

February 17, 2023

**Written and Oral KSBHA Neutral Testimony for the
Senate Public Health and Welfare Committee on SB 131**

Dear Chair and Honorable Committee Members:

The Kansas State Board of Healing Arts (“Board” or “KSBHA”) submits this neutral testimony to assist legislators in evaluating SB 131. I am Courtney Cyzman, General Counsel of the Board, on behalf of the Board and Executive Director, Susan Gile. The Board is the executive body tasked with licensing and regulating 16 healthcare professions in Kansas, including physicians. *See* K.S.A. 65-2801 *et seq.* The Board is composed of 15 members, 12 of whom are licensed healthcare professionals from various professions, including eight licensed physicians, three chiropractors, one podiatrist, and three public members. **The statutory mission of the Board is patient protection.** *See* K.S.A. 65-2801.

We appreciate the opportunity to provide comment as it relates to SB 131, articulate the Board’s patient safety concerns, and express the Board’s willingness to work collaboratively towards a solution that protects Kansans, while addressing an identifiable need.

The Board’s main concern with SB 131 is that out of state professionals permitted to practice in Kansas will not be held accountable to Kansas law and that patients will not be protected because the proposed legislation lacks a mechanism by which the Board can exercise jurisdiction over those out of state professionals.

Attached is a complete markup with the Board’s comments and concerns as it relates to the proposed legislation in its current form. (**See Attachment 1**).

I. Concerns

A. Jurisdiction - What if the physician practicing under this exemption commits professional incompetence or unprofessional misconduct on a patient in Kansas?

Generally, the practice of medicine is deemed to occur where the patient is located. To lawfully practice medicine on a patient located in Kansas, the physician must have a license to practice medicine and surgery issued by the KSBHA.¹

¹ K.S.A. 65-2803; *See also* K.S.A. 65-2803(d): Does not apply to a healthcare professional who in good faith renders emergency care; K.S.A. 65-28,135 (Telemedicine Waiver); K.A.R. 100-26-1 through K.A.R. 100-26-3 (Orders for diagnostic professional services and therapeutic professional services).

The Board’s jurisdiction for a legal remedy as it pertains to licensure for professional incompetence or unprofessional misconduct arises directly from the license.² The Board also has legal jurisdiction to seek injunctive relief in the District Court for the unlicensed practice of medicine.³

Under SB 131, the physician would be practicing under an exemption (i.e., no license), but would be lawfully practicing in Kansas – and therefore, in the event of professional incompetence or unprofessional misconduct by the out of state physician practicing medicine in Kansas, the Board’s hands would be tied.

We could notify the state medical board which the physician is licensed of the professional incompetence or unprofessional conduct provided that: (1) the Board is sufficiently notified of what physicians are working in Kansas under this exemption; (2) the Board is sufficiently notified of what state licenses that physician holds; and (3) the Board is sufficiently notified of such professional incompetence or unprofessional conduct; **however**, it is still very unlikely the applicable state medical board would be able to successfully take legal action on that physician’s license for the *practice of medicine that occurred in Kansas*, absent an additional legal hook (i.e. settlement, conviction). Ultimately, the result could be a patient being harmed in Kansas without a proper or efficient legal licensure remedy.

B. “In good standing” – Clarification

Currently, “in good standing” is not defined or further articulated in SB 131. The lack of clarity creates an opening for subjectivity on what “in good standing” means. If this legislation is passed, it would be to the benefit of patients to clarify what “good standing” means. Never subject to disciplinary action? Not the subject of an active investigation? Full active license? Or a combination thereof?

C. Granting and Extension of Exemptions – Clarification

In its current form, SB 131 is a bit unclear as to who initially grants exemptions to out of state physicians. (Section 1(d), p. 1, l. 31-36, p. 2, l. 1-2). It appears the intent may be for the Board to grant exemptions, and any continuance thereof, but clarification as to the intent of who would be granting exemptions would be beneficial.

II. Proposed Solutions

The Board’s goal in requesting further working of this bill and proposed solutions is ensuring that there is a mechanism by which the Board has jurisdiction over out of state professionals who are permitted to practice in Kansas to ensure accountability for following Kansas laws and for the protection of our patients. A few options that the Board suggests are:

A. Consider creating a “Sports Waiver” similar to the framework of the permanent telemedicine waiver in Kansas, with alterations to meet this specific healthcare need– See [K.S.A. 65-28,135](#).

² K.S.A. 65-2801; K.S.A. 65-2836; K.S.A. 65-2837; K.S.A. 65-2838

³ K.S.A. 65-2857.

- Would provide sufficient notification to the Board as to out of state physicians who would be practicing in Kansas under these circumstances.
- Essentially functions as a limited license by which the out of state physician could provide services to patients located in Kansas lawfully, in that any person who received a “sports waiver” shall be considered a licensee for purposes of the Healing Arts Act.
 - In the event of professional incompetence or unprofessional conduct by the out of state physician, the Board would have jurisdiction to take disciplinary action.
- Provides clarification on what a license “in good standing” means.

The Board emphasizes its willingness to collaborate with others on this to obtain an agreeable solution to ensure patient safety.

B. Provide additional clarification in the current proposed legislation regarding:

- Delete “or oral” in Section 1(a)(1), p. 1, l. 14
- Define “in good standing”.
- Clarifying Section 1(b), p. 1, l. 22-25 – regarding medical services to be rendered; also, what about the physicians who qualify under (a)(1)?
- Clarifying the granting of exemptions and extensions under Section 1(d), p. 1, l. 31-36, p. 2, l. 1-2).
 - Consider adding a provision of notification to KSBHA of instances of professional incompetence or unprofessional conduct.
 - If KSBHA grants exemptions and extensions, add a fee cap.
- Eliminating Section 1(f), p.2, l. 7-10.

C. Consider increased utilization of the Interstate Medical Licensure Compact (“IMLC”) – Physician Compact

Kansas is a member of the IMLC – the Physician Compact. The physician compact is an agreement among participating U.S. states to work together to streamline the licensing process of physicians who want or need to practice in multiple states. It is a voluntary, expedited pathway to licensure for physicians who qualify. There are currently 37 states, DC, and Guam participating in the Physician Compact.

I welcome any comments, questions, or further dialogue with members of the committee. Please feel free to contact me at (785) 250-8021 or at any time via email at Courtney.cyzman@ks.gov.

Sincerely,



Courtney Cyzman
General Counsel

SENATE BILL No. 131

By Senators Pittman, Doll and Erickson

2-1

1 AN ACT concerning certain healthcare providers; relating to the powers,
2 duties and functions thereof; providing an exemption from licensure
3 requirements for certain out-of-state physicians practicing medicine on
4 a limited basis in the state during certain sporting events; authorizing
5 the state board of healing arts to adopt rules and regulations related
6 thereto.

7
8 *Be it enacted by the Legislature of the State of Kansas:*

9 Section 1. (a) Notwithstanding any other provision of law to the
10 contrary, a physician licensed in good standing to practice medicine in
11 another state shall be exempt from the licensure requirements of the state
12 board of healing arts while practicing medicine in this state if either of the
13 following apply:

14 (1) The physician has a written ~~or oral~~ agreement with a sports team
15 to provide medical care to team members and coaching staff traveling with
16 the team for a specific sporting event to take place in this state; or

17 (2) (A) the physician has been invited by a national sport governing
18 body to provide medical services to team members and coaching staff at a
19 national sport training center in this state; or

20 (B) to provide medical services at an event or competition in this state
21 that is sanctioned by a national sport governing body.

22 (b) The physician's practice of medicine shall be limited to that
23 required by the national sport governing body and such medical services
24 provided by the physician shall be limited to those within the physician's
25 board certification.

26 (c) Nothing in this act shall be construed to permit a physician
27 exempt from state licensure requirements by the provisions of this act to:

28 (1) Provide medical care or consultation to any individual residing in
29 this state, other than individuals described in subsection (a); or

30 (2) practice medicine at a licensed healthcare facility in this state.

31 (d) A licensure exemption obtained pursuant to the provisions of
32 subsection (a)(1) shall be valid while the physician is traveling with the
33 sports team, except that no exemption shall be granted for longer than 10
34 days in duration for each respective sporting event. A maximum of 20
35 additional days per sporting event may be granted upon request made prior
36 to the sporting event to the state board of healing arts, except that no

What does "in good standing" mean - not subject to disciplinary action? Not under investigatoin? Full active license?

←
What about the physician under (a)(1)?
Subjective; should the medical services required be outlined somewhere so physician, patient, and sports body know what is and is not permissible?

If exemptions need to be granted, by who? KSBHA? And if KSBHA, recommend including a provision where they explicitly have to apply for exemption, so that it can be evaluated and granted if within the confines of the law. If KSBHA, we would request a fee cap for such exemption as there would be staffing involved with processing such exemptions.

1 physician shall receive an exemption of more than 30 additional days in a
2 calendar year.

3 (e) A licensure exemption obtained pursuant to the provisions of
4 subsection (a)(2) shall be valid during the time certified by the national
5 sport governing body, except that no exemption shall be granted for longer
6 than 30 days.

7 ~~(f) The state board of healing arts may enter into agreements with the~~
8 ~~medical and osteopathic licensing boards of other states to implement the~~
9 ~~provisions of this act. Agreements may include, but not be limited to,~~
10 ~~procedures for reporting potential medical license violations.~~

11 (g) The state board of healing arts is hereby authorized to adopt rules
12 and regulations necessary to implement the provisions of this section,
13 including, but not limited to, procedures for reporting potential medical
14 violations.

15 (h) This section shall be a part of and supplemental to article 28 of
16 chapter 65 of the Kansas Statutes Annotated, and amendments thereto.

17 Sec. 2. This act shall take effect and be in force from and after its
18 publication in the statute book.

(g) would cover. It could be a challenged to get MOUs with other states regarding this. We can develop rules/ regs regarding notification to others states; BUT, practice of medicine is generally deemed to occur where the patient is located (here KS). It is very likely the "home state" would not have have legal jurisdiction over the licensee for the practice of medicine and violation that occurred in KS.