

HOUSE BILL No. 2210

By Representatives Fairchild, Garber, Helmer and Rhiley

2-3

1 AN ACT concerning crimes, punishment and criminal procedure; creating
2 the crime of unlawful gender reassignment service; providing grounds
3 for unprofessional conduct for healing arts licensees; amending K.S.A.
4 65-2837 and repealing the existing section.

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

7 New Section 1. (a) Unlawful gender reassignment service is
8 knowingly performing, or causing to be performed, any of the following
9 upon a child under 18 years of age for the purpose of attempting to change
10 or affirm the child's perception of the child's sex, if that perception is
11 inconsistent with the child's sex:

12 (1) Performing a surgery that sterilizes, including, but not limited to,
13 castration, vasectomy, hysterectomy, oophorectomy, orchiectomy and
14 penectomy;

15 (2) performing a surgery that artificially constructs tissue with the
16 appearance of genitalia, including, but not limited to, metoidioplasty,
17 phalloplasty and vaginoplasty;

18 (3) performing a mastectomy;

19 (4) prescribing, dispensing, administering or otherwise supplying the
20 following medications:

21 (A) Puberty-blocking medication to stop normal puberty;

22 (B) supraphysiologic doses of testosterone to females; or

23 (C) supraphysiologic doses of estrogen to males; or

24 (5) removing any otherwise healthy or nondiseased body part or
25 tissue.

26 (b) Unlawful gender reassignment service is a severity level 8, person
27 felony.

28 (c) The provisions of this section shall not apply if a child was born
29 with a medically verifiable disorder of sex development, including:

30 (1) A child with external biological sex characteristics that are
31 irresolvably ambiguous, such as a child born having 46,XX chromosomes
32 with virilization, 46,XY chromosomes with undervirilization or both
33 ovarian and testicular tissue; or

34 (2) when a physician has otherwise diagnosed a disorder of sexual
35 development, in which the physician has determined through genetic or
36 biochemical testing that the child does not have the normal sex

1 chromosome structure, sex steroid hormone production or sex steroid
 2 hormone action for a male or female.

3 (d) As used in this section, "sex" means the biological state of being
 4 female or male, based on the individual's sex organs, chromosomes and
 5 endogenous hormone profiles.

6 Sec. 2. K.S.A. 65-2837 is hereby amended to read as follows: 65-
 7 2837. As used in K.S.A. 65-2836, and amendments thereto, and in this
 8 section:

9 (a) "Professional incompetency" means:

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

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

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

18 (b) "Unprofessional conduct" means:

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

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

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

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

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

31 (6) ~~Willful betrayal of~~ *Willfully betraying* confidential information.

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

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

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

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

43 (11) Prescribing, ordering, dispensing, administering, selling,

1 supplying or giving any amphetamines or sympathomimetic amines,
2 except as authorized by K.S.A. 65-2837a, and amendments thereto.

3 (12) *Engaging in* conduct likely to deceive, defraud or harm the
4 public.

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

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

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

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

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

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

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

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

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

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

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

37 (24) ~~Repeated failure~~*Failing repeatedly* to practice healing arts with
38 that level of care, skill and treatment that is recognized by a reasonably
39 prudent similar practitioner as being acceptable under similar conditions
40 and circumstances.

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

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

4 (27) Using experimental forms of therapy without proper informed
5 patient consent, without conforming to generally accepted criteria or
6 standard protocols, without keeping detailed legible records or without
7 having periodic analysis of the study and results reviewed by a committee
8 or peers.

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

14 (29) Referring a patient to a health care entity for services if the
15 licensee has a significant investment interest in the health care entity,
16 unless the licensee informs the patient in writing of such significant
17 investment interest and that the patient may obtain such services
18 elsewhere.

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

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

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

35 (A) A hospital;

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

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

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

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

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

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

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

8 (A) Falsifying or concealing a material fact;

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

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

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

13 (c) "False advertisement" means any advertisement that is false,
14 misleading or deceptive in a material respect. In determining whether any
15 advertisement is misleading, there shall be taken into account not only
16 representations made or suggested by statement, word, design, device,
17 sound or any combination thereof, but also the extent to which the
18 advertisement fails to reveal facts material in the light of such
19 representations made.

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

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

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

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

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

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

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