

Testimony before the Senate Commerce Committee

February 14, 2020

Chairperson and Honorable Committee Members:

I am Tucker Poling, Interim Executive Director and General Counsel for the Kansas State Board of Healing Arts (“KSBHA”). Our agency submits this testimony in regard to HB2506 to assist the committee. As outlined below, the agency respectfully requests the committee consider: **(1) the effect on KSBHA’s ability to meet its mission to protect patient safety; (2) the feasibility of implementation; (3) the effect on recently initiated efforts to improve processing speed without compromising patient safety; and (4) the increase in administrative and civil litigation.** The KSBHA supports updating KSBHA licensure statutes to improve and expedite the licensing process, but respectfully suggests that the safest approach is to work with the KSBHA and other stakeholders to develop revisions to existing KSBHA endorsement statutes that are efficient, practical, and prioritize public safety in a workable manner. We stand ready to collaborate with legislators and stakeholders to improve and expedite the licensure process while protecting patient safety – without significantly growing to size of the agency.

The KSBHA requests that, in the event the committee chooses to move forward with this bill in its current form, the committee consider exempting licensees of the KSBHA from this bill, just as the bill exempts attorneys. In the context of professional licensing, one size does not fit all. The KSBHA believes that exemption of KSBHA licensees is as appropriate as exempting attorneys due to the importance of protecting patient safety. The KSBHA licenses and regulates health care professionals who directly hold the life and health of Kansans in their hands every day, who have access to Kansans’ most private and intimate information, and who are given the privilege of a relationship of absolute physical and psychological trust with Kansas patients. Further, existing KSBHA licensing laws already provide for expedited licensure for well qualified applicants with a clear record of safety and ethical conduct.

1. Effect on agency’s ability to meet its mission to protect patient safety.

- This bill takes a narrowly tailored statute designed to ensure that military families can practice their profession without undue delay when they are transferred from state to state and exponentially broadens it in scope and substance. This bill applies to all license applicants and replaces a 60 day licensing window for military families with an untenable 10 day licensing window for all applicants and adds the requirement that temporary licenses must be issued even if the applicant does not meet the education and training requirements that all other current Kansas licensees meet. **These licensing requirements are not arbitrary administrative “red tape” – they are substantive requirements the legislature has determined to be necessary to protect patient safety.**

- The Board questions whether the “one size fits all” approach to professional licensing is appropriate. The Board respectfully asks the committee to consider exempting licensees of the KSBHA from the bill. Licensing barbers is not the same as licensing pediatric surgeons. Over 50+ years, the Kansas legislature has wisely addressed professional licensing on a profession by profession basis, due to the vastly different interests and issues at stake with each unique profession.
 - The Board of Healing Arts, like other boards, already has both generally applicable endorsement statutes (e.g., KSA 65-2833) as well as an interstate medical licensure compact (KSA 65-28,133) that provide avenues for expedited licensure for well qualified applicants with a record of safety and ethical conduct in their states of origin. However, these statutes recognize the unique priority of patient safety in the healthcare context. **These existing statutes do not require a temporary license to be issued before due diligence can be completed** as to the applicant’s background and qualifications.
 - With the assistance of the administrative resources of the interstate medical licensure compact commission pursuant to K.S.A. 65-28,133, the KSBHA already issues expedited licensure for well qualified applicants with a record of safety and ethical conduct in their states of origin within approximately 7-10 days of receipt of a letter of qualification. This existing process provides for fast-track licensing for well qualified applicants in a safe manner.

2. Feasibility of implementation.

- Requiring that a license be issued within 10 days is not feasible with existing KSBHA resources. It is uncertain whether it is feasible with enhanced resources. Current law calls for a decision to be issued on an application within 90 days if practicable (see K.S.A. 77-511), or 60 days for qualified military personnel or military spouses. As described under heading #3, below, this agency is committed to processing applications as quickly as we can do so while meeting our obligation to protect patient safety. We are achieving significant improvement in processing times without growing the size of the agency. This bill will likely derail those efforts and will require significantly enhanced resources and corresponding increases in licensing fees.
 - For example, criminal background checks alone often take more than 10 days to receive.
- This bill would also insert **a new layer of administrative process, paperwork, and litigation** into the current application process.
 - This bill would require the KSBHA to issue formal factual findings and conclusions within 10 days anytime the board finds that the applicant’s qualifications are not equivalent to Kansas qualifications.
 - This bill would require the KSBHA to issue formal factual findings and conclusions within 10 days anytime the board determines that issuing a temporary license would jeopardize public safety.
 - These new mandates would inject a new layer of administrative steps and paperwork into the process.
 - This bill would require the KSBHA to determine appropriate additional training and education program that must be completed during probationary license period for applicants that don’t meet the same qualifications as existing Kansas licensees.

- This new layer of bureaucracy and litigation cannot be implemented with existing resources.
3. Derailment of recently initiated efforts to improve processing speed without compromising patient safety.
- KSBHA staff work very hard to process applications and license qualified applicants as quickly as possible. Our turnaround time for applications are currently faster than they have been in two years. **Since the fall of 2019, without compromising public safety, we initiated changes in the Licensing Department with the goal of streamlining and improving the processing time:**
 - Initiated a process of revising all applications to ensure only the legally necessary information is being requested from the applicants.
 - Creating online application for all professions.
 - Paper reduction effort, in conjunction with transition to paperless document management system in summer 2020.
 - Initiated a training program to implement consistent and efficient work processes.
 - Divided staff into teams to allow staff to specialize in specific license types, which promotes improved subject matter expertise.
 - Restructured staffing to allow for more timely review of application issues by supervisory staff.
 - Set and measured timeline expectations for the final review of applications.
 - These current streamlining efforts will likely be derailed by the extensive new processes and paperwork mandated by this bill.

4. Increased administrative and civil litigation.

- The new layers of formal fact findings and conclusions, as well issuing training and education programs for applicants who don't meet Kansas standards will all be subject to hearings and appeals pursuant to the Kansas Administrative Procedure Act (K.S.A. 77-501 et. seq.) and the Kansas Judicial Review Act (K.S.A. 77-601 et. seq). This will inject additional rounds of administrative litigation and civil appeals into agency operations. **This will grow the size of the agency, increase costs, and result in higher licensing fees to produce the revenue necessary to meet these new resource demands.**

Thank you for considering this agency's input on HB2506. Please feel free to contact me with any questions.

Sincerely,

/s/ Tucker Poling

Tucker L. Poling

Interim Executive Director

General Counsel