

SENATE BILL No. 367

By Committee on Public Health and Welfare

2-6

1 AN ACT concerning health and healthcare; relating to behavioral and
2 mental health; prohibiting certain licensed individuals from using
3 conversion therapy on minors; amending K.S.A. 65-2837 and 74-7507
4 and K.S.A. 2019 Supp. 65-1120 and repealing the existing sections.
5

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

7 New Section 1. (a) As used in this section:

8 (1) "Conversion therapy" means any practice or treatment that seeks
9 to change an individual's sexual orientation or gender identity, including
10 efforts to change behaviors or gender expressions or to eliminate or reduce
11 sexual or romantic attractions or feelings toward individuals of the same
12 sex or gender.

13 (2) "Conversion therapy" does not include any practice or treatment
14 that:

15 (A) Provides assistance to an individual undergoing gender transition;

16 (B) provides acceptance, support and understanding of an individual's
17 sexual orientation or gender identity, including such individual's gender
18 expressions or sexual or romantic attractions or feelings toward individuals
19 of the same sex or gender; or

20 (C) facilitates an individual's coping, social support and identity
21 exploration and development, including sexual orientation-neutral
22 interventions to prevent or address unlawful conduct or unsafe sexual
23 practices, so long as such practice or treatment does not seek to change the
24 individual's sexual orientation or gender identity.

25 (b) (1) The following licensees shall be prohibited from performing
26 conversion therapy on any individual under 18 years of age:

27 (A) Persons licensed by the state board of healing arts;

28 (B) persons licensed by the board of nursing; and

29 (C) persons licensed by the behavioral sciences regulatory board.

30 (2) Any practice of conversion therapy on any individual under 18
31 years of age by any such licensee shall constitute unprofessional conduct
32 and shall be subject to discipline by such licensee's respective regulatory
33 board.

34 (3) The provisions of this subsection shall not apply to the use of
35 conversion therapy by a religious leader or official of any religious
36 denomination that is:

- 1 (A) Part of such leader's or official's religious duties; and
2 (B) not performed under the authority of a license issued by any of
3 the regulatory boards listed in paragraph (1).

4 Sec. 2. K.S.A. 2019 Supp. 65-1120 is hereby amended to read as
5 follows: 65-1120. (a) *Grounds for disciplinary actions.* The board may
6 deny, revoke, limit or suspend any license or authorization to practice
7 nursing as a registered professional nurse, as a licensed practical nurse, as
8 an advanced practice registered nurse or as a registered nurse anesthetist
9 that is issued by the board or applied for under this act, or may require the
10 licensee to attend a specific number of hours of continuing education in
11 addition to any hours the licensee may already be required to attend or
12 may publicly or privately censure a licensee or holder of a temporary
13 permit or authorization, if the applicant, licensee or holder of a temporary
14 permit or authorization is found after a hearing:

15 (1) To be guilty of fraud or deceit in practicing nursing or in
16 procuring or attempting to procure a license to practice nursing;

17 (2) to have been guilty of a felony or to have been guilty of a
18 misdemeanor involving an illegal drug offense unless the applicant or
19 licensee establishes sufficient rehabilitation to warrant the public trust,
20 except that notwithstanding K.S.A. 74-120, and amendments thereto, no
21 license or authorization to practice nursing as a licensed professional
22 nurse, as a licensed practical nurse, as an advanced practice registered
23 nurse or registered nurse anesthetist shall be granted to a person with a
24 felony conviction for a crime against persons as specified in article 34 of
25 chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article
26 54 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2019 Supp.
27 21-6104, 21-6325, 21-6326 or 21-6418, and amendments thereto;

28 (3) has been convicted or found guilty or has entered into an agreed
29 disposition of a misdemeanor offense related to the practice of nursing as
30 determined on a case-by-case basis;

31 (4) to have committed an act of professional incompetency as defined
32 in subsection (e);

33 (5) to be unable to practice with skill and safety due to current abuse
34 of drugs or alcohol;

35 (6) to be a person who has been adjudged in need of a guardian or
36 conservator, or both, under the act for obtaining a guardian or conservator,
37 or both, and who has not been restored to capacity under that act;

38 (7) to be guilty of unprofessional conduct:

39 (A) As defined by rules and regulations of the board; *and*

40 (B) *including the use of conversion therapy on a minor in violation of*
41 *section 1, and amendments thereto;*

42 (8) to have willfully or repeatedly violated the provisions of the
43 Kansas nurse practice act or any rules and regulations adopted pursuant to

1 that act, including K.S.A. 65-1114 and 65-1122, and amendments thereto;

2 (9) to have a license to practice nursing as a registered nurse or as a
3 practical nurse denied, revoked, limited or suspended, or to be publicly or
4 privately censured, by a licensing authority of another state, agency of the
5 United States government, territory of the United States or country or to
6 have other disciplinary action taken against the applicant or licensee by a
7 licensing authority of another state, agency of the United States
8 government, territory of the United States or country. A certified copy of
9 the record or order of public or private censure, denial, suspension,
10 limitation, revocation or other disciplinary action of the licensing authority
11 of another state, agency of the United States government, territory of the
12 United States or country shall constitute prima facie evidence of such a
13 fact for purposes of this paragraph (9); or

14 (10) to have assisted suicide in violation of K.S.A. 21-3406, prior to
15 its repeal, or K.S.A. 2019 Supp. 21-5407, and amendments thereto, as
16 established by any of the following:

17 (A) A copy of the record of criminal conviction or plea of guilty for a
18 felony in violation of K.S.A. 21-3406, prior to its repeal, or K.S.A. 2019
19 Supp. 21-5407, and amendments thereto-;

20 (B) a copy of the record of a judgment of contempt of court for
21 violating an injunction issued under K.S.A. 2019 Supp. 60-4404, and
22 amendments thereto-; or

23 (C) a copy of the record of a judgment assessing damages under
24 K.S.A. 2019 Supp. 60-4405, and amendments thereto.

25 (b) *Proceedings*. Upon filing of a sworn complaint with the board
26 charging a person with having been guilty of any of the unlawful practices
27 specified in subsection (a), two or more members of the board shall
28 investigate the charges, or the board may designate and authorize an
29 employee or employees of the board to conduct an investigation. After
30 investigation, the board may institute charges. If an investigation, in the
31 opinion of the board, reveals reasonable grounds for believing the
32 applicant or licensee is guilty of the charges, the board shall fix a time and
33 place for proceedings, which shall be conducted in accordance with the
34 provisions of the Kansas administrative procedure act.

35 (c) *Witnesses*. No person shall be excused from testifying in any
36 proceedings before the board under this act or in any civil proceedings
37 under this act before a court of competent jurisdiction on the ground that
38 such testimony may incriminate the person testifying, but such testimony
39 shall not be used against the person for the prosecution of any crime under
40 the laws of this state except the crime of perjury as defined in K.S.A. 2019
41 Supp. 21-5903, and amendments thereto.

42 (d) *Costs*. If final agency action of the board in a proceeding under
43 this section is adverse to the applicant or licensee, the costs of the board's

1 proceedings shall be charged to the applicant or licensee as in ordinary
2 civil actions in the district court, but if the board is the unsuccessful party,
3 the costs shall be paid by the board. Witness fees and costs may be taxed
4 by the board according to the statutes relating to procedure in the district
5 court. All costs accrued by the board, when it is the successful party, and
6 which the attorney general certifies cannot be collected from the applicant
7 or licensee shall be paid from the board of nursing fee fund. All moneys
8 collected following board proceedings shall be credited in full to the board
9 of nursing fee fund.

10 (e) *Professional incompetency defined.* As used in this section,
11 "professional incompetency" means:

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

15 (2) repeated instances involving failure to adhere to the applicable
16 standard of care to a degree which constitutes ordinary negligence, as
17 determined by the board; or

18 (3) a pattern of practice or other behavior which demonstrates a
19 manifest incapacity or incompetence to practice nursing.

20 (f) *Criminal justice information.* The board upon request shall receive
21 from the Kansas bureau of investigation such criminal history record
22 information relating to arrests and criminal convictions as necessary for
23 the purpose of determining initial and continuing qualifications of
24 licensees of and applicants for licensure by the board.

25 Sec. 3. K.S.A. 65-2837 is hereby amended to read as follows: 65-
26 2837. As used in K.S.A. 65-2836, and amendments thereto, and in this
27 section:

28 (a) "Professional incompetency" means:

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

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

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

37 (b) "Unprofessional conduct" means:

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

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

43 (3) Assisting in the care or treatment of a patient without the consent

- 1 of the patient, the attending physician or the patient's legal representatives.
- 2 (4) The use of any letters, words or terms as an affix, on stationery, in
3 advertisements or otherwise indicating that such person is entitled to
4 practice a branch of the healing arts for which such person is not licensed.
- 5 (5) Performing, procuring or aiding and abetting in the performance
6 or procurement of a criminal abortion.
- 7 (6) Willful betrayal of confidential information.
- 8 (7) Advertising professional superiority or the performance of
9 professional services in a superior manner.
- 10 (8) Advertising to guarantee any professional service or to perform
11 any operation painlessly.
- 12 (9) Participating in any action as a staff member of a medical care
13 facility that is designed to exclude or that results in the exclusion of any
14 person licensed to practice medicine and surgery from the medical staff of
15 a nonprofit medical care facility licensed in this state because of the
16 branch of the healing arts practiced by such person or without just cause.
- 17 (10) Failure to effectuate the declaration of a qualified patient as
18 provided in K.S.A. 65-28,107(a), and amendments thereto.
- 19 (11) Prescribing, ordering, dispensing, administering, selling,
20 supplying or giving any amphetamines or sympathomimetic amines,
21 except as authorized by K.S.A. 65-2837a, and amendments thereto.
- 22 (12) Conduct likely to deceive, defraud or harm the public.
- 23 (13) Making a false or misleading statement regarding the licensee's
24 skill or the efficacy or value of the drug, treatment or remedy prescribed
25 by the licensee or at the licensee's direction in the treatment of any disease
26 or other condition of the body or mind.
- 27 (14) Aiding or abetting the practice of the healing arts by an
28 unlicensed, incompetent or impaired person.
- 29 (15) Allowing another person or organization to use the licensee's
30 license to practice the healing arts.
- 31 (16) Commission of any act of sexual abuse, misconduct or other
32 improper sexual contact that exploits the licensee-patient relationship with
33 a patient or a person responsible for health care decisions concerning such
34 patient.
- 35 (17) The use of any false, fraudulent or deceptive statement in any
36 document connected with the practice of the healing arts including the
37 intentional falsifying or fraudulent altering of a patient or medical care
38 facility record.
- 39 (18) Obtaining any fee by fraud, deceit or misrepresentation.
- 40 (19) Directly or indirectly giving or receiving any fee, commission,
41 rebate or other compensation for professional services not actually and
42 personally rendered, other than through the legal functioning of lawful
43 professional partnerships, corporations, limited liability companies or

1 associations.

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

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

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

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

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

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

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

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

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

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

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

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

42 (32) Charging, billing or otherwise soliciting payment from any
43 patient, patient's representative or insurer for anatomic pathology services,

1 if such services are not personally rendered by the licensee or under such
2 licensee's direct supervision. As used in this subsection, "anatomic
3 pathology services" means the gross or microscopic examination of
4 histologic processing of human organ tissue or the examination of human
5 cells from fluids, aspirates, washings, brushings or smears, including blood
6 banking services, and subcellular or molecular pathology services,
7 performed by or under the supervision of a person licensed to practice
8 medicine and surgery or a clinical laboratory. Nothing in this subsection
9 shall be construed to prohibit billing for anatomic pathology services by:

10 (A) A hospital;

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

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

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

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

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

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

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

26 (A) Falsifying or concealing a material fact;

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

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

30 (35) *Using conversion therapy on a minor in violation of section 1,*
31 *and amendments thereto.*

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

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

42 (e) "Licensee" for purposes of this section and K.S.A. 65-2836, and
43 amendments thereto, means all persons issued a license, permit or special

1 permit pursuant to article 28 of chapter 65 of the Kansas Statutes
2 Annotated, and amendments thereto.

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

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

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

15 Sec. 4. K.S.A. 74-7507 is hereby amended to read as follows: 74-
16 7507. (a) The behavioral sciences regulatory board shall have the
17 following powers, duties and functions:

18 (1) Recommend to the appropriate district or county attorneys
19 prosecution for violations of this act, the licensure of psychologists act of
20 the state of Kansas, the professional counselors licensure act, the social
21 workers licensure act, the licensure of master's level psychologists act, the
22 applied behavior analysis licensure act, the marriage and family therapists
23 licensure act or the addiction counselor licensure act;

24 (2) compile and publish annually a list of the names and addresses of
25 all persons who are licensed under this act, are licensed under the licensure
26 of psychologists act of the state of Kansas, the professional counselors
27 licensure act, the social workers licensure act, the licensure of master's
28 level psychologists act, the applied behavior analysis licensure act, the
29 marriage and family therapists licensure act or the addiction counselor
30 licensure act;

31 (3) prescribe the form and contents of examinations required under
32 this act, the licensure of psychologists act of the state of Kansas, the
33 professional counselors licensure act, the social workers licensure act, the
34 licensure of master's level psychologists act, the applied behavior analysis
35 licensure act, the marriage and family therapists licensure act or the
36 addiction counselor licensure act;

37 (4) enter into contracts necessary to administer this act, the licensure
38 of psychologists act of the state of Kansas, the professional counselors
39 licensure act, the social workers licensure act, the licensure of master's
40 level psychologists act, the applied behavior analysis licensure act, the
41 marriage and family therapists licensure act or the addiction counselor
42 licensure act;

43 (5) adopt an official seal;

1 (6) adopt and enforce rules and regulations for professional conduct
2 of persons licensed under the licensure of psychologists act of the state of
3 Kansas, the professional counselors licensure act, the social workers
4 licensure act, the licensure of master's level psychologists act, the applied
5 behavior analysis licensure act, the marriage and family therapists
6 licensure act or the addiction counselor licensure act;

7 (7) adopt and enforce rules and regulations establishing requirements
8 for the continuing education of persons licensed under the licensure of
9 psychologists act of the state of Kansas, the professional counselors
10 licensure act, the social workers licensure act, the licensure of master's
11 level psychologists act, the applied behavior analysis licensure act, the
12 marriage and family therapists licensure act or the addiction counselor
13 licensure act;

14 (8) adopt rules and regulations establishing classes of social work
15 specialties which will be recognized for licensure under K.S.A. 65-6301 to
16 65-6318, inclusive, and amendments thereto;

17 (9) adopt rules and regulations establishing procedures for
18 examination of candidates for licensure under the licensure of
19 psychologists act of the state of Kansas, the professional counselors
20 licensure act, the social workers licensure act, the licensure of master's
21 level psychologists act, the applied behavior analysis licensure act, the
22 marriage and family therapists licensure act, the addiction counselor
23 licensure act and for issuance of such certificates and such licenses;

24 (10) adopt rules and regulations as may be necessary for the
25 administration of this act, the licensure of psychologists act of the state of
26 Kansas, the professional counselors licensure act, the social workers
27 licensure act, the licensure of master's level psychologists act, the applied
28 behavior analysis licensure act, the marriage and family therapists
29 licensure act and the addiction counselor licensure act and to carry out the
30 purposes thereof;

31 (11) appoint an executive director and other employees as provided in
32 K.S.A. 74-7501, and amendments thereto; and

33 (12) exercise such other powers and perform such other functions and
34 duties as may be prescribed by law.

35 (b) *Any rules and regulations adopted pursuant to this section*
36 *concerning professional conduct shall prohibit any use of conversion*
37 *therapy on a minor that would be in violation of section 1, and*
38 *amendments thereto.*

39 (c) If an order of the behavioral sciences regulatory board is adverse
40 to a licensee or registrant of the board, the actual costs shall be charged to
41 such person as in ordinary civil actions in the district court. The board
42 shall pay any additional costs and, if the board is the unsuccessful party,
43 the costs shall be paid by the board. Witness fees and costs may be taxed

1 in accordance with statutes governing taxation of witness fees and costs in
2 the district court.

3 Sec. 5. K.S.A. 65-2837 and 74-7507 and K.S.A. 2019 Supp. 65-1120
4 are hereby repealed.

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