

## SENATE BILL No. 285

By Committee on Public Health and Welfare

2-5

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9 AN ACT concerning the healing arts act; prohibiting billing for anatomic  
10 pathology services in certain circumstances; amending K.S.A. 2006  
11 Supp. 65-2837 and repealing the existing section.  
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13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2006 Supp. 65-2837 is hereby amended to read as  
15 follows: 65-2837. As used in K.S.A. 65-2836, and amendments thereto,  
16 and in this section:

17 (a) “Professional incompetency” means:

18 (1) One or more instances involving failure to adhere to the appli-  
19 cable standard of care to a degree which constitutes gross negligence, as  
20 determined by the board.

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

24 (3) A pattern of practice or other behavior which demonstrates a  
25 manifest incapacity or incompetence to practice medicine.

26 (b) “Unprofessional conduct” means:

27 (1) Solicitation of professional patronage through the use of fraudu-  
28 lent or false advertisements, or profiting by the acts of those representing  
29 themselves to be agents of the licensee.

30 (2) Representing to a patient that a manifestly incurable disease, con-  
31 dition or injury can be permanently cured.

32 (3) Assisting in the care or treatment of a patient without the consent  
33 of the patient, the attending physician or the patient’s legal  
34 representatives.

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

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

40 (6) Willful betrayal of confidential information.

41 (7) Advertising professional superiority or the performance of pro-  
42 fessional services in a superior manner.

43 (8) Advertising to guarantee any professional service or to perform

- 1 any operation painlessly.
- 2 (9) Participating in any action as a staff member of a medical care  
3 facility which is designed to exclude or which results in the exclusion of  
4 any person licensed to practice medicine and surgery from the medical  
5 staff of a nonprofit medical care facility licensed in this state because of  
6 the branch of the healing arts practiced by such person or without just  
7 cause.
- 8 (10) Failure to effectuate the declaration of a qualified patient as  
9 provided in subsection (a) of K.S.A. 65-28,107, and amendments thereto.
- 10 (11) Prescribing, ordering, dispensing, administering, selling, supply-  
11 ing or giving any amphetamines or sympathomimetic amines, except as  
12 authorized by K.S.A. 65-2837a, and amendments thereto.
- 13 (12) Conduct likely to deceive, defraud or harm the public.
- 14 (13) Making a false or misleading statement regarding the licensee's  
15 skill or the efficacy or value of the drug, treatment or remedy prescribed  
16 by the licensee or at the licensee's direction in the treatment of any dis-  
17 ease or other condition of the body or mind.
- 18 (14) Aiding or abetting the practice of the healing arts by an unli-  
19 censed, incompetent or impaired person.
- 20 (15) Allowing another person or organization to use the licensee's  
21 license to practice the healing arts.
- 22 (16) Commission of any act of sexual abuse, misconduct or exploita-  
23 tion related to the licensee's professional practice.
- 24 (17) The use of any false, fraudulent or deceptive statement in any  
25 document connected with the practice of the healing arts including the  
26 intentional falsifying or fraudulent altering of a patient or medical care  
27 facility record.
- 28 (18) Obtaining any fee by fraud, deceit or misrepresentation.
- 29 (19) Directly or indirectly giving or receiving any fee, commission,  
30 rebate or other compensation for professional services not actually and  
31 personally rendered, other than through the legal functioning of lawful  
32 professional partnerships, corporations or associations.
- 33 (20) Failure to transfer patient records to another licensee when re-  
34 quested to do so by the subject patient or by such patient's legally des-  
35 ignated representative.
- 36 (21) Performing unnecessary tests, examinations or services which  
37 have no legitimate medical purpose.
- 38 (22) Charging an excessive fee for services rendered.
- 39 (23) Prescribing, dispensing, administering or distributing a prescrip-  
40 tion drug or substance, including a controlled substance, in an improper  
41 or inappropriate manner, or for other than a valid medical purpose, or  
42 not in the course of the licensee's professional practice.
- 43 (24) Repeated failure to practice healing arts with that level of care,

1 skill and treatment which is recognized by a reasonably prudent similar  
2 practitioner as being acceptable under similar conditions and  
3 circumstances.

4 (25) Failure to keep written medical records which accurately de-  
5 scribe the services rendered to the patient, including patient histories,  
6 pertinent findings, examination results and test results.

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

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

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

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

24 (30) Failing to properly supervise, direct or delegate acts which con-  
25 stitute the healing arts to persons who perform professional services pur-  
26 suant to such licensee's direction, supervision, order, referral, delegation  
27 or practice protocols.

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

29 (32) *Charging, billing or otherwise soliciting payment from any pa-*  
30 *tient, patient's representative or insurer for anatomic pathology services,*  
31 *if such services are not personally rendered by the licensee or under such*  
32 *licensee's direct supervision. As used in this subsection, "anatomic pa-*  
33 *thology services" means the gross or microscopic examination of histologic*  
34 *processing of human organ tissue or the examination of human cells from*  
35 *fluids, aspirates, washings, brushings or smears, including bloodbanking*  
36 *services, and subcellular or molecular pathology services, performed by*  
37 *or under the supervision of a person licensed to practice medicine and*  
38 *surgery or a clinical laboratory. Nothing in this subsection shall be con-*  
39 *strued to prohibit billing for anatomic pathology services by a hospital,*  
40 *or by a clinical laboratory when samples are transferred between clinical*  
41 *laboratories for the provision of anatomic pathology services.*

42 (c) "False advertisement" means any advertisement which is false,  
43 misleading or deceptive in a material respect. In determining whether

1 any advertisement is misleading, there shall be taken into account not  
2 only representations made or suggested by statement, word, design, de-  
3 vice, sound or any combination thereof, but also the extent to which the  
4 advertisement fails to reveal facts material in the light of such represen-  
5 tations made.

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

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

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

16 (g) "Health care entity" means any corporation, firm, partnership or  
17 other business entity which provides services for diagnosis or treatment  
18 of human health conditions and which is owned separately from a refer-  
19 ring licensee's principle practice.

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

24 Sec. 2. K.S.A. 2006 Supp. 65-2837 is hereby repealed.

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