

## HOUSE BILL No. 2792

By Committee on Health and Human Services

Requested by Representative Landwehr

2-9

1 AN ACT concerning health and healthcare; relating to transgender care  
2 services; prohibiting gender transition surgeries on minors; authorizing  
3 professional discipline against a physician who performs such  
4 surgeries; adopting a standard of care for gender transition care  
5 services; amending K.S.A. 65-2837 and repealing the existing section.  
6

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

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

9 (1) "Gender transition surgery" means a surgical procedure performed  
10 for the purpose of assisting an individual with a gender transition,  
11 including, but not limited to:

12 (A) Procedures that artificially construct tissue with the appearance of  
13 genitalia that differs from the individual's biological sex, including, but not  
14 limited to, metoidioplasty, phalloplasty or vaginoplasty; and

15 (B) augmentation, mammoplasty or subcutaneous mastectomy.

16 (2) "Healthcare provider" means a person defined as a healthcare  
17 provider under K.S.A. 65-4921, and amendments thereto, a person  
18 licensed by the board of nursing or a person licensed by the behavioral  
19 sciences regulatory board.

20 (3) "Minor" means an individual under 18 years of age.

21 (4) "Physician" means a person licensed by the state board of healing  
22 arts to practice medicine and surgery.

23 (5) "Sex" means the biological indication of male and female in the  
24 context of reproductive potential or capacity, such as sex chromosomes,  
25 naturally occurring sex hormones, gonads and nonambiguous internal and  
26 external genitalia present at birth.

27 (b) A physician shall not perform a gender transition surgery on a  
28 minor.

29 (c) When providing transgender care services, healthcare providers  
30 shall conduct services and treatments according to the clinical practice  
31 guidelines specified in Wylie C. Hembree et al., Endocrine treatment of  
32 gender-dysphoric/gender-incongruent person: an endocrine society clinical  
33 practice guidelines, 102 JCEM 11, 3869, September 13, 2017.

34 Sec. 2. K.S.A. 65-2837 is hereby amended to read as follows: 65-  
35 2837. As used in K.S.A. 65-2836, and amendments thereto, and in this

1 section:

2 (a) "Professional incompetency" means:

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

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

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

11 (b) "Unprofessional conduct" means:

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

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

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

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

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

24 (6) Willful betrayal of confidential information.

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

27 (8) Advertising to guarantee any professional service or to perform  
28 any operation painlessly.

29 (9) Participating in any action as a staff member of a medical care  
30 facility that is designed to exclude or that results in the exclusion of any  
31 person licensed to practice medicine and surgery from the medical staff of  
32 a nonprofit medical care facility licensed in this state because of the  
33 branch of the healing arts practiced by such person or without just cause.

34 (10) Failure to effectuate the declaration of a qualified patient as  
35 provided in K.S.A. 65-28,107(a), and amendments thereto.

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

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

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

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

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

5 (16) Commission of any act of sexual abuse, misconduct or other  
6 improper sexual contact that exploits the licensee-patient relationship with  
7 a patient or a person responsible for health care decisions concerning such  
8 patient.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (32) *Performing gender transition surgery, as defined in section 1,*  
17 *and amendments thereto, on a minor.*

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

29 (A) A hospital;

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

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

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

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

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

41 ~~(33)~~(34) Engaging in conduct that violates patient trust and exploits  
42 the licensee-patient relationship for personal gain.

43 ~~(34)~~(35) Obstructing a board investigation including, but not limited

1 to, engaging in one or more of the following acts:

2 (A) Falsifying or concealing a material fact;

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

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

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

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

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

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

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

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

32 Sec. 3. K.S.A. 65-2837 is hereby repealed.

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