

SENATE BILL No. 581

By Committee on Federal and State Affairs

3-2

9 AN ACT concerning office-based surgeries; providing for inspection of
10 offices at which office-based surgeries and special procedures are
11 performed.
12

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

14 Section 1. The purpose of this act is to promote patient safety in the
15 offices of licensees of the healing arts board at which surgery and other
16 invasive medical procedures are performed by providing for the devel-
17 opment, establishment and enforcement of clinical standards governing
18 qualifications of personnel, facility safety and sanitation, equipment
19 requirements, quality assurance, peer review and related matters.

20 Sec. 2. As used in this act:

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

22 (b) "General anesthesia" means a drug that, when administered to a
23 patient, results in the patient's controlled state of unconsciousness accom-
24 panied by a loss of protective reflexes, including the loss of the inde-
25 pendent and continuous ability to maintain the airway and a regular
26 breathing pattern, and the loss of the ability to respond purposefully to
27 verbal commands or tactile stimulation.

28 (c) "Local anesthesia" means a drug that, when administered to a
29 localized part of the human body by topical application or by local infil-
30 tration in close proximity to a nerve, produces a transient and reversible
31 loss of sensation. This term shall include lidocaine injections not exceed-
32 ing seven milligrams per kilogram of body weight and also tumescent
33 local anesthesia.

34 (d) "Minor surgery" means surgery that meets both of the following
35 conditions:

36 (1) Any complication from the surgery requiring hospitalization is not
37 reasonably foreseeable; and

38 (2) the surgery can safely and comfortably be performed either on a
39 patient who has received no anesthesia or on a patient who has received
40 local anesthesia or topical anesthesia.

41 (e) "Office" means any place intended for the practice of the healing
42 arts in the state of Kansas. This term shall not include a medical care
43 facility, as defined by K.S.A. 65-425 and amendments thereto, that is

1 licensed by the department of health and environment.

2 (f) “Office-based surgery” means any surgery that requires any an-
3 esthesia or sedation and that is performed by or upon the order of a
4 physician in an office. Office-based surgery shall not include minor
5 surgery.

6 (g) “Physician” means a person licensed to practice medicine and
7 surgery in the state of Kansas.

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

9 (i) “Sedation” means a depressed level of consciousness in which the
10 patient retains the independent and continuous ability to perform the
11 following:

- 12 (1) Maintain adequate cardiorespiratory functioning;
- 13 (2) maintain an open airway;
- 14 (3) maintain a regular breathing pattern;
- 15 (4) maintain the protective reflexes; and
- 16 (5) respond purposefully and rationally to tactile stimulation and ver-
17 bal commands.

18 (j) “Special procedure” means any patient care service that involves
19 any potentially painful contact with the human body, with or without
20 instruments, for the purpose of diagnosis or therapy and for which the
21 applicable standard of care necessitates any anesthesia to prevent or re-
22 duce pain. This term shall include a diagnostic or therapeutic endoscopy,
23 invasive radiology, manipulation under anesthesia and an endoscopic ex-
24 amination. This term shall include the conduct of pain management when
25 performed using anesthesia levels exceeding local anesthesia.

26 (k) “Surgery” means a manual or operative method that involves the
27 partial or complete excision or resection, destruction, incision, or other
28 structural alteration of human tissue by any means, including the use of
29 lasers, performed upon the human body for the purpose of preserving
30 health, diagnosing or treating disease, repairing injury, correcting defor-
31 mity or defects, prolonging life, terminating pregnancy or relieving suf-
32 fering, or for aesthetic, reconstructive or cosmetic purposes.

33 (l) “Topical anesthesia” means a drug applied to the skin or mucous
34 membranes for the purpose of producing a transient and reversible loss
35 of sensation to a circumscribed area.

36 Sec. 3. The board, by rules and regulations, shall establish standards
37 for clinics and other facilities where office based surgery or special pro-
38 cedures, or both, are performed. Such standards shall promote the safety
39 of patients, including, but not limited to, standards addressing:

- 40 (a) Qualification and supervision of nonphysician personnel;
- 41 (b) facility safety and sanitation;
- 42 (c) equipment requirements, sanitation, testing and maintenance;
- 43 (d) patient screening, assessment and monitoring;

- 1 (e) selection of procedures to be performed;
- 2 (f) anesthesia services;
- 3 (g) peri-operative care;
- 4 (h) emergencies and patient transfers; and
- 5 (i) quality assurance and peer review.

6 Sec. 4. The board shall maintain and make available to the secretary
7 a current list of offices at which office-based surgery or special proce-
8 dures, or both, are performed in the state of Kansas.

9 Sec. 5. The secretary shall inspect offices at which office-based sur-
10 gery or special procedures, or both, are performed to determine compli-
11 ance with the standards promoting the safety of patients adopted by the
12 board by rules and regulations addressing:

- 13 (a) Cleanliness and sanitation and safety;
- 14 (b) infection control and disposal of biological waste; and
- 15 (c) presence of required equipment.

16 Sec. 6. (a) The secretary shall forward the results of all inspections
17 to the board when an office is in violation of any rules and regulations
18 adopted by the board establishing standards that each licensee of the
19 healing arts who is authorized to perform office-based surgery or special
20 procedures must follow.

21 (b) Within 30 days after receipt of the results of any inspection that
22 reflects noncompliance with any rules and regulations adopted by the
23 board establishing standards that each licensee of the healing arts who is
24 authorized to perform office-based surgery or special procedures must
25 follow, the board shall issue a notice of noncompliance to the licensee
26 with a requirement for timely correction.

27 (c) The board shall file formal charges against any licensee who is
28 performing office-based surgery or special procedures, or both, who fails
29 to make timely correction of any noncompliance following issuance of the
30 notice of noncompliance.

31 (d) Upon the filing of formal charges, the board shall appoint a pre-
32 siding officer to be provided by the office of administrative hearings to
33 commence a formal hearing or a conference hearing in accordance with
34 the Kansas administrative procedure act and to issue an initial order.

35 (e) In addition to any other remedy authorized under the healing arts
36 act, the board may assess an administrative fine against a licensee for a
37 violation of rules and regulations establishing standards for office-based
38 surgery or special procedures, or both, in an amount not to exceed \$5,000
39 for the first violation, \$10,000 for the second violation and \$15,000 for
40 the third violation and for each subsequent violation. All fines assessed
41 and collected under this section shall be remitted to the state treasurer
42 in accordance with the provisions of K.S.A. 75-4215, and amendments
43 thereto. Upon receipt of each such remittance, the state treasurer shall

1 deposit the entire amount in the state treasury to the credit of the state
2 general fund.
3 Sec. 7. This act shall take effect and be in force from and after its
4 publication in the statute book.