

SENATE BILL No. 12

By Senators Thompson and Steffen

1-5

1 AN ACT concerning gender identity medical care; creating the crime of
2 unlawful gender reassignment service and providing punishment
3 therefor; providing grounds for unprofessional conduct for healing arts
4 licensees; amending K.S.A. 65-2837 and repealing the existing section.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 New Section 1. (a) Unlawful gender reassignment service is
8 knowingly performing, or causing to be performed, any of the following
9 upon a person under 21 years of age for the purpose of attempting to
10 change or affirm the person's perception of the person's sex, if that
11 perception is inconsistent with the person's sex:

12 (1) A surgery that sterilizes or is intended to result in sterilization,
13 including, but not limited to, castration, vasectomy, hysterectomy,
14 oophorectomy, orchiectomy and penectomy;

15 (2) a surgery that artificially constructs tissue with the appearance of
16 genitalia, including, but not limited to, metoidioplasty, phalloplasty and
17 vaginoplasty;

18 (3) a mastectomy;

19 (4) prescribing, dispensing, administering or otherwise supplying the
20 following medications:

21 (A) Puberty-blocking medication to delay, hinder, stop or reverse
22 normal puberty;

23 (B) supraphysiologic doses of testosterone to females; or

24 (C) supraphysiologic doses of estrogen to males; or

25 (5) removing any otherwise healthy or nondiseased body part or
26 tissue.

27 (b) Unlawful gender reassignment service is a severity level 4, person
28 felony.

29 (c) The provisions of this section shall not apply if the person was
30 born with a medically verifiable disorder of sex development, including,
31 but not limited to:

32 (1) A person with external biological sex characteristics that are
33 irresolvably ambiguous, such as a person born having 46,XX
34 chromosomes with virilization, 46,XY chromosomes with
35 undervirilization or both ovarian and testicular tissue; or

36 (2) when a physician has otherwise diagnosed a disorder of sexual

1 development, in which the physician has determined through genetic or
2 biochemical testing that the person does not have the normal sex
3 chromosome structure, sex steroid hormone production or sex steroid
4 hormone action for a male or female of the person's age.

5 (d) As used in this section, "sex" means the biological state of being
6 female or male, based on the individual's sex organs, chromosomes and
7 endogenous hormone profiles.

8 (e) This section shall be known as the Kansas child mutilation
9 prevention act.

10 (f) This section shall be a part of and supplemental to the Kansas
11 criminal code.

12 Sec. 2. K.S.A. 65-2837 is hereby amended to read as follows: 65-
13 2837. As used in K.S.A. 65-2836, and amendments thereto, and in this
14 section:

15 (a) "Professional incompetency" means:

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

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

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

24 (b) "Unprofessional conduct" means:

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

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

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

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

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

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

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

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

43 (9) Participating in any action as a staff member of a medical care

1 facility that is designed to exclude or that results in the exclusion of any
2 person licensed to practice medicine and surgery from the medical staff of
3 a nonprofit medical care facility licensed in this state because of the
4 branch of the healing arts practiced by such person or without just cause.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 (A) A hospital;

43 (B) a clinical laboratory when samples are transferred between

1 clinical laboratories for the provision of anatomic pathology services; or

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

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

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

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

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

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

15 (A) Falsifying or concealing a material fact;

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

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

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

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

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

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

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

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

42 (h) "Significant investment interest" means ownership of at least 10%
43 of the value of the firm, partnership or other business entity that owns or

1 leases the ~~health-care~~ *healthcare* entity, or ownership of at least 10% of the
2 shares of stock of the corporation that owns or leases the ~~health-care~~
3 *healthcare* entity.

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

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