SENATE BILL No. 63

AN ACT concerning children and minors; relating to healthcare of minors; enacting the help not harm act; prohibiting healthcare providers from treating a child whose gender identity is inconsistent with the child's sex; authorizing a civil cause of action against healthcare providers for providing such treatments; restricting use of state funds to promote gender transitioning; prohibiting professional liability insurance from covering damages for healthcare providers that provide gender transition treatment to children; requiring professional discipline against a healthcare provider who performs such treatments; adding violation of the act to the definition of unprofessional conduct for physicians; amending K.S.A. 65-2837 and repealing the existing section.

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

New Section 1. (a) The provisions of sections 1 through 6, and amendments thereto, shall be known and may be cited as the help not harm act.

(b) As used in this act:

(1) "Child" means an individual less than 18 years of age.

(2) "Female" means an individual who is a member of the female sex.

(3) "Gender" means the psychological, behavioral, social and cultural aspects of being male or female.

(4) "Gender dysphoria" is the diagnosis of gender dysphoria in the fifth edition of the diagnostic and statistical manual of mental disorders.

(5) "Healthcare provider" means an individual who is licensed, certified or otherwise authorized by the laws of this state to administer healthcare services in the ordinary course of the practice of such individual's profession.

(6) "Male" means an individual who is a member of the male sex.

(7) "Perceived sex" is an individual's internal sense of such individual's sex.

(8) "Perceived gender" is an individual's internal sense of such individual's gender.

(9) "Sex" means the biological indication of male and female in the context of reproductive potential or capacity, including sex chromosomes, naturally occurring sex hormones, gonads and nonambiguous internal and external genitalia present at birth, without regard to an individual's psychological, chosen or subjective experience of gender.

(10) "Social transitioning" means acts other than medical or surgical interventions that are undertaken for the purpose of presenting as a member of the opposite sex, including the changing of an individual's preferred pronouns or manner of dress.

New Sec. 2. (a) A recipient of state funds shall not use such funds to provide or subsidize medication or surgery as provided in section 3, and amendments thereto, as a treatment for a child's perception of gender or sex that is inconsistent with such child's sex.

(b) An individual or entity that receives state funds to pay for or subsidize the treatment of children for psychological conditions, including gender dysphoria, shall not prescribe, dispense or administer medication or perform surgery as provided in section 3, and amendments thereto, or provide a referral to another healthcare provider for such medication or surgery for a child whose perceived gender or perceived sex is inconsistent with such child's sex.

(c) The Kansas program of medical assistance and its managed care organizations shall not reimburse or provide coverage for medication or surgery as provided in section 3, and amendments thereto, as a treatment for a child whose perceived gender or perceived sex is inconsistent with such child's sex.

(d) Except to the extent required by the first amendment to the United States constitution, a state property, facility or building shall not be used to promote or advocate the use of social transitioning,

medication or surgery as provided in section 3, and amendments thereto, as a treatment for a child whose perceived gender or perceived sex is inconsistent with such child's sex.

(e) A state property, facility or building shall not be used to prescribe, dispense or administer medication or perform surgery as provided in section 3, and amendments thereto, as a treatment for a child whose perceived gender or perceived sex is inconsistent with such child's sex.

(f) A state employee whose official duties include the care of children shall not, while engaged in those official duties, promote the use of social transitioning or provide or promote medication or surgery as provided in section 3, and amendments thereto, as a treatment for a child whose perceived gender or perceived sex is inconsistent with such child's sex.

New Sec. 3. (a) Except as provided in subsection (c) or (d), a healthcare provider shall not knowingly perform the following surgical procedures or prescribe, dispense or administer the following medications to a female child for the purpose of treatment for distress arising from such female child's perception that such child's gender or sex is not female:

(1) Surgical procedures, including, but not limited to, a vaginectomy, hysterectomy, oophorectomy, ovariectomy, reconstruction of the urethra, metoidioplasty, phalloplasty, scrotoplasty, implantation of erection or testicular protheses, subcutaneous mastectomy, voice surgery, liposuction, lipofilling or pectoral implants;

(2) supraphysiologic doses of testosterone or other androgens; or

(3) puberty blockers such as GnRH agonists or other synthetic drugs that suppress the production of estrogen and progesterone to delay or suppress pubertal development in female children.

(b) Except as provided in subsection (c) or (d), a healthcare provider shall not knowingly perform the following surgical procedures or prescribe, dispense or administer the following medications to a male child for the purpose of treatment for distress arising from such male child's perception that such child's gender or sex is not male:

(1) Surgical procedures, including, but not limited to, a penectomy, orchiectomy, vaginoplasty, clitoroplasty, vulvoplasty, augmentation mammoplasty, facial feminization surgery, liposuction, lipofilling, voice surgery, thyroid cartilage reduction or gluteal augmentation;

(2) supraphysiologic doses of estrogen; or

(3) puberty blockers such as GnRH agonists or other synthetic drugs that suppress the production of testosterone or delay or suppress pubertal development in male children.

(c) The treatments prohibited by subsections (a) and (b) shall not apply to treatment provided for other purposes, including:

(1) Treatment for individuals born with a medically verifiable disorder of sex development, including:

(A) An individual born with external biological sex characteristics that are irresolvably ambiguous, including an individual born with 46 XX chromosomes with virilization, 46 XY chromosomes with under virilization or having both ovarian and testicular tissue; or

(B) an individual whom a physician has otherwise diagnosed with a disorder of sexual development that the physician has determined through genetic or biochemical testing that such individual does not have normal sex chromosome structure, sex steroid hormone production or sex steroid hormone action for a male or female; and

(2) treatment of any infection, injury, disease or disorder that has been caused or exacerbated by the performance of a procedure listed in subsections (a) or (b).

(d) If a healthcare provider has initiated a course of treatment for a child that includes prescribing, administering or dispensing of a drug prohibited by subsection (a)(2), (a)(3), (b)(2) or (b)(3) prior to the effective date of this act, the healthcare provider may continue such course of treatment if the healthcare provider:

(1) Develops a plan to systematically reduce the child's use of such drug;

(2) determines and documents in the child's medical record that immediately terminating the child's use of such drug would cause harm to the child; and

(3) such course of treatment shall not extend beyond December 31, 2025.

New Sec. 4. (a) If a healthcare provider violates the provisions of section 3, and amendments thereto:

(1) The healthcare provider has engaged in unprofessional conduct and, notwithstanding any provision of law to the contrary, the license of such healthcare provider shall be revoked by the appropriate licensing entity or disciplinary review board with competent jurisdiction in this state.

(b) A healthcare provider who provides treatment to a child in violation of section 3(a) or (b), and amendments thereto, shall be held strictly liable to such child if the treatment or effects of such treatment results in any physical, psychological, emotional or physiological harms to such child in the next 10 years from the date that the individual turns 18 years of age. A prevailing plaintiff may recover actual and punitive damages, injunctive relief, the cost of the suit and reasonable attorney fees.

(c) The parents of a child who has experienced violation of section 3(a) or (b), and amendments thereto, shall have a private cause of action against a healthcare provider for actual and punitive damages, injunctive relief, the cost of the suit and reasonable attorney fees.

(d) (1) An individual who was provided treatment as a child in violation of section 3(a) or (b), and amendments thereto, shall have a private cause of action against the healthcare provider who provided such treatment for actual damages, punitive damages, injunctive relief, the cost of the suit and reasonable attorney fees.

(2) An action against a healthcare provider pursuant to this subsection shall be filed within 10 years from the date that the individual turns 18 years of age.

New Sec. 5. A professional liability insurance policy issued to a healthcare provider shall not include coverage for damages assessed against the healthcare provider who provides treatment to a child in violation of section 3(a) or (b), and amendments thereto.

New Sec. 6. If any provision or clause of this act or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this act that can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 7. K.S.A. 65-2837 is hereby amended to read as follows: 65-2837. 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~~ *healthcare* 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~~ *healthcare* entity for services if the licensee has a significant investment interest in the ~~health care~~ *healthcare* 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) *Violating the help not harm act, sections 1 through 6, and amendments thereto.*

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

~~(34)~~*(35)* 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~~*Healthcare* 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~~ *healthcare* entity, or ownership of at least 10% of the shares of stock of the corporation that owns or leases the ~~health care~~ *healthcare* entity.

Sec. 8. K.S.A. 65-2837 is hereby repealed.

Sec. 9. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the SENATE, and passed that body

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_____

President of the Senate.

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Secretary of the Senate.

Passed the HOUSE _____

_____

Speaker of the House.

_____

Chief Clerk of the House.

APPROVED _____

_____

Governor.