

HOUSE BILL No. 2027

By Committee on Health and Human Services

1-11

1 AN ACT concerning the healing arts; relating to anatomic pathology
2 billing; amending K.S.A. 2016 Supp. 65-2837 and repealing the
3 existing section.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

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

9 (a) "Professional incompetency" means:

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

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

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

18 (b) "Unprofessional conduct" means:

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

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

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

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

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

31 (6) Willful betrayal of confidential information.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41 (23) Prescribing, dispensing, administering or distributing a
42 prescription drug or substance, including a controlled substance, in an
43 improper or inappropriate manner, or for other than a valid medical

1 purpose, or not in the course of the licensee's professional practice.

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

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

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

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

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

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

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

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

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

43 (A) A hospital; ~~or;~~

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

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

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

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

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

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

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

16 (A) Falsifying or concealing a material fact;

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

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

20 (c) "False advertisement" means any advertisement which 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 which are likely
29 to 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, shall mean all persons issued a license, permit or
32 special 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, shall mean any license, permit or special permit
36 granted under article 28 of chapter 65 of the Kansas Statutes Annotated,
37 and amendments thereto.

38 (g) "Health care entity" means any corporation, firm, partnership or
39 other business entity which provides services for diagnosis or treatment of
40 human health conditions and which is owned separately from a referring
41 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 which owns or

1 leases the health care entity, or ownership of at least 10% of the shares of
2 stock of the corporation which owns or leases the health care entity.

3 Sec. 2. K.S.A. 2016 Supp. 65-2837 is hereby repealed.

4 Sec. 3. This act shall take effect and be in force from and after its
5 publication in the statute book.