

SENATE BILL No. 225

AN ACT relating to physical therapy; providing for licensure of physical therapists; amending K.S.A. 7-121b, 40-2,111, 60-513d, 60-2609, 65-1501, 65-1902, 65-2891, 65-2901, 65-2903, 65-2904, 65-2905, 65-2906, 65-2909, 65-2910, 65-2911, 65-2912, 65-2913, 65-2914, 65-2916, 65-2918, 65-2919, 65-4915, 65-4921, 65-5418 and 65-5912 and K.S.A. 2002 Supp. 17-2707, 21-3721 and 40-3401 and repealing the existing sections; also repealing K.S.A. 65-2902, 65-2907, 65-2908 and 65-2915.

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

Section 1. K.S.A. 65-2901 is hereby amended to read as follows: 65-2901. ~~(a)~~ As used in this act, the term *article 29 of chapter 65 of the Kansas Statutes Annotated and acts amendatory of the provisions thereof or supplemental thereto:*

(a) “Physical therapy” means ~~a health specialty concerned with the evaluation, treatment or instruction of human beings to assess, prevent and alleviate physical disability and pain. This includes the administration and evaluation of tests and measurements of bodily functions and structures in aid of treatment; the planning, administration, evaluation and modifications of treatment and instruction, including the use of physical measures, activities and devices for prevention and therapeutic purposes; and the provision of consultative, educational and advisory services for the purpose of reducing the incidence and severity of physical disability and pain. The use of roentgen rays and radium for diagnostic and therapeutic purposes, the use of electricity for surgical purposes, including cauterization, and the practice of medicine and surgery are not authorized or included under the term “physical therapy” as used in this act~~ *examining, evaluating and testing individuals with mechanical, anatomical, physiological and developmental impairments, functional limitations and disabilities or other health and movement-related conditions in order to determine a diagnosis solely for physical therapy, prognosis, plan of therapeutic intervention and to assess the ongoing effects of physical therapy intervention. Physical therapy also includes alleviating impairments, functional limitations and disabilities by designing, implementing and modifying therapeutic interventions that may include, but are not limited to, therapeutic exercise; functional training in community or work integration or reintegration; manual therapy; therapeutic massage; prescription, application and, as appropriate, fabrication of assistive, adaptive, orthotic, prosthetic, protective and supportive devices and equipment; airway clearance techniques; integumentary protection and repair techniques; debridement and wound care; physical agents or modalities; mechanical and electrotherapeutic modalities; patient-related instruction; reducing the risk of injury, impairments, functional limitations and disability, including the promotion and maintenance of fitness, health and quality of life in all age populations and engaging in administration, consultation, education and research. Physical therapy also includes the care and services provided by a physical therapist or a physical therapist assistant under the direction and supervision of a physical therapist that is licensed pursuant to this act. Physical therapy does not include the use of roentgen rays and radium for diagnostic and therapeutic purposes, the use of electricity for surgical purposes, including cauterization, the practice of any branch of the healing arts and the making of a medical diagnosis.*

(b) “Physical therapist” means ~~a person who practices physical therapy as defined in this act and delegates selective forms of treatment to supportive personnel under the supervision of such person is licensed to practice physical therapy pursuant to this act. Any person who successfully meets the requirements of K.S.A. 65-2906 and amendments thereto shall be known and designated as a physical therapist and may designate or describe oneself as a physical therapist, physiotherapist, registered licensed physical therapist, P.T., Ph. T., M.P.T., D.P.T. or R.P.T. L.P.T. Physical therapists may evaluate patients without physician referral but may initiate treatment only after consultation with and approval by a physician licensed to practice medicine and surgery, a licensed podiatrist, a licensed chiropractor or a licensed dentist in appropriately related cases or a therapeutic licensed optometrist pursuant to subsection (e) of K.S.A. 65-1501, and amendments thereto.~~

(c) “Physical therapist assistant” means ~~a person who is certified pursuant to this act and who works under the direction of a physical therapist, and who assists in the application of physical therapy, and whose activities require an understanding of physical therapy, but do not require profes-~~

sional or advanced training in the anatomical, biological and physical sciences involved in the practice of physical therapy *the physical therapist in selected components of physical therapy intervention*. Any person who successfully meets the requirements of K.S.A. 65-2906 and amendments thereto shall be known and designated as a physical therapist assistant, and may designate or describe oneself as a physical therapist assistant, certified physical therapist assistant, P.T.A., C.P.T.A. or P.T. Asst.

(d) “Board” means the state board of healing arts.

(e) “Council” means the physical therapy advisory council.

Sec. 2. K.S.A. 65-2903 is hereby amended to read as follows: 65-2903. There is hereby created a ~~state examining committee for~~ physical therapy *advisory council* to assist the ~~state board of healing arts~~ in carrying out the provisions of this law, ~~regarding the qualifications and examination of physical therapists and physical therapist assistants~~. The ~~examining committee council~~ shall consist of five members, citizens and residents of the state of Kansas, three of whom shall be physical therapists, one of whom shall be a physician licensed by the board to practice medicine and surgery and one of whom shall be a member of such board.

Sec. 3. K.S.A. 65-2904 is hereby amended to read as follows: 65-2904. The ~~state examining committee council~~ shall be appointed as follows: The ~~state board of healing arts~~ shall appoint one physician licensed to practice medicine and surgery and one member of the ~~state board of healing arts~~, and the governor shall appoint three physical therapists who are duly ~~registered~~ *licensed* physical therapists who have at least three years’ experience in physical therapy immediately preceding the appointment and are actively engaged, in this state, in physical therapy. The foregoing appointees shall constitute the ~~state examining committee for physical therapy council~~. Except as otherwise provided in this section, the members appointed in accordance with this section shall be appointed for terms of four years and shall serve until their successors are appointed and qualify. ~~Of the first three physical therapist members appointed by the governor on or after July 1, 1983, one shall be appointed for a term of two years, one shall be appointed for a term of three years and one shall be appointed for a term of four years, and these members shall serve until a successor is appointed and qualified. Thereafter, physical therapist members appointed by the governor shall be appointed for terms of four years and shall serve until their successors are appointed and qualified. Members serving on the examining committee for physical therapy on the effective date of this act shall be members of the council and shall serve on the council until the conclusion of the terms for which they were appointed to the examining committee for physical therapy and until their successors are appointed and qualified.~~ Each member of the ~~committee council~~ shall take an oath as required by law for state officers. No physical therapist member appointed by the governor ~~on or after July 1, 1983~~, shall be appointed for more than two successive four-year terms commencing on or after that date.

Sec. 4. K.S.A. 65-2905 is hereby amended to read as follows: 65-2905. (a) The ~~state examining committee for~~ physical therapy *advisory council* provided for in this act shall elect from their members a president and a vice-president, who shall serve for one year or until their successors are elected and qualified. The executive director of the ~~state board of healing arts~~ shall act as secretary of the ~~examining committee council~~.

(b) The ~~state examining committee council~~ shall serve in an advisory capacity to the ~~state board of healing arts~~ in matters pertaining to physical therapy. The ~~state board of healing arts~~ may adopt reasonable rules and regulations ~~relative to the qualification and examination of applicants~~ as may be found necessary for the performance of its duties. As to any matters coming under its jurisdiction, the ~~state examining committee council~~ while in session may take testimony and any member may administer oaths in the taking of such testimony.

(c) A simple majority of the ~~committee council~~ shall constitute a quorum for the transaction of business. The secretary shall keep a record of all procedures of the ~~committee council~~.

(d) ~~The examining committee shall meet at a city designated by the examining committee and the board, and under the direction of the state board of healing arts, there conduct the examination for the registration of physical therapists and certification of physical therapist assistants, at~~

~~least once each year, and may hold other meetings and examinations at such times and places as the examining committee and board may determine.~~

~~—(e) (d) The board may appoint and fix the compensation of such employees as may be necessary to assist the examining committee council, and the board shall have the power to employ such expert assistance as it may deem necessary to carry out the purposes of this act. Members of the state examining committee for physical therapy council attending meetings of such committee council, or attending a subcommittee meeting thereof authorized by such committee council, shall be paid compensation, subsistence allowances, mileage and other expenses as amounts provided in subsection (e) of K.S.A. 75-3223 and amendments thereto.~~

Sec. 5. K.S.A. 65-2906 is hereby amended to read as follows: 65-2906. (a) ~~It shall be the duty of~~ The state board of healing arts, with the advice and assistance of the state examining committee, ~~to council, shall pass upon the qualifications of all applicants for examination and registration licensure or certification, provide for and conduct all examinations, determine the applicants who successfully pass the examination, and duly register license or certify such persons and adopt rules and regulations for professional conduct of the registered or certified persons those applicants who meet the qualifications established by this act.~~

(b) An applicant applying for registration licensure as a physical therapist or for a certificate as a physical therapist assistant shall file a written application on forms provided by the state board of healing arts, showing to the satisfaction of the board that the applicant meets the following requirements:

- (1) The applicant is of legal age;
- (2) the applicant has successfully completed the academic requirements of an educational program in physical therapy approved by the board which is appropriate for the certification or registration licensure of the applicant *or, if the applicant attended a program not approved by the board, the applicant shall present an evaluation by an entity approved by the board showing that applicant's educational program met the criteria a school must satisfy to be approved by the board;*
- (3) the applicant has passed an examination required by the board which is appropriate for the certification or registration licensure of the applicant to test the applicant's knowledge of the basic and clinical sciences relating to physical therapy theory and practice; and
- (4) the applicant has paid to the board all applicable fees established under K.S.A. 65-2911 and amendments thereto.

(c) The board shall adopt rules and regulations establishing the criteria which a school shall satisfy in order to be approved by the board for purposes of subsection (b). The board may send a questionnaire developed by the board to any school for which the board does not have sufficient information to determine whether the school meets the requirements of the board for approval and rules and regulations adopted under this section. The questionnaire providing the necessary information shall be completed and returned to the board in order for the school to be considered for approval. The board may contract with investigative agencies, commissions or consultants to assist the board in obtaining information about schools. In entering such contracts the authority to approve schools shall remain solely with the board.

~~(d) All registrations or certificates issued prior to July 1, 1994, which are in effect on the effective date of this act shall be and continue in full force and effect and be eligible for renewal and reinstatement under K.S.A. 65-2910 and amendments thereto.~~

Sec. 6. K.S.A. 65-2909 is hereby amended to read as follows: 65-2909. (a) The board may issue a ~~certificate of registration license~~ in physical therapy without examination ~~therein~~ to an applicant who presents evidence satisfactory to the board of having passed the examination in physical therapy of the American registry of physical therapists, *approved by the board* or an examination before a ~~similar~~, lawfully authorized examining board in physical therapy of another state, District of Columbia, territory or foreign country, if the standards for registration licensure in physical therapy in such other state, district, territory or foreign country are determined by the board to be as high as those of this state. At the

time of making such application, the applicant shall pay to the board a fee as prescribed, no part of which shall be returned.

(b) The board may issue a certificate as a physical therapist assistant without examination therein to an applicant who presents evidence satisfactory to the board of having passed an examination as a physical therapist assistant ~~as approved by the state board of healing arts~~ or an examination before a ~~similar~~, lawfully authorized examining board in physical therapy of another state, District of Columbia, territory or foreign country, if the standards for certification in physical therapy in such other state, District of Columbia, territory or foreign country are determined by the board to be as high as those of this state. At the time of making such application, the applicant shall pay to the board a fee as prescribed, no part of which shall be returned.

(c) *The board may issue a temporary permit to an applicant for licensure as a physical therapist or an applicant for certification as a physical therapist assistant who applies for a temporary permit on a form provided by the board, who meets the requirements for licensure as a physical therapist or for certification as a physical therapist assistant or who meets all of the requirements for licensure or certification except examination and who pays to the board the temporary permit fee as required under K.S.A. 65-2911 and amendments thereto. Such temporary permit shall expire three months from the date of issue or on the date that the board approves the application for licensure or certification, whichever occurs first. No more than one such temporary permit shall be granted to any one person.*

Sec. 7. K.S.A. 65-2910 is hereby amended to read as follows: 65-2910. (a) The ~~registration license~~ of every ~~registered licensed~~ physical therapist and the certification of every certified physical therapist assistant shall expire on the date established by rules and regulations of the ~~state board of healing arts~~ which may provide renewal throughout the year on a continuing basis. In each case in which a ~~registration license~~ or certificate is renewed for a period of time of less than one year, the board may prorate the amount of the fee established under K.S.A. 65-2911 and amendments thereto. The request for renewal shall be on a form provided by the board and shall be accompanied by the renewal fee established under ~~to~~ K.S.A. 65-2911 and amendments thereto which shall be paid not later than the expiration date of the ~~registration license~~ or certificate.

(b) The ~~state board of healing arts~~ shall require every ~~registered licensed~~ physical therapist or certified physical therapist assistant as a condition of renewal to submit with the application for a renewal evidence of satisfactory completion of a program of continuing education required by the board. The board shall establish the requirements for each such program of continuing education by rules and regulations. In establishing such requirements the board shall consider any existing programs of continuing education currently being offered to ~~registered licensed~~ physical therapists or certified physical therapist assistants.

~~(c) The state board of healing arts prior to renewal of the registration of a physical therapist, shall require the registrant, if in the active practice of physical therapy within Kansas, to submit to the board evidence satisfactory to the board that the registrant is maintaining a policy of professional liability insurance as required by K.S.A. 40-3402 and amendments thereto and has paid the annual premium surcharge as required by K.S.A. 40-3404 and amendments thereto.~~

~~(d)~~ (c) At least 30 days before the expiration of the ~~registration license~~ of a physical therapist or the certificate of a physical therapist assistant, the ~~state board of healing arts~~ shall notify the ~~registrant licensee~~ or certificate holder of the expiration by mail addressed to the ~~registrant's licensee's~~ last mailing address as noted upon the office records. If the ~~registrant licensee~~ or certificate holder fails to pay the renewal fee by the date of expiration, the ~~registrant licensee~~ or certificate holder shall be given a second notice that the ~~registration license~~ or certificate has expired and the ~~registration license~~ or certificate may be renewed only if the renewal fee and the late renewal fee are received by the board within the thirty-day period following the date of expiration and that, if both fees are not received within the thirty-day period, the ~~registration license~~ or certificate shall be ~~considered to have lapsed~~ *canceled* for failure to renew

and shall be reissued only after the physical therapist or physical therapist assistant has been reinstated under subsection ~~(c)~~ (d).

~~(c)~~ (d) Any ~~registrant licensee~~ or certificate holder who allows the ~~registration license~~ or certificate to lapse ~~be canceled~~ by failing to renew may be reinstated upon recommendation of the ~~state board of healing arts~~ and, upon payment of the ~~renewal fee and the~~ reinstatement fee and upon submitting evidence of satisfactory completion of any applicable reeducation and continuing education requirements established by the board. The board shall adopt rules and regulations establishing appropriate reeducation and continuing education requirements for reinstatement of persons whose ~~registrations licenses~~ or certificates have ~~lapsed been canceled~~ for failure to renew.

Sec. 8. K.S.A. 65-2911 is hereby amended to read as follows: 65-2911. (a) The ~~state board of healing arts~~ may adopt such rules and regulations as necessary to carry out the purposes of this act. The executive director of the board shall keep a record of all proceedings under this act and a roster of all persons ~~registered licensed~~ or certified under the act. The roster shall show the name, address, date and number of the original ~~certificate of registration license~~ or certificate, and the renewal thereof.

(b) (1) *The board shall charge and collect in advance fees provided for in this act as fixed by the board by rules and regulations, subject to the following limitations:*

<i>Application based upon certificate of prior examination, not more than . . .</i>	\$80
<i>Application based on examination, not more than</i>	100
<i>Annual renewal fee, not more than</i>	70
<i>Late renewal fee, not more than</i>	75
<i>Reinstatement fee, not more than</i>	80
<i>Certified copy of license or certificate, not more than</i>	15
<i>Duplicate certificate</i>	15
<i>Temporary permit</i>	25

(2) *The board shall charge and collect in advance fees for any examination administered by the board under article 29 of chapter 65 of the Kansas Statutes Annotated and acts amendatory of the provisions thereof or supplemental thereto as fixed by the board by rules and regulations in an amount equal to the cost to the board of the examination. If the examination is not administered by the board, the board may require that fees paid for any examination under article 29 of chapter 65 of the Kansas Statutes Annotated and acts amendatory of the provisions thereof or supplemental thereto be paid directly to the examination service by the person taking the examination.*

(3) *The fees fixed by the board by rules and regulations under article 29 of chapter 65 of the Kansas Statutes Annotated and acts amendatory of the provisions thereof or supplemental thereto and in effect immediately prior to the effective date of this act shall continue in effect until different fees are fixed by the board by rules and regulations as provided under this section.*

~~(b)~~ (c) The ~~state board of healing arts~~ shall remit all moneys received by or for it from fees, charges or penalties to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury. Twenty percent of such amount shall be credited to the state general fund and the balance shall be credited to the healing arts fee fund. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the president of the board or by a person or persons designated by the president of the board.

Sec. 9. K.S.A. 65-2912 is hereby amended to read as follows: 65-2912. (a) The board may refuse to grant a ~~certificate of registration license~~ to any physical therapist or a certificate to any physical therapist assistant, or may suspend or revoke the ~~registration license~~ of any ~~registered licensed~~ physical therapist or certificate of any certified physical therapist assistant, *or may limit the license of any licensed physical therapist or certificate of any certified physical therapist assistant or may censure a licensed physical therapist or certified physical therapist assistant* for any of the following grounds:

(1) Addiction to or distribution of intoxicating liquors or drugs for other than lawful purposes;

(2) conviction of a felony if the board determines, after investigation, that the physical therapist or physical therapist assistant has not been sufficiently rehabilitated to warrant the public trust;

(3) obtaining or attempting to obtain ~~registration~~ licensure or certification by fraud or deception;

(4) finding by a court of competent jurisdiction that the physical therapist or physical therapist assistant is a disabled person and has not thereafter been restored to legal capacity;

(5) unprofessional conduct *as defined by rules and regulations adopted by the board*;

(6) the treatment or attempt to treat ailments or other health conditions of human beings other than by physical therapy and as authorized by this act;

(7) failure to refer patients to other health care providers if symptoms are present for which physical therapy treatment is inadvisable or if symptoms indicate conditions for which treatment is outside the scope of knowledge of the ~~registered~~ licensed physical therapist;

(8) initiating treatment without prior consultation and approval by a physician licensed to practice medicine and surgery, by a licensed podiatrist ~~or, by a licensed chiropractor~~, by a licensed dentist ~~or by a therapeutic licensed optometrist pursuant to subsection (e) of K.S.A. 65-1501, and amendments thereto~~; and

(9) knowingly submitting any misleading, deceptive, untrue or fraudulent misrepresentation on a claim form, bill or statement.

(b) All proceedings pursuant to ~~this section~~ article 29 of chapter 65 of the Kansas Statutes Annotated, and acts amendatory of the provisions thereof or supplemental thereto, shall be conducted in accordance with the provisions of the Kansas administrative procedure act and shall be reviewable in accordance with the act for judicial review and civil enforcement of agency actions.

Sec. 10. K.S.A. 65-2913 is hereby amended to read as follows: 65-2913. (a) ~~Any person who, in any manner, represents oneself as a physical therapist, or who uses in connection with such person's name the words or letters physical therapist, physiotherapist, registered physical therapist, It shall be unlawful for any person who is not licensed under this act as a physical therapist or whose license has been suspended or revoked in any manner to represent oneself as a physical therapist or to use in connection with such person's name the words physical therapist, physiotherapist or licensed physical therapist or use the abbreviations P.T., Ph. T., M.P.T., D.P.T. or R.P.T. L.P.T., or any other letters, words, abbreviations or insignia, indicating or implying that such person is a physical therapist, without a valid existing certificate of registration as a physical therapist issued to such person under the provisions of this act, shall be guilty of a class B nonperson misdemeanor. A violation of this subsection shall constitute a class B nonperson misdemeanor.~~

(b) Any person who, in any manner, represents oneself as a physical therapist assistant, or who uses in connection with such person's name the words or letters physical therapist assistant, certified physical therapist assistant, P.T.A., C.P.T.A. or P.T. Asst., or any other letters, words, abbreviations or insignia, indicating or implying that such person is a physical therapist assistant, without a valid existing certificate as a physical therapist assistant issued to such person pursuant to the provisions of this act, shall be guilty of a class B nonperson misdemeanor.

(c) ~~Nothing in this act shall prohibit any person not holding oneself out as a physical therapist or physical therapist assistant from carrying out as an independent practitioner, without prescription or supervision, the therapy or practice for which the person is qualified, and shall not prohibit the person from using corrective therapy. Nothing in this act shall prohibit any person who assists the physical therapist or physical therapist assistant from being designated as a physical therapy aide. Nothing in this act is intended to limit, preclude or otherwise interfere with the practices of other health care providers formally trained and practicing their profession. The provisions of article 29 of chapter 65 of the Kansas Statutes Annotated and acts amendatory thereof or supplemental thereto shall not apply to the following individuals so long as they do not hold themselves out in a manner prohibited under subsection (a) or (b) of this section:~~

(1) Persons rendering assistance in the case of an emergency;

- (2) *members of any church practicing their religious tenets;*
 - (3) *persons whose services are performed pursuant to the delegation of and under the supervision of a physical therapist who is licensed under this act;*
 - (4) *health care providers in the United States armed forces, public health services, federal facilities and coast guard or other military service when acting in the line of duty in this state;*
 - (5) *licensees under the healing arts act, and practicing their professions, when licensed and practicing in accordance with the provisions of law or persons performing services pursuant to the delegation of a licensee under subsection (g) of K.S.A. 65-2872 and amendments thereto;*
 - (6) *dentists practicing their professions, when licensed and practicing in accordance with the provisions of law;*
 - (7) *nurses practicing their professions, when licensed and practicing in accordance with the provisions of law or persons performing services pursuant to the delegation of a licensed nurse under subsection (m) of K.S.A. 65-1124 and amendments thereto;*
 - (8) *health care providers who have been formally trained and are practicing in accordance with their training or have received specific training in one or more functions included in this act pursuant to established educational protocols or both;*
 - (9) *students while in actual attendance in an accredited health care educational program and under the supervision of a qualified instructor;*
 - (10) *self-care by a patient or gratuitous care by a friend or family member;*
 - (11) *optometrists practicing their profession when licensed and practicing in accordance with the provisions of article 15 of chapter 65 of the Kansas Statutes Annotated and amendments thereto;*
 - (12) *podiatrists practicing their profession when licensed and practicing in accordance with the provisions of article 20 of chapter 65 of the Kansas Statutes Annotated and amendments thereto;*
 - (13) *occupational therapists practicing their profession when licensed and practicing in accordance with the occupational therapy practice act and occupational therapy assistants practicing their profession when licensed and practicing in accordance with the occupational therapy practice act;*
 - (14) *respiratory therapists practicing their profession when licensed and practicing in accordance with the respiratory therapy practice act;*
 - (15) *physician assistants practicing their profession when licensed and practicing in accordance with the physician assistant licensure act;*
 - (16) *persons practicing corrective therapy in accordance with their training in corrective therapy;*
 - (17) *athletic trainers practicing their profession when registered and practicing in accordance with the athletic trainers registration act;*
 - (18) *persons who massage for the purpose of relaxation, muscle conditioning or figure improvement, so long as no drugs are used and such persons do not hold themselves out to be physicians or healers;*
 - (19) *barbers practicing their profession when licensed and practicing in accordance with the provisions of article 18 of chapter 65 of the Kansas Statutes Annotated and amendments thereto;*
 - (20) *cosmetologists practicing their profession when licensed and practicing in accordance with the provisions of article 19 of chapter 65 of the Kansas Statutes Annotated and amendments thereto;*
 - (21) *attendants practicing their profession when certified and practicing in accordance with the provisions of article 61 of chapter 65 of the Kansas Statutes Annotated and amendments thereto;*
 - (22) *naturopathic doctors practicing their profession when registered and practicing in accordance with the naturopathic doctor registration act.*
- (d) *Any patient monitoring, assessment or other procedures designed to evaluate the effectiveness of prescribed physical therapy must be performed by or pursuant to the delegation of a licensed physical therapist or other health care provider.*
- (e) *Nothing in this act shall be construed to permit the practice of medicine and surgery. No statute granting authority to licensees of the state board of healing arts shall be construed to confer authority upon physical therapists to engage in any activity not conferred by this act.*

Sec. 11. K.S.A. 65-2914 is hereby amended to read as follows: 65-2914. (a) No person shall employ fraud or deception in applying for or securing a ~~certificate of registration~~ *license* as a physical therapist.

(b) A person ~~registered~~ *licensed* under this act as a physical therapist shall not treat ailments or other health conditions of human beings other than by physical therapy unless duly licensed or registered to provide such treatment under the laws of this state.

(c) A person certified under this act as a physical therapist assistant shall not treat ailments or other health conditions of human beings except under the direction of a physical therapist duly ~~registered~~ *licensed* under this act. The word “direction” as used in this subsection (c) shall mean that the physical therapist shall see all patients initially and evaluate them periodically except in those cases in a hospital setting when the physical therapist is not immediately available, the physical therapist assistant may initiate patient care after telephone contact with the physical therapist for documented instruction. The physical therapist must then evaluate the patient and establish a plan of treatment as soon as possible with a minimum weekly review.

(d) Any person violating the provisions of this section shall be guilty of a class B misdemeanor.

Sec. 12. K.S.A. 65-2916 is hereby amended to read as follows: 65-2916. (a) Any violation of the provisions of this act shall constitute a class B misdemeanor.

(b) *When it appears to the board that any person is violating any of the provisions of article 29 of chapter 65 of the Kansas Statutes Annotated and acts amendatory of the provisions thereof or supplemental thereto, the board may bring an action in the name of the state in a court of competent jurisdiction for an injunction against such violation without regard to whether proceedings have been or may be instituted before the board or whether criminal proceedings have been or may be instituted.*

(c) *The board, in addition to any other penalty prescribed under the provisions of article 29 of chapter 65 of the Kansas Statutes Annotated and acts amendatory of the provisions thereof or supplemental thereto, may assess a civil fine, after proper notice and an opportunity to be heard, against a licensee for a violation of the provisions of article 29 of chapter 65 of the Kansas Statutes Annotated and acts amendatory of the provisions thereof or supplemental thereto in an amount not to exceed \$5,000 for the first violation, \$10,000 for the second violation and \$15,000 for the third violation and for each subsequent violation. All fines assessed and collected under this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.*

Sec. 13. K.S.A. 65-2918 is hereby amended to read as follows: 65-2918. Physical therapists *and physical therapist assistants* practicing their profession, when ~~registered~~ *licensed or certified* and practicing under and in accordance with the provisions of article 29 of chapter 65 of the Kansas Statutes Annotated, and acts amendatory of the provisions thereof or supplemental thereto, shall not be construed to be practicing the healing arts or be subject to the healing arts act.

Sec. 14. K.S.A. 65-2919 is hereby amended to read as follows: 65-2919. Any person holding a valid ~~certificate registration~~ as a ~~physical therapy assistant~~ *physical therapist* immediately prior to the effective date of this act which has been issued by the ~~state board of healing arts~~ shall be deemed to be a ~~certified licensed~~ *physical therapist assistant* for the purposes of this act and article 29 of chapter 65 of the Kansas Statutes Annotated and acts amendatory of the provisions thereof ~~and or~~ supplemental thereto and shall be subject to the provisions of this act and the provisions of such article and chapter of the Kansas Statutes Annotated *and acts amendatory of the provisions thereof or supplemental thereto.*

Sec. 15. K.S.A. 7-121b is hereby amended to read as follows: 7-121b. (a) Subject to subsection (b) of K.S.A. 40-3411 and amendments thereto, whenever a civil action is commenced by filing a petition or whenever a pleading states a claim in a district court for damages for personal injuries or death arising out of the rendering of or the failure to render professional services by any health care provider, compensation for reasonable attorney fees to be paid by each litigant in the action shall be approved

by the judge after an evidentiary hearing and prior to final disposition of the case by the district court. Compensation for reasonable attorney fees for services performed in an appeal of a judgment in any such action to the court of appeals shall be approved after an evidentiary hearing by the chief judge or by the presiding judge of the panel hearing the case. Compensation for reasonable attorney fees for services performed in an appeal of a judgment in any such action to the supreme court shall be approved after an evidentiary hearing by the departmental justice for the department in which the appeal originated. In determining the reasonableness of such compensation, the judge or justice shall consider the following:

(1) The time and labor required, the novelty and difficulty of the questions involved and the skill requisite to perform the legal service properly.

(2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the attorney.

(3) The fee customarily charged in the locality for similar legal services.

(4) The amount involved and the results obtained.

(5) The time limitations imposed by the client or by the circumstances.

(6) The nature and length of the professional relationship with the client.

(7) The experience, reputation and ability of the attorney or attorneys performing the services.

(8) Whether the fee is fixed or contingent.

(b) As used in this section:

(1) “Health care provider” means a person licensed to practice any branch of the healing arts, a person who holds a temporary permit to practice any branch of the healing arts, a person engaged in a postgraduate training program approved by the state board of healing arts, a licensed medical care facility, a health maintenance organization, a licensed dentist, a licensed professional nurse, a licensed practical nurse, a licensed optometrist, a licensed podiatrist, a licensed pharmacist, a professional corporation organized pursuant to the professional corporation law of Kansas by persons who are authorized by such law to form such a corporation and who are health care providers as defined by this subsection, a ~~registered~~ *licensed* physical therapist or an officer, employee or agent thereof acting in the course and scope of such person’s employment or agency; and

(2) “professional services” means those services which require licensure, registration or certification by agencies of the state for the performance thereof.

Sec. 16. K.S.A. 2002 Supp. 17-2707 is hereby amended to read as follows: 17-2707. As used in this act, unless the context clearly indicates that a different meaning is intended:

(a) “Professional corporation” means a corporation organized under this act.

(b) “Professional service” means the type of personal service rendered by a person duly licensed by this state as a member of any of the following professions, each paragraph constituting one type:

- (1) A certified public accountant;
- (2) an architect;
- (3) an attorney-at-law;
- (4) a chiropractor;
- (5) a dentist;
- (6) an engineer;
- (7) an optometrist;
- (8) an osteopathic physician or surgeon;
- (9) a physician, surgeon or doctor of medicine;
- (10) a veterinarian;
- (11) a podiatrist;
- (12) a pharmacist;
- (13) a land surveyor;
- (14) a licensed psychologist;
- (15) a specialist in clinical social work;
- (16) a ~~registered~~ *licensed* physical therapist;

- (17) a landscape architect;
- (18) a registered professional nurse;
- (19) a real estate broker or salesperson;
- (20) a clinical professional counselor;
- (21) a geologist;
- (22) a clinical psychotherapist; and
- (23) a clinical marriage and family therapist.

(c) “Regulating board” means the court, board or state agency which is charged with the licensing and regulation of the practice of the profession which the professional corporation is organized to render.

(d) “Qualified person” means:

- (1) Any natural person licensed to practice the same type of profession which any professional corporation is authorized to practice;
- (2) the trustee of a trust which is a qualified trust under subsection (a) of section 401 of the federal internal revenue code, as in effect on January 1, 2001, or of a contribution plan which is a qualified employee stock ownership plan under subsection (a) of section 409A of the federal internal revenue code, as in effect on January 1, 2001; or
- (3) the trustee of a revocable living trust established by a natural person who is licensed to practice the type of profession which any professional corporation is authorized to practice, if the terms of such trust provide that such natural person is the principal beneficiary and sole trustee of such trust and such trust does not continue to hold title to professional corporation stock following such natural person’s death for more than a reasonable period of time necessary to dispose of such stock.

Sec. 17. K.S.A. 2002 Supp. 21-3721 is hereby amended to read as follows: 21-3721. (a) Criminal trespass is:

(1) Entering or remaining upon or in any land, nonnavigable body of water, structure, vehicle, aircraft or watercraft other than railroad property as defined in K.S.A. 2002 Supp. 21-3761 and amendments thereto by a person who knows such person is not authorized or privileged to do so, and:

(A) Such person enters or remains therein in defiance of an order not to enter or to leave such premises or property personally communicated to such person by the owner thereof or other authorized person; or

(B) such premises or property are posted in a manner reasonably likely to come to the attention of intruders, or are locked or fenced or otherwise enclosed, or shut or secured against passage or entry; or

(C) such person enters or remains therein in defiance of a restraining order issued pursuant to K.S.A. 2002 Supp. 60-31a05, K.S.A. 2002 Supp. 60-31a06, K.S.A. 60-1607, 60-3105, 60-3106 or 60-3107 or K.S.A. 38-1542, 38-1543 or 38-1563, and amendments thereto, and the restraining order has been personally served upon the person so restrained; or

(2) entering or remaining upon or in any public or private land or structure in a manner that interferes with access to or from any health care facility by a person who knows such person is not authorized or privileged to do so and such person enters or remains thereon or therein in defiance of an order not to enter or to leave such land or structure personally communicated to such person by the owner of the health care facility or other authorized person.

(b) As used in this section:

(1) “Health care facility” means any licensed medical care facility, certificated health maintenance organization, licensed mental health center, or mental health clinic, licensed psychiatric hospital or other facility or office where services of a health care provider are provided directly to patients.

(2) “Health care provider” means any person: (A) Licensed to practice a branch of the healing arts; (B) licensed to practice psychology; (C) licensed to practice professional or practical nursing; (D) licensed to practice dentistry; (E) licensed to practice optometry; (F) licensed to practice pharmacy; (G) ~~registered~~ *licensed* to practice podiatry; (H) licensed as a social worker; or (I) ~~registered~~ *licensed* to practice physical therapy.

(c) (1) Criminal trespass is a class B nonperson misdemeanor.

(2) Upon a conviction of a violation of subsection (a)(1)(C), a person shall be sentenced to not less than 48 consecutive hours of imprisonment

which must be served either before or as a condition of any grant of probation or suspension, reduction of sentence or parole.

Sec. 18. K.S.A. 40-2,111 is hereby amended to read as follows: 40-2,111. As used in K.S.A. 40-2,111 through 40-2,113, and amendments thereto: (a) “Adverse underwriting decision” means: Any of the following actions with respect to insurance transactions involving insurance coverage which is individually underwritten:

- (1) A declination of insurance coverage;
- (2) a termination of insurance coverage;
- (3) an offer to insure at higher than standard rates, with respect to life, health or disability insurance coverage; or
- (4) the charging of a higher rate on the basis of information which differs from that which the applicant or policyholder furnished, with respect to property or casualty insurance coverage.

(b) “Declination of insurance coverage” means a denial, in whole or in part, by an insurance company or agent of requested insurance coverage.

(c) “Health care institution” means any medical care facility, adult care home, drug abuse and alcoholic treatment facility, home-health agency certified for federal reimbursement, mental health center or mental health clinic licensed by the secretary of social and rehabilitation services, kidney disease treatment center, county, city-county or multicounty health departments and health-maintenance organization.

(d) “Health care provider” means any person licensed to practice any branch of the healing arts, licensed dentist, licensed professional nurse, licensed practical nurse, advanced registered nurse practitioner, licensed optometrist, ~~registered~~ licensed physical therapist, licensed social worker, licensed physician assistant, licensed podiatrist or licensed psychologist.

(e) “Institutional source” means any natural person, corporation, association, partnership or governmental or other legal entity that provides information about an individual to an agent or insurance company, other than:

- (1) An agent;
- (2) the individual who is the subject of the information; or
- (3) a natural person acting in a personal capacity rather than a business or professional capacity.

(f) “Insurance transaction” means any transaction involving insurance, but not including group insurance coverage, primarily for personal, family or household needs rather than business or professional needs.

(g) “Medical-record information” means personal information which:

- (1) Relates to an individual’s physical or mental condition, medical history or medical treatment; and

- (2) is obtained from a health care provider or health care institution, from the individual, or from the individual’s spouse, parent or legal guardian.

(h) “Termination of insurance coverage” or “termination of an insurance policy” means either a cancellation, nonrenewal or lapse of an insurance policy, in whole or in part, for any reason other than:

- (1) The failure to pay a premium as required by the policy; or
- (2) at the request or direction of the insured.

Sec. 19. K.S.A. 2002 Supp. 40-3401 is hereby amended to read as follows: 40-3401. As used in this act the following terms shall have the meanings respectively ascribed to them herein.

(a) “Applicant” means any health care provider.

(b) “Basic coverage” means a policy of professional liability insurance required to be maintained by each health care provider pursuant to the provisions of subsection (a) or (b) of K.S.A. 40-3402 and amendments thereto.

(c) “Commissioner” means the commissioner of insurance.

(d) “Fiscal year” means the year commencing on the effective date of this act and each year, commencing on the first day of that month, thereafter.

(e) “Fund” means the health care stabilization fund established pursuant to subsection (a) of K.S.A. 40-3403 and amendments thereto.

(f) “Health care provider” means a person licensed to practice any branch of the healing arts by the state board of healing arts with the exception of physician assistants, a person who holds a temporary permit

to practice any branch of the healing arts issued by the state board of healing arts, a person engaged in a postgraduate training program approved by the state board of healing arts, a medical care facility licensed by the department of health and environment, a health maintenance organization issued a certificate of authority by the commissioner of insurance, a podiatrist licensed by the state board of healing arts, an optometrist licensed by the board of examiners in optometry, a pharmacist licensed by the state board of pharmacy, a licensed professional nurse who is authorized to practice as a registered nurse anesthetist, a licensed professional nurse who has been granted a temporary authorization to practice nurse anesthesia under K.S.A. 65-1153 and amendments thereto, a professional corporation organized pursuant to the professional corporation law of Kansas by persons who are authorized by such law to form such a corporation and who are health care providers as defined by this subsection, a Kansas limited liability company organized for the purpose of rendering professional services by its members who are health care providers as defined by this subsection and who are legally authorized to render the professional services for which the limited liability company is organized, a partnership of persons who are health care providers under this subsection, a Kansas not-for-profit corporation organized for the purpose of rendering professional services by persons who are health care providers as defined by this subsection, a nonprofit corporation organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the university of Kansas school of medicine, a dentist certified by the state board of healing arts to administer anesthetics under K.S.A. 65-2899 and amendments thereto, ~~a physical therapist registered by the state board of healing arts,~~ a psychiatric hospital licensed under K.S.A. 75-3307b and amendments thereto, or a mental health center or mental health clinic licensed by the secretary of social and rehabilitation services, except that health care provider does not include (1) any state institution for the mentally retarded, (2) any state psychiatric hospital, (3) any person holding an exempt license issued by the state board of healing arts or (4) any person holding a visiting clinical professor license from the state board of healing arts.

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

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

(i) “Plan” means the operating and administrative rules and procedures developed by insurers and rating organizations or the commissioner to make professional liability insurance available to health care providers.

(j) “Professional liability insurance” means insurance providing coverage for legal liability arising out of the performance of professional services rendered or which should have been rendered by a health care provider.

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

(l) “Self-insurer” means a health care provider who qualifies as a self-insurer pursuant to K.S.A. 40-3414 and amendments thereto.

(m) “Medical care facility” means the same when used in the health care provider insurance availability act as the meaning ascribed to that term in K.S.A. 65-425 and amendments thereto, except that as used in the health care provider insurance availability act such term, as it relates to insurance coverage under the health care provider insurance availability act, also includes any director, trustee, officer or administrator of a medical care facility.

(n) “Mental health center” means a mental health center licensed by the secretary of social and rehabilitation services under K.S.A. 75-3307b and amendments thereto, except that as used in the health care provider insurance availability act such term, as it relates to insurance coverage under the health care provider insurance availability act, also includes any director, trustee, officer or administrator of a mental health center.

(o) “Mental health clinic” means a mental health clinic licensed by the secretary of social and rehabilitation services under K.S.A. 75-3307b and amendments thereto, except that as used in the health care provider insurance availability act such term, as it relates to insurance coverage under the health care provider insurance availability act, also includes any director, trustee, officer or administrator of a mental health clinic.

(p) “State institution for the mentally retarded” means Winfield state hospital and training center, Parsons state hospital and training center and the Kansas neurological institute.

(q) “State psychiatric hospital” means Larned state hospital, Osawatimie state hospital and Rainbow mental health facility.

(r) “Person engaged in residency training” means:

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

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

(s) “Full-time physician faculty employed by the university of Kansas medical center” means a person licensed to practice medicine and surgery who holds a full-time appointment at the university of Kansas medical center when such person is providing health care.

(t) “Sexual act” or “sexual activity” means that sexual conduct which constitutes a criminal or tortious act under the laws of the state of Kansas.

Sec. 20. K.S.A. 60-513d is hereby amended to read as follows: 60-513d. As used in K.S.A. 60-513 and 60-513b, and amendments to such statutes, the term “health care provider” means a person licensed to practice any branch of the healing arts, a person who holds a temporary permit to practice any branch of the healing arts, a person engaged in a postgraduate training program approved by the state board of healing arts, a licensed medical care facility, a health maintenance organization, a licensed dentist, a licensed professional nurse, a licensed practical nurse, a licensed optometrist, a licensed podiatrist, a professional corporation organized pursuant to the professional corporation law of Kansas by persons who are authorized by such law to form such a corporation and who are health care providers as defined by this section, a licensed pharmacist or a ~~registered~~ licensed physical therapist.

Sec. 21. K.S.A. 60-2609 is hereby amended to read as follows: 60-2609. (a) Whenever judgment is entered on a claim in any action for recovery of damages for personal injury or death arising out of the rendering of or the failure to render professional services by any health care provider, the court may include in such judgment a requirement that the damages awarded be paid in whole or in part by installment or periodic payments, and any installment or periodic payment upon becoming due and payable under the terms of any such judgment shall constitute a

separate judgment upon which execution may issue. Any judgment ordering any such payments shall specify the amount of each payment, the interval between payments and the number of payments to be paid under the judgment. For good cause shown, the court may modify such judgment with respect to the amount of such payments and the number of payments to be made or the interval between payments, but the total amount of damages awarded by such judgment shall not be subject to modification in any event.

(b) As used in this section, “health care provider” means a person licensed to practice any branch of the healing arts, a person who holds a temporary permit to practice any branch of the healing arts or a person engaged in a postgraduate training program approved by the state board of healing arts, a licensed medical care facility, a health maintenance organization, a licensed dentist, a licensed professional nurse, a licensed practical nurse, a licensed optometrist, a licensed podiatrist, a licensed pharmacist, a professional corporation organized pursuant to the professional corporation law of Kansas by persons who are authorized by such law to form such a corporation and who are health care providers as defined by this subsection, a ~~registered~~ *licensed* physical therapist or an officer, employee or agent thereof acting in the course and scope of employment or agency.

Sec. 22. K.S.A. 65-1501 is hereby amended to read as follows: 65-1501. (a) The practice of optometry means:

(1) The examination of the human eye and its adnexae and the employment of objective or subjective means or methods (including the administering, prescribing or dispensing, of topical pharmaceutical drugs) for the purpose of diagnosing the refractive, muscular, or pathological condition thereof;

(2) the prescribing or adapting of lenses (including any ophthalmic lenses which are classified as drugs by any law of the United States or of this state), prisms, low vision rehabilitation services, orthoptic exercises and visual training therapy for the relief of any insufficiencies or abnormal conditions of the human eye and its adnexae; and

(3) except as otherwise limited by this section, the prescribing, administering or dispensing of topical pharmaceutical drugs and oral drugs for the examination, diagnosis and treatment of any insufficiencies or abnormal conditions of the human eye and its adnexae.

(b) The practice of optometry shall not include: (1) The management and treatment of glaucoma, except as provided in subsection (d); (2) the performance of surgery, including the use of lasers for surgical purposes, except that therapeutic licensees may remove superficial foreign bodies from the cornea and the conjunctiva; (3) the use of topical pharmaceutical drugs by a person licensed to practice optometry unless such person successfully meets the requirements of a diagnostic licensee or a therapeutic licensee; and (4) the prescribing, administering and dispensing of oral drugs for ocular conditions by a person licensed to practice optometry unless such person successfully meets the requirements of a therapeutic licensee, except that such therapeutic licensee may prescribe or administer oral steroids or oral antiglaucoma drugs for ocular conditions following consultation with an ophthalmologist, which consultation shall be noted in writing in the patient’s file. No optometrist may prescribe or administer oral drugs to persons less than six years of age.

(c) A therapeutic licensee certified to treat adult open-angle glaucoma as provided herein shall be held to a standard of care in the use of such agents in diagnosis and treatment commensurate to that of a person licensed to practice medicine and surgery, who exercises that degree of skill and proficiency commonly exercised by an ordinary, skillful, careful and prudent person licensed to practice medicine and surgery.

(d) An optometrist may prescribe, administer and dispense topical pharmaceutical drugs and oral drugs for the treatment of adult open-angle glaucoma only following glaucoma licensure as provided in subsection (l) of K.S.A. 65-1501a and amendments thereto. After the initial diagnosis of adult open-angle glaucoma, by an optometrist during the co-management period described in subsection (s) of K.S.A. 65-1501a and amendments thereto, the patient shall be notified that the diagnosis must be confirmed by an ophthalmologist and that any subsequent treatment

requires a written co-management plan with an ophthalmologist of the patient's choice.

(e) Under the direction and supervision of a therapeutic licensee, a licensed professional nurse, licensed practical nurse, ~~registered licensed~~ physical therapist and licensed occupational therapist may assist in the provision of low vision rehabilitation services in addition to such other services which such licensed professional nurse, licensed practical nurse, ~~registered licensed~~ physical therapist and licensed occupational therapist is authorized by law to provide under subsection (d) of K.S.A. 65-1113, subsection (h) of K.S.A. 65-1124, subsection (b) of K.S.A. 65-2901 and subsection (b) of K.S.A. 65-5402, and amendments thereto.

Sec. 23. K.S.A. 65-1902 is hereby amended to read as follows: 65-1902. (a) Except as provided in subsection (b), no person shall:

(1) Engage in practice of cosmetology, esthetics, nail technology or electrology unless the person holds a valid license, issued by the board, to engage in that practice;

(2) conduct a school for teaching cosmetology unless the person holds a valid license, issued by the board, to conduct the school;

(3) teach cosmetology in a licensed school unless the person holds a valid cosmetology instructor's license issued by the board;

(4) conduct a school for teaching nail technology unless the person holds a valid license, issued by the board, to conduct the school;

(5) teach nail technology in a licensed school unless the person holds a valid cosmetology or manicuring instructor's license issued by the board;

(6) conduct a school for teaching electrology unless the person holds a valid license, issued by the board, to conduct the school;

(7) teach electrology in a licensed school or clinic unless the person holds a valid electrology instructor's license issued by the board;

(8) conduct a school for teaching esthetics unless the person holds a valid license, issued by the board, to conduct the school;

(9) teach esthetics in a licensed school unless the person holds a valid cosmetology or esthetics instructor's license issued by the board;

(10) own or operate a school, salon or clinic where cosmetology, esthetics, nail technology or electrology is taught or practiced unless the person holds a valid school, salon or clinic license issued by the board; or

(11) teach or practice cosmetology, esthetics, nail technology or electrology in a school, salon or clinic unless the owner or operator of the school, salon or clinic holds a valid school, salon or clinic license issued by the board.

(b) The provisions of this act shall not apply to:

(1) Any person licensed as a barber or apprentice barber;

(2) any person licensed to practice medicine and surgery, chiropractic, optometry, nursing or dentistry, while engaged in that practice;

(3) any person who is a ~~registered licensed~~ physical therapist or certified physical therapist assistant while engaged in that practice; or

(4) any teacher while engaged in instructing elementary or secondary school students in the proper care of their own persons.

(c) A person holding a license as a cosmetology technician on the day immediately preceding the effective date of this act shall continue to be a licensed cosmetology technician and perform the functions of a cosmetology technician, as such term was defined immediately prior to the effective date of this act, and may renew such license subject to the payment of fees and other conditions and limitations on the renewal of licenses under article 19 of chapter 65 of the Kansas Statutes Annotated and acts amendatory of the provisions thereof.

(d) If the board determines that an individual has violated subsection (a), in addition to any other penalties imposed by law, the board, in accordance with the Kansas administrative procedure act, may issue a cease and desist order against such individual or may assess such individual a fine of not to exceed \$1,500, or may issue such order and assess such fine. In determining the amount of fine to be assessed, the board may consider the following factors: (1) Willfulness of the violation, (2) repetitions of the violation and (3) risk of harm to the public caused by the violation.

(e) A violation of subsection (a) of this section is a class C misdemeanor.

Sec. 24. K.S.A. 65-2891 is hereby amended to read as follows: 65-2891. (a) Any health care provider who in good faith renders emergency

care or assistance at the scene of an emergency or accident including treatment of a minor without first obtaining the consent of the parent or guardian of such minor shall not be liable for any civil damages for acts or omissions other than damages occasioned by gross negligence or by willful or wanton acts or omissions by such person in rendering such emergency care.

(b) Any health care provider may render in good faith emergency care or assistance, without compensation, to any minor requiring such care or assistance as a result of having engaged in competitive sports, without first obtaining the consent of the parent or guardian of such minor. Such health care provider shall not be liable for any civil damages other than damages occasioned by gross negligence or by willful or wanton acts or omissions by such person in rendering such emergency care.

(c) Any health care provider may in good faith render emergency care or assistance during an emergency which occurs within a hospital or elsewhere, with or without compensation, until such time as the physician employed by the patient or by the patient's family or by guardian assumes responsibility for such patient's professional care. The health care provider rendering such emergency care shall not be held liable for any civil damages other than damages occasioned by negligence.

(d) Any provision herein contained notwithstanding, the ordinary standards of care and rules of negligence shall apply in those cases wherein emergency care and assistance is rendered in any physician's or dentist's office, clinic, emergency room or hospital with or without compensation.

(e) As used in this section the term "health care provider" means any person licensed to practice any branch of the healing arts, licensed dentist, licensed optometrist, licensed professional nurse, licensed practical nurse, licensed podiatrist, licensed pharmacist, ~~registered~~ *licensed* physical therapist, and any ~~physician's~~ *physician* assistant who has successfully completed an American medical association approved training program and has successfully completed the national board examination for physicians' assistants of the American board of medical examiners, any registered athletic trainer, any licensed occupational therapist, any licensed respiratory therapist, any person who holds a valid attendant's certificate under K.S.A. 65-6129, and amendments thereto, any person who holds a valid certificate for the successful completion of a course in first aid offered or approved by the American red cross, by the American heart association, by the mining enforcement and safety administration of the bureau of mines of the department of interior, by the national safety council or by any instructor-coordinator, as defined in K.S.A. 65-6112, and amendments thereto, and any person engaged in a postgraduate training program approved by the state board of healing arts.

Sec. 25. K.S.A. 65-4915 is hereby amended to read as follows: 65-4915. (a) As used in this section:

(1) "Health care provider" means: (A) Those persons and entities defined as a health care provider under K.S.A. 40-3401 and amendments thereto; and (B) a dentist licensed by the Kansas dental board, a dental hygienist licensed by the Kansas dental board, a professional nurse licensed by the board of nursing, a practical nurse licensed by the board of nursing, a mental health technician licensed by the board of nursing, *a physical therapist licensed by the state board of healing arts*, a physical therapist assistant certified by the state board of healing arts, an occupational therapist licensed by the state board of healing arts, an occupational therapy assistant licensed by the state board of healing arts, a respiratory therapist licensed by the state board of healing arts, a physician assistant licensed by the state board of healing arts and attendants and ambulance services certified by the emergency medical services board.

(2) "Health care provider group" means:

(A) A state or local association of health care providers or one or more committees thereof;

(B) the board of governors created under K.S.A. 40-3403 and amendments thereto;

(C) an organization of health care providers formed pursuant to state or federal law and authorized to evaluate medical and health care services;

(D) a review committee operating pursuant to K.S.A. 65-2840c and amendments thereto;

(E) an organized medical staff of a licensed medical care facility as defined by K.S.A. 65-425 and amendments thereto, an organized medical staff of a private psychiatric hospital licensed under K.S.A. 75-3307b and amendments thereto or an organized medical staff of a state psychiatric hospital or state institution for the mentally retarded, as follows: Larned state hospital, Osawatomie state hospital, Rainbow mental health facility, Kansas neurological institute and Parsons state hospital and training center;

(F) a health care provider;

(G) a professional society of health care providers or one or more committees thereof;

(H) a Kansas corporation whose stockholders or members are health care providers or an association of health care providers, which corporation evaluates medical and health care services; or

(I) an insurance company, health maintenance organization or administrator of a health benefits plan which engages in any of the functions defined as peer review under this section.

(3) “Peer review” means any of the following functions:

(A) Evaluate and improve the quality of health care services rendered by health care providers;

(B) determine that health services rendered were professionally indicated or were performed in compliance with the applicable standard of care;

(C) determine that the cost of health care rendered was considered reasonable by the providers of professional health services in this area;

(D) evaluate the qualifications, competence and performance of the providers of health care or to act upon matters relating to the discipline of any individual provider of health care;

(E) reduce morbidity or mortality;

(F) establish and enforce guidelines designed to keep within reasonable bounds the cost of health care;

(G) conduct of research;

(H) determine if a hospital’s facilities are being properly utilized;

(I) supervise, discipline, admit, determine privileges or control members of a hospital’s medical staff;

(J) review the professional qualifications or activities of health care providers;

(K) evaluate the quantity, quality and timeliness of health care services rendered to patients in the facility;

(L) evaluate, review or improve methods, procedures or treatments being utilized by the medical care facility or by health care providers in a facility rendering health care.

(4) “Peer review officer or committee” means:

(A) An individual employed, designated or appointed by, or a committee of or employed, designated or appointed by, a health care provider group and authorized to perform peer review; or

(B) a health care provider monitoring the delivery of health care at correctional institutions under the jurisdiction of the secretary of corrections.

(b) Except as provided by K.S.A. 60-437 and amendments thereto and by subsections (c) and (d), the reports, statements, memoranda, proceedings, findings and other records submitted to or generated by peer review committees or officers shall be privileged and shall not be subject to discovery, subpoena or other means of legal compulsion for their release to any person or entity or be admissible in evidence in any judicial or administrative proceeding. Information contained in such records shall not be discoverable or admissible at trial in the form of testimony by an individual who participated in the peer review process. The peer review officer or committee creating or initially receiving the record is the holder of the privilege established by this section. This privilege may be claimed by the legal entity creating the peer review committee or officer, or by the commissioner of insurance for any records or proceedings of the board of governors.

(c) Subsection (b) shall not apply to proceedings in which a health care provider contests the revocation, denial, restriction or termination of staff privileges or the license, registration, certification or other authorization to practice of the health care provider. A licensing agency in conducting a disciplinary proceeding in which admission of any peer re-

view committee report, record or testimony is proposed shall hold the hearing in closed session when any such report, record or testimony is disclosed. Unless otherwise provided by law, a licensing agency conducting a disciplinary proceeding may close only that portion of the hearing in which disclosure of a report or record privileged under this section is proposed. In closing a portion of a hearing as provided by this section, the presiding officer may exclude any person from the hearing location except the licensee, the licensee's attorney, the agency's attorney, the witness, the court reporter and appropriate staff support for either counsel. The licensing agency shall make the portions of the agency record in which such report or record is disclosed subject to a protective order prohibiting further disclosure of such report or record. Such report or record shall not be subject to discovery, subpoena or other means of legal compulsion for their release to any person or entity. No person in attendance at a closed portion of a disciplinary proceeding shall at a subsequent civil, criminal or administrative hearing, be required to testify regarding the existence or content of a report or record privileged under this section which was disclosed in a closed portion of a hearing, nor shall such testimony be admitted into evidence in any subsequent civil, criminal or administrative hearing. A licensing agency conducting a disciplinary proceeding may review peer review committee records, testimony or reports but must prove its findings with independently obtained testimony or records which shall be presented as part of the disciplinary proceeding in open meeting of the licensing agency. Offering such testimony or records in an open public hearing shall not be deemed a waiver of the peer review privilege relating to any peer review committee testimony, records or report.

(d) Nothing in this section shall limit the authority, which may otherwise be provided by law, of the commissioner of insurance, the state board of healing arts or other health care provider licensing or disciplinary boards of this state to require a peer review committee or officer to report to it any disciplinary action or recommendation of such committee or officer; to transfer to it records of such committee's or officer's proceedings or actions to restrict or revoke the license, registration, certification or other authorization to practice of a health care provider; or to terminate the liability of the fund for all claims against a specific health care provider for damages for death or personal injury pursuant to subsection (i) of K.S.A. 40-3403 and amendments thereto. Reports and records so furnished shall not be subject to discovery, subpoena or other means of legal compulsion for their release to any person or entity and shall not be admissible in evidence in any judicial or administrative proceeding other than a disciplinary proceeding by the state board of healing arts or other health care provider licensing or disciplinary boards of this state.

(e) A peer review committee or officer may report to and discuss its activities, information and findings to other peer review committees or officers or to a board of directors or an administrative officer of a health care provider without waiver of the privilege provided by subsection (b) and the records of all such committees or officers relating to such report shall be privileged as provided by subsection (b).

(f) Nothing in this section shall be construed to prevent an insured from obtaining information pertaining to payment of benefits under a contract with an insurance company, a health maintenance organization or an administrator of a health benefits plan.

Sec. 26. K.S.A. 65-4921 is hereby amended to read as follows: 65-4921. As used in K.S.A. 65-4921 through 65-4930, and amendments thereto:

(a) "Appropriate licensing agency" means the agency that issued the license to the individual or health care provider who is the subject of a report under this act.

(b) "Department" means the department of health and environment.

(c) "Health care provider" means: (1) Those persons and entities defined as a health care provider under K.S.A. 40-3401 and amendments thereto; and (2) a dentist licensed by the Kansas dental board, a dental hygienist licensed by the Kansas dental board, a professional nurse licensed by the board of nursing, a practical nurse licensed by the board of nursing, a mental health technician licensed by the board of nursing, *a physical therapist licensed by the state board of healing arts*, a physical

therapist assistant certified by the state board of healing arts, an occupational therapist licensed by the state board of healing arts, an occupational therapy assistant licensed by the state board of healing arts and a respiratory therapist licensed by the state board of healing arts.

(d) “License,” “licensee” and “licensing” include comparable terms which relate to regulation similar to licensure, such as registration.

(e) “Medical care facility” means: (1) A medical care facility licensed under K.S.A. 65-425 et seq. and amendments thereto; (2) a private psychiatric hospital licensed under K.S.A. 75-3307b and amendments thereto; and (3) state psychiatric hospitals and state institutions for the mentally retarded, as follows: Larned state hospital, Osawatimie state hospital, Rainbow mental health facility, Kansas neurological institute and Parsons state hospital and training center.

(f) “Reportable incident” means an act by a health care provider which: (1) Is or may be below the applicable standard of care and has a reasonable probability of causing injury to a patient; or (2) may be grounds for disciplinary action by the appropriate licensing agency.

(g) “Risk manager” means the individual designated by a medical care facility to administer its internal risk management program and to receive reports of reportable incidents within the facility.

(h) “Secretary” means the secretary of health and environment.

Sec. 27. K.S.A. 65-5418 is hereby amended to read as follows: 65-5418. (a) Nothing in the occupational therapy practice act is intended to limit, preclude or otherwise interfere with the practices of other health care providers formally trained and licensed, registered, credentialed or certified by appropriate agencies of the state of Kansas.

(b) The practice of occupational therapy shall not be construed to include the following:

- (1) Persons rendering assistance in the case of an emergency;
- (2) members of any church practicing their religious tenets;
- (3) persons whose services are performed pursuant to the delegation of and under the supervision of an occupational therapist who is licensed under this act;
- (4) any person employed as an occupational therapist or occupational therapy assistant by the government of the United States or any agency thereof, if such person practices occupational therapy solely under the direction or control of the organization by which such person is employed;
- (5) licensees under the healing arts act when licensed and practicing in accordance with the provisions of law or persons performing services pursuant to a delegation authorized under subsection (g) of K.S.A. 65-2872 and amendments thereto;
- (6) dentists practicing their professions, when licensed and practicing in accordance with the provisions of law;
- (7) nurses practicing their professions, when licensed and practicing in accordance with the provisions of law or persons performing services pursuant to the delegation of a licensed nurse under subsection (m) of K.S.A. 65-1124 and amendments thereto;
- (8) health care providers who have been formally trained and are practicing in accordance with the training or have received specific training in one or more functions included in the occupational therapy practice act pursuant to established educational protocols, or both;
- (9) any person pursuing a supervised course of study leading to a degree or certificate in occupational therapy at an accredited or approved educational program, if the person is designated by the title which clearly indicates such person’s status as a student or trainee;
- (10) any person fulfilling the supervised fieldwork experience requirements as part of the experience necessary to meet the requirement of the occupational therapy practice act;
- (11) self-care by a patient or gratuitous care by a friend or family member who does not represent or hold oneself out to the public to be an occupational therapist or an occupational therapy assistant;
- (12) optometrists practicing their profession when licensed and practicing in accordance with the provisions of article 15 of chapter 65 of the Kansas Statutes Annotated and amendments thereto;
- (13) podiatrists practicing their profession when licensed and practicing in accordance with the provisions of article 15 of chapter 65 of the Kansas Statutes Annotated and amendments thereto;

(14) physical therapists practicing their profession when ~~registered~~ *licensed* and practicing in accordance with K.S.A. 65-2901 *et seq.* and amendments thereto;

(15) physician assistants practicing their profession when licensed and practicing in accordance with the physician assistant licensure act;

(16) athletic trainers practicing their profession when registered and practicing in accordance with the athletic trainers registration act;

(17) manufacturers of prosthetic devices;

(18) any person performing occupational therapy services, if these services are performed for no more than 45 days in a calendar year in association with an occupational therapist licensed under the occupational therapy practice act so long as (A) the person is registered or licensed under the laws of another state which has licensure requirements at least as stringent as the licensure requirements of this act, or (B) the person meets the requirements for certification as an occupational therapist registered (OTR) or a certified occupational therapy assistant (COTA) established by the national board for certification in occupational therapy (NBCOT).

(c) Any patient monitoring, assessment or other procedures designed to evaluate the effectiveness of prescribed occupational therapy must be performed by or pursuant to the delegation of a licensed occupational therapist or other health care provider.

(d) Education related therapy services provided by an occupational therapist to school systems or consultation regarding prevention, ergonomics and wellness within the occupational therapy scope of practice shall not require a referral, supervision, order or direction of a physician, a licensed podiatrist, a licensed dentist or a licensed optometrist. However, when in the course of providing such services an occupational therapist reasonably believes that an individual may have an underlying injury, illness, disease, disorder or impairment, the occupational therapist shall refer the individual to a physician, a licensed podiatrist, a licensed dentist or a licensed optometrist, as appropriate.

(e) Nothing in the occupational therapy practice act shall be construed to permit the practice of medicine and surgery. No statute granting authority to licensees of the state board of healing arts shall be construed to confer authority upon occupational therapists to engage in any activity not conferred by the occupational therapy practice act.

(f) This section shall be part of and supplemental to the occupational therapy practice act.

(g) The provisions of this section shall take effect on and after April 1, 2003.

Sec. 28. K.S.A. 65-5912 is hereby amended to read as follows: 65-5912. (a) Nothing in this act shall be construed to require any insurer or other entity regulated under chapter 40 of the Kansas Statutes Annotated or any other law of this state to provide coverage for or indemnify for the services provided by a person licensed under this act.

(b) So long as the following persons do not hold themselves out to the public to be dietitians or licensed dietitians or use these titles in combination with other titles or use the abbreviation L.D., or any combination thereof, nothing in this act shall be construed to apply:

(1) To any person licensed to practice the healing arts, a licensed dentist, a licensed dental hygienist, a licensed professional nurse, a licensed practical nurse, a licensed psychologist, a licensed masters level psychologist, a licensed pharmacist or an employee thereof, a physician's assistant, a licensed professional counselor;

(2) to any unlicensed employee of a licensed adult care home or a licensed medical care facility as long as such person is working under the general direction of a licensee in the healing arts, nursing or a dietetic services supervisor as defined in regulations adopted by the secretary of health and environment or a consultant licensed under this act;

(3) to any dietetic technician or dietetic assistant;

(4) to any student enrolled in an approved academic program in dietetics, home economics, nutrition, education or other like curriculum, while engaged in such academic program;

(5) to prevent any person, including persons employed in health food stores, from furnishing nutrition information as to the use of food, food materials or dietary supplements, nor to prevent in any way the free dis-

semination of information or of literature as long as no individual engaged in such practices holds oneself out as being licensed under this act;

(6) to prohibit any individual from marketing or distributing food products, including dietary supplements, or to prevent any such person from providing information to customers regarding the use of such products;

(7) to prevent any employee of the state or a political subdivision who is employed in nutrition-related programs from engaging in activities included within the definition of dietetics practice as a part of such person's employment;

(8) to any person who performs the activities and services of a licensed dietitian or nutrition educator as an employee of the state or a political subdivision, an elementary or secondary school, an educational institution, a licensed institution, or a not-for-profit organization;

(9) to any person serving in the armed forces, the public health service, the veterans administration or as an employee of the federal government;

(10) to any person who has a degree in home economics insofar as the activities of such person are within the scope of such person's education and training;

(11) to any person who counsels or provides weight-control services as a part of a franchised or recognized weight-control program or a weight-control program that operates under the general direction of a person licensed to practice the healing arts, nursing or a person licensed under this act;

(12) to any person who is acting as a representative of a trade association and who engages in one or more activities included within the practice of dietetics as a representative of such association;

(13) to a ~~registered~~ *licensed* physical therapist who makes a dietetic or nutritional assessment or gives dietetic or nutritional advice in the normal practice of such person's profession or as otherwise authorized by law;

(14) to a dietitian licensed, registered or otherwise authorized to practice dietetics in another state who is providing consultation in this state;

(15) to any person conducting a teaching clinical demonstration which is carried out in an educational institution or an affiliated clinical facility or health care agency;

(16) to any person conducting classes or disseminating information relating to nonmedical nutrition; or

(17) to any person permitted to practice under K.S.A. 65-2872a and amendments thereto.

(c) Nothing in this act shall be construed to interfere with the religious practices or observances of a bona fide religious organization, nor to prevent any person from caring for the sick in accordance with tenets and practices of any church or religious denomination which teaches reliance upon spiritual means through prayer for healing.

New Sec. 29. A policy of professional liability insurance approved by the commissioner of insurance and issued by an insurer duly authorized to transact business in this state shall be maintained in effect by each licensed physical therapist actively practicing in this state as a condition to rendering professional services as a physical therapist in this state. The state board of healing arts shall fix by rules and regulations the minimum level of coverage for such professional liability insurance.

Sec. 30. K.S.A. 7-121b, 40-2,111, 60-513d, 60-2609, 65-1501, 65-1902, 65-2891, 65-2901, 65-2902, 65-2903, 65-2904, 65-2905, 65-2906, 65-2907, 65-2908, 65-2909, 65-2910, 65-2911, 65-2912, 65-2913, 65-2914, 65-2915, 65-2916, 65-2918, 65-2919, 65-4915, 65-4921, 65-5418 and 65-5912 and K.S.A. 2002 Supp. 17-2707, 21-3721 and 40-3401 are hereby repealed.

Sec. 31. This act shall take effect and be in force from and after April 1, 2004, and its publication in the statute book.

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

SENATE concurred in
HOUSE amendments _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.