

2021 Kansas Statutes

65-2837. **Definitions.** As used in K.S.A. 65-2836, and amendments thereto, and in this section:

(a) "Professional incompetency" means:

- (1) One or more instances involving failure to adhere to the applicable standard of care to a degree that constitutes gross negligence, as determined by the board.
- (2) Repeated instances involving failure to adhere to the applicable standard of care to a degree that constitutes ordinary negligence, as determined by the board.
- (3) A pattern of practice or other behavior that demonstrates a manifest incapacity or incompetence to practice the healing arts.

(b) "Unprofessional conduct" means:

- (1) Solicitation of professional patronage through the use of fraudulent or false advertisements, or profiting by the acts of those representing themselves to be agents of the licensee.
- (2) Representing to a patient that a manifestly incurable disease, condition or injury can be permanently cured.
- (3) Assisting in the care or treatment of a patient without the consent of the patient, the attending physician or the patient's legal representatives.
- (4) The use of any letters, words or terms as an affix, on stationery, in advertisements or otherwise indicating that such person is entitled to practice a branch of the healing arts for which such person is not licensed.
- (5) Performing, procuring or aiding and abetting in the performance or procurement of a criminal abortion.
- (6) Willful betrayal of confidential information.
- (7) Advertising professional superiority or the performance of professional services in a superior manner.
- (8) Advertising to guarantee any professional service or to perform any operation painlessly.
- (9) Participating in any action as a staff member of a medical care facility that is designed to exclude or that results in the exclusion of any person licensed to practice medicine and surgery from the medical staff of a nonprofit medical care facility licensed in this state because of the branch of the healing arts practiced by such person or without just cause.
- (10) Failure to effectuate the declaration of a qualified patient as provided in K.S.A. 65-28,107(a), and amendments thereto.
- (11) Prescribing, ordering, dispensing, administering, selling, supplying or giving any amphetamines or sympathomimetic amines, except as authorized by K.S.A. 65-2837a, and amendments thereto.
- (12) Conduct likely to deceive, defraud or harm the public.
- (13) Making a false or misleading statement regarding the licensee's skill or the efficacy or value of the drug, treatment or remedy prescribed by the licensee or at the licensee's direction in the treatment of any disease or other condition of the body or mind.
- (14) Aiding or abetting the practice of the healing arts by an unlicensed, incompetent or impaired person.
- (15) Allowing another person or organization to use the licensee's license to practice the healing arts.
- (16) Commission of any act of sexual abuse, misconduct or other improper sexual contact that exploits the licensee-patient relationship with a patient or a person responsible for health care decisions concerning such patient.
- (17) The use of any false, fraudulent or deceptive statement in any document connected

with the practice of the healing arts including the intentional falsifying or fraudulent altering of a patient or medical care facility record.

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

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

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

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

(22) Charging an excessive fee for services rendered.

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

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

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

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

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

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

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

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

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

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

subsection shall be construed to prohibit billing for anatomic pathology services by:

- (A) A hospital;
- (B) a clinical laboratory when samples are transferred between clinical laboratories for the provision of anatomic pathology services; or
- (C) a physician providing services to a patient pursuant to a medical retainer agreement in compliance with K.S.A. 65-4978, and amendments thereto, when the bill to the patient for such services:

- (i) Identifies the laboratory or physician that performed the services;
- (ii) discloses in writing to the patient the actual amount charged by the physician or laboratory that performed the service; and
- (iii) is consistent with rules and regulations adopted by the board for appropriate billing standards applicable to such services when furnished under these agreements.

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

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

- (A) Falsifying or concealing a material fact;
- (B) knowingly making or causing to be made any false or misleading statement or writing; or
- (C) other acts or conduct likely to deceive or defraud the board.

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

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

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

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

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

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

History: L. 1957, ch. 343, § 37; L. 1976, ch. 273, § 15; L. 1979, ch. 198, § 4; L. 1979, ch. 200, § 1; L. 1983, ch. 214, § 2; L. 1984, ch. 237, § 2; L. 1986, ch. 229, § 42; L. 1987, ch. 176, § 6; L. 1989, ch. 196, § 2; L. 1991, ch. 192, § 3; L. 1993, ch. 205, § 1; L. 1998, ch. 170, § 2; L. 2000, ch. 141, § 6; L. 2006, ch. 110, § 5; L. 2007, ch. 66, § 1; L. 2008, ch. 154, § 7; L. 2014, ch. 131, § 11; L. 2017, ch. 33, § 1; July 1.