

**Neutral Testimony on SB222  
House Committee on Judiciary  
Kansas State Board of Healing Arts  
March 4th, 2025**

Chair Humphries and Honorable Committee Members,

Thank you for the opportunity to provide this neutral testimony concerning SB222. My name is Derenda Mitchell, and I am the General Counsel for the Kansas State Board of Healing Arts (“KSBHA” or “Board”). The Board is the executive body tasked with licensing and regulating 16 different healthcare professions in Kansas. *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, three chiropractors, one podiatrist, and three public members. **The statutory mission of the Board is patient protection.** *See* K.S.A. 65-2801.

To begin, I would like to commend the work of the Senate Committee on Judiciary. The amendments made to lines 16-19 have provided invaluable clarification to our agency and are on point with our concern that the Kansas Legislature not be interpreted as giving the courts the power to legislate. We thank you for your efforts to protect personal freedoms and institute efficiencies in our government. The Board remains neutral on the passage of this legislation, and I would like to highlight several key points for the committee’s consideration.

As written, SB222 would prohibit a state court or an administrative hearing officer that is interpreting a state statute, rule and regulation, or document that has the force and effect of law from deferring to an agency’s interpretation of such statute. In actions brought by or against a state agency, a state court or administrative hearing officer shall – after applying all customary tools of interpretation and rules of statutory construction – exercise any remaining doubt in a way that is consistent with an individual’s fundamental constitutional rights.

As an aside, the footnote to this testimony cites an article reviewing nationwide judicial deference laws<sup>1</sup>. It is worth noting that deference to an agency’s interpretation of statutes and regulations is already prohibited in Kansas. In *Douglas v. Ad Astra Information Systems, LLC*, 209 Kan 552 (2013) the Kansas Supreme Court said that any provision that gives deference to agencies to decide the law is “abandoned, abrogated, disallowed, disapproved, ousted, overruled, and permanently relegated to the history books where it will never again affect the outcome of an appeal.”. At best, SB222 appears to be duplicative, and could be construed as conflicting with the existing mandate if not further amended.

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<sup>1</sup> Bamzai, A. (2017, February). *The origins of judicial deference to executive interpretation*. The Yale Law Journal - Home. <https://www.yalelawjournal.org/article/the-origins-of-judicial-deference-to-executive-interpretation>

Although the Senate's amendments addressed our concerns about courts not acting as a legislature, they did not go far enough. We propose two more changes that further our goal of keeping the courts in their lane.

The Board proposes deleting the word "document" and striking lines 11-12 (beginning at "or"). This will prevent an interpretation of the word "documents" that includes exhibits admitted during disciplinary proceedings. This term in the current bill, coupled with the phrase "de novo"<sup>2</sup>, might suggest the courts could retry the facts decided in a disciplinary proceeding. We would ask that the courts not be invited by this legislation to reconsider the facts. To do so would otherwise be costly, confusing, and time consuming.

For the sake of clarity, we suggest the attached technical amendments that would eliminate these concerns.

As mentioned above, the Board remains neutral to the passage of SB222. I welcome any comments, questions, or further dialogue with members of the committee. If you have any questions, please feel free to contact me at 785-296-1384.

Sincerely,



Derenda Mitchell  
General Counsel

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<sup>2</sup> Meaning "from the beginning"; without reference to any legal conclusion or assumption made by the previous body to hear this case

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**Senate Bill No. 222**  
Proposed Technical Amendments  
Kansas State Board of Healing Arts

1 AN ACT concerning state agencies; relating to interpretation of statutes,  
2 rules and regulations ~~and documents~~ with the force and effect of law;  
3 prohibiting deference to the agency's interpretation by a state court or  
4 an ***administrative hearing officer*** hearing an administrative action.  
5

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

7 Section 1. (a) In interpreting a state statute, rule ~~and or~~  
8 regulation ~~or document~~ that has the force and effect of law, a state court or  
9 an ***administrative hearing*** officer hearing an administrative action may  
10 consider but shall not defer to a state agency's interpretation of such  
11 statute, rule and regulation ~~or document and shall interpret the meaning~~  
12 ~~and effect of such statute, rule and regulation or document de novo.~~

13 (b) In an action brought by or against a state agency, after  
14 applying all customary tools of interpretation and rules of statutory  
15 construction pursuant to law, a state court or an ***administrative hearing***  
16 officer hearing an administrative action shall exercise any remaining doubt  
17 ~~in favor of a reasonable interpretation that limits the state agency's powers~~  
18 ~~and maximizes individual liberty~~ ***a way that is consistent with an***  
19 ***individual's fundamental constitutional rights.***

20 (c) As used in this section, "rule and regulation" and "state  
21 agency" mean the same as defined in K.S.A. 77-602, and amendments  
22 thereto.

23 Sec. 2. This act shall take effect and be in force from and after  
24 its publication in the statute book.