

## HOUSE BILL No. 2645

By Representative Xu

2-12

1 AN ACT concerning health and healthcare; relating to healing arts  
2 licensees; unprofessional conduct; pelvic, rectal or prostate exams;  
3 amending K.S.A. 65-2837 and repealing the existing section.  
4

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

6 New Section 1. (a) No person licensed under this act shall knowingly  
7 perform or supervise the performance of a pelvic, rectal or prostate  
8 examination on an anesthetized or unconscious person unless:

9 (1) The patient or the patient's authorized representative gives  
10 informed consent for the examination;

11 (2) the examination is within the standard of care for the patient;

12 (3) the patient is unconscious, and the examination is necessary for  
13 diagnostic or treatment purposes;

14 (4) a medical emergency exists, obtaining the patient's consent is  
15 impractical and the examination is necessary for diagnostic or treatment  
16 purposes; or

17 (5) a court of competent jurisdiction finds that there is a compelling  
18 need for such examination, and orders the performance of the examination  
19 for the collection of evidence.

20 (b) The licensee shall notify the patient as soon after the examination  
21 as practicable that an examination has been performed pursuant to  
22 subsection (a)(3), (a)(4) or (a)(5).

23 (c) Violation of this section shall constitute unprofessional conduct as  
24 defined in K.S.A. 65-2837, and amendments thereto.

25 (d) As used in this section, "informed consent" means the signing of a  
26 consent form by a patient or person authorized to make healthcare  
27 decisions on behalf of such patient that:

28 (1) Is written in plain language;

29 (2) is dated;

30 (3) includes a description of the procedure to be performed; and

31 (4) states if there will be a medical student or medical resident who  
32 will perform or be present at the examination.

33 (d) This section shall be a part of and supplemental to the Kansas  
34 healing arts act.

35 Sec. 2. K.S.A. 65-2837 is hereby amended to read as follows: 65-  
36 2837. As used in K.S.A. 65-2836, and amendments thereto, and in this

1 section:

2 (a) "Professional incompetency" means:

3 (1) One or more instances involving failure to adhere to the  
4 applicable standard of care to a degree that constitutes gross negligence, as  
5 determined by the board.

6 (2) Repeated instances involving failure to adhere to the applicable  
7 standard of care to a degree that constitutes ordinary negligence, as  
8 determined by the board.

9 (3) A pattern of practice or other behavior that demonstrates a  
10 manifest incapacity or incompetence to practice the healing arts.

11 (b) "Unprofessional conduct" means:

12 (1)—~~Solicitation of~~ *Soliciting* professional patronage through the use  
13 of fraudulent or false advertisements, or profiting by the acts of those  
14 representing themselves to be agents of the licensee.

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

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

19 (4)—~~The use of~~ *Using* any letters, words or terms as an affix, on  
20 stationery, in advertisements or otherwise indicating that such person is  
21 entitled to practice a branch of the healing arts for which such person is  
22 not licensed.

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

25 (6) Willful betrayal of confidential information.

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

28 (8) Advertising to guarantee any professional service or to perform  
29 any operation painlessly.

30 (9) Participating in any action as a staff member of a medical care  
31 facility that is designed to exclude or that results in the exclusion of any  
32 person licensed to practice medicine and surgery from the medical staff of  
33 a nonprofit medical care facility licensed in this state because of the  
34 branch of the healing arts practiced by such person or without just cause.

35 (10)—~~Failure~~ *Failing* to effectuate the declaration of a qualified  
36 patient as provided in K.S.A. 65-28,107(a), and amendments thereto.

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

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

41 (13) Making a false or misleading statement regarding the licensee's  
42 skill or the efficacy or value of the drug, treatment or remedy prescribed  
43 by the licensee or at the licensee's direction in the treatment of any disease

1 or other condition of the body or mind.

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

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

6 ~~(16)—Commission—of~~ *Committing* any act of sexual abuse,  
7 misconduct or other improper sexual contact that exploits the licensee-  
8 patient relationship with a patient or a person responsible for health care  
9 decisions concerning such patient.

10 ~~(17)—The use of~~ *Using* any false, fraudulent or deceptive statement  
11 in any document connected with the practice of the healing arts including  
12 the intentional falsifying or fraudulent altering of a patient or medical care  
13 facility record.

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

15 (19) Directly or indirectly giving or receiving any fee, commission,  
16 rebate or other compensation for professional services not actually and  
17 personally rendered, other than through the legal functioning of lawful  
18 professional partnerships, corporations, limited liability companies or  
19 associations.

20 ~~(20)—Failure~~ *Failing* to transfer patient records to another licensee  
21 when requested to do so by the subject patient or by such patient's legally  
22 designated representative.

23 (21) Performing unnecessary tests, examinations or services that have  
24 no legitimate medical purpose.

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

26 (23) Prescribing, dispensing, administering or distributing a  
27 prescription drug or substance, including a controlled substance, in an  
28 improper or inappropriate manner, or for other than a valid medical  
29 purpose, or not in the course of the licensee's professional practice.

30 ~~(24)—Repeated—failure~~ *Repeatedly failing* to practice healing arts  
31 with that level of care, skill and treatment that is recognized by a  
32 reasonably prudent similar practitioner as being acceptable under similar  
33 conditions and circumstances.

34 ~~(25)—Failure~~ *Failing* to keep written medical records that accurately  
35 describe the services rendered to the patient, including patient histories,  
36 pertinent findings, examination results and test results.

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

40 (27) Using experimental forms of therapy without proper informed  
41 patient consent, without conforming to generally accepted criteria or  
42 standard protocols, without keeping detailed legible records or without  
43 having periodic analysis of the study and results reviewed by a committee

1 or peers.

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

7 (29) Referring a patient to a health care entity for services if the  
8 licensee has a significant investment interest in the health care entity,  
9 unless the licensee informs the patient in writing of such significant  
10 investment interest and that the patient may obtain such services  
11 elsewhere.

12 (30) Failing to properly supervise, direct or delegate acts that  
13 constitute the healing arts to persons who perform professional services  
14 pursuant to such licensee's direction, supervision, order, referral,  
15 delegation or practice protocols.

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

17 (32) Charging, billing or otherwise soliciting payment from any  
18 patient, patient's representative or insurer for anatomic pathology services,  
19 if such services are not personally rendered by the licensee or under such  
20 licensee's direct supervision. As used in this subsection, "anatomic  
21 pathology services" means the gross or microscopic examination of  
22 histologic processing of human organ tissue or the examination of human  
23 cells from fluids, aspirates, washings, brushings or smears, including blood  
24 banking services, and subcellular or molecular pathology services,  
25 performed by or under the supervision of a person licensed to practice  
26 medicine and surgery or a clinical laboratory. Nothing in this subsection  
27 shall be construed to prohibit billing for anatomic pathology services by:

28 (A) A hospital;

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

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

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

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

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

40 (33) Engaging in conduct that violates patient trust and exploits the  
41 licensee-patient relationship for personal gain.

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

- 1 (A) Falsifying or concealing a material fact;  
2 (B) knowingly making or causing to be made any false or misleading  
3 statement or writing; or  
4 (C) other acts or conduct likely to deceive or defraud the board.

5 (35) *Violating section 1, and amendments thereto.*

6 (c) "False advertisement" means any advertisement that is false,  
7 misleading or deceptive in a material respect. In determining whether any  
8 advertisement is misleading, there shall be taken into account not only  
9 representations made or suggested by statement, word, design, device,  
10 sound or any combination thereof, but also the extent to which the  
11 advertisement fails to reveal facts material in the light of such  
12 representations made.

13 (d) "Advertisement" means all representations disseminated in any  
14 manner or by any means for the purpose of inducing, or that are likely to  
15 induce, directly or indirectly, the purchase of professional services.

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

20 (f) ~~"License" for purposes of this section and K.S.A. 65-2836, and~~  
21 ~~amendments thereto,~~ means any license, permit or special permit granted  
22 under article 28 of chapter 65 of the Kansas Statutes Annotated, and  
23 amendments thereto.

24 (g) "Health care entity" means any corporation, firm, partnership or  
25 other business entity that provides services for diagnosis or treatment of  
26 human health conditions and that is owned separately from a referring  
27 licensee's principle practice.

28 (h) "Significant investment interest" means ownership of at least 10%  
29 of the value of the firm, partnership or other business entity that owns or  
30 leases the health care entity, or ownership of at least 10% of the shares of  
31 stock of the corporation that owns or leases the health care entity.

32 Sec. 3. K.S.A. 65-2837 is hereby repealed.

33 Sec. 4. This act shall take effect and be in force from and after its  
34 publication in the statute book.