

Testimony To
House Health and Human Services Committee
In Opposition to House Bill 2256
By Charles L. Wheelen
February 10, 2005

The Kansas Association of Osteopathic Medicine is opposed to the provisions of HB2256 for two principal reasons.

1. Prescription-only drugs are potentially harmful. Most of them have deleterious side effects and can be particularly harmful if taken in the wrong dosage or frequency. That's why they may be lawfully dispensed only upon a prescription order by a licensed practitioner.

It has always been the public policy of this State to reserve prescribing privileges to doctorate level health care professionals. This includes dentists, optometrists, podiatrists, and veterinarians as well as physicians. House Bill 2256 constitutes a major departure from an established health care policy of this State.

2. We are also opposed to HB2256 because this proposed legislation would grant a scope of practice to advanced registered nurse practitioners (ARNPs) that would constitute the equivalence of independent practice of medicine, without establishing commensurate standards of practice and accountability.

Several years ago the nursing profession requested prescribing authority for ARNPs and the Legislature agreed to a compromise which allows ARNPs to prescribe medication pursuant to a protocol agreement with a responsible physician. This arrangement is similar to the relationship between physician assistants (PAs) and the responsible physician. But PAs and ARNPs are inherently different.

Physician assistants are actually authorized to engage in the practice of medicine and surgery because of their relationship with a responsible physician. And PAs are licensed and regulated by the Board of Healing Arts, the same agency that regulates the responsible physician. In contrast, ARNPs are authorized to engage in one of four categories of advanced nursing (not medicine and surgery) and they are licensed and regulated by a completely separate agency, the Board of Nursing.

We would prefer to tell you the protocol system is working well and does not need to be changed. Unfortunately the existing system is not perfect. It is for this reason we have spent several hours working with a special committee of the Board of Healing Arts in an effort to improve standards and accountability for those physicians who agree to assume responsibility for allied health professionals (PAs, naturopathic doctors, and pharmacists as well as ARNPs). The product of our efforts is a set of draft administrative regulations that will be presented to the entire Board of Healing Arts in the near future.

Advanced registered nurse practitioners are well-trained professionals who make important contributions in the health care delivery system. But unlike most health care professionals, their scope of practice is not defined in statute. It is

presumably the practice of nursing as further defined by the Board of Nursing by way of administrative regulations. Those regulations could be repealed or amended by simply publishing an announcement in the *Kansas Register* and conducting a public hearing.

Despite statutory provisions and administrative laws defining differences between the practice of medicine and surgery versus the practice of advanced nursing, in a clinical setting those differences are not as meaningful. In a practice setting, ARNPs often function much the same as physician assistants. They practice medicine and surgery pursuant to delegation by a licensed physician who may or may not provide direct supervision.

We believe that if nurse practitioners are to be granted a scope of practice that equates to doctorate level health care, they should be held to similar standards of practice and accountability as persons who are licensed to practice the healing arts. For those reasons we offer you an alternative to HB2256.

This draft substitute bill would establish a new “Advanced Nursing Practice Act.” It is based on the principle that if nurse practitioners should be allowed to diagnose and treat patients, including the authority to prescribe medication, they should be governed by rules similar to those governing physicians, chiropractors, and podiatrists, and be regulated by a board that includes health care professionals who prescribe medications.

Section one resembles existing law by allowing the Board to establish different categories of advanced nursing. Section two makes it unlawful to engage in advanced nursing without a license and also makes it clear that nurse practitioners may perform invasive procedures as well as prescribe medication.

Sections three through five are routine sections pertaining to the licensure process. Section six deals with disciplinary actions and would establish ethical standards for nurse practitioners similar to those expected of physicians, chiropractors, and podiatrists. The definitions of “professional incompetency” and “unprofessional conduct” make reference to a section of the Healing Arts Act. Most of the remaining sections of this draft bill closely resemble the Healing Arts Act. Section sixteen would add nurse practitioners to the list of health care professionals who are required to participate in the Health Care Stabilization Fund. In other words, nurse practitioners would be required to have professional liability insurance.

Section 17 of the draft bill is similar to the original version of HB2256 because it would remove ARNPs from the definition of “mid-level practitioner” in the law pertaining to critical access hospitals and rural health networks. Section 18 would amend the Pharmacy Act to assure that nurse practitioners would be authorized to prescribe medication without a protocol agreement or responsible physician requirement. A similar amendment to the Controlled Substances Act is contained in section 19 of the bill.

This substitute bill is superior to the original version because it provides greater assurance of public protection from unqualified or unethical individuals. It establishes a new standard for nurse practitioners at the same level as physicians, chiropractors, podiatrists, and other doctorate level health care professionals.

We urge you to either **recommend that HB2256 not be passed** or that the following substitute for HB2256 be passed in lieu of the original version. Thank you for

considering our position on this legislation.

Draft Substitute for HB2256
By Chip Wheelen, Kansas Association of Osteopathic Medicine

AN ACT enacting the advanced nursing practice act.

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

Section 1. As used in this act, unless the context otherwise requires:

- (a) "Board" means the state board of healing arts.
- (b) "Nurse practitioner" means a person who has been licensed pursuant to this act to engage in the practice of advanced nursing.
- (c) "Advanced nursing" means the scope of practice for a specific category of advanced nursing established by the board at a level adequate to assure the competent performance by a nurse practitioner licensed by the board.

Sec. 2. (a) It shall be unlawful for any person to profess to be a nurse practitioner, to practice or assume the duties incidental to advanced nursing, to advertise or hold oneself out to the public as a nurse practitioner, or to use any sign or advertisement with the word or words nurse practitioner, or any other term or terms indicating that such person is a nurse practitioner or that such person practices or holds oneself out as practicing advanced nursing in any manner, without first obtaining from the board a license authorizing the practice of advanced nursing in this state, except as hereinafter provided.

(b) A licensed nurse practitioner shall be authorized to prescribe such drugs or medicine, and to perform such invasive procedures as may be necessary to the proper practice of advanced nursing.

(c) This act shall not prohibit or otherwise limit the authority of a person licensed to practice medicine and surgery in this state to delegate such acts that constitute the practice of medicine and surgery to a nurse practitioner who is under the direction or supervision of the person licensed to practice medicine and surgery.

Sec. 3. (a) Examinations for a license to practice advanced nursing in this state may be held at the same time and place as the examinations held by the board under the Kansas healing arts act. All applicants for a license to practice advanced nursing under the provisions of this act: (1) Shall have attained the age of 21 years; (2) shall have completed at least four years of instruction in, and be graduates of, a school of nursing which is recognized by the board; and (3) commencing with applicants for a license to be granted on or after January 1, 2006, shall have completed acceptable postgraduate study as may be established by the board by rules and regulations.

(b) Applicants who on the effective date of this act are licensed by the state board of nursing and have been issued a certificate of qualification as an advanced registered nurse practitioner may be granted, upon payment of the appropriate fee, a license without examination.

(c) Applicants licensed, registered or certified by a board of examiners of any other state or country whose requirements for licensure, registration or certification

are substantially equal to those of this state in the opinion of the state board of healing arts may be granted, upon payment of the appropriate fee, a license without examination.

Sec. 4. (a) Except as provided in section 3, each applicant for a license to practice advanced nursing shall be examined by the board in the following subjects: Anatomy, bacteriology, chemistry, dermatology, histology, pathology, physiology, pharmacology, diagnosis, and therapeutics. If the applicant possesses the qualifications required by section 3, completes the examination prescribed with the passing grade as established by rules and regulations of the board, and pays to the board the appropriate license fee, such applicant may be issued a license by the board to practice advance nursing in this state.

(b) Each applicant before taking the examination shall pay to the board the appropriate examination fee. Any applicant failing the examination may have a reexamination in accordance with criteria established by rules and regulations of the board, which criteria may limit the number of times an applicant may retake the examination.

Sec. 5. (a) A licensee under this act shall be designated a licensed nurse practitioner and shall not use any title or abbreviations without the designation licensed nurse practitioner, and shall not mislead the public as to such licensee's professional qualifications to treat human ailments. Whenever the phrase advanced registered nurse practitioner, or words of like effect, is referred to or designated by any statute, contract or other document, such reference or designation shall be deemed to refer to or designate a licensed nurse practitioner.

(b) The license of each licensed nurse practitioner shall expire on the date established by rules and regulations of the board which may provide renewal throughout the year on a continuing basis. In each case in which a license is renewed for a period of time of less than one year, the board may prorate the amount of the fee. The request for renewal shall be on a form provided by the board and shall be accompanied by the renewal fee which shall be paid not later than the expiration date of the license. At least 30 days before the expiration of a licensee's license, the board shall notify the licensee of the expiration by mail addressed to the licensee's last mailing address as noted upon the office records. If a licensee fails to pay the renewal fee by the date of expiration, the licensee shall be given a second notice that the licensee's license has expired and the license may be renewed only if the renewal fee and the late renewal fee are received by the board within the thirty-day period following the date of expiration and that, if both fees are not received within the thirty-day period, such licensee's license shall be canceled for failure to renew and shall be reissued only after the licensee has been reinstated under subsection (c).

(c) Any licensee who allows the licensee's license to be canceled by failing to renew may be reinstated upon recommendation of the board and upon payment of the renewal fee and the reinstatement fee and upon submitting evidence of satisfactory completion of the applicable continuing education requirements established by the board. The board shall adopt rules and regulations establishing appropriate continuing education requirements for reinstatement of persons whose licenses have been canceled for failure to renew.

(d) The board, prior to renewal of a license, shall require the licensee, if in the active practice of advanced nursing within Kansas, to submit to the board evidence satisfactory to the board that the licensee is maintaining a policy of professional liability insurance as required by K.S.A. 40-3402 and amendments thereto and has paid the annual premium surcharge as required by K.S.A. 40-3404 and amendments thereto.

(e) The board may issue a temporary permit to practice advanced nursing in this state to any person making application for such temporary permit upon a form provided by the board who meets the requirements prescribed by the board and who pays to the board the temporary permit fee. A temporary permit shall authorize the permittee to practice within the limits of the permit until the license is issued or denied to the permittee by the board, except that where a graduate nurse practitioner is working under the supervision of a licensed nurse practitioner in a training program approved by the board, the temporary permit issued to such graduate nurse practitioner shall be valid for the period of such training program.

(f) The board may issue, upon payment to the board of a temporary license fee, a temporary license to a nurse practitioner of another state or country who is appearing as a clinician at meetings, seminars or training programs approved by the board, if the nurse practitioner holds a current license, registration or certificate as a nurse practitioner from another state or country and the sole purpose of such appearance is for promoting professional education.

(g) There is hereby created a designation of exempt license. The board is authorized to issue an exempt license to any licensee who makes written application for such license on a form provided by the board and remits the fee for an exempt license. The board may issue an exempt license only to a person who has previously been issued a license to practice advanced nursing within Kansas, who is no longer regularly engaged in such practice and who does not hold oneself out to the public as being professionally engaged in such practice. An exempt license shall entitle the holder to all privileges attendant to the practice of advanced nursing. Each exempt license may be renewed annually subject to the other provisions of this section and other sections of the this act. Each exempt licensee shall be subject to all provisions of the this act, except as otherwise provided. The holder of an exempt license shall not be required to submit evidence of satisfactory completion of a program of continuing education required under the this act. Each exempt licensee may apply for a license to regularly engage in the practice of advanced nursing upon filing a written application with the board and submitting evidence of satisfactory completion of the applicable and continuing education requirements established by the board. The request shall be on a form provided by the board and shall be accompanied by the license fee. The board shall adopt rules and regulations establishing appropriate and continuing education requirements for exempt licensees to become licensed to regularly practice advanced nursing within Kansas.

(h) Each license or permit granted under this act shall be conspicuously displayed at the office or other place of practice of the licensee or permittee.

Sec. 6. (a) The board, upon hearing, may revoke, suspend or limit any license or permit to practice advanced nursing, may deny issuance or renewal of any such license or permit, or may publicly or privately censure a licensee or permittee, if the person holding or applying for such license or permit is found by the board to:

- (1) Have committed fraud in securing the license or permit;
- (2) have engaged in unprofessional or dishonorable conduct or professional incompetency;
- (3) have been convicted of a felony if the board determines, after investigation, that such person has not been sufficiently rehabilitated to warrant the public trust;
- (4) have used untruthful or improbable statements or exaggerated or extravagant claims in advertisements concerning the licensee's or permit holder's professional abilities;
- (5) be addicted to or have distributed drugs for any other than lawful purposes;
- (6) have willfully or repeatedly violated the advanced nursing act, the pharmacy

act or the uniform controlled substances act, or any rules and regulations adopted thereunder, or any rules and regulations of the secretary of health and environment which are relevant to the practice of advanced nursing;

(7) have unlawfully invaded the field of practice of any branch of the healing arts;

(8) have failed to submit proof of completion of a continuing education course required pursuant to the advanced nursing act;

(9) have engaged in the practice of advanced nursing under a false or assumed name or impersonated another nurse practitioner, but practice by a licensee or permit holder under a professional corporation or other legal entity duly authorized to provide advanced nursing services in this state shall not be considered to be practice under an assumed name;

(10) be unable to practice advanced nursing with reasonable skill and safety to patients by reason of any mental or physical condition, illness, alcoholism or excessive use of drugs, controlled substances or chemical or any other type of material;

(11) have had the person's license or permit to practice advanced nursing revoked, suspended or limited, or have had other disciplinary actions taken or an application for a license or permit denied, by the proper licensing authority of any state, territory or country or the District of Columbia;

(12) have violated any rules and regulations of the board or any lawful order or directive of the board;

(13) have knowingly submitted a misleading, deceptive, untrue or fraudulent misrepresentation on a claim form, bill or statement; or

(14) have assisted suicide in violation of K.S.A. 21-3406 and amendments thereto as established by any of the following:

(A) A copy of the record of criminal conviction or plea of guilty for a felony in violation of K.S.A. 21-3406 and amendments thereto.

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

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

(b) In determining whether or not a licensee or permit holder is unable to practice advanced nursing with reasonable skill and safety to patients the board, upon probable cause, shall have authority to compel a licensee or permit holder to submit to mental or physical examination by such persons as the board may designate. Failure of a licensee or permit holder to submit to such examination when directed shall constitute an admission of the allegations against the licensee or permit holder, unless the failure was due to circumstances beyond the licensee's or permit holder's control. A person affected by this subsection shall be offered, at reasonable intervals, an opportunity to demonstrate that such person can resume the competent practice of advanced nursing with reasonable skill and safety to patients. Each licensee or permit holder accepting the privilege to practice advanced nursing in this state, by practicing advanced nursing in this state or by making and filing an application for a license or permit, or renewal of a license or permit, to practice advanced nursing in this state, shall be deemed to have consented to submit to a mental or physical examination when directed in writing by the board pursuant to this subsection and to have waived all objections to the admissibility of the testimony or examination report of the person conducting such examination at any proceeding or hearing before the board on the ground that such testimony or examination report constitutes a privileged communication. The record of any board proceedings involving a mental or physical

examination pursuant to this subsection shall not be used in any other administrative or judicial proceeding.

Whenever the board directs that a licensee or permit holder submit to an examination pursuant to this subsection, the time from the date of the board's directive until the submission to the board of the report of the examination shall not be included in the computation of the time limit for hearing prescribed by the Kansas administrative procedure act.

(c) As used in this section, "professional incompetency" and "unprofessional conduct" shall have the meanings ascribed thereto by K.S.A. 65-2837 and amendments thereto.

(d) The procedure for revocation, suspension, limitation, temporary suspension, temporary limitation, or for denial of issuance or renewal pursuant to this section, of any license or permit to practice advanced nursing shall be in accordance with the provisions of the Kansas administrative procedure act.

Sec. 7. Any person who knowingly violates any of the provisions of this act shall, upon conviction thereof, be guilty of a class B misdemeanor.

Sec. 8. This act shall not apply to persons licensed by the state board of healing arts to practice medicine and surgery, nor to personnel of any branch of the United States military or the United States public health service when in actual performance of their official duties.

Sec. 9. An action to enjoin from the unlawful practice of advanced nursing may be brought and maintained in the name of the state of Kansas against any person who shall practice advanced nursing without being licensed by the board to practice advanced nursing. This authority shall be in addition to and not in lieu of authority to prosecute criminally any person unlawfully engaged in the practice of advanced nursing.

Sec. 10. (a) Every licensed nurse practitioner in the active practice of advanced nursing within Kansas shall submit with the request for renewal under this act evidence of satisfactory completion of continuing education courses approved by the board. The board shall revoke the license of any individual who fails to submit proof of completion of such continuing education. Where a license has been revoked for this cause, the board may later reissue such license if proof of completion of such continuing education is later provided.

(b) Every licensed nurse practitioner in the active practice of advanced nursing within Kansas, in order to comply with the provisions of this section, shall complete such hours of continuing education as may be required by the board by rules and regulations. The following categories of continuing education programs shall count toward satisfying the hourly requirement: (1) Advanced nursing programs offered by colleges of nursing, (2) veterans administration advanced nursing educational programs and (3) advanced nursing educational programs offered by national or state nursing associations recognized by the board.

(c) Formal meetings and seminars which are not included in any category of subsection (b) shall be assigned credit by the board upon the licensee furnishing a copy of the program of such meetings and seminars to the board for the board's approval 30 days prior to the license renewal date. Nurse practitioners engaged in acceptable internships, residencies, military service or formal graduate study will fulfill their continuing education requirements by the nature of their activities and shall not

be required to fulfill the normal requirements for continuing education while involved in the above training programs.

(d) Each licensed nurse practitioner shall be responsible for keeping a record of attendance for credit in compliance with the requirements of continuing education established by this section. Such record shall be submitted to the board at the time required by subsection (a). The board may waive educational requirements set forth in subsections (a) and (b) for good cause shown.

Sec. 11. The state board of healing arts shall remit all moneys received by or for it under this act from fees, charges or penalties to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of such remittance, the state treasurer shall deposit the entire amount in the state treasury. Twenty percent of each such deposit shall be credited to the state general fund and the balance shall be credited to the healing arts fee fund.

Sec. 12. The following fees shall be established by rules and regulations adopted by the board and shall be collected by the board:

(a) For a license to practice advanced nursing, issued on the basis of an examination, an amount of not more than \$300;

(b) for a license to practice advanced nursing, issued without examination and by endorsement, an amount of not more than \$300;

(c) for a license to practice advanced nursing, issued upon request of an exempt licensee, an amount of not more than \$300;

(d) for an exempt license or renewal of an exempt license, an amount of not more than \$150;

(e) for the annual renewal of a license to practice advanced nursing, an amount of not more than \$500;

(f) for late renewal of any license, an amount of not more than \$200;

(g) for reinstatement of a licensee whose license was lapsed or revoked, an amount of not more than \$1,000;

(h) for a temporary permit, an amount of not more than \$60;

(i) for a temporary license, an amount of not more than \$50;

(j) for any examination given by the board, an amount equal to the cost to the board of the examination and its administration;

(k) for a certified statement from the board that a licensee is licensed to practice advanced nursing in this state, an amount of not more than \$30;

(l) for any copy of any license issued by the board, an amount of not more than \$30; and

(m) for written verification of any license issued by the board, an amount of not more than \$25.

Sec. 13. The board shall adopt such rules and regulations as necessary to carry out the provisions of the advanced nursing act, and may adopt or revoke any existing rules and regulations adopted by the state board of nursing pertaining to advanced registered nurse practitioners.

Sec. 14. (a) The state board of healing arts, in addition to any other penalty prescribed under the advanced nursing act, may assess a civil fine, after proper notice and an opportunity to be heard, against a licensee for a violation of the advanced nursing act in an amount not to exceed \$5,000 for the first violation, \$10,000 for the second violation and \$15,000 for the third violation and for each subsequent violation. All fines assessed and collected under this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general

fund.

Sec. 15. The state board of healing arts shall establish and appoint a review committee for the practice of advanced nursing. The review committee shall be composed of not less than three members. The members shall be licensed nurse practitioners. Additional members of the review committee may be appointed on an ad hoc basis. Such additional members shall be licensed nurse practitioners. Members of the state board of healing arts shall not be eligible to act as members of the review committee. Members of the review committee may be selected from names submitted by the state nurses association. The state board of healing arts shall ensure that no conflict of interest exists by reason of geography, personal or professional relationship, or otherwise, between any of the review committee members and any person whose conduct is being reviewed. Members of the review committee attending meetings of such committee shall be paid amounts provided in subsection (e) of K.S.A. 75-3223, and amendments thereto.

Sec. 16. K.S.A. 40-3401 is hereby amended to read as follows: 40-3401. As used in this act the following terms shall have the meanings respectively ascribed to them herein.

(a) "Applicant" means any health care provider.

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

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

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

(e) "Fund" means the health care stabilization fund established pursuant to subsection (a) of K.S.A. 40-3403 and amendments thereto.

(f) "Health care provider" means a person licensed to practice any branch of the healing arts by the state board of healing arts with the exception of physician assistants, a person who holds a temporary permit to practice any branch of the healing arts issued by the state board of healing arts, a person engaged in a postgraduate training program approved by the state board of healing arts, a medical care facility licensed by the department of health and environment, a health maintenance organization issued a certificate of authority by the commissioner of insurance, a podiatrist licensed by the state board of healing arts, an optometrist licensed by the board of examiners in optometry, a pharmacist licensed by the state board of pharmacy, a licensed ~~professional nurse practitioner who is authorized to practice as a registered nurse anesthetist~~, a licensed ~~professional nurse practitioner~~ who has been granted a temporary authorization to practice ~~nurse anesthesia under K.S.A. 65-1153 and amendments thereto~~ advanced nursing, a professional corporation organized pursuant to the professional corporation law of Kansas by persons who are authorized by such law to form such a corporation and who are health care providers as defined by this subsection, a Kansas limited liability company organized for the purpose of rendering professional services by its members who are health care providers as defined by this subsection and who are legally authorized to render the professional services for which the limited liability company is organized, a partnership of persons who are health care providers under this subsection, a Kansas not-for-profit corporation organized for the purpose of rendering professional services by persons who are health care providers as defined by this subsection, a nonprofit corporation organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the university of Kansas school of medicine, a dentist certified by the state board of healing arts to administer

anesthetics under K.S.A. 65-2899 and amendments thereto, a psychiatric hospital licensed under K.S.A. 75-3307b and amendments thereto, or a mental health center or mental health clinic licensed by the secretary of social and rehabilitation services, except that health care provider does not include (1) any state institution for the mentally retarded, (2) any state psychiatric hospital, (3) any person holding an exempt license issued by the state board of healing arts or (4) any person holding a visiting clinical professor license from the state board of healing arts.

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

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

(i) "Plan" means the operating and administrative rules and procedures developed by insurers and rating organizations or the commissioner to make professional liability insurance available to health care providers.

(j) "Professional liability insurance" means insurance providing coverage for legal liability arising out of the performance of professional services rendered or which should have been rendered by a health care provider.

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

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

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

(n) "Mental health center" means a mental health center licensed by the secretary of social and rehabilitation services under K.S.A. 75-3307b and amendments thereto, except that as used in the health care provider insurance availability act such term, as it relates to insurance coverage under the health care provider insurance availability act, also includes any director, trustee, officer or administrator of a mental health center.

(o) "Mental health clinic" means a mental health clinic licensed by the secretary of social and rehabilitation services under K.S.A. 75-3307b and amendments thereto, except that as used in the health care provider insurance availability act such term, as it relates to insurance coverage under the health care provider insurance availability act, also includes any director, trustee, officer or administrator of a mental health clinic.

(p) "State institution for the mentally retarded" means Winfield state hospital and training center, Parsons state hospital and training center and the Kansas neurological institute.

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

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

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

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

(s) "Full-time physician faculty employed by the university of Kansas medical center" means a person licensed to practice medicine and surgery who holds a full-time appointment at the university of Kansas medical center when such person is providing health care.

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

Sec. 17. K.S.A. 2004 Supp. 65-468 is hereby amended to read as follows: 65-468. As used in K.S.A. 65-468 to 65-474, inclusive, and amendments thereto:

(a) "Health care provider" means any person licensed or otherwise authorized by law to provide health care services in this state or a professional corporation organized pursuant to the professional corporation law of Kansas by persons who are authorized by law to form such corporation and who are health care providers as defined by this subsection, or an officer, employee or agent thereof, acting in the course and scope of employment or agency.

(b) "Member" means any hospital, emergency medical service, local health department, home health agency, adult care home, medical clinic, mental health center or clinic or nonemergency transportation system.

(c) "Mid-level practitioner" means a physician's assistant or ~~advanced registered nurse practitioner~~ who has entered into a written protocol with a rural health network physician.

(d) "Physician" means a person licensed to practice medicine and surgery.

(e) "Rural health network" means an alliance of members including at least one critical access hospital and at least one other hospital which has developed a comprehensive plan submitted to and approved by the secretary of health and

environment regarding patient referral and transfer; the provision of emergency and nonemergency transportation among members; the development of a network-wide emergency services plan; and the development of a plan for sharing patient information and services between hospital members concerning medical staff credentialing, risk management, quality assurance and peer review.

(f) "Critical access hospital" means a member of a rural health network which makes available twenty-four hour emergency care services; provides not more than 15 acute care inpatient beds or in the case of a facility with an approved swing-bed agreement a combined total of extended care and acute care beds that does not exceed 25 beds (provided that the number of beds used at any time for acute care inpatient services does not exceed 15 beds); provides acute inpatient care for a period that does not exceed, on an annual average basis, 96 hours per patient; and provides nursing services under the direction of a licensed professional nurse and continuous licensed professional nursing services for not less than 24 hours of every day when any bed is occupied or the facility is open to provide services for patients unless an exemption is granted by the licensing agency pursuant to rules and regulations. The critical access hospital may provide any services otherwise required to be provided by a full-time, on-site dietician, pharmacist, laboratory technician, medical technologist and radiological technologist on a part-time, off-site basis under written agreements or arrangements with one or more providers or suppliers recognized under medicare. The critical access hospital may provide inpatient services by a physician's assistant, nurse practitioner or a clinical nurse specialist subject to the oversight of a physician who need not be present in the facility.

(g) "Hospital" means a hospital other than a critical access hospital which has entered into a written agreement with at least one critical access hospital to form a rural health network and to provide medical or administrative supporting services within the limit of the hospital's capabilities.

Sec. 18. K.S.A. 2004 Supp. 65-1626 is hereby amended to read as follows: 65-1626. For the purposes of this act:

(a) "Administer" means the direct application of a drug, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by:

- (1) A practitioner or pursuant to the lawful direction of a practitioner;
- (2) the patient or research subject at the direction and in the presence of the practitioner; or
- (3) a pharmacist as authorized in K.S.A. 65-1635a and amendments thereto.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser but shall not include a common carrier, public warehouseman or employee of the carrier or warehouseman when acting in the usual and lawful course of the carrier's or warehouseman's business.

(c) "Board" means the state board of pharmacy created by K.S.A. 74-1603 and amendments thereto.

(d) "Brand exchange" means the dispensing of a different drug product of the same dosage form and strength and of the same generic name than the brand name drug product prescribed.

(e) "Brand name" means the registered trademark name given to a drug product by its manufacturer, labeler or distributor.

(f) "Deliver" or "delivery" means the actual, constructive or attempted transfer from one person to another of any drug whether or not an agency relationship exists.

(g) "Direct supervision" means the process by which the responsible pharmacist shall observe and direct the activities of a pharmacy student or pharmacy technician

to a sufficient degree to assure that all such activities are performed accurately, safely and without risk or harm to patients, and complete the final check before dispensing.

(h) "Dispense" means to deliver prescription medication to the ultimate user or research subject by or pursuant to the lawful order of a practitioner or pursuant to the prescription of a mid-level practitioner.

(i) "Dispenser" means a practitioner or pharmacist who dispenses prescription medication.

(j) "Distribute" means to deliver, other than by administering or dispensing, any drug.

(k) "Distributor" means a person who distributes a drug.

(l) "Drug" means: (1) Articles recognized in the official United States pharmacopoeia, or other such official compendiums of the United States, or official national formulary, or any supplement of any of them; (2) articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; (3) articles, other than food, intended to affect the structure or any function of the body of man or other animals; and (4) articles intended for use as a component of any articles specified in clause (1), (2) or (3) of this subsection; but does not include devices or their components, parts or accessories, except that the term "drug" shall not include amygdalin (laetrile) or any livestock remedy, if such livestock remedy had been registered in accordance with the provisions of article 5 of chapter 47 of the Kansas Statutes Annotated prior to its repeal.

(m) "Electronic transmission" means transmission of information in electronic form or the transmission of the exact visual image of a document by way of electronic equipment.

(n) "Generic name" means the established chemical name or official name of a drug or drug product.

(o) (1) "Institutional drug room" means any location where prescription-only drugs are stored and from which prescription-only drugs are administered or dispensed and which is maintained or operated for the purpose of providing the drug needs of:

(A) Inmates of a jail or correctional institution or facility;

(B) residents of a juvenile detention facility, as defined by the Kansas code for care of children and the Kansas juvenile justice code;

(C) students of a public or private university or college, a community college or any other institution of higher learning which is located in Kansas;

(D) employees of a business or other employer; or

(E) persons receiving inpatient hospice services.

(2) "Institutional drug room" does not include:

(A) Any registered pharmacy;

(B) any office of a practitioner; or

(C) a location where no prescription-only drugs are dispensed and no prescription-only drugs other than individual prescriptions are stored or administered.

(p) "Medical care facility" shall have the meaning provided in K.S.A. 65-425 and amendments thereto, except that the term shall also include facilities licensed under the provisions of K.S.A. 75-3307b and amendments thereto except community mental health centers and facilities for the mentally retarded.

(q) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a drug either directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the drug or labeling or relabeling of its container, except

that this term shall not include the preparation or compounding of a drug by an individual for the individual's own use or the preparation, compounding, packaging or labeling of a drug by: (1) A practitioner or a practitioner's authorized agent incident to such practitioner's administering or dispensing of a drug in the course of the practitioner's professional practice; (2) a practitioner, by a practitioner's authorized agent or under a practitioner's supervision for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale; or (3) a pharmacist or the pharmacist's authorized agent acting under the direct supervision of the pharmacist for the purpose of, or incident to, the dispensing of a drug by the pharmacist.

(r) "Person" means individual, corporation, government, governmental subdivision or agency, partnership, association or any other legal entity.

(s) "Pharmacist" means any natural person licensed under this act to practice pharmacy.

(t) "Pharmacist in charge" means the pharmacist who is responsible to the board for a registered establishment's compliance with the laws and regulations of this state pertaining to the practice of pharmacy, manufacturing of drugs and the distribution of drugs. The pharmacist in charge shall supervise such establishment on a full-time or a part-time basis and perform such other duties relating to supervision of a registered establishment as may be prescribed by the board by rules and regulations. Nothing in this definition shall relieve other pharmacists or persons from their responsibility to comply with state and federal laws and regulations.

(u) "Pharmacy," "drug store" or "apothecary" means premises, laboratory, area or other place: (1) Where drugs are offered for sale where the profession of pharmacy is practiced and where prescriptions are compounded and dispensed; or (2) which has displayed upon it or within it the words "pharmacist," "pharmaceutical chemist," "pharmacy," "apothecary," "drugstore," "druggist," "drugs," "drug sundries" or any of these words or combinations of these words or words of similar import either in English or any sign containing any of these words; or (3) where the characteristic symbols of pharmacy or the characteristic prescription sign "Rx" may be exhibited. As used in this subsection, premises refers only to the portion of any building or structure leased, used or controlled by the licensee in the conduct of the business registered by the board at the address for which the registration was issued.

(v) "Pharmacy student" means an individual, registered with the board of pharmacy, enrolled in an accredited school of pharmacy.

(w) "Pharmacy technician" means an individual who, under the direct supervision and control of a pharmacist, may perform packaging, manipulative, repetitive or other nondiscretionary tasks related to the processing of a prescription or medication order and who assists the pharmacist in the performance of pharmacy related duties, but who does not perform duties restricted to a pharmacist.

(x) "Practitioner" means a person licensed to practice medicine and surgery, dentist, podiatrist, veterinarian, optometrist licensed under the optometry law as a therapeutic licensee or diagnostic and therapeutic licensee, or scientific investigator or other person authorized by law to use a prescription-only drug in teaching or chemical analysis or to conduct research with respect to a prescription-only drug.

(y) "Preceptor" means a licensed pharmacist who possesses at least two years' experience as a pharmacist and who supervises students obtaining the pharmaceutical experience required by law as a condition to taking the examination for licensure as a pharmacist.

(z) "Prescription" means, according to the context, either a prescription order or a prescription medication.

(aa) "Prescription medication" means any drug, including label and container according to context, which is dispensed pursuant to a prescription order.

(bb) "Prescription-only drug" means any drug whether intended for use by man or animal, required by federal or state law (including 21 United States Code section 353, as amended) to be dispensed only pursuant to a written or oral prescription or order of a practitioner or is restricted to use by practitioners only.

(cc) "Prescription order" means: (1) An order to be filled by a pharmacist for prescription medication issued and signed by a practitioner or a mid-level practitioner in the authorized course of professional practice; or (2) an order transmitted to a pharmacist through word of mouth, note, telephone or other means of communication directed by such practitioner or mid-level practitioner.

(dd) "Probation" means the practice or operation under a temporary license, registration or permit or a conditional license, registration or permit of a business or profession for which a license, registration or permit is granted by the board under the provisions of the pharmacy act of the state of Kansas requiring certain actions to be accomplished or certain actions not to occur before a regular license, registration or permit is issued.

(ee) "Professional incompetency" means:

(1) One or more instances involving failure to adhere to the applicable standard of pharmaceutical care to a degree which constitutes gross negligence, as determined by the board;

(2) repeated instances involving failure to adhere to the applicable standard of pharmaceutical care to a degree which constitutes ordinary negligence, as determined by the board; or

(3) a pattern of pharmacy practice or other behavior which demonstrates a manifest incapacity or incompetence to practice pharmacy.

(ff) "Retail dealer" means a person selling at retail nonprescription drugs which are prepackaged, fully prepared by the manufacturer or distributor for use by the consumer and labeled in accordance with the requirements of the state and federal food, drug and cosmetic acts. Such nonprescription drugs shall not include: (1) A controlled substance; (2) a prescription-only drug; or (3) a drug intended for human use by hypodermic injection.

(gg) "Secretary" means the executive secretary of the board.

(hh) "Unprofessional conduct" means:

(1) Fraud in securing a registration or permit;

(2) intentional adulteration or mislabeling of any drug, medicine, chemical or poison;

(3) causing any drug, medicine, chemical or poison to be adulterated or mislabeled, knowing the same to be adulterated or mislabeled;

(4) intentionally falsifying or altering records or prescriptions;

(5) unlawful possession of drugs and unlawful diversion of drugs to others;

(6) willful betrayal of confidential information under K.S.A. 65-1654 and amendments thereto;

(7) conduct likely to deceive, defraud or harm the public;

(8) making a false or misleading statement regarding the licensee's professional practice or the efficacy or value of a drug;

(9) commission of any act of sexual abuse, misconduct or exploitation related to the licensee's professional practice; or

(10) performing unnecessary tests, examinations or services which have no

legitimate pharmaceutical purpose.

(ii) "Mid-level practitioner" means ~~an advanced registered nurse practitioner issued a certificate of qualification pursuant to K.S.A. 65-1131 and amendments thereto who has authority to prescribe drugs pursuant to a written protocol with a responsible physician under K.S.A. 65-1130 and amendments thereto~~ a licensed nurse practitioner who has been authorized to prescribe drugs pursuant to rules and regulations adopted by the state board of healing arts or a physician assistant licensed pursuant to the physician assistant licensure act who has authority to prescribe drugs pursuant to a written protocol with a responsible physician under K.S.A. 65-28a08 and amendments thereto.

(jj) "Vaccination protocol" means a written protocol, agreed to by a pharmacist and a person licensed to practice medicine and surgery by the state board of healing arts, which establishes procedures and recordkeeping and reporting requirements for administering a vaccine by the pharmacist for a period of time specified therein, not to exceed two years.

(kk) "Veterinary medical teaching hospital pharmacy" means any location where prescription-only drugs are stored as part of an accredited college of veterinary medicine and from which prescription-only drugs are distributed for use in treatment of or administration to a non-human.

Sec. 19. K.S.A. 2004 Supp. 65-4101 is hereby amended to read as follows: 65-4101. As used in this act: (a) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by: (1) A practitioner or pursuant to the lawful direction of a practitioner; or

(2) the patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser. It does not include a common carrier, public warehouseman or employee of the carrier or warehouseman.

(c) "Board" means the state board of pharmacy.

(d) "Bureau" means the bureau of narcotics and dangerous drugs, United States department of justice, or its successor agency.

(e) "Controlled substance" means any drug, substance or immediate precursor included in any of the schedules designated in K.S.A. 65-4105, 65-4107, 65-4109, 65-4111 and 65-4113, and amendments to these sections.

(f) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization bears the trademark, trade name or other identifying mark, imprint, number or device or any likeness thereof of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the substance.

(g) "Deliver" or "delivery" means the actual, constructive or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

(h) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the packaging, labeling or compounding necessary to prepare the substance for that delivery, or pursuant to the prescription of a mid-level practitioner.

(i) "Dispenser" means a practitioner or pharmacist who dispenses.

(j) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(k) "Distributor" means a person who distributes.

(l) "Drug" means: (1) Substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States or official national formulary or any supplement to any of them; (2) substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals; (3) substances (other than food) intended to affect the structure or any function of the body of man or animals; and (4) substances intended for use as a component of any article specified in clause (1), (2) or (3) of this subsection. It does not include devices or their components, parts or accessories.

(m) "Immediate precursor" means a substance which the board has found to be and by rule and regulation designates as being the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

(n) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance either directly or indirectly or by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance by an individual for the individual's own lawful use or the preparation, compounding, packaging or labeling of a controlled substance:

(1) By a practitioner or the practitioner's agent pursuant to a lawful order of a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

(2) by a practitioner or by the practitioner's authorized agent under such practitioner's supervision for the purpose of or as an incident to research, teaching or chemical analysis or by a pharmacist or medical care facility as an incident to dispensing of a controlled substance.

(o) "Marijuana" means all parts of all varieties of the plant *Cannabis* whether growing or not, the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil, or cake or the sterilized seed of the plant which is incapable of germination.

(p) "Narcotic drug" means any of the following whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis: (1) Opium and opiate and any salt, compound, derivative or preparation of opium or opiate;

(2) any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (1) but not including the isoquinoline alkaloids of opium;

(3) opium poppy and poppy straw;

(4) coca leaves and any salt, compound, derivative or preparation of coca leaves, and any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(q) "Opiate" means any substance having an addiction-forming or addiction-

sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under K.S.A. 65-4102 and amendments thereto, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

(r) "Opium poppy" means the plant of the species *Papaver somniferum L.* except its seeds.

(s) "Person" means individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership or association or any other legal entity.

(t) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(u) "Pharmacist" means an individual currently licensed by the board to practice the profession of pharmacy in this state.

(v) "Practitioner" means a person licensed to practice medicine and surgery, dentist, podiatrist, veterinarian, optometrist licensed under the optometry law as a therapeutic licensee or diagnostic and therapeutic licensee, or scientific investigator or other person authorized by law to use a controlled substance in teaching or chemical analysis or to conduct research with respect to a controlled substance.

(w) "Production" includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.

(x) "Ultimate user" means a person who lawfully possesses a controlled substance for such person's own use or for the use of a member of such person's household or for administering to an animal owned by such person or by a member of such person's household.

(y) "Isomer" means all enantiomers and diastereomers.

(z) "Medical care facility" shall have the meaning ascribed to that term in K.S.A. 65-425 and amendments thereto.

(aa) "Cultivate" means the planting or promotion of growth of five or more plants which contain or can produce controlled substances.

(bb) (1) "Controlled substance analog" means a substance that is intended for human consumption, and:

(A) The chemical structure of which is substantially similar to the chemical structure of a controlled substance listed in or added to the schedules designated in K.S.A. 65-4105 or 65-4107 and amendments thereto;

(B) which has a stimulant, depressant or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance included in the schedules designated in K.S.A. 65-4105 or 65-4107 and amendments thereto; or

(C) with respect to a particular individual, which the individual represents or intends to have a stimulant, depressant or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance included in the schedules designated in K.S.A. 65-4105 or 65-4107 and amendments thereto.

(2) "Controlled substance analog" does not include:

(A) A controlled substance;

(B) a substance for which there is an approved new drug application; or

(C) a substance with respect to which an exemption is in effect for investigational use by a particular person under section 505 of the federal food, drug,

and cosmetic act (21 U.S.C. 355) to the extent conduct with respect to the substance is permitted by the exemption.

(cc) "Mid-level practitioner" means ~~an advanced registered nurse practitioner issued a certificate of qualification pursuant to K.S.A. 65-1131 and amendments thereto, who has authority to prescribe drugs pursuant to a written protocol with a responsible physician under K.S.A. 65-1130, and amendments thereto~~ a licensed nurse practitioner who has been authorized to prescribe drugs pursuant to rules and regulations adopted by the state board of healing arts or a physician assistant licensed under the physician assistant licensure act who has authority to prescribe drugs pursuant to a written protocol with a responsible physician under K.S.A. 65-28a08 and amendments thereto.

Sec. 20. K.S.A. 65-1130 through 65-1133, K.S.A. 2004 Supp. 65-468, 65-1626 and 65-4101 are hereby repealed.

Sec. 21. This act shall take effect and be in force from and after its publication in the statute book.