

**Neutral Testimony on SB222
Senate Committee on Judiciary
Kansas State Board of Healing Arts
February 14, 2025**

Chair Warren 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, the Board would first like to acknowledge your concerns about the federal bureaucracy. We thank you for your efforts to protect personal freedoms and institute efficiencies in our government. There are legitimate concerns that exist with respect to the power of federal regulators, but the same areas of concern are not present at the state level. Though the Board remains neutral on the passage of SB222, there are several important factors I would like to highlight for the committee.

First, the necessity of SB222 is unclear, as state courts are already *de jure* prohibited from deferring to a state agency’s interpretation of statutes and regulations. In *Douglas v. Ad Astra Information Systems, LLC*, 209 Kan 552, the Kansas Supreme Court said in 2013 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 in some cases in conflict with the existing process. Please refer to the below article¹ for an overview of existing judicial deference laws.

Second, this legislation raises potential concerns surrounding the balance of powers in the three branches of government. As written, SB222 would empower the judicial branch to substitute their own “reasonable interpretation” rather than reviewing the legislature’s intent. Determining the legislative intent of a law – which is required judicial practice – is not the same as considering a separate interpretation favoring individual liberty. In effect, this usurps the constitutionally granted authority of the legislature to make and decide laws and would potentially give state courts the ability to act as a super legislature.

Third, SB222 would directly conflict with the Board’s ability carry out its authorized duties. The Board has been authorized by the legislature to (1) grant the privilege of practicing the healing arts (a license);

¹ 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>

and (2) properly protect the public from unprofessional, improper, unauthorized, and unqualified practice of the healing arts *See* K.S.A. 65-2801.

Subsection (b) would require courts to adopt an interpretation that “limits the state agency’s powers and maximizes individual liberty.” Further, SB222 states that this framework extends to the interpretation of documents.

- We are greatly concerned that by giving the courts de novo authority in matters involving licensure - and by requiring them to favor interpretations that limit the state agency’s powers – a licensee could appeal to the court based on the argument of individual liberty. As currently written, the officer or court may be required to substitute that individual’s interpretation at the expense of public safety.

It is also important to highlight that the Board of Healing Arts stands apart from other regulatory agencies. This is because the KSBHA Board members must themselves meet the same qualifications to be granted the privilege of a license and treat patients in accordance with the same rules and regulations as other licensees in their profession. KSBHA board members have direct hands-on knowledge of how laws and regulations impact the delivery of healthcare in Kansas and why, or why not, a regulation is needed to protect the public from unprofessional, improper, unauthorized, and unqualified practice of the healing arts. Limiting the KSBHA power and maximizing individual liberty conflicts with the legislative declaration that practicing the healing arts is “privilege” and the role of the KSBHA to: (1) grant the privilege to only qualified applicants; and (2) protect the public from unprofessional, improper, unauthorized, and unqualified practice of the healing arts.

We would ask that our agency be exempted from this legislation entirely. Our regulatory board consists of qualified licensed professionals who balance their own needs for provider autonomy with the responsibility of the Board to protect and safeguard the public. Should the committee feel strongly in favor of the passage of SB222, the Board would ask for the following technical amendments:

1. Delete section 1(a). This can be deleted in its entirety or, at minimum, the word “document” (lines 8, 10, and 11) should be deleted.
2. Subsection (b) – strike the word “reasonable” and rephrase lines 16-17 to read that the courts “shall exercise any remaining doubt in favor of an interpretation that does not exceed the agency’s powers...” Full section would now read:

(b) In an action brought by or against a state agency, after applying all customary tools of interpretation and rules of statutory construction pursuant to law, a state court or an officer hearing an administrative action shall exercise any remaining doubt in favor of *an* ~~reasonable~~ interpretation that *does not exceed* the state agency's powers. ~~and maximizes individual liberty.~~

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As mentioned above, the Board remains neutral to the passage of SB222, however we would welcome further discussion. If you have any questions, please feel free to contact me at 785-296-2482.

Sincerely,

Derenda Mitchell
General Counsel

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