

HOUSE BILL No. 2146

By Committee on Health and Human Services

2-5

1 AN ACT concerning health and healthcare; providing for a certificate of
2 authorization for a business entity to practice medicine; amending
3 K.S.A. 65-2803, 65-2836 and 65-2877a and K.S.A. 2018 Supp. 40-
4 3401 and repealing the existing sections.

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

7 New Section 1. (a) Notwithstanding any other provision of law, a
8 business entity shall not be prohibited from engaging in the practice of the
9 healing arts if it obtains a certificate of authorization pursuant to this
10 section prior to practicing the healing arts in this state. To obtain a
11 certificate of authorization, a business entity shall:

12 (1) Require each employee and agent of the business entity who is
13 engaged in the practice of the healing arts to be licensed to practice such
14 profession by the state board of healing arts;

15 (2) leave the method, manner and means of patient treatment to the
16 discretion of the licensed individuals treating such patients; and

17 (3) not impose or substitute its judgment for that of the licensed
18 individuals.

19 (b) (1) A business entity shall apply to the state board of healing arts
20 for a certificate of authorization, upon a form prescribed by the state board
21 of healing arts, listing the names and addresses of all employees and
22 agents of the business entity who are licensed to practice the healing arts
23 and such other information as may be required by the state board of
24 healing arts. The application for a certificate of authorization shall be
25 accompanied by an application fee fixed by the state board of healing arts.

26 (2) The certificate of authorization shall be renewed biennially. The
27 biennial renewal fee shall be fixed by the state board of healing arts and
28 shall be accompanied by a form prescribed by the state board of healing
29 arts.

30 (3) The board of healing arts shall adopt the rules and regulations
31 necessary to administer the provisions of this subsection.

32 (c) In the event the list of individuals licensed to practice the healing
33 arts changes, the business entity shall provide notice of any such change to
34 the state board of healing arts within 30 days after the effective date of
35 such change.

36 (d) If the state board of healing arts finds that such business entity is

1 in compliance with all of the requirements of this section, the state board
2 of healing arts shall issue a certificate of authorization to such business
3 entity designating the business entity as authorized to engage in the
4 practice of the healing arts.

5 (e) No business entity issued a certificate of authorization under this
6 section shall be relieved of responsibility for the conduct or acts of its
7 agents or employees by reason of its compliance with the provisions of
8 this section, nor shall any individual licensed to practice the healing arts be
9 relieved of responsibility and liability for services performed by reason of
10 employment or relationship with such business entity. Nothing in this
11 section shall exempt any business entity from the provisions of any other
12 law applicable to the business entity.

13 (f) As used in this section, "business entity" means a general
14 corporation, limited liability company, limited liability partnership or other
15 legal entity created by law that employs individuals who are licensed to
16 practice medicine by the board of healing arts.

17 (g) This section shall be part of and supplemental to the Kansas
18 healing arts act.

19 Sec. 2. K.S.A. 2018 Supp. 40-3401 is hereby amended to read as
20 follows: 40-3401. As used in this act:

21 (a) "Applicant" means any healthcare provider.

22 (b) "Basic coverage" means a policy of professional liability
23 insurance required to be maintained by each healthcare provider pursuant
24 to the provisions of K.S.A. 40-3402(a) or (b), and amendments thereto.

25 (c) "Commissioner" means the commissioner of insurance.

26 (d) "Fiscal year" means the year commencing on the effective date of
27 this act and each year, commencing on the first day of July thereafter.

28 (e) "Fund" means the healthcare stabilization fund established
29 pursuant to K.S.A. 40-3403(a), and amendments thereto.

30 (f) "Healthcare provider" means a person licensed to practice any
31 branch of the healing arts by the state board of healing arts, a person who
32 holds a temporary permit to practice any branch of the healing arts issued
33 by the state board of healing arts, a person engaged in a postgraduate
34 training program approved by the state board of healing arts, a medical
35 care facility licensed by the state of Kansas, a podiatrist licensed by the
36 state board of healing arts, a health maintenance organization issued a
37 certificate of authority by the commissioner, an optometrist licensed by the
38 board of examiners in optometry, a pharmacist licensed by the state board
39 of pharmacy, a licensed professional nurse who is authorized to practice as
40 a registered nurse anesthetist, a licensed professional nurse who has been
41 granted a temporary authorization to practice nurse anesthesia under
42 K.S.A. 65-1153, and amendments thereto, a professional corporation
43 organized pursuant to the professional corporation law of Kansas by

1 persons who are authorized by such law to form such a corporation and
2 who are healthcare providers as defined by this subsection, a Kansas
3 limited liability company organized for the purpose of rendering
4 professional services by its members who are healthcare providers as
5 defined by this subsection and who are legally authorized to render the
6 professional services for which the limited liability company is organized,
7 a partnership of persons who are healthcare providers under this
8 subsection, a Kansas not-for-profit corporation organized for the purpose
9 of rendering professional services by persons who are healthcare providers
10 as defined by this subsection, a nonprofit corporation organized to
11 administer the graduate medical education programs of community
12 hospitals or medical care facilities affiliated with the university of Kansas
13 school of medicine, a dentist certified by the state board of healing arts to
14 administer anesthetics under K.S.A. 65-2899, and amendments thereto, a
15 psychiatric hospital licensed prior to January 1, 1988, and continuously
16 thereafter under K.S.A. 2015 Supp. 75-3307b, prior to its repeal, and
17 K.S.A. 2018 Supp. 39-2001 et seq., and amendments thereto, ~~or~~ a mental
18 health center or mental health clinic licensed by the state of Kansas ~~On~~
19 ~~and after January 1, 2015; "Healthcare provider" also means, a physician~~
20 ~~assistant licensed by the state board of healing arts, a licensed advanced~~
21 ~~practice registered nurse who is authorized by the board of nursing to~~
22 ~~practice as an advanced practice registered nurse in the classification of a~~
23 ~~nurse-midwife, a licensed advanced practice registered nurse who has been~~
24 ~~granted a temporary authorization by the board of nursing to practice as an~~
25 ~~advanced practice registered nurse in the classification of a nurse-midwife,~~
26 ~~a nursing facility licensed by the state of Kansas, an assisted living facility~~
27 ~~licensed by the state of Kansas ~~or~~, a residential healthcare facility licensed~~
28 ~~by the state of Kansas or a business entity that holds a certificate of~~
29 ~~authorization under section 1, and amendments thereto. "Healthcare~~
30 ~~provider" does not include: (1) Any state institution for people with~~
31 ~~intellectual disability; (2) any state psychiatric hospital; (3) any person~~
32 ~~holding an exempt license issued by the state board of healing arts or the~~
33 ~~board of nursing; (4) any person holding a visiting clinical professor~~
34 ~~license from the state board of healing arts; (5) any person holding an~~
35 ~~inactive license issued by the state board of healing arts; (6) any person~~
36 ~~holding a federally active license issued by the state board of healing arts;~~
37 ~~(7) an advanced practice registered nurse who is authorized by the board~~
38 ~~of nursing to practice as an advanced practice registered nurse in the~~
39 ~~classification of nurse-midwife or nurse anesthetist and who practices~~
40 ~~solely in the course of employment or active duty in the United States~~
41 ~~government or any of its departments, bureaus or agencies or who~~
42 ~~provides professional services as a charitable healthcare provider as~~
43 ~~defined under K.S.A. 75-6102, and amendments thereto; or (8) a physician~~

1 assistant licensed by the state board of healing arts who practices solely in
2 the course of employment or active duty in the United States government
3 or any of its departments, bureaus or agencies or who provides
4 professional services as a charitable healthcare provider as defined under
5 K.S.A. 75-6102, and amendments thereto.

6 (g) "Inactive healthcare provider" means a person or other entity who
7 purchased basic coverage or qualified as a self-insurer on or subsequent to
8 the effective date of this act but who, at the time a claim is made for
9 personal injury or death arising out of the rendering of or the failure to
10 render professional services by such healthcare provider, does not have
11 basic coverage or self-insurance in effect solely because such person is no
12 longer engaged in rendering professional service as a healthcare provider.

13 (h) "Insurer" means any corporation, association, reciprocal
14 exchange, inter-insurer and any other legal entity authorized to write
15 bodily injury or property damage liability insurance in this state, including
16 workers compensation and automobile liability insurance, pursuant to the
17 provisions of the acts contained in article 9, 11, 12 or 16 of chapter 40 of
18 the Kansas Statutes Annotated, and amendments thereto.

19 (i) "Plan" means the operating and administrative rules and
20 procedures developed by insurers and rating organizations or the
21 commissioner to make professional liability insurance available to
22 healthcare providers.

23 (j) "Professional liability insurance" means insurance providing
24 coverage for legal liability arising out of the performance of professional
25 services rendered or that should have been rendered by a healthcare
26 provider.

27 (k) "Rating organization" means a corporation, an unincorporated
28 association, a partnership or an individual licensed pursuant to K.S.A. 40-
29 956, and amendments thereto, to make rates for professional liability
30 insurance.

31 (l) "Self-insurer" means a healthcare provider who qualifies as a self-
32 insurer pursuant to K.S.A. 40-3414, and amendments thereto.

33 (m) "Medical care facility" means the same when used in the
34 healthcare provider insurance availability act as defined in K.S.A. 65-425,
35 and amendments thereto, except that as used in the healthcare provider
36 insurance availability act such term, as it relates to insurance coverage
37 under the healthcare provider insurance availability act, also includes any
38 director, trustee, officer or administrator of a medical care facility.

39 (n) "Mental health center" means a mental health center licensed by
40 the state of Kansas under K.S.A. 2018 Supp. 39-2001 et seq., and
41 amendments thereto, except that as used in the healthcare provider
42 insurance availability act such term, as it relates to insurance coverage
43 under the healthcare provider insurance availability act, also includes any

1 director, trustee, officer or administrator of a mental health center.

2 (o) "Mental health clinic" means a mental health clinic licensed by
3 the state of Kansas under K.S.A. 2018 Supp. 39-2001 et seq., and
4 amendments thereto, except that as used in the healthcare provider
5 insurance availability act such term, as it relates to insurance coverage
6 under the healthcare provider insurance availability act, also includes any
7 director, trustee, officer or administrator of a mental health clinic.

8 (p) "State institution for people with intellectual disability" means
9 Winfield state hospital and training center, Parsons state hospital and
10 training center and the Kansas neurological institute.

11 (q) "State psychiatric hospital" means Larned state hospital,
12 Osawatomie state hospital and Rainbow mental health facility.

13 (r) "Person engaged in residency training" means:

14 (1) A person engaged in a postgraduate training program approved by
15 the state board of healing arts who is employed by and is studying at the
16 university of Kansas medical center only when such person is engaged in
17 medical activities that do not include extracurricular, extra-institutional
18 medical service for which such person receives extra compensation and
19 that have not been approved by the dean of the school of medicine and the
20 executive vice-chancellor of the university of Kansas medical center.
21 Persons engaged in residency training shall be considered resident
22 healthcare providers for purposes of K.S.A. 40-3401 et seq., and
23 amendments thereto; and

24 (2) a person engaged in a postgraduate training program approved by
25 the state board of healing arts who is employed by a nonprofit corporation
26 organized to administer the graduate medical education programs of
27 community hospitals or medical care facilities affiliated with the university
28 of Kansas school of medicine or who is employed by an affiliate of the
29 university of Kansas school of medicine as defined in K.S.A. 76-367, and
30 amendments thereto, only when such person is engaged in medical
31 activities that do not include extracurricular, extra-institutional medical
32 service for which such person receives extra compensation and that have
33 not been approved by the chief operating officer of the nonprofit
34 corporation or the chief operating officer of the affiliate and the executive
35 vice-chancellor of the university of Kansas medical center.

36 (s) "Full-time physician faculty employed by the university of Kansas
37 medical center" means a person licensed to practice medicine and surgery
38 who holds a full-time appointment at the university of Kansas medical
39 center when such person is providing healthcare. A person licensed to
40 practice medicine and surgery who holds a full-time appointment at the
41 university of Kansas medical center may also be employed part-time by
42 the United States department of veterans affairs if such employment is
43 approved by the executive vice-chancellor of the university of Kansas

1 medical center.

2 (t) "Sexual act" or "sexual activity" means ~~that~~ sexual conduct that
3 constitutes a criminal or tortious act under the laws of the state of Kansas.

4 (u) "Board" means the board of governors created by K.S.A. 40-3403,
5 and amendments thereto.

6 (v) "Board of directors" means the governing board created by K.S.A.
7 40-3413, and amendments thereto.

8 (w) "Locum tenens contract" means a temporary agreement not
9 exceeding 182 days per calendar year that employs a healthcare provider
10 to actively render professional services in this state.

11 (x) "Professional services" means patient care or other services
12 authorized under the act governing licensure of a healthcare provider.

13 (y) "Healthcare facility" means a nursing facility, an assisted living
14 facility or a residential healthcare facility as all such terms are defined in
15 K.S.A. 39-923, and amendments thereto.

16 (z) "Charitable healthcare provider" means the same as defined in
17 K.S.A. 75-6102, and amendments thereto.

18 Sec. 3. K.S.A. 65-2803 is hereby amended to read as follows: 65-
19 2803. (a) Unless otherwise specified by the board *or as provided in section*
20 *1, and amendment thereto*, it shall be unlawful for any person who does
21 not have a license, registration, permit or certificate to engage in the
22 practice of any profession regulated by the board or whose license,
23 registration, permit or certificate to practice has been revoked or
24 suspended to engage in the practice of any profession regulated by the
25 board.

26 (b) This section shall not apply to any healthcare provider who in
27 good faith renders emergency care or assistance at the scene of an
28 emergency or accident as authorized by K.S.A. 65-2891, and amendments
29 thereto.

30 (c) The commission of any act or practice declared to be a violation
31 of this section may render the violator liable to the state or county for the
32 payment of a civil penalty of up to \$1,000 per day for each day a person
33 engages in the unlawful practice of a profession regulated by the board. In
34 addition to such civil penalty, such violator may be assessed reasonable
35 costs of investigation and prosecution.

36 (d) Violation of this section is a severity level 10, nonperson felony.

37 Sec. 4. K.S.A. 65-2836 is hereby amended to read as follows: 65-
38 2836. A licensee's license may be revoked, suspended or limited, or the
39 licensee may be publicly censured or placed under probationary
40 conditions, or an application for a license or for reinstatement of a license
41 may be denied upon a finding of the existence of any of the following
42 grounds:

43 (a) The licensee has committed fraud or misrepresentation in

1 applying for or securing an original, renewal or reinstated license.

2 (b) The licensee has committed an act of unprofessional or
3 dishonorable conduct or professional incompetency, except that the board
4 may take appropriate disciplinary action or enter into a non-disciplinary
5 resolution when a licensee has engaged in any conduct or professional
6 practice on a single occasion that, if continued, would reasonably be
7 expected to constitute an inability to practice the healing arts with
8 reasonable skill and safety to patients or unprofessional conduct as defined
9 in K.S.A. 65-2837, and amendments thereto.

10 (c) The licensee has been convicted of a felony or class A
11 misdemeanor, or substantially similar offense in another jurisdiction,
12 whether or not related to the practice of the healing arts, or the licensee
13 has been convicted in a special or general court-martial, whether or not
14 related to the practice of the healing arts. The board shall revoke a
15 licensee's license following conviction of a felony or substantially similar
16 offense in another jurisdiction, or following conviction in a general court-
17 martial occurring after July 1, 2000, unless a $\frac{2}{3}$ majority of the board
18 members present and voting determine by clear and convincing evidence
19 that such licensee will not pose a threat to the public in such person's
20 capacity as a licensee and that such person has been sufficiently
21 rehabilitated to warrant the public trust. In the case of a person who has
22 been convicted of a felony or convicted in a general court-martial and who
23 applies for an original license or to reinstate a canceled license, the
24 application for a license shall be denied unless a $\frac{2}{3}$ majority of the board
25 members present and voting on such application determine by clear and
26 convincing evidence that such person will not pose a threat to the public in
27 such person's capacity as a licensee and that such person has been
28 sufficiently rehabilitated to warrant the public trust.

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

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

32 (f) The licensee has willfully or repeatedly violated this act, the
33 pharmacy act of the state of Kansas or the uniform controlled substances
34 act, or any rules and regulations adopted pursuant thereto, or any rules and
35 regulations of the secretary of health and environment—~~which~~ *that* are
36 relevant to the practice of the healing arts.

37 (g) The licensee has unlawfully invaded the field of practice of any
38 branch of the healing arts in which the licensee is not licensed to practice.

39 (h) The licensee has engaged in the practice of the healing arts under
40 a false or assumed name, or the impersonation of another practitioner. The
41 provisions of this subsection relating to an assumed name shall not apply
42 to licensees practicing under a professional corporation, *under a business*
43 *entity that holds a certificate of authorization under section 1, and*

1 *amendments thereto*, or *under any* other legal entity duly authorized to
2 provide such professional services in the state of Kansas.

3 (i) The licensee's ability to practice the healing arts with reasonable
4 skill and safety to patients is impaired by reason of physical or mental
5 illness, or condition or use of alcohol, drugs or controlled substances. All
6 information, reports, findings and other records relating to impairment
7 shall be confidential and not subject to discovery by or release to any
8 person or entity outside of a board proceeding.

9 (j) The licensee has had a license to practice the healing arts revoked,
10 suspended or limited, has been censured or has had other disciplinary
11 action taken, or an application for a license denied, by the proper licensing
12 authority of another state, territory, District of Columbia, or other country.

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

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

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

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

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

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

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

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

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

43 (t) The licensee has failed to report to the board any adverse action

1 taken against the licensee by another state or licensing jurisdiction, a peer
2 review body, a health care facility, a professional association or society, a
3 governmental agency, by a law enforcement agency or a court for acts or
4 conduct similar to acts or conduct ~~which~~ *that* would constitute grounds for
5 disciplinary action under this section.

6 (u) The licensee has surrendered a license or authorization to practice
7 the healing arts in another state or jurisdiction, has surrendered the
8 authority to utilize controlled substances issued by any state or federal
9 agency, has agreed to a limitation to or restriction of privileges at any
10 medical care facility or has surrendered the licensee's membership on any
11 professional staff or in any professional association or society while under
12 investigation for acts or conduct similar to acts or conduct ~~which~~ *that*
13 would constitute grounds for disciplinary action under this section.

14 (v) The licensee has failed to report to the board surrender of the
15 licensee's license or authorization to practice the healing arts in another
16 state or jurisdiction or surrender of the licensee's membership on any
17 professional staff or in any professional association or society while under
18 investigation for acts or conduct similar to acts or conduct ~~which~~ *that*
19 would constitute grounds for disciplinary action under this section.

20 (w) The licensee has an adverse judgment, award or settlement
21 against the licensee resulting from a medical liability claim related to acts
22 or conduct similar to acts or conduct ~~which~~ *that* would constitute grounds
23 for disciplinary action under this section.

24 (x) The licensee has failed to report to the board any adverse
25 judgment, settlement or award against the licensee resulting from a
26 medical malpractice liability claim related to acts or conduct similar to acts
27 or conduct ~~which~~ *that* would constitute grounds for disciplinary action
28 under this section.

29 (y) The licensee has failed to maintain a policy of professional
30 liability insurance as required by K.S.A. 40-3402 or 40-3403a, and
31 amendments thereto.

32 (z) The licensee has failed to pay the premium surcharges as required
33 by K.S.A. 40-3404, and amendments thereto.

34 (aa) The licensee has knowingly submitted any misleading, deceptive,
35 untrue or fraudulent representation on a claim form, bill or statement.

36 (bb) The licensee as the supervising physician for a physician
37 assistant has failed to adequately direct and supervise the physician
38 assistant in accordance with the physician assistant licensure act or rules
39 and regulations adopted under such act.

40 (cc) The licensee has assisted suicide in violation of K.S.A. 21-3406,
41 prior to its repeal, or K.S.A. 2018 Supp. 21-5407, and amendments
42 thereto, as established by any of the following:

43 (1) A copy of the record of criminal conviction or plea of guilty for a

1 felony in violation of K.S.A. 21-3406, prior to its repeal, or K.S.A. 2018
2 Supp. 21-5407, and amendments thereto.

3 (2) A copy of the record of a judgment of contempt of court for
4 violating an injunction issued under K.S.A. 60-4404, and amendments
5 thereto.

6 (3) A copy of the record of a judgment assessing damages under
7 K.S.A. 60-4405, and amendments thereto.

8 (dd) The licensee has given a worthless check or stopped payment on
9 a debit or credit card for fees or moneys legally due to the board.

10 (ee) The licensee has knowingly or negligently abandoned medical
11 records.

12 Sec. 5. K.S.A. 65-2877a is hereby amended to read as follows: 65-
13 2877a. ~~The healing arts act and any other~~No provision of law prohibiting
14 practice of the healing arts by a general corporation shall ~~not~~ apply to a
15 healing arts school approved by the board if the healing arts school is a
16 non-profit entity under section 501(c)(3) of the internal revenue code of
17 1986, is approved by the state board of regents, and as part of its academic
18 requirements provides clinical training to its students under the supervision
19 of persons who are licensed to practice a branch of the healing arts in this
20 state.

21 Sec. 6. K.S.A. 65-2803, 65-2836 and 65-2877a and K.S.A. 2018
22 Supp. 40-3401 are hereby repealed.

23 Sec. 7. This act shall take effect and be in force from and after its
24 publication in the statute book.