

HOUSE BILL No. 2276

By Committee on Health and Human Services

2-2

1 AN ACT concerning health and healthcare; relating to the Kansas healing
2 arts act; licensees; unprofessional conduct; prohibiting pelvic, rectal or
3 prostate exams on unconscious patients without informed consent;
4 amending K.S.A. 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) No person licensed under this act shall knowingly
8 perform or supervise the performance of a pelvic, rectal or prostate
9 examination on an anesthetized or unconscious person unless:

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

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

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

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

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

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

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

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

29 (1) Is written in plain language;

30 (2) is dated;

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

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

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

36 Sec. 2. K.S.A. 65-2837 is hereby amended to read as follows: 65-

1 2837. As used in K.S.A. 65-2836, and amendments thereto, and in this
2 section:

3 (a) "Professional incompetency" means:

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

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

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

12 (b) "Unprofessional conduct" means:

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

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

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

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

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

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

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

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

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

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

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

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

43 (13) Making a false or misleading statement regarding the licensee's

1 skill or the efficacy or value of the drug, treatment or remedy prescribed
2 by the licensee or at the licensee's direction in the treatment of any disease
3 or other condition of the body or mind.

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

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

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

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

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

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

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

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

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

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

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

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

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

42 (27) Using experimental forms of therapy without proper informed
43 patient consent, without conforming to generally accepted criteria or

1 standard protocols, without keeping detailed legible records or without
2 having periodic analysis of the study and results reviewed by a committee
3 or peers.

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

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

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

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

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

30 (A) A hospital;

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

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

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

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

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

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

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

3 (A) Falsifying or concealing a material fact;

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

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

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

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

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

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

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

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

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

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

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