

## SENATE BILL No. 314

By Committee on Ways and Means

4-28

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9 AN ACT concerning office-based surgeries; providing for regulation of  
10 physicians who perform office-based surgeries and special procedures.

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

13 Section 1. As used in this act:

14 (a) "Board" means the state board of healing arts.

15 (b) "Local anesthesia" means the administration of an anesthetic  
16 agent into a localized part of the human body by topical application or  
17 local infiltration in close proximity to a nerve, which produces a transient  
18 and reversible loss of sensation.

19 (c) "Minimal sedation" means the administration of oral sedative or  
20 oral analgesic drugs in doses appropriate for the unsupervised treatment  
21 of insomnia, anxiety or pain.

22 (d) "Minor surgery" means surgery which can be safely and com-  
23 fortably performed on a patient who has received local or topical anes-  
24 thesia or without more than minimal sedation and where the likelihood  
25 of complications requiring hospitalization is remote.

26 (e) "Office-based surgery" means any surgery or other special pro-  
27 cedure requiring anesthesia, analgesia or sedation which is performed by  
28 a physician in a clinical location other than a medical facility licensed  
29 pursuant to K.S.A. 65-425 et seq., and amendments thereto, and which  
30 results in a patient stay of less than 24 hours. The term does not include  
31 minor surgery.

32 (f) "Physician" means a person licensed to practice medicine and sur-  
33 gery in the state of Kansas.

34 (g) "Secretary" means the secretary of health and environment.

35 (h) "Special procedure" means a patient care service which requires  
36 contact with the human body with or without instruments in a potentially  
37 painful manner, for a diagnostic or therapeutic procedure requiring an-  
38 esthesia services. The term does not include minor surgery.

39 (i) "Surgery" means a manual or operative procedure which involves  
40 the excision or resection, partial or complete, destruction, incision or  
41 other structural alteration of human tissue by any means, including the  
42 use of lasers, performed upon the human body for the purpose of pre-  
43 serving health, diagnosing or treating disease, repairing injury, correcting

1 deformity or defects, prolonging life or relieving suffering, or for aes-  
2 thetic, reconstructive or cosmetic purposes. Surgery includes, but is not  
3 limited to, incision or curettage of tissue or an organ, suture or other  
4 repair of tissue or an organ, a closed or open reduction of a fracture,  
5 extraction of tissue from the uterus and insertion of natural or artificial  
6 implants.

7 (j) “Topical anesthesia” means an anesthetic agent applied directly or  
8 by spray to the skin or mucous membranes, intended to produce a tran-  
9 sient and reversible loss of sensation to a circumscribed area.

10 (k) “Facilities means offices for the practice of the healing arts where  
11 office-based surgery or special procedures, or both, are performed, but  
12 does not include a medical care facility as defined by K.S.A. 65-425, and  
13 amendments thereto.

14 Sec. 2. (a) The board, by rules and regulations, shall establish stan-  
15 dards that each licensee of the healing arts who is authorized to perform  
16 office-based surgery or special procedures must follow. Such standards  
17 shall promote the safety of patients, including, but not limited to, stan-  
18 dards addressing:

- 19 (1) Qualifications and supervision of nonphysician personnel;
- 20 (2) facility safety and sanitation;
- 21 (3) equipment requirements, sanitation, testing and maintenance;
- 22 (4) patient screening, assessment and monitoring;
- 23 (5) selection of procedures to be performed;
- 24 (6) anesthesia services;
- 25 (7) peri-operative care;
- 26 (8) emergencies and patient transfers; and
- 27 (9) quality assurance and peer review.

28 (b) In adopting standards pursuant to this section, the board shall  
29 give consideration to standards adopted by the secretary for purposes of  
30 regulating ambulatory surgery centers licensed pursuant to K.S.A. 65-425  
31 et seq., and amendments thereto and shall give consideration to the  
32 guidelines for office-based surgery and special procedures approved by  
33 the Kansas medical society house of delegates on May 5, 2002.

34 (c) Regulations adopted under this section shall allow reasonable time  
35 within which a licensee must comply.

36 Sec. 3. (a) The board shall establish an interagency agreement with  
37 the secretary which provides for the inspection of facilities. The agree-  
38 ment shall establish the time period for completing an inspection, and  
39 shall establish an inspection fee that the board will pay to the secretary  
40 to cover the cost of the inspection. Payment of such fee shall be from the  
41 fee fund of the board, and shall not be subject to any limitation on ap-  
42 propriation. The board may assess the cost of any inspection in the man-  
43 ner provided by K.S.A. 65-2846, and amendments thereto.

1 (b) The board may request that the secretary inspect a facility or  
2 facilities on a routine or random basis, or if the standards adopted pur-  
3 suant to this act pertaining to subsections (a)(2) and (3) of section 2, and  
4 amendments thereto are suspected to have been violated. Upon receipt  
5 of such a request, the secretary shall conduct an inspection in a timely  
6 manner.

7 (c) The board may request that the secretary conduct unannounced  
8 inspections of any facility.

9 (d) The secretary shall forward to the board a written report of all  
10 inspections of facilities.

11 (e) This act shall not be construed to limit the authority of the board  
12 to conduct any investigation or inspection as provided by K.S.A. 65-2839a,  
13 and amendments thereto.

14 Sec. 4. (a) A correction order may be issued by the board to a phy-  
15 sician who owns or operates a clinic or facility who performs office-based  
16 surgery or special procedures, or both, whenever a duly authorized rep-  
17 resentative of the secretary inspects or investigates such clinic or facility  
18 and determines that the clinic or facility is not in compliance with the  
19 standards adopted by the board by rule and regulation pursuant to section  
20 2, and amendments thereto. The correction order shall be served upon  
21 the physician either personally or by certified mail. The correction order  
22 shall be in writing, shall state the specific deficiency, and shall specify a  
23 time of 30 days for correction of the deficiency, unless the deficiency is  
24 of such an extreme hazard to the health and safety of a patient that im-  
25 mediate correction is required. In such an extreme case correction of the  
26 deficiency in less than 30 days may be ordered by the board.

27 (b) When the time period set forth in the correction order has passed,  
28 the clinic or facility shall be reinspected for compliance. If the clinic or  
29 facility is still in noncompliance, the board may restrict the performance  
30 of any office-based surgeries or special procedures, or both, at the non-  
31 compliant clinic or facility until compliance is found and may level a civil  
32 penalty against the physician who owns or operates such clinic or other  
33 facility. If the board determines that the continued performance of office-  
34 based surgeries and special procedures at the noncompliant clinic or fa-  
35 cility poses a threat of potential harm to patients, the board may exercise  
36 its injunctive authority until such time as a hearing may be conducted in  
37 accordance with the provisions of the Kansas administrative procedure  
38 act.

39 Sec. 5. (a) Any physician who remains noncompliant to the correc-  
40 tion order and continues to violate any provision of the rules and regu-  
41 lations adopted under this act may incur a civil penalty in an amount not  
42 more than \$5,000 for every such violation. In the case of a continuing  
43 violation, every day such violation continues shall be deemed a separate

1 violation.

2 (b) The board, upon a finding that the physician has violated any  
3 provision of rules and regulations adopted under this act may impose a  
4 penalty within the limits provided in this section. In determining the  
5 amount of the civil penalty, the board shall take into consideration all  
6 relevant circumstances, including, but not limited to, the extent of poten-  
7 tial harm caused by the violation, the nature and persistence of the vio-  
8 lation, the length of time over which the violation occurs and any correc-  
9 tive actions taken.

10 (c) No penalty shall be imposed under this section until written notice  
11 and an opportunity for hearing have been provided to the physician al-  
12 leged to have committed the violation. Such notice shall state the viola-  
13 tion, the penalty to be imposed and the right of the physician to a hearing  
14 on the matter. Such physician, within 15 days after service of the order,  
15 may make written request to the board for a hearing thereon. The hearing  
16 shall be conducted in accordance with the provisions of the Kansas ad-  
17 ministrative procedure act.

18 (d) Any action of the board pursuant to this section is subject to re-  
19 view in accordance with the act for judicial review and civil enforcement  
20 of agency actions.

21 Sec. 6. Any clinic or facility where office-based surgery or special  
22 procedures, or both, are performed at the time rules and regulations  
23 adopted under this act take effect shall be given reasonable time, as de-  
24 termined by the board under the particular circumstances, but not to  
25 exceed 30 days from the effective date of such rules and regulations,  
26 within which to comply with such rules and regulations.

27 Sec. 7. This act shall be a part of and supplemental to the Kansas  
28 healing arts act.

29 Sec. 8. This act shall take effect and be in force from and after its  
30 publication in the statute book.