject to civil liability for libel, slander or
15 any other relevant tort cause of action by virtue of performing a peer or
16 utilization review under contract with the director.

17 (2) The formal hearing shall be conducted by hearing officers, the
18 medical administrator or both as appointed by the director. During the
19 formal hearing parties to the dispute shall have the right to appear or be
20 represented and may produce witnesses, including expert witnesses, and
21 such other relevant evidence as may be otherwise allowed under the
22 workers compensation act. If the director finds that a provider or facility
23 has made excessive charges or provided or ordered unjustified treatment,
24 services, hospitalization or visits, the provider or facility may, subject to
25 the director's order, receive payment pursuant to this section from the
26 carrier, employer or employee for the excessive fees or unjustified treat-
27 ment, services, hospitalization or visits and such provider may be ordered
28 to repay any fees or charges collected therefor. If it is determined after
29 the formal hearing that a provider improperly utilized or otherwise ren-
30 dered or ordered unjustified treatment or services or that the fees for
31 such treatment or services were excessive, the director may provide a
32 report to the licensing board of the service provider with full documen-
33 tation of any such determination, except that no such report shall be
34 provided until after judicial review if the order is appealed. Any decision
35 rendered under this section may be reviewed by the workers compen-
36 sation board. A party must file a notice of appeal within 10 days of the
37 issuance of any decision under this section. The record on appeal shall
38 be limited only to the evidence presented to the hearing officer. The
39 decision of the director shall be affirmed unless the board determines
40 that the decision was not supported by substantial competent evidence.

41 (e) By accepting payment pursuant to this section for treatment or
42 services rendered to an injured employee, the provider shall be deemed
43 to consent to submitting all necessary records to substantiate the nature

1 and necessity of the service or charge and other information concerning
2 such treatment to utilization review under this section. Such health care
3 provider shall comply with any decision of the director pursuant to this
4 section.

5 (f) Except as provided in K.S.A. 60-437 and amendments thereto and
6 this section, findings and records which relate to utilization and peer
7 review conducted pursuant to this section shall be privileged ~~and shall~~
8 ~~not be subject to discovery, subpoena or other means of legal compulsion~~
9 ~~for release to any person or entity and shall not be admissible in evidence~~
10 ~~in any judicial or administrative proceeding, except those proceedings~~
11 ~~authorized pursuant to this section.~~ In any proceedings where there is an
12 application by an employee, employer, insurance carrier or the workers
13 compensation fund for a hearing pursuant to K.S.A. 44-534a, and amend-
14 ments thereto, for a change of medical benefits which has been filed after
15 a health care provider, employer, insurance carrier or the workers com-
16 pensation fund has made application to the medical services section of
17 the division for the resolution of a dispute or matter pursuant to the
18 provisions of this section, all reports, information, statements, memo-
19 randa, proceedings, findings and records which relate to utilization and
20 peer review including the records of contract reviewers and findings and
21 records of the medical services section of the division shall be admissible
22 at the hearing before the administrative law judge on the issue of the
23 medical benefits to which an employee is entitled.

24 (g) A provider may not improperly overcharge or charge for services
25 which were not provided for the purpose of obtaining additional payment.
26 Any dispute regarding such actions shall be resolved in the same manner
27 as other bill disputes as provided by this section. Any violation of the
28 provisions of this section or K.S.A. 44-510i, and amendments thereto,
29 which is willful or which demonstrates a pattern of improperly charging
30 or overcharging for services rendered pursuant to this act constitutes
31 grounds for the director to impose a civil fine not to exceed \$5,000. Any
32 civil fine imposed under this section shall be subject to review by the
33 board. All moneys received for civil fines imposed under this section shall
34 be deposited in the state treasury to the credit of the workers compen-
35 sation fund.

36 (h) Any health care provider, nurse, physical therapist, any entity provid-
37 ing medical, physical or vocational rehabilitation services or providing
38 reeducation or training pursuant to K.S.A. 44-510g and amendments
39 thereto, medical supply establishment, surgical supply establishment, am-
40 bulance service or hospital which accept the terms of the workers com-
41 pensation act by providing services or material thereunder shall be bound
42 by the fees approved by the director and no injured employee or de-
43 pendent of a deceased employee shall be liable for any charges above the

1 amounts approved by the director. If the employer has knowledge of the
2 injury and refuses or neglects to reasonably provide the services of a
3 health care provider required by this act, the employee may provide the
4 same for such employee, and the employer shall be liable for such ex-
5 penses subject to the regulations adopted by the director. No action shall
6 be filed in any court by a health care provider or other provider of services
7 under this act for the payment of an amount for medical services or
8 materials provided under the workers compensation act and no other
9 action to obtain or attempt to obtain or collect such payment shall be
10 taken by a health care provider or other provider of services under this
11 act, including employing any collection service, until after final adjudica-
12 tion of any claim for compensation for which an application for hearing
13 is filed with the director under K.S.A. 44-534 and amendments thereto.
14 In the case of any such action filed in a court prior to the date an appli-
15 cation is filed under K.S.A. 44-534 and amendments thereto, no judgment
16 may be entered in any such cause and the action shall be stayed until
17 after the final adjudication of the claim. In the case of an action stayed
18 hereunder, any award of compensation shall require any amounts payable
19 for medical services or materials to be paid directly to the provider thereof
20 plus an amount of interest at the rate provided by statute for judgments.
21 No period of time under any statute of limitation, which applies to a cause
22 of action barred under this subsection, shall commence or continue to
23 run until final adjudication of the claim under the workers compensation
24 act.

25 (i) As used in this section, unless the context or the specific provisions
26 clearly require otherwise, "carrier" means a self-insured employer, an
27 insurance company or a qualified group-funded workers compensation
28 pool and "provider" means any health care provider, vocational rehabil-
29 itation service provider or any facility providing health care services or
30 vocational rehabilitation services, or both, including any hospital.

31 Sec. 3. K.S.A. 2004 Supp. 44-714 is hereby amended to read as fol-
32 lows: 44-714. (a) *Duties and powers of secretary*. It shall be the duty of
33 the secretary to administer this act and the secretary shall have power
34 and authority to adopt, amend or revoke such rules and regulations, to
35 employ such persons, make such expenditures, require such reports,
36 make such investigations, and take such other action as the secretary
37 deems necessary or suitable to that end. Such rules and regulations may
38 be adopted, amended, or revoked by the secretary only after public hear-
39 ing or opportunity to be heard thereon. The secretary shall determine the
40 organization and methods of procedure in accordance with the provisions
41 of this act, and shall have an official seal which shall be judicially noticed.
42 The secretary shall make and submit reports for the administration of the
43 employment security law in the manner prescribed by K.S.A. 75-3044 to

1 75-3046, inclusive, and 75-3048, and amendments thereto. Whenever the
2 secretary believes that a change in contribution or benefit rates will be-
3 come necessary to protect the solvency of the fund, the secretary shall
4 promptly so inform the governor and the legislature, and make recom-
5 mendations with respect thereto.

6 (b) *Publication.* The secretary shall cause to be printed for distribu-
7 tion to the public the text of this act, the secretary's rules and regulations
8 and any other material the secretary deems relevant and suitable and shall
9 furnish the same to any person upon application therefor.

10 (c) *Personnel.* (1) Subject to other provisions of this act, the secretary
11 is authorized to appoint, fix the compensation, and prescribe the duties
12 and powers of such officers, accountants, deputies, attorneys, experts and
13 other persons as may be necessary in carrying out the provisions of this
14 act. The secretary shall classify all positions and shall establish salary
15 schedules and minimum personnel standards for the positions so classi-
16 fied. The secretary shall provide for the holding of examinations to de-
17 termine the qualifications of applicants for the positions so classified, and,
18 except to temporary appointments not to exceed six months in duration,
19 shall appoint all personnel on the basis of efficiency and fitness as deter-
20 mined in such examinations. The secretary shall not appoint or employ
21 any person who is an officer or committee member of any political party
22 organization or who holds or is a candidate for a partisan elective public
23 office. The secretary shall adopt and enforce fair and reasonable rules
24 and regulations for appointment, promotions and demotions, based upon
25 ratings of efficiency and fitness and for terminations for cause. The sec-
26 retary may delegate to any such person so appointed such power and
27 authority as the secretary deems reasonable and proper for the effective
28 administration of this act, and may in the secretary's discretion bond any
29 person handling moneys or signing checks under the employment security
30 law.

31 (2) No employee engaged in the administration of the employment
32 security law shall directly or indirectly solicit or receive or be in any man-
33 ner concerned with soliciting or receiving any assistance, subscription or
34 contribution for any political party or political purpose, other than solici-
35 ting and receiving contributions for such person's personal campaign as
36 a candidate for a nonpartisan elective public office, nor shall any employee
37 engaged in the administration of the employment security law participate
38 in any form of political activity except as a candidate for a nonpartisan
39 elective public office, nor shall any employee champion the cause of any
40 political party or the candidacy of any person other than such person's
41 own personal candidacy for a nonpartisan elective public office. Any em-
42 ployee engaged in the administration of the employment security law who
43 violates these provisions shall be immediately discharged. No person shall

1 solicit or receive any contribution for any political purpose from any em-
2 ployee engaged in the administration of the employment security law and
3 any such action shall be a misdemeanor and shall be punishable by a fine
4 of not less than \$100 nor more than \$1,000 or by imprisonment in the
5 county jail for not less than 30 days nor more than six months, or both.

6 (d) *Advisory councils.* The secretary shall appoint a state employment
7 security advisory council and may appoint local advisory councils, com-
8 posed in each case of men and women which shall include an equal num-
9 ber of employer representatives and employee representatives who may
10 fairly be regarded as representative because of their vocation, employ-
11 ment, or affiliations, and of such members representing the general public
12 as the secretary may designate. Each such member shall serve a four-year
13 term. On July 1, 1996, the secretary shall designate term lengths for
14 seated members of the council. One-half of the seated members repre-
15 senting employers, $\frac{1}{2}$ of the seated members representing employees and
16 $\frac{1}{2}$ of the members representing the general public shall be designated
17 by the secretary to serve two-year terms. The remaining seated members
18 of the council shall be designated to serve four-year terms. When the
19 term of any member expires, the secretary shall appoint the member's
20 successor to a four-year term. If a position on the council becomes vacant
21 prior to the expiration of the vacating member's term, the secretary may
22 appoint an otherwise qualified individual to fulfill the remainder of such
23 unexpired term. Such councils shall aid the secretary in formulating pol-
24 icies and discussing problems related to the administration of this act and
25 in securing impartiality and freedom from political influence in the so-
26 lution of such problems. Members of the state employment security ad-
27 visory council attending meetings of such council, or attending a subcom-
28 mittee meeting thereof authorized by such council, shall be paid amounts
29 provided in subsection (e) of K.S.A. 75-3223 and amendments thereto.
30 Service on the state employment security advisory council shall not in and
31 of itself be sufficient to cause any member of the state employment se-
32 curity advisory council to be classified as a state officer or employee.

33 (e) *Employment stabilization.* The secretary, with the advice and aid
34 of the secretary's advisory councils and through the appropriate divisions
35 of the department of labor, shall take all appropriate steps to reduce and
36 prevent unemployment; to encourage and assist in the adoption of prac-
37 tical methods of vocational training, retraining and vocational guidance;
38 to investigate, recommend, advise, and assist in the establishment and
39 operation, by municipalities, counties, school districts and the state, of
40 reserves for public works to be used in time of business depression and
41 unemployment; to promote the reemployment of unemployed workers
42 throughout the state in every other way that may be feasible; and to these
43 ends to carry on and publish the results of investigations and research

1 studies.

2 (f) *Records and reports.* Each employing unit shall keep true and
3 accurate work records, containing such information as the secretary may
4 prescribe. Such records shall be open to inspection and subject to being
5 copied by the secretary or the secretary's authorized representatives at
6 any reasonable time and shall be preserved for a period of five years from
7 the due date of the contributions or payments in lieu of contributions for
8 the period to which they relate. Only one audit shall be made of any
9 employer's records for any given period of time. Upon request the em-
10 ploying unit shall be furnished a copy of all findings by the secretary or
11 the secretary's authorized representatives, resulting from such audit. A
12 special inquiry or special examination made for a specific and limited
13 purpose shall not be considered to be an audit for the purpose of this
14 subsection. The secretary may require from any employing unit any sworn
15 or unsworn reports, with respect to persons employed by it, which the
16 secretary deems necessary for the effective administration of this act.
17 Information thus obtained or obtained from any individual pursuant to
18 the administration of this act shall be held confidential, except to the
19 extent necessary for the proper presentation of a claim by an employer
20 or employee under the employment security law, and shall not be pub-
21 lished or be open to public inspection, other than to public employees in
22 the performance of their public duties, in any manner revealing the in-
23 dividual's or employing unit's identity. Any claimant or employing unit or
24 their representatives at a hearing before an appeal tribunal or the sec-
25 retary shall be supplied with information from such records to the extent
26 necessary for the proper presentation of the claim. ~~The transcript made~~
27 ~~at any such benefits hearing shall not be discoverable or admissible in~~
28 ~~evidence in any other proceeding, hearing or determination of any kind~~
29 ~~or nature.~~ In the event of any appeal of a benefits matter, the transcript
30 shall be sealed by the hearing officer and shall be available only to any
31 reviewing authority who shall reseal the transcript after making a review
32 of it. In no event shall such transcript be deemed a public record. Nothing
33 in this subsection (f) shall be construed to prohibit disclosure of any in-
34 formation obtained under the employment security law, including hearing
35 transcripts, upon request of either of the parties, for the purpose of ad-
36 ministering or adjudicating a claim for benefits under the provisions of
37 any other state program, except that any party receiving such information
38 shall be prohibited from further disclosure and shall be subject to the
39 same duty of confidentiality otherwise imposed by this subsection (f) and
40 shall be subject to the penalties imposed by this subsection (f) for viola-
41 tions of such duty of confidentiality. Nothing in this subsection (f) shall
42 be construed to prohibit disclosure of any information obtained under
43 the employment security law, including hearing transcripts, for use as

1 evidence in open court in a criminal prosecution for perjury at an appeal
2 hearing under the employment security law or for any criminal violation
3 of the employment security law. If the secretary or any officer or em-
4 ployee of the secretary violates any provisions of this subsection (f), the
5 secretary or such officer or employee shall be fined not less than \$20 nor
6 more than \$200 or imprisoned for not longer than 90 days, or both. Orig-
7 inal records of the agency and original paid benefit warrants of the state
8 treasurer may be made available to the employment security agency of
9 any other state or the federal government to be used as evidence in pros-
10 ecution of violations of the employment security law of such state or
11 federal government. Photostatic copies of such records shall be made and
12 where possible shall be substituted for original records introduced in ev-
13 idence and the originals returned to the agency.

14 (g) *Oaths and witnesses.* In the discharge of the duties imposed by
15 the employment security law, the chairperson of an appeal tribunal, an
16 appeals referee, the secretary or any duly authorized representative of
17 the secretary shall have power to administer oaths and affirmations, take
18 depositions, issue interrogatories, certify to official acts, and issue sub-
19 poenas to compel the attendance of witnesses and the production of
20 books, papers, correspondence, memoranda and other records deemed
21 necessary as evidence in connection with a disputed claim or the admin-
22 istration of the employment security law.

23 (h) *Subpoenas, service.* Upon request, service of subpoenas shall be
24 made by the sheriff of a county within that county, by the sheriff's deputy,
25 by any other person who is not a party and is not less than 18 years of
26 age or by some person specially appointed for that purpose by the sec-
27 retary of labor or the secretary's designee. A person not a party as de-
28 scribed above or a person specially appointed by the secretary or the
29 secretary's designee to serve subpoenas may make service any place in
30 the state. The subpoena shall be served as follows:

31 (1) *Individual.* Service upon an individual, other than a minor or in-
32 capacitated person, shall be made (A) by delivering a copy of the sub-
33 poena to the individual personally, (B) by leaving a copy at such individ-
34 ual's dwelling house or usual place of abode with some person of suitable
35 age and discretion then residing therein, (C) by leaving a copy at the
36 business establishment of the employer with an officer or employee of
37 the establishment, (D) by delivering a copy to an agent authorized by
38 appointment or by law to receive service of process, but if the agent is
39 one designated by a statute to receive service, such further notice as the
40 statute requires shall be given, or (E) if service as prescribed above in
41 clauses (A), (B), (C) or (D) cannot be made with due diligence, by leaving
42 a copy of the subpoena at the individual's dwelling house, usual place of
43 abode or usual business establishment, and by mailing a notice by first-

1 class mail to the place that the copy has been left.

2 (2) *Corporations and partnerships.* Service upon a domestic or for-
3 eign corporation or upon a partnership or other unincorporated associa-
4 tion, when by law it may be sued as such, shall be made by delivering a
5 copy of the subpoena to an officer, partner or resident managing or gen-
6 eral agent thereof, or by leaving the copy at any business office of the
7 employer with the person having charge thereof or by delivering a copy
8 to any other agent authorized by appointment or required by law to re-
9 ceive service of process, if the agent is one authorized by law to receive
10 service and, if the law so requires, by also mailing a copy to the employer.

11 (3) *Refusal to accept service.* In all cases when the person to be
12 served, or an agent authorized by such person to accept service of peti-
13 tions and summonses shall refuse to receive copies of the subpoena, the
14 offer of the duly authorized process server to deliver copies thereof and
15 such refusal shall be sufficient service of such subpoena.

16 (4) *Proof of service.* (A) Every officer to whom a subpoena or other
17 process shall be delivered for service within or without the state, shall
18 make return thereof in writing stating the time, place and manner of
19 service of such writ and shall sign such officer's name to such return.

20 (B) If service of the subpoena is made by a person appointed by the
21 secretary or the secretary's designee to make service, or any other person
22 described in subsection (h) of this section, such person shall make an
23 affidavit as to the time, place and manner of service thereof in a form
24 prescribed by the secretary or the secretary's designee.

25 (5) *Time for return.* The officer or other person receiving a subpoena
26 shall make a return of service promptly and shall send such return to the
27 secretary or the secretary's designee in any event within 10 days after the
28 service is effected. If the subpoena cannot be served it shall be returned
29 to the secretary or the secretary's designee within 30 days after the date
30 of issue with a statement of the reason for the failure to serve the same.

31 (i) *Subpoenas, enforcement.* In case of contumacy by or refusal to
32 obey a subpoena issued to any person, any court of this state within the
33 jurisdiction of which the inquiry is carried on or within the jurisdiction
34 of which such person guilty of contumacy or refusal to obey is found,
35 resides or transacts business, upon application by the secretary or the
36 secretary's duly authorized representative, shall have jurisdiction to issue
37 to such person an order requiring such person to appear before the sec-
38 retary, or the secretary's duly authorized representative, to produce evi-
39 dence, if so ordered, or to give testimony relating to the matter under
40 investigation or in question. Failure to obey such order of the court may
41 be punished by the court as a contempt thereof. Any person who, without
42 just cause, shall fail or refuse to attend and testify or to answer any lawful
43 inquiry or to produce books, papers, correspondence, memoranda or

1 other records in obedience to the subpoena of the secretary or the sec-
2 retary's duly authorized representative shall be punished by a fine of not
3 less than \$200 or by imprisonment of not longer than 60 days, or both,
4 and each day such violation continued shall be deemed to be a separate
5 offense.

6 (j) *State-federal cooperation.* In the administration of this act, the
7 secretary shall cooperate to the fullest extent consistent with the provi-
8 sions of this act, with the federal security agency, shall make such reports,
9 in such form and containing such information as the federal security ad-
10 ministrator may from time to time require, and shall comply with such
11 provisions as the federal security administrator may from time to time
12 find necessary to assure the correctness and verification of such reports;
13 and shall comply with the regulations prescribed by the federal security
14 agency governing the expenditures of such sums as may be allotted and
15 paid to this state under title III of the social security act for the purpose
16 of assisting in the administration of this act. Upon request therefor the
17 secretary shall furnish to any agency of the United States charged with
18 the administration of public works or assistance through public employ-
19 ment, the name, address, ordinary occupation, and employment status of
20 each recipient of benefits and such recipient's rights to further benefits
21 under this act.

22 (k) *Reciprocal arrangements.* The secretary shall participate in mak-
23 ing reciprocal arrangements with appropriate and duly authorized agen-
24 cies of other states or of the federal government, or both, whereby:

25 (1) Services performed by an individual for a single employing unit
26 for which services are customarily performed in more than one state shall
27 be deemed to be services performed entirely within any one of the states
28 (A) in which any part of such individual's service is performed, (B) in
29 which such individual maintains residence, or (C) in which the employing
30 unit maintains a place of business, provided there is in effect as to such
31 services, an election, approved by the agency charged with the adminis-
32 tration of such state's unemployment compensation law, pursuant to
33 which all the services performed by such individual for such employing
34 units are deemed to be performed entirely within such state;

35 (2) service performed by not more than three individuals, on any
36 portion of a day but not necessarily simultaneously, for a single employing
37 unit which customarily operates in more than one state shall be deemed
38 to be service performed entirely within the state in which such employing
39 unit maintains the headquarters of its business; provided that there is in
40 effect, as to such service, an approved election by an employing unit with
41 the affirmative consent of each such individual, pursuant to which service
42 performed by such individual for such employing unit is deemed to be
43 performed entirely within such state;

- 1 (3) potential rights to benefits accumulated under the employment
2 compensation laws of one or more states or under one or more such laws
3 of the federal government, or both, may constitute the basis for the pay-
4 ments of benefits through a single appropriate agency under terms which
5 the secretary finds will be fair and reasonable as to all affected interests
6 and will not result in any substantial loss to the fund;
- 7 (4) wages or services, upon the basis of which an individual may be-
8 come entitled to benefits under an unemployment compensation law of
9 another state or of the federal government, shall be deemed to be wages
10 for insured work for the purpose of determining such individual's rights
11 to benefits under this act, and wages for insured work, on the basis of
12 which an individual may become entitled to benefits under this act, shall
13 be deemed to be wages or services on the basis of which unemployment
14 compensation under such law of another state or of the federal govern-
15 ment is payable, but no such arrangement shall be entered into unless it
16 contains provisions for reimbursements to the fund for such of the ben-
17 efits paid under this act upon the basis of such wages or services, and
18 provisions for reimbursements from the fund for such of the compensa-
19 tion paid under such other law upon the basis of wages for insured work,
20 as the secretary finds will be fair and reasonable as to all affected interests;
21 and
- 22 (5) (A) contributions due under this act with respect to wages for
23 insured work shall be deemed for the purposes of K.S.A. 44-717, and
24 amendments thereto, to have been paid to the fund as of the date pay-
25 ment was made as contributions therefor under another state or federal
26 unemployment compensation law, but no such arrangement shall be en-
27 tered into unless it contains provisions for such reimbursements to the
28 fund of such contributions and the actual earnings thereon as the secre-
29 tary finds will be fair and reasonable as to all affected interests;
- 30 (B) reimbursements paid from the fund pursuant to subsection (l)(4)
31 of this section shall be deemed to be benefits for the purpose of K.S.A.
32 44-704 and 44-712 and amendments thereto; the secretary is authorized
33 to make to other state or federal agencies, and to receive from such other
34 state or federal agencies, reimbursements from or to the fund, in accord-
35 ance with arrangements entered into pursuant to the provisions of this
36 section or any other section of the employment security law;
- 37 (C) the administration of this act and of other state and federal un-
38 employment compensation and public employment service laws will be
39 promoted by cooperation between this state and such other states and
40 the appropriate federal agencies in exchanging services and in making
41 available facilities and information; the secretary is therefore authorized
42 to make such investigations, secure and transmit such information, make
43 available such services and facilities and exercise such of the other powers

1 provided herein with respect to the administration of this act as the sec-
2 retary deems necessary or appropriate to facilitate the administration of
3 any such unemployment compensation or public employment service law
4 and, in like manner, to accept and utilize information, service and facilities
5 made available to this state by the agency charged with the administration
6 of any such other unemployment compensation or public employment
7 service law; and

8 (D) to the extent permissible under the laws and constitution of the
9 United States, the secretary is authorized to enter into or cooperate in
10 arrangements whereby facilities and services provided under this act and
11 facilities and services provided under the unemployment compensation
12 law of any foreign government may be utilized for the taking of claims
13 and the payment of benefits under the employment security law of this
14 state or under a similar law of such government.

15 (l) *Records available.* The secretary may furnish the railroad retire-
16 ment board, at the expense of such board, such copies of the records as
17 the railroad retirement board deems necessary for its purposes.

18 (m) *Destruction of records, reproduction and disposition.* The sec-
19 retary may provide for the destruction, reproduction, temporary or per-
20 manent retention, and disposition of records, reports and claims in the
21 secretary's possession pursuant to the administration of the employment
22 security law provided that prior to any destruction of such records, reports
23 or claims the secretary shall comply with K.S.A. 75-3501 to 75-3514, in-
24 clusive, and amendments thereto.

25 (n) *Federal cooperation.* The secretary may afford reasonable coop-
26 eration with every agency of the United States charged with administra-
27 tion of any unemployment insurance law.

28 (o) The secretary is hereby authorized to fix, charge and collect fees
29 for copies made of public documents, as defined by subsection (c) of
30 K.S.A. 45-204, and amendments thereto, by xerographic, thermographic
31 or other photocopying or reproduction process, in order to recover all or
32 part of the actual costs incurred, including any costs incurred in certifying
33 such copies. All moneys received from fees charged for copies of such
34 documents shall be remitted to the state treasurer in accordance with the
35 provisions of K.S.A. 75-4215 and amendments thereto. Upon receipt of
36 each such remittance, the state treasurer shall deposit the entire amount
37 in the state treasury to the credit of the employment security administra-
38 tion fund. No such fees shall be charged or collected for copies of doc-
39 uments that are made pursuant to a statute which requires such copies
40 to be furnished without expense.

41 Sec. 4. K.S.A. 2004 Supp. 44-817 is hereby amended to read as fol-
42 lows: 44-817. (a) The secretary of labor shall have power to appoint any
43 competent, impartial, disinterested person to act as mediator in any labor

1 dispute either upon the secretary's own initiative or upon the request of
2 one of the parties to the dispute. It shall be the function of such mediator
3 to bring the parties together voluntarily under such favorable auspices as
4 will tend to effectuate settlement of the dispute, but neither the mediator
5 nor the secretary of labor shall have any power of compulsion in mediation
6 proceedings. The secretary of labor or the secretary's designee shall be
7 authorized to charge fees to the parties for mediation, conflict resolution
8 services or training programs contracted for to be provided by the agency
9 and shall prescribe reasonable rules of procedure for such mediators. The
10 costs for such mediation services shall be allocated by the secretary or
11 the secretary's designee.

12 (b) All verbal or written information transmitted between any party
13 to a dispute and a mediator conducting the proceeding, or the staff of an
14 approved program under K.S.A. 5-501 *et seq.* and amendments thereto,
15 shall be confidential communications. ~~No admission, representation or~~
16 ~~statement made in the proceeding shall be admissible as evidence or~~
17 ~~subject to discovery. A mediator shall not be subject to process requiring~~
18 ~~the disclosure of any matter discussed during the proceedings unless all~~
19 ~~the parties consent to a waiver.~~ Any party, including the neutral person
20 or staff of an approved program conducting the proceeding, participating
21 in the proceeding has a privilege in any action to refuse to disclose, and
22 to prevent a witness from disclosing, any communication made in the
23 course of the proceeding. The privilege may be claimed by the party or
24 anyone the party authorizes to claim the privilege.

25 (c) The confidentiality and privilege requirements of this section shall
26 not apply to:

27 (1) Information that is reasonably necessary to establish a defense for
28 the mediator or staff of an approved program conducting the proceeding
29 in the case of an action against the mediator or staff of an approved
30 program that is filed by a party to the mediation;

31 (2) any information that the mediator is required to report under
32 K.S.A. 38-1522 and amendments thereto;

33 (3) any information that is reasonably necessary to stop the commis-
34 sion of an ongoing crime or fraud or to prevent the commission of a crime
35 or fraud in the future for which there was an expressed intent to commit
36 such crime or fraud; or

37 (4) any information that the mediator is required to report or com-
38 municate under the specific provisions of any statute or in order to comply
39 with orders of the court.

40 Sec. 5. K.S.A. 65-1,113 is hereby amended to read as follows: 65-
41 1,113. (a) The secretary of health and environment shall collect such
42 information as is necessary to define the effective distribution of health
43 manpower in the state and to project future health manpower needs in

1 the state. The board of nursing, the Kansas dental board, the board of
2 examiners in optometry, the state board of pharmacy, the state board of
3 healing arts and the state board of veterinary medical examiners shall
4 cooperate with the secretary of health and environment in the collection
5 of health manpower information and shall furnish to the secretary of
6 health and environment all such health manpower information.

7 (b) Information collected pursuant to the provisions of subsection (a)
8 of this section shall be confidential and shall not be disclosed or made
9 public, ~~upon subpoena or otherwise~~, except such information shall be
10 disclosed if no person can be identified in the information to be disclosed
11 and the disclosure is for statistical purposes only.

12 Sec. 6. K.S.A. 65-2836 is hereby amended to read as follows: 65-
13 2836. A licensee's license may be revoked, suspended or limited, or the
14 licensee may be publicly or privately censured, or an application for a
15 license or for reinstatement of a license may be denied upon a finding of
16 the existence of any of the following grounds:

17 (a) The licensee has committed fraud or misrepresentation in apply-
18 ing for or securing an original, renewal or reinstated license.

19 (b) The licensee has committed an act of unprofessional or dishon-
20 orable conduct or professional incompetency.

21 (c) The licensee has been convicted of a felony or class A misde-
22 meanor, whether or not related to the practice of the healing arts. The
23 board shall revoke a licensee's license following conviction of a felony
24 occurring after July 1, 2000, unless a $\frac{2}{3}$ majority of the board members
25 present and voting determine by clear and convincing evidence that such
26 licensee will not pose a threat to the public in such person's capacity as
27 a licensee and that such person has been sufficiently rehabilitated to war-
28 rant the public trust. In the case of a person who has been convicted of
29 a felony and who applies for an original license or to reinstate a canceled
30 license, the application for a license shall be denied unless a $\frac{2}{3}$ majority
31 of the board members present and voting on such application determine
32 by clear and convincing evidence that such person will not pose a threat
33 to the public in such person's capacity as a licensee and that such person
34 has been sufficiently rehabilitated to warrant the public trust.

35 (d) The licensee has used fraudulent or false advertisements.

36 (e) The licensee is addicted to or has distributed intoxicating liquors
37 or drugs for any other than lawful purposes.

38 (f) The licensee has willfully or repeatedly violated this act, the phar-
39 macy act of the state of Kansas or the uniform controlled substances act,
40 or any rules and regulations adopted pursuant thereto, or any rules and
41 regulations of the secretary of health and environment which are relevant
42 to the practice of the healing arts.

43 (g) The licensee has unlawfully invaded the field of practice of any

1 branch of the healing arts in which the licensee is not licensed to practice.
2 (h) The licensee has engaged in the practice of the healing arts under
3 a false or assumed name, or the impersonation of another practitioner.
4 The provisions of this subsection relating to an assumed name shall not
5 apply to licensees practicing under a professional corporation or other
6 legal entity duly authorized to provide such professional services in the
7 state of Kansas.

8 (i) The licensee has the inability to practice the healing arts with rea-
9 sonable skill and safety to patients by reason of physical or mental illness,
10 or condition or use of alcohol, drugs or controlled substances. In deter-
11 mining whether or not such inability exists, the board, upon reasonable
12 suspicion of such inability, shall have authority to compel a licensee to
13 submit to mental or physical examination or drug screen, or any combi-
14 nation thereof, by such persons as the board may designate either in the
15 course of an investigation or a disciplinary proceeding. To determine
16 whether reasonable suspicion of such inability exists, the investigative
17 information shall be presented to the board as a whole, to a review com-
18 mittee of professional peers of the licensee established pursuant to K.S.A.
19 65-2840c and amendments thereto or to a committee consisting of the
20 officers of the board elected pursuant to K.S.A. 65-2818 and amendments
21 thereto and the executive director appointed pursuant to K.S.A. 65-2878
22 and amendments thereto or to a presiding officer authorized pursuant to
23 K.S.A. 77-514 and amendments thereto. The determination shall be made
24 by a majority vote of the entity which reviewed the investigative infor-
25 mation. Information submitted to the board as a whole or a review com-
26 mittee of peers or a committee of the officers and executive director of
27 the board and all reports, findings and other records shall be confidential
28 ~~and not subject to discovery by or release to any person or entity.~~ The
29 licensee shall submit to the board a release of information authorizing
30 the board to obtain a report of such examination or drug screen, or both.
31 A person affected by this subsection shall be offered, at reasonable in-
32 tervals, an opportunity to demonstrate that such person can resume the
33 competent practice of the healing arts with reasonable skill and safety to
34 patients. For the purpose of this subsection, every person licensed to
35 practice the healing arts and who shall accept the privilege to practice
36 the healing arts in this state by so practicing or by the making and filing
37 of a renewal to practice the healing arts in this state shall be deemed to
38 have consented to submit to a mental or physical examination or a drug
39 screen, or any combination thereof, when directed in writing by the board
40 and further to have waived all objections to the admissibility of the tes-
41 timony, drug screen or examination report of the person conducting such
42 examination or drug screen, or both, at any proceeding or hearing before
43 the board on the ground that such testimony or examination or drug

1 screen report constitutes a privileged communication. In any proceeding
2 by the board pursuant to the provisions of this subsection, the record of
3 such board proceedings involving the mental and physical examination or
4 drug screen, or any combination thereof, shall not be used in any other
5 administrative or judicial proceeding.

6 (j) The licensee has had a license to practice the healing arts revoked,
7 suspended or limited, has been censured or has had other disciplinary
8 action taken, or an application for a license denied, by the proper licensing
9 authority of another state, territory, District of Columbia, or other coun-
10 try, a certified copy of the record of the action of the other jurisdiction
11 being conclusive evidence thereof.

12 (k) The licensee has violated any lawful rule and regulation promul-
13 gated by the board or violated any lawful order or directive of the board
14 previously entered by the board.

15 (l) The licensee has failed to report or reveal the knowledge required
16 to be reported or revealed under K.S.A. 65-28,122 and amendments
17 thereto.

18 (m) The licensee, if licensed to practice medicine and surgery, has
19 failed to inform in writing a patient suffering from any form of abnor-
20 mality of the breast tissue for which surgery is a recommended form of
21 treatment, of alternative methods of treatment recognized by licensees
22 of the same profession in the same or similar communities as being ac-
23 ceptable under like conditions and circumstances.

24 (n) The licensee has cheated on or attempted to subvert the validity
25 of the examination for a license.

26 (o) The licensee has been found to be mentally ill, disabled, not guilty
27 by reason of insanity, not guilty because the licensee suffers from a mental
28 disease or defect or incompetent to stand trial by a court of competent
29 jurisdiction.

30 (p) The licensee has prescribed, sold, administered, distributed or
31 given a controlled substance to any person for other than medically ac-
32 cepted or lawful purposes.

33 (q) The licensee has violated a federal law or regulation relating to
34 controlled substances.

35 (r) The licensee has failed to furnish the board, or its investigators or
36 representatives, any information legally requested by the board.

37 (s) Sanctions or disciplinary actions have been taken against the li-
38 censee by a peer review committee, health care facility, a governmental
39 agency or department or a professional association or society for acts or
40 conduct similar to acts or conduct which would constitute grounds for
41 disciplinary action under this section.

42 (t) The licensee has failed to report to the board any adverse action
43 taken against the licensee by another state or licensing jurisdiction, a peer

- 1 review body, a health care facility, a professional association or society, a
2 governmental agency, by a law enforcement agency or a court for acts or
3 conduct similar to acts or conduct which would constitute grounds for
4 disciplinary action under this section.
- 5 (u) The licensee has surrendered a license or authorization to practice
6 the healing arts in another state or jurisdiction, has surrendered the au-
7 thority to utilize controlled substances issued by any state or federal
8 agency, has agreed to a limitation to or restriction of privileges at any
9 medical care facility or has surrendered the licensee's membership on any
10 professional staff or in any professional association or society while under
11 investigation for acts or conduct similar to acts or conduct which would
12 constitute grounds for disciplinary action under this section.
- 13 (v) The licensee has failed to report to the board surrender of the
14 licensee's license or authorization to practice the healing arts in another
15 state or jurisdiction or surrender of the licensee's membership on any
16 professional staff or in any professional association or society while under
17 investigation for acts or conduct similar to acts or conduct which would
18 constitute grounds for disciplinary action under this section.
- 19 (w) The licensee has an adverse judgment, award or settlement
20 against the licensee resulting from a medical liability claim related to acts
21 or conduct similar to acts or conduct which would constitute grounds for
22 disciplinary action under this section.
- 23 (x) The licensee has failed to report to the board any adverse judg-
24 ment, settlement or award against the licensee resulting from a medical
25 malpractice liability claim related to acts or conduct similar to acts or
26 conduct which would constitute grounds for disciplinary action under this
27 section.
- 28 (y) The licensee has failed to maintain a policy of professional liability
29 insurance as required by K.S.A. 40-3402 or 40-3403a and amendments
30 thereto.
- 31 (z) The licensee has failed to pay the premium surcharges as required
32 by K.S.A. 40-3404 and amendments thereto.
- 33 (aa) The licensee has knowingly submitted any misleading, deceptive,
34 untrue or fraudulent representation on a claim form, bill or statement.
- 35 (bb) The licensee as the responsible physician for a physician assistant
36 has failed to adequately direct and supervise the physician assistant in
37 accordance with the physician assistant licensure act or rules and regu-
38 lations adopted under such act.
- 39 (cc) The licensee has assisted suicide in violation of K.S.A. 21-3406
40 as established by any of the following:
- 41 (A) A copy of the record of criminal conviction or plea of guilty for a
42 felony in violation of K.S.A. 21-3406 and amendments thereto.
- 43 (B) A copy of the record of a judgment of contempt of court for

1 violating an injunction issued under K.S.A. 2003 Supp. 60-4404 and
2 amendments thereto.

3 (C) A copy of the record of a judgment assessing damages under
4 K.S.A. 2003 Supp. 60-4405 and amendments thereto.

5 Sec. 7. K.S.A. 65-4922 is hereby amended to read as follows: 65-
6 4922. (a) Each medical care facility shall establish and maintain an internal
7 risk management program which shall consist of:

8 (1) A system for investigation and analysis of the frequency and causes
9 of reportable incidents within the facility;

10 (2) measures to minimize the occurrence of reportable incidents and
11 the resulting injuries within the facility; and

12 (3) a reporting system based upon the duty of all health care providers
13 staffing the facility and all agents and employees of the facility directly
14 involved in the delivery of health care services to report reportable inci-
15 dents to the chief of the medical staff, chief administrative officer or risk
16 manager of the facility.

17 (b) Not less than 60 days before the time for renewal of its license in
18 1987, each medical care facility shall submit to the department its plan
19 for establishing and implementing an internal risk management program.
20 Such plan may rely upon policies and procedures adopted by the medical
21 care facility and its departments and committees. Failure to submit such
22 a plan shall result in denial of the renewal of the facility's license.

23 (c) The department shall make or cause to be made such inspections
24 and investigations as it deems necessary to reasonably assure that each
25 medical care facility is implementing the internal risk management pro-
26 gram required by this section. In making such inspections and investi-
27 gations, the department may review and copy the reports and records of
28 all executive committees designated to investigate reportable incidents
29 under this act.

30 (d) Upon review of a plan submitted pursuant to subsection (b), the
31 department shall determine whether the plan meets criteria of this sec-
32 tion. If the plan does not meet such criteria, the department shall dis-
33 approve the plan and return it to the facility, along with the reasons for
34 disapproval. Within 60 days, the facility shall submit to the department a
35 revised plan which meets the requirements of this section and any rules
36 and regulations adopted hereunder. No medical care facility shall be
37 granted renewal of its license in 1988 unless its plan has been approved
38 by the department.

39 (e) A medical care facility shall not be liable for compliance with or
40 failure to comply with the provisions of this section or any rules and
41 regulations adopted hereunder, except as provided in K.S.A. 65-430 and
42 amendments thereto.

43 (f) The secretary shall adopt such rules and regulations as necessary

1 to administer and enforce the provisions of this section.

2 (g) Any reports and records reviewed or obtained by the department
3 and in the department's possession, pursuant to subsection (a) of K.S.A.
4 65-4925, and amendments thereto, shall be confidential and privileged
5 and not subject to discovery, subpoena or legal compulsion for their re-
6 lease to any person or entity, nor shall they be admissible in any civil or
7 administrative action other than a disciplinary proceeding by the
8 department.

9 Sec. 8. K.S.A. 65-4925 is hereby amended to read as follows: 65-
10 4925. (a) The reports and records made pursuant to K.S.A. 65-4923 or
11 65-4924, and amendments thereto, shall be confidential and privileged,
12 including:

13 (1) Reports and records of executive or review committees of medical
14 care facilities or of a professional society or organization;

15 (2) reports and records of the chief of the medical staff, chief admin-
16 istrative officer or risk manager of a medical care facility;

17 (3) reports and records of any state licensing agency or impaired pro-
18 vider committee of a professional society or organization; and

19 (4) reports made pursuant to this act to or by a medical care facility
20 risk manager, any committee, the board of directors, administrative of-
21 ficer or any consultant.

22 ~~Such reports and records shall not be subject to discovery, subpoena~~
23 ~~or other means of legal compulsion for their release to any person or~~
24 ~~entity and shall not be admissible in any civil or administrative action~~
25 ~~other than a disciplinary proceeding by the appropriate state licensing~~
26 ~~agency.~~

27 (b) No person in attendance at any meeting of an executive or review
28 committee of a medical care facility or of a professional society or organ-
29 ization while such committee is engaged in the duties imposed by K.S.A.
30 65-4923 shall be compelled to testify in any civil, criminal or administra-
31 tive action, other than a disciplinary proceeding by the appropriate li-
32 censing agency, as to any committee discussions or proceedings.

33 (c) No person in attendance at any meeting of an impaired provider
34 committee shall be required to testify, nor shall the testimony of such
35 person be admitted into evidence, in any civil, criminal or administrative
36 action, other than a disciplinary proceeding by the appropriate state li-
37 censing agency, as to any committee discussions or proceedings.

38 (d) Any person or committee performing any duty pursuant to this
39 act shall be designated a peer review committee or officer pursuant to
40 K.S.A. 65-4915 and amendments thereto.

41 (e) A licensing agency in conducting a disciplinary proceeding in
42 which admission of any peer review committee report, record or testi-
43 mony is proposed shall hold the hearing in closed session when any such

1 report, record or testimony is disclosed. Unless otherwise provided by
2 law, a licensing agency conducting a disciplinary proceeding may close
3 only that portion of the hearing in which disclosure of a report or record
4 privileged under this section is proposed. In closing a portion of a hearing
5 as provided by this section, the presiding officer may exclude any person
6 from the hearing location except the licensee, the licensee's attorney, the
7 agency's attorney, the witness, the court reporter and appropriate staff
8 support for either counsel. The licensing agency shall make the portions
9 of the agency record in which such report or record is disclosed subject
10 to a protective order prohibiting further disclosure of such report or rec-
11 ord. ~~Such report or record shall not be subject to discovery, subpoena or~~
12 ~~other means of legal compulsion for their release to any person or entity.~~
13 ~~No person in attendance at a closed portion of a disciplinary proceeding~~
14 ~~shall at a subsequent civil, criminal or administrative hearing, be required~~
15 ~~to testify regarding the existence or content of a report or record privi-~~
16 ~~leged under this section which was disclosed in a closed portion of a~~
17 ~~hearing, nor shall such testimony be admitted into evidence in any sub-~~
18 ~~sequent civil, criminal or administrative hearing.~~ A licensing agency con-
19 ducting a disciplinary proceeding may review peer review committee re-
20 cords, testimony or reports but must prove its findings with independently
21 obtained testimony or records which shall be presented as part of the
22 disciplinary proceeding in open meeting of the licensing agency. Offering
23 such testimony or records in an open public hearing shall not be deemed
24 a waiver of the peer review privilege relating to any peer review com-
25 mittee testimony, records or report.

26 Sec. 9. K.S.A. 22a-243, 44-510j, 65-1,113, 65-2836, 65-4922 and 65-
27 4925 and K.S.A. 2004 Supp. 44-714 and 44-817 are hereby repealed.

28 Sec. 10. This act shall take effect and be in force from and after its
29 publication in the statute book.