

## Senate Substitute for HOUSE BILL No. 2027

By Committee on Public Health and Welfare

3-24

1 AN ACT concerning the healing arts; relating to anatomic pathology  
2 billing; institutional licenses; licensee reporting; amending K.S.A. 2016  
3 Supp. 65-2837, 65-2895 and 65-2898 and repealing the existing  
4 sections.

5  
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2016 Supp. 65-2837 is hereby amended to read as  
8 follows: 65-2837. As used in K.S.A. 65-2836, and amendments thereto,  
9 and in this section:

10 (a) "Professional incompetency" means:

11 (1) One or more instances involving failure to adhere to the  
12 applicable standard of care to a degree ~~which~~ that constitutes gross  
13 negligence, as determined by the board.

14 (2) Repeated instances involving failure to adhere to the applicable  
15 standard of care to a degree ~~which~~ that constitutes ordinary negligence, as  
16 determined by the board.

17 (3) A pattern of practice or other behavior ~~which~~ that demonstrates a  
18 manifest incapacity or incompetence to practice the healing arts.

19 (b) "Unprofessional conduct" means:

20 (1) Solicitation of professional patronage through the use of  
21 fraudulent or false advertisements, or profiting by the acts of those  
22 representing themselves to be agents of the licensee.

23 (2) Representing to a patient that a manifestly incurable disease,  
24 condition or injury can be permanently cured.

25 (3) Assisting in the care or treatment of a patient without the consent  
26 of the patient, the attending physician or the patient's legal representatives.

27 (4) The use of any letters, words, or terms, as an affix, on stationery,  
28 in advertisements, or otherwise indicating that such person is entitled to  
29 practice a branch of the healing arts for which such person is not licensed.

30 (5) Performing, procuring or aiding and abetting in the performance  
31 or procurement of a criminal abortion.

32 (6) Willful betrayal of confidential information.

33 (7) Advertising professional superiority or the performance of  
34 professional services in a superior manner.

35 (8) Advertising to guarantee any professional service or to perform  
36 any operation painlessly.

1 (9) Participating in any action as a staff member of a medical care  
2 facility ~~which~~ *that* is designed to exclude or ~~which~~ *that* results in the  
3 exclusion of any person licensed to practice medicine and surgery from the  
4 medical staff of a nonprofit medical care facility licensed in this state  
5 because of the branch of the healing arts practiced by such person or  
6 without just cause.

7 (10) Failure to effectuate the declaration of a qualified patient as  
8 provided in ~~subsection (a)~~ of K.S.A. 65-28,107(a), and amendments  
9 thereto.

10 (11) Prescribing, ordering, dispensing, administering, selling,  
11 supplying or giving any amphetamines or sympathomimetic amines,  
12 except as authorized by K.S.A. 65-2837a, and amendments thereto.

13 (12) Conduct likely to deceive, defraud or harm the public.

14 (13) Making a false or misleading statement regarding the licensee's  
15 skill or the efficacy or value of the drug, treatment or remedy prescribed  
16 by the licensee or at the licensee's direction in the treatment of any disease  
17 or other condition of the body or mind.

18 (14) Aiding or abetting the practice of the healing arts by an  
19 unlicensed, incompetent or impaired person.

20 (15) Allowing another person or organization to use the licensee's  
21 license to practice the healing arts.

22 (16) Commission of any act of sexual abuse, misconduct or other  
23 improper sexual contact, ~~which~~ *that* exploits the licensee-patient  
24 relationship; with a patient or a person responsible for health care  
25 decisions concerning such patient.

26 (17) The use of any false, fraudulent or deceptive statement in any  
27 document connected with the practice of the healing arts including the  
28 intentional falsifying or fraudulent altering of a patient or medical care  
29 facility record.

30 (18) Obtaining any fee by fraud, deceit or misrepresentation.

31 (19) Directly or indirectly giving or receiving any fee, commission,  
32 rebate or other compensation for professional services not actually and  
33 personally rendered, other than through the legal functioning of lawful  
34 professional partnerships, corporations, limited liability ~~company~~  
35 *companies* or associations.

36 (20) Failure to transfer patient records to another licensee when  
37 requested to do so by the subject patient or by such patient's legally  
38 designated representative.

39 (21) Performing unnecessary tests, examinations or services ~~which~~  
40 *that* have no legitimate medical purpose.

41 (22) Charging an excessive fee for services rendered.

42 (23) Prescribing, dispensing, administering or distributing a  
43 prescription drug or substance, including a controlled substance, in an

1 improper or inappropriate manner, or for other than a valid medical  
2 purpose, or not in the course of the licensee's professional practice.

3 (24) Repeated failure to practice healing arts with that level of care,  
4 skill and treatment—~~which~~ *that* is recognized by a reasonably prudent  
5 similar practitioner as being acceptable under similar conditions and  
6 circumstances.

7 (25) Failure to keep written medical records—~~which~~ *that* accurately  
8 describe the services rendered to the patient, including patient histories,  
9 pertinent findings, examination results and test results.

10 (26) Delegating professional responsibilities to a person when the  
11 licensee knows or has reason to know that such person is not qualified by  
12 training, experience or licensure to perform them.

13 (27) Using experimental forms of therapy without proper informed  
14 patient consent, without conforming to generally accepted criteria or  
15 standard protocols, without keeping detailed legible records or without  
16 having periodic analysis of the study and results reviewed by a committee  
17 or peers.

18 (28) Prescribing, dispensing, administering or distributing an anabolic  
19 steroid or human growth hormone for other than a valid medical purpose.  
20 Bodybuilding, muscle enhancement or increasing muscle bulk or strength  
21 through the use of an anabolic steroid or human growth hormone by a  
22 person who is in good health is not a valid medical purpose.

23 (29) Referring a patient to a health care entity for services if the  
24 licensee has a significant investment interest in the health care entity,  
25 unless the licensee informs the patient in writing of such significant  
26 investment interest and that the patient may obtain such services  
27 elsewhere.

28 (30) Failing to properly supervise, direct or delegate acts—~~which~~ *that*  
29 constitute the healing arts to persons who perform professional services  
30 pursuant to such licensee's direction, supervision, order, referral,  
31 delegation or practice protocols.

32 (31) Violating K.S.A. 65-6703, and amendments thereto.

33 (32) Charging, billing or otherwise soliciting payment from any  
34 patient, patient's representative or insurer for anatomic pathology services,  
35 if such services are not personally rendered by the licensee or under such  
36 licensee's direct supervision. As used in this subsection, "anatomic  
37 pathology services" means the gross or microscopic examination of  
38 histologic processing of human organ tissue or the examination of human  
39 cells from fluids, aspirates, washings, brushings or smears, including blood  
40 banking services, and subcellular or molecular pathology services,  
41 performed by or under the supervision of a person licensed to practice  
42 medicine and surgery or a clinical laboratory. Nothing in this subsection  
43 shall be construed to prohibit billing for anatomic pathology services by:

1 (A) A hospital, ~~or by~~

2 (B) a clinical laboratory when samples are transferred between  
3 clinical laboratories for the provision of anatomic pathology services; or

4 (C) a physician providing services to a patient pursuant to a medical  
5 retainer agreement in compliance with K.S.A. 65-4978, and amendments  
6 thereto, when the bill to the patient for such services:

7 (i) Identifies the laboratory or physician that performed the services;

8 (ii) discloses in writing to the patient the actual amount charged by  
9 the physician or laboratory that performed the service; and

10 (iii) is consistent with rules and regulations adopted by the board for  
11 appropriate billing standards applicable to such services when furnished  
12 under these agreements.

13 (33) Engaging in conduct ~~which~~ that violates patient trust and  
14 exploits the licensee-patient relationship for personal gain.

15 (34) Obstructing a board investigation including, but not limited to,  
16 engaging in one or more of the following acts:

17 (A) Falsifying or concealing a material fact;

18 (B) knowingly making or causing to be made any false or misleading  
19 statement or writing; or

20 (C) other acts or conduct likely to deceive or defraud the board.

21 (c) "False advertisement" means any advertisement ~~which~~ that is  
22 false, misleading or deceptive in a material respect. In determining  
23 whether any advertisement is misleading, there shall be taken into account  
24 not only representations made or suggested by statement, word, design,  
25 device, sound or any combination thereof, but also the extent to which the  
26 advertisement fails to reveal facts material in the light of such  
27 representations made.

28 (d) "Advertisement" means all representations disseminated in any  
29 manner or by any means; for the purpose of inducing, or ~~which~~ that are  
30 likely to induce, directly or indirectly, the purchase of professional  
31 services.

32 (e) "Licensee" for purposes of this section and K.S.A. 65-2836, and  
33 amendments thereto, ~~shall mean~~ means all persons issued a license, permit  
34 or special permit pursuant to article 28 of chapter 65 of the Kansas Statutes  
35 Annotated, and amendments thereto.

36 (f) "License" for purposes of this section and K.S.A. 65-2836, and  
37 amendments thereto, ~~shall mean~~ means any license, permit or special  
38 permit granted under article 28 of chapter 65 of the Kansas Statutes  
39 Annotated, and amendments thereto.

40 (g) "Health care entity" means any corporation, firm, partnership or  
41 other business entity ~~which~~ that provides services for diagnosis or  
42 treatment of human health conditions and ~~which~~ that is owned separately  
43 from a referring licensee's principle practice.

1 (h) "Significant investment interest" means ownership of at least 10%  
2 of the value of the firm, partnership or other business entity ~~which that~~  
3 owns or leases the health care entity, or ownership of at least 10% of the  
4 shares of stock of the corporation ~~which that~~ owns or leases the health care  
5 entity.

6 Sec. 2. K.S.A. 2016 Supp. 65-2895 is hereby amended to read as  
7 follows: 65-2895. (a) There is hereby created an institutional license ~~which~~  
8 *that* may be issued by the board to a person who:

9 (1) Is a graduate of an accredited school of medicine or osteopathic  
10 medicine or a school which the graduates have been licensed in another  
11 state or states ~~which that~~ have standards similar to Kansas;

12 (2) has completed at least two years in a postgraduate training  
13 program in the United States approved by the board; and

14 (3) who is employed as provided in this section.

15 (b) Subject to the restrictions of this section, the institutional license  
16 shall confer upon the holder the right and privilege to practice medicine  
17 and surgery and shall obligate the holder to comply with all requirements  
18 of such license.

19 (c) The practice privileges of institutional license holders are  
20 restricted and shall be valid only during the period in which:

21 (1) The holder is employed by any institution within the Kansas  
22 department for aging and disability services, employed by any institution  
23 within the department of corrections or employed pursuant to a contract  
24 entered into by the Kansas department for aging and disability services or  
25 the department of corrections with a third party, and only within the  
26 institution to which the holder is assigned; and

27 (2) the holder has been employed for at least three years as described  
28 in subsection (c)(1) and is employed to provide mental health services in  
29 Kansas in the employ of a Kansas licensed community mental health  
30 center, or one of its contracted affiliates, or a federal, state, county or  
31 municipal agency, or other political subdivision, or a contractor of a  
32 federal, state, county or municipal agency, or other political subdivision, or  
33 a duly chartered educational institution, or a medical care facility licensed  
34 under K.S.A. 65-425 et seq., and amendments thereto, in a psychiatric  
35 hospital licensed under K.S.A. ~~75-3307b~~ *2016 Supp. 39-2001 et seq.*, and  
36 amendments thereto, or a contractor of such educational institution,  
37 medical care facility or psychiatric hospital, and whose practice, in any  
38 such employment, is limited to providing mental health services, is a part  
39 of the duties of such licensee's paid position and is performed solely on  
40 behalf of the employer; *or*

41 (3) *the holder was issued an institutional license prior to May 9,*  
42 *1997, and is providing mental health services pursuant to a written*  
43 *protocol with a person who holds a Kansas license to practice medicine*

1 *and surgery other than an institutional license.*

2 (d) An institutional license shall be canceled on the date established  
3 by rules and regulations of the board ~~which~~ *that* may provide for renewal  
4 throughout the year on a continuing basis. In each case in which an  
5 institutional license is renewed for a period of time of more or less than 12  
6 months, the board may prorate the amount of the fee established under  
7 K.S.A. 65-2852, and amendments thereto. The request for renewal shall be  
8 on a form provided by the board and shall be accompanied by the  
9 prescribed fee, ~~which~~ *that* shall be paid not later than the renewal date of  
10 the license. An institutional license may be renewed for an additional one-  
11 year period if the applicant for renewal meets the requirements under  
12 subsection (c), has submitted an application for renewal on a form  
13 provided by the board, has paid the renewal fee established by rules and  
14 regulations of the board of not to exceed \$500 and has submitted evidence  
15 of satisfactory completion of a program of continuing education required  
16 by the board. In addition, an applicant for renewal who is employed as  
17 described in subsection (c)(1) shall submit with the application for renewal  
18 a recommendation that the institutional license be renewed signed by the  
19 superintendent of the institution to which the institutional license holder is  
20 assigned.

21 (e) Nothing in this section shall prohibit any person who was issued  
22 an institutional license prior to the effective date of this section from  
23 having the institutional license reinstated by the board if the person meets  
24 the requirements for an institutional license described in subsection (a).

25 (f) This section shall be a part of and supplemental to the Kansas  
26 healing arts act.

27 Sec. 3. K.S.A. 2016 Supp. 65-2898 is hereby amended to read as  
28 follows: 65-2898. (a) No person reporting to the state board of healing arts  
29 in good faith any information such person may have relating to alleged  
30 incidents of malpractice, or the qualifications, fitness or character of, or  
31 disciplinary action taken against, a person licensed, registered or certified  
32 by the board shall be subject to a civil action for damages as a result of  
33 reporting such information, *and such person reporting shall be immune*  
34 *from any civil liability that might otherwise be incurred in an action*  
35 *resulting from reporting such information. In any civil action resulting*  
36 *from reporting such information in which a court determines that a person*  
37 *reporting under this section reported in good faith, the court shall allow*  
38 *the person reporting a reasonable amount for attorney fees and expenses*  
39 *incurred in defending the civil action.*

40 (b) Any state, regional or local association composed of persons  
41 licensed to practice a profession regulated by the board and the individual  
42 members of any committee thereof, ~~which~~ *that* in good faith investigates  
43 or communicates information pertaining to the alleged incidents of

1 malpractice, or the qualifications, fitness or character of, or disciplinary  
2 action taken against, any licensee, registrant or certificate holder to the  
3 state board of healing arts or to any committee or agent thereof, shall be  
4 immune from liability in any civil action; that is based upon such  
5 investigation or transmittal of information if the investigation and  
6 communication was made in good faith and did not represent as true any  
7 matter not reasonably believed to be true.

8       Sec. 4. K.S.A. 2016 Supp. 65-2837, 65-2895 and 65-2898 are hereby  
9 repealed.

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