SENATE BILL No. 120

By Committee on Public Health and Welfare

AN ACT concerning health and healthcare; providing for a certificate of authorization for a business entity to practice medicine; amending K.S.A. 65-2803, 65-2836 and 65-2877a and K.S.A. 2018 Supp. 40-3401 and repealing the existing sections.

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

New Section 1. (a) Notwithstanding any other provision of law, a business entity shall not be prohibited from engaging in the practice of the healing arts if it obtains a certificate of authorization pursuant to this section prior to practicing the healing arts in this state. To obtain a certificate of authorization, a business entity shall:

(1) Require each employee and agent of the business entity who is engaged in the practice of the healing arts to be licensed to practice such profession by the state board of healing arts;

(2) leave the method, manner and means of patient treatment to the discretion of the licensed individuals treating such patients; and

(3) not impose or substitute its judgment for that of the licensed individuals.

(b) (1) A business entity shall apply to the state board of healing arts for a certificate of authorization, upon a form prescribed by the state board of healing arts, listing the names and addresses of all employees and agents of the business entity who is licensed to practice the healing arts and such other information as may be required by the state board of healing arts. The application for a certificate of authorization shall be accompanied by an application fee fixed by the state board of healing arts.

(2) The certificate of authorization shall be renewed biennially. The biennial renewal fee shall be fixed by the state board of healing arts and shall be accompanied by a form prescribed by the state board of healing arts.

(3) The board of healing arts shall adopt the rules and regulations necessary to administer the provisions of this subsection.

(c) In the event the list of individuals licensed to practice the healing arts changes, the business entity shall provide notice of any such change to the state board of healing arts within 30 days after the effective date of such change.

(d) If the state board of healing arts finds that such business entity is
in compliance with all of the requirements of this section, the state board
of healing arts shall issue a certificate of authorization to such business
entity designating the business entity as authorized to engage in the
practice of the healing arts.

(e) No business entity issued a certificate of authorization under this
section shall be relieved of responsibility for the conduct or acts of its
agents or employees by reason of its compliance with the provisions of
this section, nor shall any individual licensed to practice the healing arts be
relieved of responsibility and liability for services performed by reason of
employment or relationship with such business entity. Nothing in this
section shall exempt any business entity from the provisions of any other
law applicable to the business entity.

(f) As used in this section, "business entity" means a general
corporation, limited liability company, limited liability partnership or other
legal entity created by law that employs individuals who are licensed to
practice medicine by the board of healing arts.

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

Sec. 2. K.S.A. 2018 Supp. 40-3401 is hereby amended to read as
follows: 40-3401. As used in this act:

(a) "Applicant" means any healthcare provider.

(b) "Basic coverage" means a policy of professional liability
insurance required to be maintained by each healthcare provider pursuant
to the provisions of K.S.A. 40-3402(a) or (b), 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 July thereafter.

(e) "Fund" means the healthcare stabilization fund established
pursuant to K.S.A. 40-3403(a), and amendments thereto.

(f) "Healthcare provider" means a person licensed to practice any
branch of the healing arts by the state board of healing arts, 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 state of Kansas, a podiatrist licensed by the
state board of healing arts, a health maintenance organization issued a
certificate of authority by the commissioner, an optometrist licensed by the
board of examiners in optometry, a pharmacist licensed by the state board
of pharmacy, a licensed professional nurse who is authorized to practice as
a registered nurse anesthetist, a licensed professional nurse who has been
granted a temporary authorization to practice nurse anesthesia under
K.S.A. 65-1153, and amendments thereto, 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 healthcare providers as defined by this subsection, a Kansas
limited liability company organized for the purpose of rendering
professional services by its members who are healthcare providers as
defined by this subsection and who are legally authorized to render the
professional services for which the limited liability company is organized,
partnership of persons who are healthcare providers under this
subsection, a Kansas not-for-profit corporation organized for the purpose
of rendering professional services by persons who are healthcare 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 prior to January 1, 1988, and continuously
thereafter under K.S.A. 2015 Supp. 75-3307b, prior to its repeal, and
K.S.A. 2018 Supp. 39-2001 et seq., and amendments thereto, or a mental
health center or mental health clinic licensed by the state of Kansas or a
business entity that holds a certificate of authorization under section 1,
and amendments thereto. On and after January 1, 2015, "Healthcare
provider" also means a physician assistant licensed by the state board of
healing arts, a licensed advanced practice registered nurse who is
authorized by the board of nursing to practice as an advanced practice
registered nurse in the classification of a nurse-midwife, a licensed
advanced practice registered nurse who has been granted a temporary
authorization by the board of nursing to practice as an advanced practice
registered nurse in the classification of a nurse-midwife, a nursing facility
licensed by the state of Kansas, an assisted living facility licensed by the
state of Kansas or a residential healthcare facility licensed by the state of
Kansas. "Healthcare provider" does not include: (1) Any state institution
for people with intellectual disability; (2) any state psychiatric hospital; (3)
any person holding an exempt license issued by the state board of healing
arts or the board of nursing; (4) any person holding a visiting clinical
professor license from the state board of healing arts; (5) any person
holding an inactive license issued by the state board of healing arts; (6)
any person holding a federally active license issued by the state board of
healing arts; (7) an advanced practice registered nurse who is authorized
by the board of nursing to practice as an advanced practice registered
nurse in the classification of nurse-midwife or nurse anesthetist and who
practices solely in the course of employment or active duty in the United
States government or any of its departments, bureaus or agencies or who
provides professional services as a charitable healthcare provider as
defined under K.S.A. 75-6102, and amendments thereto; or (8) a physician
assistant licensed by the state board of healing arts who practices solely in
the course of employment or active duty in the United States government
or any of its departments, bureaus or agencies or who provides
professional services as a charitable healthcare provider as defined under
K.S.A. 75-6102, and amendments thereto.

(g) "Inactive healthcare 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 healthcare 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 healthcare 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
the Kansas Statutes Annotated, and amendments thereto.

(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
healthcare providers.

(j) "Professional liability insurance" means insurance providing
coverage for legal liability arising out of the performance of professional
services rendered or that should have been rendered by a healthcare
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 healthcare 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
healthcare provider insurance availability act as defined in K.S.A. 65-425,
and amendments thereto, except that as used in the healthcare provider
insurance availability act such term, as it relates to insurance coverage
under the healthcare 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 state of Kansas under K.S.A. 2018 Supp. 39-2001 et seq., and
amendments thereto, except that as used in the healthcare provider
insurance availability act such term, as it relates to insurance coverage
under the healthcare 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 state of Kansas under K.S.A. 2018 Supp. 39-2001 et seq., and
amendments thereto, except that as used in the healthcare provider
insurance availability act such term, as it relates to insurance coverage
under the healthcare provider insurance availability act, also includes any
director, trustee, officer or administrator of a mental health clinic.

(p) "State institution for people with intellectual disability" 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 that do not include extracurricular, extra-institutional
medical service for which such person receives extra compensation and
that 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
healthcare 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 that do not include extracurricular, extra-institutional medical
service for which such person receives extra compensation and that 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 healthcare. A person licensed to
practice medicine and surgery who holds a full-time appointment at the
university of Kansas medical center may also be employed part-time by
the United States department of veterans affairs if such employment is
approved by the executive vice-chancellor of the university of Kansas
medical center.

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

(u) "Board" means the board of governors created by K.S.A. 40-3403, and amendments thereto.

(v) "Board of directors" means the governing board created by K.S.A. 40-3413, and amendments thereto.

(w) "Locum tenens contract" means a temporary agreement not exceeding 182 days per calendar year that employs a healthcare provider to actively render professional services in this state.

(x) "Professional services" means patient care or other services authorized under the act governing licensure of a healthcare provider.

(y) "Healthcare facility" means a nursing facility, an assisted living facility or a residential healthcare facility as all such terms are defined in K.S.A. 39-923, and amendments thereto.

(z) "Charitable healthcare provider" means the same as defined in K.S.A. 75-6102, and amendments thereto.

Sec. 3. K.S.A. 65-2803 is hereby amended to read as follows: 65-2803. (a) Unless otherwise specified by the board or as provided in section 1, and amendment thereto, it shall be unlawful for any person who does not have a license, registration, permit or certificate to engage in the practice of any profession regulated by the board or whose license, registration, permit or certificate to practice has been revoked or suspended to engage in the practice of any profession regulated by the board.

(b) This section shall not apply to any healthcare provider who in good faith renders emergency care or assistance at the scene of an emergency or accident as authorized by K.S.A. 65-2891, and amendments thereto.

(c) The commission of any act or practice declared to be a violation of this section may render the violator liable to the state or county for the payment of a civil penalty of up to $1,000 per day for each day a person engages in the unlawful practice of a profession regulated by the board. In addition to such civil penalty, such violator may be assessed reasonable costs of investigation and prosecution.

(d) Violation of this section is a severity level 10, nonperson felony.

Sec. 4. K.S.A. 65-2836 is hereby amended to read as follows: 65-2836. A licensee's license may be revoked, suspended or limited, or the licensee may be publicly censured or placed under probationary conditions, or an application for a license or for reinstatement of a license may be denied upon a finding of the existence of any of the following grounds:

(a) The licensee has committed fraud or misrepresentation in
applying for or securing an original, renewal or reinstated license.

(b) The licensee has committed an act of unprofessional or dishonorable conduct or professional incompetency, except that the board may take appropriate disciplinary action or enter into a non-disciplinary resolution when a licensee has engaged in any conduct or professional practice on a single occasion that, if continued, would reasonably be expected to constitute an inability to practice the healing arts with reasonable skill and safety to patients or unprofessional conduct as defined in K.S.A. 65-2837, and amendments thereto.

(c) The licensee has been convicted of a felony or class A misdemeanor, or substantially similar offense in another jurisdiction, whether or not related to the practice of the healing arts, or the licensee has been convicted in a special or general court-martial, whether or not related to the practice of the healing arts. The board shall revoke a licensee's license following conviction of a felony or substantially similar offense in another jurisdiction, or following conviction in a general court-martial occurring after July 1, 2000, unless a 2/3 majority of the board members present and voting determine by clear and convincing evidence that such licensee will not pose a threat to the public in such person's capacity as a licensee and that such person has been sufficiently rehabilitated to warrant the public trust. In the case of a person who has been convicted of a felony or convicted in a general court-martial and who applies for an original license or to reinstate a canceled license, the application for a license shall be denied unless a 2/3 majority of the board members present and voting on such application determine by clear and convincing evidence that such person will not pose a threat to the public in such person's capacity as a licensee and that such person has been sufficiently rehabilitated to warrant the public trust.

(d) The licensee has used fraudulent or false advertisements.

(e) The licensee is addicted to or has distributed intoxicating liquors or drugs for any other than lawful purposes.

(f) The licensee has willfully or repeatedly violated this act, the pharmacy act of the state of Kansas or the uniform controlled substances act, or any rules and regulations adopted pursuant thereto, or any rules and regulations of the secretary of health and environment which are relevant to the practice of the healing arts.

(g) The licensee has unlawfully invaded the field of practice of any branch of the healing arts in which the licensee is not licensed to practice.

(h) The licensee has engaged in the practice of the healing arts under a false or assumed name, or the impersonation of another practitioner. The provisions of this subsection relating to an assumed name shall not apply to licensees practicing under a professional corporation, under a business entity that holds a certificate of authorization under section 1, and
amendments thereto, or under any other legal entity duly authorized to provide such professional services in the state of Kansas.

(i) The licensee's ability to practice the healing arts with reasonable skill and safety to patients is impaired by reason of physical or mental illness, or condition or use of alcohol, drugs or controlled substances. All information, reports, findings and other records relating to impairment shall be confidential and not subject to discovery by or release to any person or entity outside of a board proceeding.

(j) The licensee has had a license to practice the healing arts revoked, suspended or limited, has been censured or has had other disciplinary action taken, or an application for a license denied, by the proper licensing authority of another state, territory, District of Columbia, or other country.

(k) The licensee has violated any lawful rule and regulation promulgated by the board or violated any lawful order or directive of the board previously entered by the board.

(l) The licensee has failed to report or reveal the knowledge required to be reported or revealed under K.S.A. 65-28,122, and amendments thereto.

(m) The licensee, if licensed to practice medicine and surgery, has failed to inform in writing a patient suffering from any form of abnormality of the breast tissue for which surgery is a recommended form of treatment, of alternative methods of treatment recognized by licensees of the same profession in the same or similar communities as being acceptable under like conditions and circumstances.

(n) The licensee has cheated on or attempted to subvert the validity of the examination for a license.

(o) The licensee has been found to be mentally ill, disabled, not guilty by reason of insanity, not guilty because the licensee suffers from a mental disease or defect or incompetent to stand trial by a court of competent jurisdiction.

(p) The licensee has prescribed, sold, administered, distributed or given a controlled substance to any person for other than medically accepted or lawful purposes.

(q) The licensee has violated a federal law or regulation relating to controlled substances.

(r) The licensee has failed to furnish the board, or its investigators or representatives, any information legally requested by the board.

(s) Sanctions or disciplinary actions have been taken against the licensee by a peer review committee, health care facility, a governmental agency or department or a professional association or society for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(t) The licensee has failed to report to the board any adverse action
taken against the licensee by another state or licensing jurisdiction, a peer
review body, a health care facility, a professional association or society, a
governmental agency, by a law enforcement agency or a court for acts or
conduct similar to acts or conduct which would constitute grounds for
disciplinary action under this section.

(u) The licensee has surrendered a license or authorization to practice
the healing arts in another state or jurisdiction, has surrendered the
authority to utilize controlled substances issued by any state or federal
agency, has agreed to a limitation to or restriction of privileges at any
medical care facility or has surrendered the licensee's membership on any
professional staff or in any professional association or society while under
investigation for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(v) The licensee has failed to report to the board surrender of the
licensee's license or authorization to practice the healing arts in another
state or jurisdiction or surrender of the licensee's membership on any
professional staff or in any professional association or society while under
investigation for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(x) The licensee has failed to report to the board any adverse
judgment, settlement or award against the licensee resulting from a medical malpractice liability claim related to acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(y) The licensee has failed to maintain a policy of professional
liability insurance as required by K.S.A. 40-3402 or 40-3403a, and
amendments thereto.

(z) The licensee has failed to pay the premium surcharges as required
by K.S.A. 40-3404, and amendments thereto.

(aa) The licensee has knowingly submitted any misleading, deceptive,
untrue or fraudulent representation on a claim form, bill or statement.

(bb) The licensee as the supervising physician for a physician
assistant has failed to adequately direct and supervise the physician
assistant in accordance with the physician assistant licensure act or rules
and regulations adopted under such act.

(cc) The licensee has assisted suicide in violation of K.S.A. 21-3406,
prior to its repeal, or K.S.A. 2018 Supp. 21-5407, and amendments
thereto, as established by any of the following:

(1) A copy of the record of criminal conviction or plea of guilty for a
felony in violation of K.S.A. 21-3406, prior to its repeal, or K.S.A. 2018 Supp. 21-5407, and amendments thereto.

(2) 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.

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

(dd) The licensee has given a worthless check or stopped payment on a debit or credit card for fees or moneys legally due to the board.

(ee) The licensee has knowingly or negligently abandoned medical records.

Sec. 5. K.S.A. 65-2877a is hereby amended to read as follows: 65-2877a. The healing arts act and any other provision of law prohibiting practice of the healing arts by a general corporation shall not apply to a healing arts school approved by the board if the healing arts school is a non-profit entity under section 501(c)(3) of the internal revenue code of 1986, is approved by the state board of regents, and as part of its academic requirements provides clinical training to its students under the supervision of persons who are licensed to practice a branch of the healing arts in this state.


Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.