

HOUSE BILL No. 2721

By Committee on Health and Human Services

2-8

1 AN ACT providing for a certificate of authorization for a business entity to
2 practice medicine; amending K.S.A. 2017 Supp. 40-3401, 65-2803, 65-
3 2836 and 65-2877a and repealing the existing sections.

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

6 New Section. 1. (a) Notwithstanding any other provision of law, a
7 business entity shall not be prohibited from engaging in the practice of
8 medicine if it obtains a certificate of authorization pursuant to this section
9 prior to practicing medicine in this state. To obtain a certificate of
10 authorization, a business entity shall meet the following:

11 (1) Each person engaged in the practice of the healing arts shall be
12 licensed to practice such profession by the state board of healing arts; and

13 (2) the method and manner of patient treatment and the means by
14 which patients are treated are left to the discretion of the licensed
15 individuals treating such patients; and

16 (3) the business entity shall not impose or substitute its judgment for
17 that of the licensed individuals.

18 (b) A business entity shall apply to the state board of healing arts for
19 a certificate of authorization, upon a form prescribed by the state board of
20 healing arts, listing the names and addresses of all individuals licensed to
21 practice the healing arts and such other information as may be required by
22 the state board of healing arts. The application for a certificate of
23 authorization shall be accompanied by an application fee fixed by the state
24 board of healing arts. The certificate of authorization shall be renewed
25 biennially. The biennial renewal fee shall be fixed by the state board of
26 healing arts and shall be accompanied by a form prescribed by the state
27 board of healing arts. In the event of a change of any such individual, such
28 change shall be provided to the state board of healing arts within 30 days
29 after the effective date of such change.

30 (c) If the state board of healing arts finds that such business entity is
31 in compliance with all of the requirements of this section, the state board
32 of healing arts shall issue a certificate of authorization to such business
33 entity designating that the business entity is authorized to engage in the
34 practice of medicine.

35 (d) No business entity issued a certificate of authorization under this
36 section shall be relieved of responsibility for the conduct or acts of its

1 agents or employees by reason of its compliance with the provisions of
2 this section, nor shall any individual licensed to practice the healing arts be
3 relieved of responsibility and liability for services performed by reason of
4 employment or relationship with such business entity. Nothing in this
5 section shall exempt any business entity from the provisions of any other
6 law applicable to the business entity.

7 (e) As used in this section:

8 (1) "Practice of medicine" means the practice of the healing arts.

9 (2) "Business entity" means a general corporation, limited liability
10 company, limited liability partnership, or other legal entity created by law.

11 (f) This section shall be part of and supplemental to the Kansas
12 healing arts act.

13 Sec. 2. K.S.A. 2017 Supp. 40-3401 is hereby amended to read as
14 follows: 40-3401. As used in this act ~~the following terms shall have the~~
15 ~~meanings respectively ascribed to them herein:~~

16 (a) "Applicant" means any healthcare provider.

17 (b) "Basic coverage" means a policy of professional liability
18 insurance required to be maintained by each healthcare provider pursuant
19 to the provisions of K.S.A. 40-3402(a) or (b), and amendments thereto.

20 (c) "Commissioner" means the commissioner of insurance.

21 (d) "Fiscal year" means the year commencing on the effective date of
22 this act and each year, commencing on the first day of July thereafter.

23 (e) "Fund" means the healthcare stabilization fund established
24 pursuant to K.S.A. 40-3403(a), and amendments thereto.

25 (f) "Healthcare provider" means a person licensed to practice any
26 branch of the healing arts by the state board of healing arts, a person who
27 holds a temporary permit to practice any branch of the healing arts issued
28 by the state board of healing arts, a person engaged in a postgraduate
29 training program approved by the state board of healing arts, a medical
30 care facility licensed by the state of Kansas, a podiatrist licensed by the
31 state board of healing arts, a health maintenance organization issued a
32 certificate of authority by the commissioner, an optometrist licensed by the
33 board of examiners in optometry, a pharmacist licensed by the state board
34 of pharmacy, a licensed professional nurse who is authorized to practice as
35 a registered nurse anesthetist, a licensed professional nurse who has been
36 granted a temporary authorization to practice nurse anesthesia under
37 K.S.A. 65-1153, and amendments thereto, a professional corporation
38 organized pursuant to the professional corporation law of Kansas by
39 persons who are authorized by such law to form such a corporation and
40 who are healthcare providers as defined by this subsection, a Kansas
41 limited liability company organized for the purpose of rendering
42 professional services by its members who are healthcare providers as
43 defined by this subsection and who are legally authorized to render the

1 professional services for which the limited liability company is organized,
2 a partnership of persons who are healthcare providers under this
3 subsection, a Kansas not-for-profit corporation organized for the purpose
4 of rendering professional services by persons who are healthcare providers
5 as defined by this subsection, a nonprofit corporation organized to
6 administer the graduate medical education programs of community
7 hospitals or medical care facilities affiliated with the university of Kansas
8 school of medicine, a dentist certified by the state board of healing arts to
9 administer anesthetics under K.S.A. 65-2899, and amendments thereto, a
10 psychiatric hospital licensed prior to January 1, 1988, and continuously
11 thereafter under K.S.A. 2015 Supp. 75-3307b, prior to its repeal and
12 K.S.A. 2017 Supp. 39-2001 et seq., and amendments thereto, ~~or~~ a mental
13 health center or mental health clinic licensed by the state of Kansas *or a*
14 *business entity that holds a certificate of authorization under section 1,*
15 *and amendments thereto.* ~~On and after January 1, 2015,~~ "Healthcare
16 provider" also means a physician assistant licensed by the state board of
17 healing arts, a licensed advanced practice registered nurse who is
18 authorized by the ~~state~~ board of nursing to practice as an advanced practice
19 registered nurse in the classification of a nurse-midwife, a licensed
20 advanced practice registered nurse who has been granted a temporary
21 authorization by the ~~state~~ board of nursing to practice as an advanced
22 practice registered nurse in the classification of a nurse-midwife, a nursing
23 facility licensed by the state of Kansas, an assisted living facility licensed
24 by the state of Kansas or a residential healthcare facility licensed by the
25 state of Kansas. "Healthcare provider" does not include: (1) Any state
26 institution for people with intellectual disability; (2) any state psychiatric
27 hospital; (3) any person holding an exempt license issued by the state
28 board of healing arts or the ~~state~~ board of nursing; (4) any person holding a
29 visiting clinical professor license from the state board of healing arts; (5)
30 any person holding an inactive license issued by the state board of healing
31 arts; (6) any person holding a federally active license issued by the state
32 board of healing arts; (7) an advanced practice registered nurse who is
33 authorized by the ~~state~~ board of nursing to practice as an advanced practice
34 registered nurse in the classification of nurse-midwife or nurse anesthetist
35 and who practices solely in the course of employment or active duty in the
36 United States government or any of its departments, bureaus or agencies or
37 who provides professional services as a charitable healthcare provider as
38 defined under K.S.A. 75-6102, and amendments thereto; or (8) a physician
39 assistant licensed by the state board of healing arts who practices solely in
40 the course of employment or active duty in the United States government
41 or any of its departments, bureaus or agencies or who provides
42 professional services as a charitable healthcare provider as defined under
43 K.S.A. 75-6102, and amendments thereto.

1 (g) "Inactive healthcare provider" means a person or other entity who
2 purchased basic coverage or qualified as a self-insurer on or subsequent to
3 the effective date of this act but who, at the time a claim is made for
4 personal injury or death arising out of the rendering of or the failure to
5 render professional services by such healthcare provider, does not have
6 basic coverage or self-insurance in effect solely because such person is no
7 longer engaged in rendering professional service as a healthcare provider.

8 (h) "Insurer" means any corporation, association, reciprocal
9 exchange, inter-insurer and any other legal entity authorized to write
10 bodily injury or property damage liability insurance in this state, including
11 workers compensation and automobile liability insurance, pursuant to the
12 provisions of the acts contained in article 9, 11, 12 or 16 of chapter 40 of
13 the Kansas Statutes Annotated, and amendments thereto.

14 (i) "Plan" means the operating and administrative rules and
15 procedures developed by insurers and rating organizations or the
16 commissioner to make professional liability insurance available to
17 healthcare providers.

18 (j) "Professional liability insurance" means insurance providing
19 coverage for legal liability arising out of the performance of professional
20 services rendered or ~~which~~ *that* should have been rendered by a healthcare
21 provider.

22 (k) "Rating organization" means a corporation, an unincorporated
23 association, a partnership or an individual licensed pursuant to K.S.A. 40-
24 956, and amendments thereto, to make rates for professional liability
25 insurance.

26 (l) "Self-insurer" means a healthcare provider who qualifies as a self-
27 insurer pursuant to K.S.A. 40-3414, and amendments thereto.

28 (m) "Medical care facility" means the same when used in the
29 healthcare provider insurance availability act as ~~the meaning ascribed to~~
30 ~~that term~~ *defined* in K.S.A. 65-425, and amendments thereto, except that
31 as used in the healthcare provider insurance availability act such term, as it
32 relates to insurance coverage under the healthcare provider insurance
33 availability act, also includes any director, trustee, officer or administrator
34 of a medical care facility.

35 (n) "Mental health center" means a mental health center licensed by
36 the state of Kansas under K.S.A. ~~75-3307b~~ *2017 Supp. 39-2001 et seq.*,
37 and amendments thereto, except that as used in the healthcare provider
38 insurance availability act such term, as it relates to insurance coverage
39 under the healthcare provider insurance availability act, also includes any
40 director, trustee, officer or administrator of a mental health center.

41 (o) "Mental health clinic" means a mental health clinic licensed by
42 the state of Kansas under K.S.A. ~~75-3307b~~ *2017 Supp. 39-2001 et seq.*,
43 and amendments thereto, except that as used in the healthcare provider

1 insurance availability act such term, as it relates to insurance coverage
2 under the healthcare provider insurance availability act, also includes any
3 director, trustee, officer or administrator of a mental health clinic.

4 (p) "State institution for people with intellectual disability" means
5 Winfield state hospital and training center, Parsons state hospital and
6 training center and the Kansas neurological institute.

7 (q) "State psychiatric hospital" means Larned state hospital,
8 Osawatomie state hospital and Rainbow mental health facility.

9 (r) "Person engaged in residency training" means:

10 (1) A person engaged in a postgraduate training program approved by
11 the state board of healing arts who is employed by and is studying at the
12 university of Kansas medical center only when such person is engaged in
13 medical activities—~~which~~ *that* do not include extracurricular, extra-
14 institutional medical service for which such person receives extra
15 compensation and—~~which~~ *that* have not been approved by the dean of the
16 school of medicine and the executive vice-chancellor of the university of
17 Kansas medical center. Persons engaged in residency training shall be
18 considered resident healthcare providers for purposes of K.S.A. 40-3401 et
19 seq., and amendments thereto; and

20 (2) a person engaged in a postgraduate training program approved by
21 the state board of healing arts who is employed by a nonprofit corporation
22 organized to administer the graduate medical education programs of
23 community hospitals or medical care facilities affiliated with the university
24 of Kansas school of medicine or who is employed by an affiliate of the
25 university of Kansas school of medicine as defined in K.S.A. 76-367, and
26 amendments thereto, only when such person is engaged in medical
27 activities—~~which~~ *that* do not include extracurricular, extra-institutional
28 medical service for which such person receives extra compensation and
29 ~~which~~ *that* have not been approved by the chief operating officer of the
30 nonprofit corporation or the chief operating officer of the affiliate and the
31 executive vice-chancellor of the university of Kansas medical center.

32 (s) "Full-time physician faculty employed by the university of Kansas
33 medical center" means a person licensed to practice medicine and surgery
34 who holds a full-time appointment at the university of Kansas medical
35 center when such person is providing healthcare. A person licensed to
36 practice medicine and surgery who holds a full-time appointment at the
37 university of Kansas medical center may also be employed part-time by
38 the United States department of veterans affairs if such employment is
39 approved by the executive vice-chancellor of the university of Kansas
40 medical center.

41 (t) "Sexual act" or "sexual activity" means ~~that~~ sexual conduct—~~which~~
42 *that* constitutes a criminal or tortious act under the laws of the state of
43 Kansas.

1 (u) "Board" means the board of governors created by K.S.A. 40-3403,
 2 and amendments thereto.

3 (v) "Board of directors" means the governing board created by K.S.A.
 4 40-3413, and amendments thereto.

5 (w) "Locum tenens contract" means a temporary agreement not
 6 exceeding 182 days per calendar year that employs a healthcare provider
 7 to actively render professional services in this state.

8 (x) "Professional services" means patient care or other services
 9 authorized under the act governing licensure of a healthcare provider.

10 (y) "Healthcare facility" means a nursing facility, an assisted living
 11 facility or a residential healthcare facility as all such terms are defined in
 12 K.S.A. 39-923, and amendments thereto.

13 (z) "Charitable healthcare provider" means the same as defined in
 14 K.S.A. 75-6102, and amendments thereto.

15 Sec. 3. K.S.A. 2017 Supp. 65-2803 is hereby amended to read as
 16 follows: 65-2803. (a) Unless otherwise specified by the board *or as*
 17 *provided in section 1, and amendments thereto*, it shall be unlawful for any
 18 person who does not have a license, registration, permit or certificate to
 19 engage in the practice of any profession regulated by the board or whose
 20 license, registration, permit or certificate to practice has been revoked or
 21 suspended to engage in the practice of any profession regulated by the
 22 board.

23 (b) This section shall not apply to any health care provider who in
 24 good faith renders emergency care or assistance at the scene of an
 25 emergency or accident as authorized by K.S.A. 65-2891, and amendments
 26 thereto.

27 (c) The commission of any act or practice declared to be a violation
 28 of this section may render the violator liable to the state or county for the
 29 payment of a civil penalty of up to \$1,000 per day for each day a person
 30 engages in the unlawful practice of a profession regulated by the board. In
 31 addition to such civil penalty, such violator may be assessed reasonable
 32 costs of investigation and prosecution.

33 (d) Violation of this section is a severity level 10, nonperson felony.

34 Sec. 4. K.S.A. 2017 Supp. 65-2836 is hereby amended to read as
 35 follows: 65-2836. A licensee's license may be revoked, suspended or
 36 limited, or the licensee may be publicly censured or placed under
 37 probationary conditions, or an application for a license or for reinstatement
 38 of a license may be denied upon a finding of the existence of any of the
 39 following grounds:

40 (a) The licensee has committed fraud or misrepresentation in
 41 applying for or securing an original, renewal or reinstated license.

42 (b) The licensee has committed an act of unprofessional or
 43 dishonorable conduct or professional incompetency, except that the board

1 may take appropriate disciplinary action or enter into a non-disciplinary
2 resolution when a licensee has engaged in any conduct or professional
3 practice on a single occasion that, if continued, would reasonably be
4 expected to constitute an inability to practice the healing arts with
5 reasonable skill and safety to patients or unprofessional conduct as defined
6 in K.S.A. 65-2837, and amendments thereto.

7 (c) The licensee has been convicted of a felony or class A
8 misdemeanor, or substantially similar offense in another jurisdiction,
9 whether or not related to the practice of the healing arts. The licensee has
10 been convicted in a special or general court-martial, whether or not related
11 to the practice of the healing arts. The board shall revoke a licensee's
12 license following conviction of a felony or substantially similar offense in
13 another jurisdiction, or following conviction in a general court-martial
14 occurring after July 1, 2000, unless a $\frac{2}{3}$ majority of the board members
15 present and voting determine by clear and convincing evidence that such
16 licensee will not pose a threat to the public in such person's capacity as a
17 licensee and that such person has been sufficiently rehabilitated to warrant
18 the public trust. In the case of a person who has been convicted of a felony
19 or convicted in a general court-martial and who applies for an original
20 license or to reinstate a canceled license, the application for a license shall
21 be denied unless a $\frac{2}{3}$ majority of the board members present and voting on
22 such application determine by clear and convincing evidence that such
23 person will not pose a threat to the public in such person's capacity as a
24 licensee and that such person has been sufficiently rehabilitated to warrant
25 the public trust.

26 (d) The licensee has used fraudulent or false advertisements.

27 (e) The licensee is addicted to or has distributed intoxicating liquors
28 or drugs for any other than lawful purposes.

29 (f) The licensee has willfully or repeatedly violated this act, the
30 pharmacy act of the state of Kansas or the uniform controlled substances
31 act, or any rules and regulations adopted pursuant thereto, or any rules and
32 regulations of the secretary of health and environment ~~which~~ *that* are
33 relevant to the practice of the healing arts.

34 (g) The licensee has unlawfully invaded the field of practice of any
35 branch of the healing arts in which the licensee is not licensed to practice.

36 (h) The licensee has engaged in the practice of the healing arts under
37 a false or assumed name, or the impersonation of another practitioner. The
38 provisions of this subsection relating to an assumed name shall not apply
39 to licensees practicing under a professional corporation, *under a business*
40 *entity that holds a certificate of authorization under section 1, and*
41 *amendments thereto, or under any other legal entity duly authorized to*
42 *provide such professional services in the state of Kansas.*

43 (i) The licensee's ability to practice the healing arts with reasonable

1 skill and safety to patients is impaired by reason of physical or mental
2 illness, or condition or use of alcohol, drugs or controlled substances. All
3 information, reports, findings and other records relating to impairment
4 shall be confidential and not subject to discovery by or release to any
5 person or entity outside of a board proceeding.

6 (j) The licensee has had a license to practice the healing arts revoked,
7 suspended or limited, has been censured or has had other disciplinary
8 action taken, or an application for a license denied, by the proper licensing
9 authority of another state, territory, District of Columbia, or other country.

10 (k) The licensee has violated any lawful rule and regulation
11 promulgated by the board or violated any lawful order or directive of the
12 board previously entered by the board.

13 (l) The licensee has failed to report or reveal the knowledge required
14 to be reported or revealed under K.S.A. 65-28,122, and amendments
15 thereto.

16 (m) The licensee, if licensed to practice medicine and surgery, has
17 failed to inform in writing a patient suffering from any form of
18 abnormality of the breast tissue for which surgery is a recommended form
19 of treatment, of alternative methods of treatment recognized by licensees
20 of the same profession in the same or similar communities as being
21 acceptable under like conditions and circumstances.

22 (n) The licensee has cheated on or attempted to subvert the validity of
23 the examination for a license.

24 (o) The licensee has been found to be mentally ill, disabled, not guilty
25 by reason of insanity, not guilty because the licensee suffers from a mental
26 disease or defect or incompetent to stand trial by a court of competent
27 jurisdiction.

28 (p) The licensee has prescribed, sold, administered, distributed or
29 given a controlled substance to any person for other than medically
30 accepted or lawful purposes.

31 (q) The licensee has violated a federal law or regulation relating to
32 controlled substances.

33 (r) The licensee has failed to furnish the board, or its investigators or
34 representatives, any information legally requested by the board.

35 (s) Sanctions or disciplinary actions have been taken against the
36 licensee by a peer review committee, health care facility, a governmental
37 agency or department or a professional association or society for acts or
38 conduct similar to acts or conduct ~~which~~ *that* would constitute grounds for
39 disciplinary action under this section.

40 (t) The licensee has failed to report to the board any adverse action
41 taken against the licensee by another state or licensing jurisdiction, a peer
42 review body, a health care facility, a professional association or society, a
43 governmental agency, by a law enforcement agency or a court for acts or

1 conduct similar to acts or conduct ~~which~~ *that* would constitute grounds for
2 disciplinary action under this section.

3 (u) The licensee has surrendered a license or authorization to practice
4 the healing arts in another state or jurisdiction, has surrendered the
5 authority to utilize controlled substances issued by any state or federal
6 agency, has agreed to a limitation to or restriction of privileges at any
7 medical care facility or has surrendered the licensee's membership on any
8 professional staff or in any professional association or society while under
9 investigation for acts or conduct similar to acts or conduct ~~which~~ *that*
10 would constitute grounds for disciplinary action under this section.

11 (v) The licensee has failed to report to the board surrender of the
12 licensee's license or authorization to practice the healing arts in another
13 state or jurisdiction or surrender of the licensee's membership on any
14 professional staff or in any professional association or society while under
15 investigation for acts or conduct similar to acts or conduct ~~which~~ *that*
16 would constitute grounds for disciplinary action under this section.

17 (w) The licensee has an adverse judgment, award or settlement
18 against the licensee resulting from a medical liability claim related to acts
19 or conduct similar to acts or conduct ~~which~~ *that* would constitute grounds
20 for disciplinary action under this section.

21 (x) The licensee has failed to report to the board any adverse
22 judgment, settlement or award against the licensee resulting from a
23 medical malpractice liability claim related to acts or conduct similar to acts
24 or conduct ~~which~~ *that* would constitute grounds for disciplinary action
25 under this section.

26 (y) The licensee has failed to maintain a policy of professional
27 liability insurance as required by K.S.A. 40-3402 or 40-3403a, and
28 amendments thereto.

29 (z) The licensee has failed to pay the premium surcharges as required
30 by K.S.A. 40-3404, and amendments thereto.

31 (aa) The licensee has knowingly submitted any misleading, deceptive,
32 untrue or fraudulent representation on a claim form, bill or statement.

33 (bb) The licensee as the supervising physician for a physician
34 assistant has failed to adequately direct and supervise the physician
35 assistant in accordance with the physician assistant licensure act or rules
36 and regulations adopted under such act.

37 (cc) The licensee has assisted suicide in violation of K.S.A. 21-3406,
38 prior to its repeal, or K.S.A. 2017 Supp. 21-5407, and amendments
39 thereto, as established by any of the following:

40 (1) A copy of the record of criminal conviction or plea of guilty for a
41 felony in violation of K.S.A. 21-3406, prior to its repeal, or K.S.A. 2017
42 Supp. 21-5407, and amendments thereto.

43 (2) A copy of the record of a judgment of contempt of court for

1 violating an injunction issued under K.S.A. 60-4404, and amendments
2 thereto.

3 (3) A copy of the record of a judgment assessing damages under
4 K.S.A. 60-4405, and amendments thereto.

5 (dd) The licensee has given a worthless check or stopped payment on
6 a debit or credit card for fees or moneys legally due to the board.

7 (ee) The licensee has knowingly or negligently abandoned medical
8 records.

9 Sec. 5. K.S.A. 2017 Supp. 65-2877a is hereby amended to read as
10 follows: 65-2877a. ~~The healing arts act and any other~~No provision of law
11 prohibiting practice of the healing arts by a general corporation shall ~~not~~
12 apply to a healing arts school approved by the board if the healing arts
13 school is a non-profit entity under section 501(c)(3) of the internal revenue
14 code of 1986, is approved by the state board of regents, and as part of its
15 academic requirements provides clinical training to its students under the
16 supervision of persons who are licensed to practice a branch of the healing
17 arts in this state.

18 Sec. 6. K.S.A. 2017 Supp. 40-3401, 65-2803, 65-2836 and 65-2877a
19 are hereby repealed.

20 Sec. 7. This act shall take effect and be in force from and after its
21 publication in the statute book.