Senate Substitute for HOUSE BILL No. 2027

By Committee on Public Health and Welfare

3-24

AN ACT concerning the healing arts; relating to anatomic pathology billing; institutional licenses; licensee reporting; amending K.S.A. 2016 Supp. 65-2837, 65-2895 and 65-2898 and repealing the existing sections.

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

Section 1. K.S.A. 2016 Supp. 65-2837 is hereby amended to read as follows: 65-2837. As used in K.S.A. 65-2836, and amendments thereto, and in this section:

(a) "Professional incompetency" means:

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

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

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

(b) "Unprofessional conduct" means:

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

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

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

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

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

(6) Willful betrayal of confidential information.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(21) Performing unnecessary tests, examinations or services ~~which~~ *that* have no legitimate medical purpose.

(22) Charging an excessive fee for services rendered.

(23) Prescribing, dispensing, administering or distributing a prescription drug or substance, including a controlled substance, in an

improper or inappropriate manner, or for other than a valid medical purpose, or not in the course of the licensee's professional practice.

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

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

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

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

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

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

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

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

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

(A) A hospital~~, or by~~

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

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

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

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

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

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

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

(A) Falsifying or concealing a material fact;

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

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

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

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

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

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

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

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

Sec. 2. K.S.A. 2016 Supp. 65-2895 is hereby amended to read as follows: 65-2895. (a) There is hereby created an institutional license ~~which~~ *that* may be issued by the board to a person who:

(1) Is a graduate of an accredited school of medicine or osteopathic medicine or a school which the graduates have been licensed in another state or states ~~which~~ *that* have standards similar to Kansas;

(2) has completed at least two years in a postgraduate training program in the United States approved by the board; and

(3) who is employed as provided in this section.

(b) Subject to the restrictions of this section, the institutional license shall confer upon the holder the right and privilege to practice medicine and surgery and shall obligate the holder to comply with all requirements of such license.

(c) The practice privileges of institutional license holders are restricted and shall be valid only during the period in which:

(1) The holder is employed by any institution within the Kansas department for aging and disability services, employed by any institution within the department of corrections or employed pursuant to a contract entered into by the Kansas department for aging and disability services or the department of corrections with a third party, and only within the institution to which the holder is assigned; and

(2) the holder has been employed for at least three years as described in subsection (c)(1) and is employed to provide mental health services in Kansas in the employ of a Kansas licensed community mental health center, or one of its contracted affiliates, or a federal, state, county or municipal agency, or other political subdivision, or a contractor of a federal, state, county or municipal agency, or other political subdivision, or a duly chartered educational institution, or a medical care facility licensed under K.S.A. 65-425 et seq., and amendments thereto, in a psychiatric hospital licensed under K.S.A. ~~75-3307b~~ *2016 Supp. 39-2001 et seq.*, and amendments thereto, or a contractor of such educational institution, medical care facility or psychiatric hospital, and whose practice, in any such employment, is limited to providing mental health services, is a part of the duties of such licensee's paid position and is performed solely on behalf of the employer*; or*

(3) the holder was issued an institutional license prior to May 9, 1997, and is providing mental health services pursuant to a written protocol with a person who holds a Kansas license to practice medicine

and surgery other than an institutional license.

(d) An institutional license shall be canceled on the date established by rules and regulations of the board ~~which~~ *that* may provide for renewal throughout the year on a continuing basis. In each case in which an institutional license is renewed for a period of time of more or less than 12 months, the board may prorate the amount of the fee established under K.S.A. 65-2852, and amendments thereto. The request for renewal shall be on a form provided by the board and shall be accompanied by the prescribed fee~~, which~~ *that* shall be paid not later than the renewal date of the license. An institutional license may be renewed for an additional one-year period if the applicant for renewal meets the requirements under subsection (c), has submitted an application for renewal on a form provided by the board, has paid the renewal fee established by rules and regulations of the board of not to exceed $500 and has submitted evidence of satisfactory completion of a program of continuing education required by the board. In addition, an applicant for renewal who is employed as described in subsection (c)(1) shall submit with the application for renewal a recommendation that the institutional license be renewed signed by the superintendent of the institution to which the institutional license holder is assigned.

(e) Nothing in this section shall prohibit any person who was issued an institutional license prior to the effective date of this section from having the institutional license reinstated by the board if the person meets the requirements for an institutional license described in subsection (a).

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

Sec. 3. K.S.A. 2016 Supp. 65-2898 is hereby amended to read as follows: 65-2898. (a) No person reporting to the state board of healing arts in good faith any information such person may have relating to alleged incidents of malpractice, or the qualifications, fitness or character of, or disciplinary action taken against, a person licensed, registered or certified by the board shall be subject to a civil action for damages as a result of reporting such information*, and such person reporting shall be immune from any civil liability that might otherwise be incurred in an action resulting from reporting such information. In any civil action resulting from reporting such information in which a court determines that a person reporting under this section reported in good faith, the court shall allow the person reporting a reasonable amount for attorney fees and expenses incurred in defending the civil action*.

(b) Any state, regional or local association composed of persons licensed to practice a profession regulated by the board and the individual members of any committee thereof~~, which~~ *that* in good faith investigates or communicates information pertaining to the alleged incidents of

malpractice, or the qualifications, fitness or character of, or disciplinary action taken against, any licensee, registrant or certificate holder to the state board of healing arts or to any committee or agent thereof, shall be immune from liability in any civil action~~,~~ that is based upon such investigation or transmittal of information if the investigation and communication was made in good faith and did not represent as true any matter not reasonably believed to be true.

Sec. 4. K.S.A. 2016 Supp. 65-2837, 65-2895 and 65-2898 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.