

Approved: February 21, 2006  
Date

MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE

The meeting was called to order by Chairman Jim Morrison at 1:30 P.M. on February 20, 2006, in Room 526-S of the Capitol.

All members were present except Representative Landwehr, who was excused.

Committee staff present:

Melissa Calderwood, Kansas Legislative Research Department  
Mary Galligan, Kansas Legislative Research Department  
Rena Jefferies, Revisor of Statutes' Office  
Gary Deeter, Committee Secretary

Conferees appearing before the committee:

Fred Lucky, Senior Vice President, Kansas Hospital Association  
Dick Allen, Mercy Regional Health Center  
Linda DeCoursey, Advocacy Director, American Heart Association  
Peter LeBourveau, Medical Student, University of Kansas Medical Center  
Lisa Benlon, Director of Government Relations, American Cancer Society  
Dan Morin, Director of Governmental Affairs, Kansas Medical Society  
John Caporale, Wichita  
John Sabatini, Walden University

Others attending:

See attached list (not available on electronic copy).

The Chair opened the hearing on **HB 2739**.

Fred Lucky, Senior Vice President, Kansas Hospital Association, introduced Dick Allen, Mercy Regional Health Center, Manhattan, who spoke as a proponent. (Attachment 1) He said the bill expands the prohibition from smoking inside hospitals to tobacco use on hospital property. He stated that the bill will promote a healthy environment to patients, visitors, and staff.

Dr. Howard Rodenberg, Director, Division of Health, Kansas Department of Health and Environment, testified in favor of the bill. (Attachment 2) He noted the negative impact of second-hand smoke, commenting on its deleterious effect on a person's health. He noted the role model hospitals can serve in promoting healthy behaviors.

Linda DeCoursey, Advocacy Director, American Heart Association, spoke as a proponent. (Attachment 3) She commented that the Hippocratic Oath, "Do no harm," should be reflected on hospital property, and she noted the many toxins in second-hand smoke.

Peter LeBourveau, Medical Student, University of Kansas Medical Center, spoke in support of the bill. (Attachment 4) He noted that the bill is not a statewide ban on tobacco use, nor is it

punitive, but a positive way to support health.

Lisa Benlon, Director of Government Relations, American Cancer Society, spoke as a proponent. ([Attachment 5](#)) She commented on the exception granted for licensed long-term-care facilities, suggesting that smoking be allowed only in areas with separate ventilation systems. ([Attachment 6](#))

Dan Morin, Director of Governmental Affairs, Kansas Medical Society, testified as a proponent. ([Attachment 7](#)) He cited statistics regarding the toxic effects of tobacco use, commented on a similar bill passed in Arkansas, and urged members to support the bill.

Three individuals offered written testimony in support of the bill: Jon Hauxwell, President, Tobacco Free Kansas Coalition ([Attachment 8](#)); Judy Keller, Executive Director, American Lung Association of Kansas ([Attachment 9](#)); and Terri Roberts, Executive Director, Kansas State Nurses Association. ([Attachment 10](#))

Answering a question, Melissa Hungerford, Kansas Hospital Association, said long-term-care facilities can be exempted because they are licensed separately.

A fiscal note was provided for the committee. ([Attachment 11](#))

The Chair closed the hearing on **HB 2739** and opened the hearing on **HB 2734**.

Representative Mario Goico testified in support of the bill. ([Attachment 12](#)) He noted the value of on-line education to advance one's education and career.

John Caporale, Wichita, related his experience and difficulties in being licensed after completing online education. ([Attachment 13](#)) He cited the expanding role of online education, noting the importance of the design of the course, not the delivery method of instruction. He commented that about one-third of states accept credits for licensing from Walden University.

John Sabatini, Walden University, testified as a proponent. ([Attachment 14](#)) He related the history of Walden as an exclusively online university, noting its accreditation for post-baccalaureate and post-graduate degrees and its acceptance by various states.

Lawrence Buening, Executive Director, Kansas Board of Healing Arts, provided written neutral testimony. ([Attachment 15](#))

Mr. Sabatini responded to members' questions, saying clinical experience is handled by internships, that most course work is post-graduate, and continuing education credits can be obtained through the university. Mr. Caporale replied that the Behavioral Sciences Regulatory Board (BSRB) had a bias against online credits and that working with BSRB to adjust rules and regulations was futile. The Chairman referred to information about what appeared to be Mr. Caporale's lawsuit against BSRB; Mr. Caporale said the issue was an appeal after district court ruled against him because of false information submitted by the BSRB. The Chair asked for further documentation and commented that the purpose of the committee was not to become

entangled in court issues. A member commented that any licensing authority has the right to deny a license if the subject content is not adequately covered by course work. Mr. Caporale said that Walden University follows the guidelines set forth by the American Psychology Association.

Representative Goico commented on a amendment suggested by the Kansas Board of Nursing. (Attachment 16)

The hearing was closed.

The Chair opened discussion on bills previously heard.

Considering **HB 2649**, a motion was made and seconded to amend the bill. (Attachment 17) Representative Bethell commented that the amendment includes all issues noted by conferees during the hearing on the bill. The motion to amend passed.

A motion was made and seconded to pass the bill out favorably as amended. The motion passed.

The committee considered **HCR 5031**. Representative Bethell noted that insurance companies handing out information about not taking heroic life-sustaining measures might be construed as a conflict of interest; a motion was made and seconded to amend the resolution. (Attachment 18) After discussion about who should implement the resolution, the motion to amend passed.

The Chair ruled that the bill will be held for further consideration at a later time.

**HB 2715** was considered for passage. A member commented that the present system seemed to be working by having a self-sustaining fee fund, that the bill would significantly raise the costs for some companies to do business, and that more work was needed on the bill. It was acknowledged that the interested parties could not work out a compromise. A motion was made to table the bill. The motion passed.

Members considered **HB 2752** for passage. A motion was made and seconded to recommend the bill for passage; the motion carried.

Representative Bethell agreed to carry **HB 2649**; Representative Colloton agreed to carry **HB 2752**.

The minutes for February 15 and 16, 2006, were approved.

The meeting was adjourned at 2:52 p.m. The next meeting is scheduled for Tuesday, February 21, 2006.

**HOUSE HEALTH AND HUMAN SERVICES COMMITTEE  
GUEST LIST**

DATE: February 20 2006

NAME	REPRESENTING
Daniel R Morin	Kansas Medical Society
John Caporale	online university graduates
<del>Henry Jones</del>	KDHE
Charly Moore	KDHE
Kosanne Butkewski	KDHE
Julia Mancison	KDHE
LISA BENLON	AMER. CANCER SOCIETY
Pete LeBoumevan	Self, Medical Student
Brent Woodbury	Self Medical Student
Chris Dakhil	Self, Medical Student
JAMES FENTON	SELF / MEDICAL STUDENT
Troy Fay	self
Marcia Stawibaugh	KDOT
Linda Libensky	KS Home Care Assn
Jessie Torres	3/LEK
Corby Samuelson	KIHA
Melissa Hungerford	KHA
Richard Allen	MERCY REGIONAL HEALTH CTR (MWHITMAN) - KHA
Phil Lucke	KANSAS Hosp Assn

Jamie Ann Lower  
 Ron Gaches  
 Scott Heidner  
 Terri Roberts

KAPP  
 GBBA  
 ACEC Kansas  
 Kansas State Nurses Assn.



Kansas Hospital Association  
Testimony on HB 2739  
Committee on Health and Human Services  
Presented by Fred Lucky  
Kansas Hospital Association, and  
Dick Allen  
Mercy Regional Health Center, Inc., Manhattan, Kansas

Good afternoon. I am Fred Lucky with the Kansas Hospital Association, and I would like to introduce Dick Allen. Dick Allen is the President and CEO of Mercy Regional Health Center, Inc. of Manhattan, a member of the Kansas Hospital Association Board of Directors, and is here in support of HB 2739.

Tobacco is the cause of death for 3,800 Kansans every year and is the root cause of many illnesses and lost productivity. Tobacco use in and around hospitals poses health and safety risks for patients, employees and visitors. While Kansas currently has a statute banning smoking in medical care facilities, House Bill 2739, expands the current ban to apply to the use of tobacco on all hospital property.

The Kansas Hospital Association, the Kansas Medical Society, Kansas Academy of Family Physicians and Kansas State Nurses Association among other groups have joined together to promote efforts to implement tobacco-free policies in medical care facilities and on medical care facility property throughout Kansas. Together, we urge you to support House Bill 2739. This bill will help hospitals create an environment of health and wellbeing for all Kansans.

As health care providers, hospitals feel it is necessary to take a stand to stop the use of tobacco which has been identified as one of the top three Healthy Kansas 2010 issues. House Bill 2739 supports tobacco-free policies which are intended to create a healthy environment for everyone who comes to a hospital to receive care, visit a patient or work.

Second-hand smoke has been proven hazardous to people's health. An international panel of experts brought together by the International Agency for Research on Cancer, an agency of the World Health Organization, determined that second-hand smoke causes cancer. Hospitals must provide an overall healthy environment – not a dangerous one - to

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patients, employees and visitors – inside and out. Legally, tobacco use is not a right; it is a privilege that can be restricted when it is detrimental to others.

As I mentioned earlier in my testimony, hospitals across Kansas have joined together with a goal of being tobacco-free by Jan. 1, 2007. We recognize that implementation will take time; it is, after all, a culture change. When the original law was implemented in 1994, making hospital buildings smoke-free, that took time as well. We are committed to the health and safety of our employees and patients. House Bill 2739 will help hospitals achieve this goal. We appreciate your leadership and support on this major health issue – we encourage your passage of House Bill 2739.

Thank you, Mr. Chairman, for the opportunity to testify. I'm happy to stand for questions.



# K A N S A S

RODERICK L. BREMBY, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

DEPARTMENT OF HEALTH AND ENVIRONMENT

Testimony on HB 2739  
To  
Committee on Health and Human Services  
By  
Howard Rodenberg, MD, MPH  
Director, Division of Health  
Kansas Department of Health and Environment

February 20, 2006

Chairman Morrison and Members of the Health and Human Services Committee, my name is Dr. Howard Rodenberg. I am the director of the Division of Health at the Kansas Department of Health and Environment and State Health Officer. Thank you for the opportunity to speak with you today in support of House Bill 2739 which proposes to prohibit the use of tobacco in a medical care facility or its property.

The toll of tobacco use on Kansas is devastating. Each year more than 3,900 Kansans die as a result of tobacco use due to heart disease, cancer, stroke, and lung disease. This is more than the death toll of AIDS, crack, heroin, cocaine, alcohol, car accidents, fire, and murder combined. In addition, it's estimated that up to 600 Kansans die each year from exposure to secondhand smoke. Tobacco costs the state of Kansas an estimated \$724 million in health care costs, of which \$180 million is attributed to Medicaid expenses, annually. Each household in Kansas bears the burden of an additional \$547 in taxes each year due to tobacco.

The negative impact of tobacco use upon patients in health care facilities is impossible to ignore. Cigarette smoking is linked to heart disease, cancer, stroke, and lung disease. Environmental tobacco smoke, or secondhand smoke, has also been proven to impact health. Secondhand smoke contains 4,000 substances, more than 40 of which are known to cause cancer. Smoke in the air is higher in tar, nicotine, carbon monoxide, and cancer-causing chemicals than smoke inhaled through a cigarette. Just as hospitals are required to provide a safe environment for all staff and patients within the facility, requiring all grounds to also be tobacco free will ensure a safe and clean environment for all who enter through the doors, without being subjected to secondhand tobacco smoke. It's important to note that tobacco-free hospital grounds policies do not only impact upon the long-term effects of secondhand smoke. They also enhance the acute management of conditions such as asthma and emphysema in sick patients within the emergency department or those admitted to the hospital. It makes good clinical sense for hospitals to have such a policy.

Hospitals are in an excellent leadership position in the community to serve as a role model for good health by not allowing tobacco use on buildings and grounds. Hospitals recognize the need for a well-defined and

OFFICE OF THE DIRECTOR OF HEALTH  
CURTIS STATE OFFICE BUILDING, 1000 SW JACKSON ST., STE. 300, TOPEKA, KS 66612-1365

Voice 785-296-1086 Fax 785-296-1562 <http://www.kdhe.state.ks.us>

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...able tobacco products policy and as health-conscious professionals will embrace this opportunity  
...reduce the effects they see on a daily basis from tobacco use and secondhand smoke. Moreover, requirin

hospitals to provide healthy environments for the patients, guests, staff, and health care providers will set  
exemplary standard for workplaces in our State.

I applaud the vision of the Kansas Hospital Association in endorsing this bill, and your interest in protecting the  
health of Kansans. I urge you to support HB 2739, and I'll be happy to stand for any questions you might have.



February 20, 2006

TO: House Committee on Health and Human Services

FROM: Linda J. De Coursey, Advocacy Director – Kansas

RE: HB 2739 – Tobacco Use in Medical Care Facility Buildings and Property

Mr. Chairman and members of the Committee:

My name is Linda De Coursey and I am appearing on behalf of the American Heart Association in support of HB 2739. The proposed bill prohibits the use of tobacco in a medical care facility building or on their property, except that an area may be established for residents of a licensed long-term care unit for a designated smoking area if the area is well-ventilated.

Smoking is the single most preventable cause of death in the U.S., claiming more than 400,000 lives annually, with 170,000 of those deaths coming from smoking related cardiovascular disease. In Kansas, tobacco use leads to approximately 4,000 smoking related heart disease deaths, and the amount of dollars spent on tobacco-related illnesses is staggering (\$720 million annually in direct health care costs).

Second-hand smoke is responsible for almost 38,000 deaths annually among adult nonsmokers in the U.S., deaths caused by heart disease and lung cancer. Children exposed to second-hand smoke are at increased risk for pneumonia, bronchitis, ear infections, and tonsillitis. Second hand smoke contains the same toxic substances as the smoke inhaled by smokers (mainstream smoke). Of the more than 4,000 chemicals in second hand smoke (including nicotine, formaldehyde, cyanide, arsenic, carbon monoxide, methane, asbestos, ammonia and benzene), at least 40 are considered carcinogens. Many of these toxins are actually found in higher concentrations in second hand smoke than they are in mainstream smoke. Even the newest ventilation technologies under ideal conditions are incapable of removing all secondhand smoke and its toxic constituents from the air.

When we consider the basis of the Hippocratic oath – first, do no harm, of all places when we have to go to a hospital, the least that should be expected of all of us is to do no harm to one another. But when tobacco smoke is present, we have no choice but to breathe the air that is filled with smoke.

Smoking is a major risk factor for the No.1 cause of death in our state – cardiovascular diseases like heart disease and stroke, and the American Heart Association is dedicated to reducing tobacco use as one way to reduce death and disability from cardiovascular disease and stroke. We respectfully ask your favorable consideration of this bill. Thank you again for your time.

**Chairman of the Board**  
Bill G. Lynch  
Heber Springs, Arkansas

**President**  
Anthony M. Fletcher, M.D.  
Little Rock, Arkansas

**Treasurer**  
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Iowa City, Iowa

C. Bruce Lawrence  
Oklahoma City, Oklahoma

Edward T. Martin, M. D.  
Tulsa, Oklahoma

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Omaha, Nebraska

John D. Rumisek, M.D.,  
FACS, FACC  
Wichita, Kansas

Peter S. Strassner  
St. Louis, Missouri

John R. Windle, M.D.  
Omaha, Nebraska

**Executive Vice President**  
Kevin D. Harker

**TESTIMONY TO COMMITTEE ON HEALTH AND HUMAN SERVICES**  
FEBRUARY 20, 2006

**To:** House Health and Human Services Committee

**From:** Peter LeBourveau  
Medical Student, University of Kansas Medical Center, Kansas City, KS

**Subject:** HB 2739; relating to tobacco use in medical care facility buildings and property

**Date:** February 20, 2006

Good morning, Chairperson Morrison and members of the committee on health and human services. Thank you for the opportunity to address the committee regarding my support of House Bill 2739.

My name is Peter LeBourveau and I am a fourth year medical student from The University of Kansas School of Medicine in Kansas City. Today I am speaking on behalf of concerned medical students as future physicians of Kansas and as a consumer of healthcare. I want to emphasize that the opinions and perspectives in this testimony are my own and do not represent official policy of the University of Kansas Medical Center or the views of university administration.

When considering this bill, I feel it is important to note not only what is called for, but also what is not. This bill does not call for a statewide smoking ban, and it does not call for punitive measures against smokers in their homes or in places where smoking is allowed under law.

What this bill does call for is responsibility and commitment at the state level. I believe the state bears responsibility for creating initiatives which make a healthier Kansas. By instituting measures that prohibit tobacco use while on the grounds of a medical care facility in this state, this bill will promote numerous positive outcomes. I would like to highlight three of these:

- (1) A tobacco free medical campus is a more attractive working environment for physicians and staff which may affect recruitment and retention of employees and physicians. Speaking as a future physician I can say without question that my preference will be to work in a smoke free environment.
- (2) Tobacco free facilities are more attractive places for our patients to receive medical care and minimize the exposure of patients to the dangers of secondhand smoke. Decreasing this risk to the patient population and recognizing their need to breathe clean air while on the grounds of a medical care facility is a measure I believe to be long overdue.
- (3) This action shows a state-wide commitment to the health of our citizens by placing hospitals in the position to support positive health habits for not only patients, but also the people who care for them.

I am impressed with the initiative shown by the action of this bill. It is admirable that the state has recognized the importance of this issue and, in the interest of the health of its citizens has assumed responsibility and shown commitment to this cause. House Bill 2739 will go far in achieving the larger goal of healthy Kansans.

Thank you for the opportunity to testify before you today.

*Attachment 4*  
*HHS 2-20-06*

**Testimony of Lisa Benlon  
American Cancer Society  
Supporting HB 2739-Prohibiting Tobacco Use on Medical Facility Property**

My name is Lisa Benlon. I am the Director of Government Relations for your American Cancer Society. Our organization supports HB 2739, which would prohibit the use of tobacco products on medical care facility property.

Although smoking has been prohibited for nearly 12 years, with some exceptions at Kansas medical facilities, we appreciate the committee's review of a statute that needs some tweaking. It is refreshing to see the committee understands smoking is not the only danger of tobacco use. With more local municipalities and states prohibiting smoking in enclosed, public places, chew tobacco is being pushed by the industry to take the place of smoking.

I doubt there is anyone in this meeting who is unaware of the effects of tobacco on the human body. Not smoking and not being around those who are smoking are two of the most conscientious ways to help one's health. It only makes sense to protect those who work, visit, or come to a facility intended to enrich the health of those who may be ill.

The American Cancer Society would like to see the facility totally tobacco-free. However, we understand the compassion of allowing smoking of residents only, in an established area for licensed long-term care units. The American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE) claims the equipment used in ventilation can not provide acceptable indoor air quality in smoking places. The American Cancer Society suggests, if a facility chooses to establish such a place for long-term care residents, the room should not only be well-ventilated, but instead, have a separate ventilation system.

Thank you for the opportunity to stand in support of HB 2739. I encourage your support also.

Mr. Chairman, I will be happy to stand for questions at the appropriate time.

*Attachment 5  
HHS 2-20-06*



## TALKING POINTS ON THE AMERICAN SOCIETY OF HEATING, REFRIGERATING AND AIR-CONDITIONING ENGINEERS, INC. (ASHRAE) POSITION DOCUMENT ON SECOND-HAND SMOKE

- The new policy of ASHRAE supporting smoking bans to eliminate second-hand smoke is much stronger than previous positions on second-hand smoke. ACS applauds ASHRAE's efforts to put the health of the public first and not to mislead the public into thinking that ventilation can eliminate second-hand smoke.
- ASHRAE is a professional membership organization that provides leadership, information, standards, guidelines, and professional resources to its members and the community in the areas of heating, ventilation, air conditioning and refrigeration.
- ASHRAE's June 2005 position statement concluded the following:
  - Smoking bans are the only way to eliminate health risks from second-hand smoke exposure.
  - No engineering approaches, including dilution ventilation, "air curtains" or air cleaning, control or significantly reduce the health risks of second-hand smoke.
  - Isolation of second-hand smoke in one room can only be accomplished by: airflow and pressure control, separate ventilation systems, exhaust air control and airtightness of physical barriers and connecting doorways between rooms.
- ASHRAE has requested that its members educate and inform their clients of the limited use of engineering for second-hand smoke control.
- ASHRAE has recently adopted two policy statements:
  - ASHRAE's documents and activities "shall consider health and safety impacts."
  - ASHRAE will not set ventilation requirements or claim to provide acceptable indoor air quality in smoking spaces.
- ASHRAE recognizes that:
  - Cognizant authorities, including the U.S. Surgeon General, the U.S. Environmental Protection Agency, the National Research Council, the California Environmental Protection Agency, and the National Toxicology Program, have determined that second-hand smoke causes significant disease.
  - No acceptable exposure level of second-hand smoke has been identified.

The above information was summarized from: Environmental Tobacco Smoke, Position Document, June 30, 2005. American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. Accessed on October 13, 2005 at [http://www.ashrae.org/content/ASHRAE/ASHRAE/ArticleAltFormat/20058211239\\_347.pdf](http://www.ashrae.org/content/ASHRAE/ASHRAE/ArticleAltFormat/20058211239_347.pdf).

National Government Relations Department  
Policy Team

October 2005

Attachment 6  
HHS 2-20-06



623 SW 10<sup>th</sup> Avenue  
Topeka KS 66612-1627  
785.235.2383  
800.332.0156  
fax 785.235.5114

www.KMSonline.org

**To:** House Health and Human Services Committee

**From:** Dan Morin  
Director of Government Affairs

**Subject:** HB 2739; Concerning crimes and punishments; relating to tobacco use in medical care facility buildings and property

**Date:** February 20, 2006

The Kansas Medical Society appreciates the opportunity to appear in support of HB 2739, which amends current non-smoking law to include all tobacco use in medical care facilities and on all medical care facility property.

As an organization that sees the results that tobacco use has on people's health every day we recognize that permitting tobacco use anywhere on the grounds of health care facilities is contrary to the mission of promoting and protecting health. In 1999, the Kansas Medical Society passed a resolution supporting the ban of tobacco use at health care facilities. It is well documented that tobacco use and health are incompatible and many patients are seen by Kansas physicians for illnesses caused or exacerbated by tobacco use. Any person observing the adverse effects that lung cancer, emphysema, and oral cancer from chewing tobacco can have on the lives of loved ones can surely empathize with those wanting to eliminate such diseases.

HB 2739 is not without precedent. A new state law passed by the legislature that bans smoking at all hospitals and hospital grounds in Arkansas went into effect in October 2005 (HB1193, Act 134 attached). The American Cancer Society reports for the first time since record-keeping began in the 1930s; the number of cancer deaths nationwide has dropped. We believe these encouraging numbers come as a result of successful education programs and the enactment of smoking regulations. The Kansas Medical Society urges members of this committee to favorably pass out HB 2739.

Thank you for the opportunity to offer these comments supporting standards to ensure a safe and healthy environment.

Attachment 7  
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By: Representatives Bradford, Bright, Roebuck, *Borhauer*

**For An Act To Be Entitled**

AN ACT TO PROHIBIT THE USE OF TOBACCO PRODUCTS IN  
AND ON THE GROUNDS OF ALL MEDICAL FACILITIES IN  
ARKANSAS; AND FOR OTHER PURPOSES.

**Subtitle**

AN ACT TO PROHIBIT THE USE OF TOBACCO  
PRODUCTS IN AND ON THE GROUNDS OF ALL  
MEDICAL FACILITIES IN ARKANSAS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 20, Chapter 27, Subchapter 7 is amended to add additional sections to read as follows:

20-27-704. Findings.

The General Assembly finds that:

- (1) Direct smoking of tobacco and indirect smoking of tobacco through inhaling the smoke of those who are smoking nearby are major causes of preventable diseases and death; and
- (2) Prohibiting tobacco use in medical facilities will decrease the use of tobacco and exposure to harm from tobacco.

20-27-705. Definitions.

For purposes of §§ 20-27-704 through 20-27-708:

(1) "Grounds" means the buildings in and on which medical facilities operate together with all property owned by a medical facility that is contiguous to the buildings in which medical services are provided;

(2)(A) "Medical facilities" means hospitals, including both inpatient and out-patient services, as well as hospital-owned and operated ambulatory surgery centers and hospital-owned and operated free-standing medical clinics; and

(B) "Medical facilities" does not include psychiatric hospitals as defined by Department of Health rules for hospitals and related institutions; and

(3) "Tobacco" means cigars, cigarettes, pipes, or other tobacco-smoking devices.

20-27-706. Prohibition of smoking at medical facilities.

(a) Smoking of tobacco is prohibited in and on the grounds of all medical facilities.

(b)(1) Each medical facility shall request any person who violates subsection (a) of this section to desist.

(2) If the violation continues, the medical facility may report the violation to the appropriate law enforcement agency.

20-27-707. Exception.

(a) If a treating physician determines that an inpatient's treatment will be substantially impaired by the denial to that patient of the use of tobacco, the physician may enter a written order permitting the

use of tobacco by that patient.

(b) The order shall be consistent with:

(1) The medical facility's medical staff bylaws;

(2) Hospital regulations; and

(3) Local ordinances.

20-27-708. Penalty.

A violation of § 20-27-706 is a Class C misdemeanor.

20-27-709. Notice at medical facilities.

(a) Each medical facility shall post signs in prominent places in its facilities and on its property to explain the prohibition of smoking under § 20-27-706.

(b)(1) Notices shall be written in English and Spanish.

(2) For a person who cannot read the signs, the prohibition of smoking in a medical facility on its grounds shall be given verbally in the appropriate language before any enforcement of the prohibition against the violator.

(c) The Department of Health may treat a violation of this section as a deficiency to be assessed against the medical facility.

SECTION 2. This act shall become effective on October 1, 2005.

*/s/ Bradford, et al*



Tobacco *Free* Kansas Coalition, Inc.

**Testimony in favor of HB 2739 before the  
House Health and Human Services Committee  
February 16, 2006**

Dear Chairman Morrison:

As president of the Tobacco Free Kansas Coalition, I'm writing to express support for HB2739.

The science indicting Second Hand Smoke (SHS) for its multiple adverse effects on human health is now beyond informed dispute.

If there is any place – any there are many places – in which protecting the public against SHS is essential, it is in Kansas' hospitals and clinics. In many communities, there are only one or two such facilities. If healthcare professionals wish to contribute their skills to the communities in which they live, they are obliged to do so within these local healthcare facilities. When these facilities expose their workers to SHS in and around hospitals, these professionals have few options – either endure the damage to their own health, or leave town.

Still, those most vulnerable to SHS effects are the patients and their visitors who must pass through these hospital facilities and their campuses in order to obtain essential healthcare services. With health already impaired, this high-risk population is even more susceptible to SHS-induced damage. They shouldn't have to jeopardize their health in order to preserve it.

I hope you will see the necessity for ensuring that both victims of disease, and the dedicated professionals who care for them, receive the protection from SHS they deserve. Please give your support to HB 2739.

Sincerely,

Jon Hauxwell, MD  
President, Tobacco Free Kansas Coalition

**Tobacco Free Kansas Coalition Officers:**

**President**  
Jon Hauxwell, MD

**Vice-President**  
Lisa Benlon

**Secretary**  
Diane McNichols, RN

**Treasurer**  
Terri Roberts, RN, JD

Mary Jayne Hellebust, Executive Director  
4300 SW Drury Lane \* Topeka, Kansas 66604  
Phone (785) 272-8396 \* Fax (785) 272-9297 \* [www.tobaccofreekansas.org](http://www.tobaccofreekansas.org)

*Attachment 8  
HHS 2-20-06*





Testimony in Support of HB 2739  
Submitted to the Committee of Health and Human Services  
By Judy Keller, Executive Director, American Lung Association of Kansas  
February 17, 2006

Chairman Morrison and Members of the Committee:

Thank you for the opportunity to provide written testimony in support of House Bill 2739. The American Lung Association of Kansas is the oldest voluntary health organization in the state, dedicated to preventing lung disease and promoting lung health.

Lung disease will claim one in every seven of us and the vast majority of those deaths will be the result of tobacco use and the host of illnesses that result from it.

In fact, tobacco use is the single leading preventable cause of death in our state. It claims 3,800 lives each year and costs the state more than \$750 million annually in medical expenses and lost productivity.

HB 2739 ensures our hospitals will be safe and healthy institutions with practices that are consistent with their mission of providing quality health care.

The bill could be strengthened by insisting that any exemptions be rare and only when there is completely separately ventilated space. The current language exempts long term care facilities if they are "well-ventilated" (line 27). But even the best ventilation systems cannot eliminate second hand smoke, according to the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE), the international standard-setting body for indoor air quality. ASHRAE's position statement on the subject states, "Although complete separation and isolation of smoking rooms can control ETS (environmental tobacco smoke) exposure in non-smoking spaces in the same building, adverse health effects for the occupants of the smoking room cannot be controlled by ventilation. No other engineering approaches, including current and advanced dilution ventilation or air-cleaning technologies, have been demonstrated or should be relied on to control health risks from ETS exposure in spaces where smoking occurs. Some engineering measures may reduce that exposure and the corresponding risk to some degree while also addressing to some extent the comfort issues of odor and some forms of irritation."

Therefore we respectfully request that you consider a change on line 27 that would replace the word "well" with the word "separately."

Thank you for your consideration. Like so many in the public health community, we are grateful that the Kansas Hospital Association has encouraged this legislation and that you have taken the initiative to address this issue.

*Attachment 9  
HHS 2-20-06*



1208 SW TYLER  
 TOPEKA, KANSAS 66612-1735  
 785.233.8638 • FAX 785.233.5222  
 www.nursingworld.org/snas/ks  
 ksna@ksna.net



LEN CARSON, PH.D., A.R.N.R., B.C.  
 PRESIDENT

THE VOICE AND VISION OF NURSING IN KANSAS

TERRI ROBERTS, J.D., R.N.  
 EXECUTIVE DIRECTOR

*For More Information Contact  
 Terri Roberts J.D., R.N., Executive Director  
 785.233.8638 troberts@ksna.net*

**H.B. 2739 — Prohibiting Tobacco Use in Hospitals and on Hospital Grounds**

February 20, 2006

Chairman Morrison and members of the House Health and Human Services Committee, my name is Terri Roberts, R.N., and I am here representing the KANSAS STATE NURSES ASSOCIATION (KSNA). KSNA is the professional organization for Registered Nurses, representing the more than 28,000 RN's licensed in the state of Kansas.

We are very pleased that this committee is having a hearing on House Bill 2739. Secondhand smoke poses a unnecessary health risk forced upon those non-smokers who are in places where smoking is unrestricted and this bill proposes to eliminate tobacco use on Hospital Grounds, where Kansans seek "health care". This new law would be consistent with the mission of hospitals, to provide a healthy, safe, healing environment toward the attainment of maximum health.

KSNA in general supports a statewide public places smoking prohibition, so naturally the prohibition of tobacco use in and around hospitals, as one more step towards eliminating smoking in public places is considered a positive step towards that goal.

The Robert Wood Foundation has funded a national campaign to assist nurses in their efforts to quit smoking, the Tobacco Free Nurses Campaign. Kansas has two registered nurses on that steering committee Dr. Cindy Hornberger, R.N., Dean of the Washburn University School of Nursing and myself. The project's goal is to assist all nurses in educating themselves about cessation techniques, and to support cessation among those addicted to tobacco products, including themselves. The project provides a confidential referral and Quit Line with all the resources and support in one location at [www.tobaccofreenurses.org](http://www.tobaccofreenurses.org) Cindy and I have both shared information with our nurse executive colleagues throughout the state about this program and encouraged their support of nurses seeking to quit the past two years.

Passing this law will assist hospitals in their goals to promote healthy lifestyles among their staff and those whom they serve. We urge your favorable recommendation for passage.

Thank You.

*Attachment 10  
 HHS 2-20-06*

February 17, 2006

The Honorable Jim Morrison, Chairperson  
House Committee on Health and Human Services  
Statehouse, Room 143-N  
Topeka, Kansas 66612

Dear Representative Morrison:

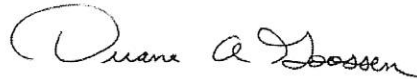
SUBJECT: Fiscal Note for HB 2739 by House Committee on Health and Human Services

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2739 is respectfully submitted to your committee.

HB 2739 would prohibit the use of tobacco in a medical care facility building or on medical care facility property. The bill would allow an exception for an area for tobacco use established for residents of a licensed long-term care unit of a medical facility. On or before January 1, 2007, the Chief Administrative Officer of each medical care facility would be required to establish procedures that describe how the prohibition would be implemented.

Enactment of HB 2739 would have no fiscal effect on state revenues or expenditures.

Sincerely,



Duane A. Goossen  
Director of the Budget

cc: Aaron Dunkel, KDHE  
Barbara Conant, Aging  
Mary Rinehart, Judiciary

Attachment 11  
HHS 2-20-06

Health and Human Services  
Testimony for HB 2734  
February 20, 2006  
By Representative Mario Goico

Chairman Morrison and Distinguished Committee Members:

HB 2734 bring us to the twenty-first century by allowing an applicant who takes a course of study online from a Department of Education regionally accredited institution or university to take the licensure, certification or registration examination.

Advances in Internet-based technology have brought opportunities for education and training through online distance education. For many, this type of instruction is perceived as a major breakthrough in teaching and learning because it facilitates the exchange of information and expertise while providing opportunities in distant or disadvantaged locations, for example in Western Kansas.

Online programs offer the flexibility and real-world skills necessary to achieve personal and professional advancement or to receive recurrent seminars and training without the need to leave medically underserved areas, for an extended period of time, in order to improve professional skills.

HB 2734 requires boards and commissions that determine the qualifications for licensure, certification, or registration to give a student the opportunity to take these tests when all the practical and educational, even if taken online, requirements for taking the examination have been met.

Attachment 12  
HHS 2-20-06

## TESTIMONY TO HOUSE HEALTH AND HUMAN SERVICES COMMITTEE

I earned my master's degree in clinical psychology from Emporia State University, graduating in 1991. After several years of practice at a community mental health center in Wichita as a master's level psychologist, I wanted to get my Ph.D. to increase my knowledge and improve my skills to better serve the community. Walden University enabled me to earn a Ph.D. in clinical psychology while continuing to work in my community. I earned my doctorate in 2002 after five years of course work, internship and dissertation. I then did one year of post doctoral supervision as required by state regulations.

I then applied for licensure at the doctoral level as a Licensed Psychologist. The Behavioral Sciences Regulatory Board denied me on four criteria. It should be noted that the state regulations indicate that to be licensed as a Licensed Psychologist one must have graduated from an APA (American Psychological Association) accredited program *or* meet all of 20 criteria. The Board concluded that I was deficient on four of these criteria. First, it claimed that I did not have a class in individual differences. I did in fact have a class in individual differences only it did not contain the words "individual differences" in the title. The class content was individual differences and fulfilled the description in the regulations. Second, the board claimed I did not have a year of residency, "or the equivalency" (as the regulations state). The Walden program requires travel to learning centers where the class meets for a long weekend and it has a 3 week summer session as well. The Board claimed that my hours were not equivalent despite it being more hours than KU requires in its residency definition. Third, the board claimed that Walden's clinical psychology program did not require standardized tests or measurements as an admission criterion. It failed to accept that Walden required a master's degree in psychology and that master's programs require the same standardized test (GRE) that the board evidently believes is the only acceptable one, thereby subsuming this requirement. The Board also failed to accept that obtaining a master's degree is a test in and of itself. And fourth, the board claimed that the program did not have a comprehensive exam "or the equivalent as determined by the program." The Board had the statement from Walden regarding the equivalency, yet ignored it.

I appealed the Board's decision to the District Court. It was then that the Board's prejudice towards online education became apparent. The Board made little effort to support its reasons for denying me. Instead it set out to denigrate online education in general and Walden University in particular. It provided the following false information to the court: It claimed Walden was not an accredited university when it is in fact accredited by the Commission on Institutions of Higher Education of the North Central Association of Colleges and Schools, one of six regional accrediting bodies established by the US Dept. of Education and the same body that accredits all the universities in Kansas. It claimed that no Walden graduates are Licensed Psychologists in any state of the union. The fact is that Walden graduates are Licensed Psychologists in over a dozen states. It claimed that Walden did not require a master's degree for admissions and went to current information that Walden does not (because it has its own master's program now). The fact is that Walden did require a master's degree when I was admitted to the

Attachment 13  
1715 2-20-06

program. Additional false information was presented as well. I was caught by surprise that a state Board would use such tactics and therefore was not able to enter evidence to the contrary. Nevertheless the Court of Appeals found in my favor on two of the four points but accepted the Board's false information on the other two.

Feeling helpless against such abuse of power, I contacted my state representative Mario Goico. He saw the injustice of my situation as well as the bigger picture: the clear benefit to Kansas if online education is fully accepted as the valid means of education that it is.

There is a shortage of health care professionals in rural Kansas, including psychologists. There are a handful of master's level psychologists in western Kansas and if they could get their advanced degree through online education, they can do so while continuing to practice in rural Kansas and improve their ability to serve the public with their doctoral degree.

Given the distances in rural Kansas, many prospective students cannot feasibly earn an advanced degree due to the demands of every day life which would not allow for the necessary commute time. Online education solves that problem. Fort Hayes State University and Kansas State University already have a number of programs by which students can earn degrees online. It would also be a boon to the military men and women stationed at Kansas military bases. Online programs from accredited universities appeal especially to the military because students can stay with one program despite being stationed at different places and even if deployed to Iraq or other "hotspots" overseas.

Other professionals, in health care and other fields, are also in short supply in rural Kansas. Eliminating the bias against online education will benefit Kansas students and thereby all Kansas citizens.

Ultimately, the Behavioral Sciences Regulatory Board, as well as other state boards, finds an applicant eligible to take the licensing exam. It is passing this licensing exam that demonstrates a person's qualification to practice psychology. In psychology this exam is called the Examination for the Professional Practice of Psychology (EPPP). The EPPP is designed to test for knowledge and thereby assess competency. It is a national exam and a national standard. HB 2734 will enable the quality graduates from accredited universities to be eligible to take this exam.

Submitted by  
John D. Caporale, Ph.D.  
11626 W. 17<sup>th</sup> St. N.  
Wichita, KS 67212

TESTIMONY  
TO THE  
COMMITTEE ON HEALTH AND HUMAN SERVICES  
BY  
WALDEN UNIVERSITY  
FEBRUARY 20, 2006

HOUSE BILL NUMBER 2734—An Act concerning state boards, commissions, and authorities relating to online education and licensure.

Mister Chairman and members of the Committee, Walden University is pleased to offer this testimony in support of House Bill 2734. We believe this legislation will improve the environment for the online sector of higher education and expand educational opportunities for Kansas citizens.

Walden University, an online institution, was originally founded in 1970 to provide access to post-baccalaureate degree programs to individuals who might otherwise be unable to pursue a doctoral degree. Walden University's graduate programs are designed primarily for the adult learners, mid-career professionals who are accomplished in the practical sphere of their particular professions and are choosing to acquire the competency and credentials associated with a masters or doctoral degree. Since 1990, Walden University has been accredited by the Higher Learning Commission and is a member of the North Central Association, located at 30 North LaSalle Street, Suite 2400, Chicago, IL, 60602-2504, 312-263-0456. By its participation in the Council of Graduate Schools, it ascribes to the highest standards of graduate education.

Walden University School of Psychology provides adult learners in psychology with the knowledge and skills to accomplish significant social impact through psychological research, theories, models and skills. Using the principles of adult learning and development, we prepare motivated, competent, and self-reflective psychologists who are informed about their profession and the contexts in which they live and work.

The School of Psychology offers a Doctor of Philosophy degree that prepares students for the practice of professional psychology. The licensure specializations in this program are designed in accordance with the highest ethical and professional standards established by the professional organizations and accrediting/approval bodies. In addition to the doctoral programs, the School also offers a Master's degree that provides pre-doctoral training and practitioner-oriented competencies, and a MS in mental health counseling for students interested in applied practice at that level. The School also offers a Post-Doctoral Psychology certificate to students who wish to enhance their academic knowledge and professional skills in a particular area of psychology.

Attachment 14  
HHS 2-20-06

Walden University supports House Bill 2734 because it would provide for an applicant for licensure the right to take an examination for licensure if the applicant's course of study was obtained online as long as the course of study was from an accredited university recognized by the US Department of Education and all such requirements of the accredited university have been met including the requisite practical or clinical supervision hours.

Thank you for this opportunity to present our testimony in support of House Bill 2734



# KANSAS BOARD OF HEALING ARTS

LAWRENCE T. BUENING, JR.  
EXECUTIVE DIRECTOR



KATHLEEN SEBELIUS  
GOVERNOR

## MEMORANDUM

**TO:** House Health and Human Services Committee

**FROM:** Lawrence T. Buening, Jr.  
Executive Director

**RE:** H.B. No. 2734

**DATE:** February 17, 2006

Thank you for the opportunity to provide information on H.B. No. 2734. The State Board of Healing Arts reviewed this bill at its meeting February 10, 2006. Because the language of the bill does not appear to affect the operations of the Board, no position was taken. However, the Board did have questions about the purpose and need for the bill.

The Board could not ascertain from the bill what entity would accredit the institutions that provide all or some of the course of study online through the internet. There are national organizations that accredit both schools and specific health care programs. However, the Board is also required to approve schools that provide satisfactory educational programs in the profession for which an individual seeks licensure, registration or certification. In the health care field, laboratory and clinical experience are necessary components to the practice of any profession. Obviously, these components cannot be obtained online through the internet. No school would be accredited by a national organization or approved by the Board that did not provide these components as part of the required curriculum for graduation. Therefore, the Board questioned what would be accomplished by enactment of this bill.

The Board does not administer the examinations approved and required for licensure, registration or certification in any of the professions the Board regulates. The examinations are administered by national organizations. Qualifications of individuals to take the examination are determined by those national organizations. Therefore, it would not appear that the provisions of H.B. No. 2734 would have any effect on the Board.

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235 S. Topeka Boulevard, Topeka, Kansas 66603-3068  
Voice: 785-296-7413 Toll Free: 888-886-7205 Fax: 785-296-0852 www.ksbha.org

Attachment 15  
HHS 2-20-06

**HOUSE BILL No. 2734**

By Committee on Health and Human Services

1-26

Representative Goico <sup>3<sup>rd</sup></sup>  
Balloon Amendment  
02-07-2006

Attachment 16  
HHS 2-20-06

9 AN ACT concerning state boards, commissions and authorities; relating  
10 to online education and licensure.

11  
12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. Notwithstanding any other provision of law, any person,  
14 board, commission or similar body who determines the qualifications of  
15 individuals for licensure, certification or registration shall not deny an  
16 applicant for licensure, certification or registration the right to take an  
17 examination for licensure, certification or registration because some or  
18 all of the applicant's course of study was obtained online through the  
19 internet, as long as the course of study was from an accredited institution  
20 or university ~~and all the requirements for taking the examination have~~  
21 ~~been met~~

22 Sec. 2. This act shall take effect and be in force from and after its  
23 publication in the statute book.

accredited by an accrediting agency recognized by the United States department of education and all such requirements of the accredited institution or university have been met, including the requisite practical or clinical supervision hours. This act shall apply to all applicants whether the applicant's degree was obtained prior or subsequent to the passage of this act

HOUSE BILL No. 2649

By Committee on Health and Human Services

1-18

Representative Bethell, 4th  
Balloon Amendment  
February 16, 2006

Attachment 17  
AHS 2-20-06

9 AN ACT concerning health care; relating to a pain patient's bill of rights;  
10 amending K.S.A. 60-4403 and 65-2837 and repealing the existing  
11 sections.

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

14 New Section 1. Sections 1 through 4, and amendments thereto, shall  
15 be known and may be cited as the "pain patient's bill of rights."

16 New Sec. 2. All Kansans have a right to:

- 17 (a) Have their report of pain taken seriously and to be treated with
- 18 dignity and respect by doctors, nurses, pharmacists and other health care
- 19 professionals;
- 20 (b) have their pain thoroughly assessed and promptly treated;
- 21 (c) participate actively in decisions about how to manage their pain;
- 22 (d) have their pain reassessed regularly and their treatment adjusted
- 23 if their pain has not been eased;
- 24 (e) be referred to a pain specialist if their pain persists;
- 25 (f) get clear and prompt answers to their questions; and
- 26 (g) take time to make decisions regarding their pain treatment and
- 27 refuse a particular type of treatment if so decided.

28 New Sec. 3. (a) A patient who suffers from moderate to severe pain  
29 may:

- 30 (1) Request or reject the use of any or all modalities to relieve pain;
- 31 (2) choose from appropriate pharmacologic treatment options to re-
- 32 lieve moderate to severe pain, including opiate medications, without first
- 33 having to submit to an invasive medical procedure such as surgery, de-
- 34 struction of a nerve or other body tissue by manipulation or the implan-
- 35 tation of a drug delivery system or device;
- 36 (3) be informed by the patient's physician or physicians who are qual-
- 37 ified to treat moderate to severe pain employing methods that include
- 38 the use of opiates when the patient's physician refuses to prescribe opiate
- 39 medication treatment for such pain; and
- 40 (4) request and receive an identifying notice of a prescription from
- 41 the patient's physician for purposes of emergency treatment or law en-
- 42 forcement identification.
- 43 (b) A physician who uses opiate therapy to relieve moderate to severe

17-2

1 pain may prescribe a dosage deemed medically necessary to relieve the  
 2 pain.

3 New Sec. 4. Nothing in the pain patient's bill of rights shall be con-  
 4 strued to:

5 (a) Expand the authorized scope of practice of any licensed physician;  
 6 (b) limit any reporting or disciplinary provisions applicable to licensed  
 7 physicians and surgeons who violate prescribing practices; and  
 8 (c) prohibit the discipline or prosecution of a licensed physician for:  
 9 (1) Failing to maintain complete, accurate and current records that  
 10 document the physical examination and medical history of a patient, the  
 11 basis for the clinical diagnosis of a patient and the treatment of the  
 12 patient;  
 13 (2) writing false or fictitious prescriptions for federal or state con-  
 14 trolled substances;  
 15 (3) prescribing, administering or dispensing pharmaceuticals in vio-  
 16 lation of the provisions of the federal comprehensive drug abuse preven-  
 17 tion and control act of 1970 (21 U.S.C. 801 et seq.);  
 18 (4) diverting medications prescribed for a patient to the licensed phy-  
 19 sician's own personal use; and  
 20 (5) causing or assisting in causing the suicide, euthanasia or mercy  
 21 killing of any individual. (A) so long as it is not causing or assisting in  
 22 causing the suicide, euthanasia or mercy killing of any individual to pre-  
 23 scribe medical treatment for the purpose of treating moderate to severe  
 24 pain and (B) so long as the medical treatment is not also furnished for  
 25 the purpose of causing or assisting in causing death for any reason.

Please put insert A here

26 Sec. 5. K.S.A. 60-4403 is hereby amended to read as follows: 60-  
 27 4403. (a) A licensed health care professional who administers, prescribes  
 28 or dispenses medications or procedures to relieve another person's pain  
 29 or discomfort, ~~even if the medication or procedure may hasten or increase~~  
 30 ~~the risk of death,~~ does not violate K.S.A. 21-3406 and amendments  
 31 thereto unless the medications or procedures are knowingly administered,  
 32 prescribed or dispensed with the intent to cause death. A mid-level prac-  
 33 titioner as defined in subsection (ii) of K.S.A. 65-1626 and amendments  
 34 thereto who prescribes medications or procedures to relieve another per-  
 35 son's pain or discomfort, ~~even if the medication or procedure may hasten~~  
 36 ~~or increase the risk of death,~~ does not violate K.S.A. 21-3406 and amend-  
 37 ments thereto unless the medications or procedures are knowingly pre-  
 38 scribed with the intent to cause death.

39 (b) A licensed health care professional, family member or other le-  
 40 gally authorized person who participates in the act of, or the decision  
 41 making process which results in the withholding or withdrawal of a life-  
 42 sustaining procedure does not violate K.S.A. 21-3406 and amendments  
 43 thereto.

Attached  
17-3

Insert A

New Sec. 2. The Legislature finds and declares the following:

(a) A person suffering from pain should expect their report of pain to be taken seriously, and should expect to be treated with respect by health care professionals.

(b) A person suffering from pain should have access to and expect proper assessment and treatment of such person's pain, while retaining the right to refuse treatment.

(c) A person's health care professional may refuse to prescribe opiate medication for a patient who requests treatment for pain. However, that health care professional shall inform the patient that there are physicians who specialize in the treatment of pain with methods that include the use of opiate medication.

(d) A person suffering from pain may request that such person's physician provide an identifying notice of such person's prescription for purposes of emergency treatment or law enforcement identification.

(e) A health care professional treating a person who suffers from pain may prescribe opiate medications in a dosage deemed medically necessary to relieve such person's pain.

(f) A person suffering from pain has the option to request or reject the use of any or all modalities to relieve such person's pain, including the use of opiate medications to relieve pain without first having to submit to an invasive medical procedure such as surgery, destruction of a nerve or other body tissue by manipulation, or the implantation of a drug delivery system or device.

Sec. 3. K.S.A. 65-2838 is hereby amended to read as follows: 65-2838. (a) The board shall have jurisdiction of proceedings to take disciplinary action authorized by K.S.A. 65-2836 and amendments thereto against any licensee practicing under this act. Any such action shall be taken in accordance with the provisions of the Kansas administrative procedure act.

(b) Either before or after formal charges have been filed, the board and the licensee may enter into a stipulation which shall be binding upon the board and the licensee entering into such stipulation, and the board may enter its findings of fact and enforcement order based upon such stipulation without the necessity of filing any formal charges or holding hearings in the case. An enforcement order based upon a stipulation may order any disciplinary action authorized by K.S.A. 65-2836 and amendments thereto against the licensee entering into such stipulation.

(c) The board may temporarily suspend or temporarily limit the license of any licensee in accordance with the emergency adjudicative proceedings under the Kansas administrative procedure act if the board determines that there is cause to believe that grounds exist under K.S.A. 65-2836 and amendments thereto for disciplinary action authorized by K.S.A. 65-2836 and amendments thereto against the licensee and that the licensee's continuation in practice would constitute an imminent danger to the public health and safety.

(d) The board shall not take disciplinary action against any licensee for prescribing, dispensing or administering controlled substances, including opioid analgesics, for a legitimate medical purpose and in the usual course of professional practice. The board shall consider prescribing, ordering, administering or dispensing controlled substances for pain to be for a legitimate medical purpose if based

on sound clinical grounds. The board shall adopt guidelines for the use of controlled substances for the treatment of pain. In the event a licensee's use of controlled substances has been questioned by another regulatory or enforcement agency and such licensee has prescribed, dispensed or administered controlled substances, including opioid analgesics, in accordance with guidelines adopted by the board, the board shall support the licensee in response to the other regulatory or enforcement agency.

New Sec. 4. Nothing in this act shall be construed to prohibit disciplinary action by the state board of healing arts or interfere with the investigative authority of any law enforcement agency.

1 (c) Providing spiritual treatment through prayer alone, in lieu of med-  
2 ical treatment, does not violate K.S.A. 21-3406 and amendments thereto.

3 Sec. 6. K.S.A. 65-2837 is hereby amended to read as follows: 65-  
4 2837. As used in K.S.A. 65-2836, and amendments thereto, and in this  
5 section:

6 (a) "Professional incompetency" means:

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

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

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

15 (b) "Unprofessional conduct" means:

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

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

21 (3) Assisting in the care or treatment of a patient without the consent  
22 of the patient, the attending physician or the patient's legal  
23 representatives.

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

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

29 (6) Willful betrayal of confidential information.

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

32 (8) Advertising to guarantee any professional service or to perform  
33 any operation painlessly.

34 (9) Participating in any action as a staff member of a medical care  
35 facility which is designed to exclude or which results in the exclusion of  
36 any person licensed to practice medicine and surgery from the medical  
37 staff of a nonprofit medical care facility licensed in this state because of  
38 the branch of the healing arts practiced by such person or without just  
39 cause.

40 (10) Failure to effectuate the declaration of a qualified patient as  
41 provided in subsection (a) of K.S.A. 65-28,107, and amendments thereto.

42 (11) Prescribing, ordering, dispensing, administering, selling, supply-  
43 ing or giving any amphetamines or sympathomimetic amines, except as

17-6

- 1 authorized by K.S.A. 65-2837a, and amendments thereto.
- 2 (12) Conduct likely to deceive, defraud or harm the public.
- 3 (13) Making a false or misleading statement regarding the licensee's
- 4 skill or the efficacy or value of the drug, treatment or remedy prescribed
- 5 by the licensee or at the licensee's direction in the treatment of any dis-
- 6 ease or other condition of the body or mind.
- 7 (14) Aiding or abetting the practice of the healing arts by an unli-
- 8 censed, incompetent or impaired person.
- 9 (15) Allowing another person or organization to use the licensee's
- 10 license to practice the healing arts.
- 11 (16) Commission of any act of sexual abuse, misconduct or exploita-
- 12 tion related to the licensee's professional practice.
- 13 (17) The use of any false, fraudulent or deceptive statement in any
- 14 document connected with the practice of the healing arts including the
- 15 intentional falsifying or fraudulent altering of a patient or medical care
- 16 facility record;
- 17 (18) Obtaining any fee by fraud, deceit or misrepresentation.
- 18 (19) Directly or indirectly giving or receiving any fee, commission,
- 19 rebate or other compensation for professional services not actually and
- 20 personally rendered, other than through the legal functioning of lawful
- 21 professional partnerships, corporations or associations.
- 22 (20) Failure to transfer patient records to another licensee when re-
- 23 quested to do so by the subject patient or by such patient's legally des-
- 24 ignated representative.
- 25 (21) Performing unnecessary tests, examinations or services which
- 26 have no legitimate medical purpose.
- 27 (22) Charging an excessive fee for services rendered.
- 28 (23) Prescribing, dispensing, administering, distributing a prescrip-
- 29 tion drug or substance, including a controlled substance, in an excessive,
- 30 improper or inappropriate manner or quantity for ~~other than~~ a legitimate
- 31 medical purpose or not in the course of the licensee's professional
- 32 practice.
- 33 (24) Repeated failure to practice healing arts with that level of care,
- 34 skill and treatment which is recognized by a reasonably prudent similar
- 35 practitioner as being acceptable under similar conditions and
- 36 circumstances.
- 37 (25) Failure to keep written medical records which accurately de-
- 38 scribe the services rendered to the patient, including patient histories,
- 39 pertinent findings, examination results and test results.
- 40 (26) Delegating professional responsibilities to a person when the
- 41 licensee knows or has reason to know that such person is not qualified by
- 42 training, experience or licensure to perform them.
- 43 (27) Using experimental forms of therapy without proper informed

or

that is inadequate, excessive, improper or inappropriate given all the medical facts relating to the patient, is not

is



# House Concurrent Resolution No. 5031

By Committee on Health and Human Services

1-25

Attachment 18  
HHS 2-20-06

9 A CONCURRENT RESOLUTION urging providers of health insur-  
10 ance to encourage certain insured individuals to have an up-to-date  
11 living will and advanced directives.

citizens of Kansas

13 WHEREAS, The cost of health care continues to increase faster than  
14 the cost of living; and

15 WHEREAS, Under Kansas law a Kansas citizen may execute a docu-  
16 ment termed a durable power of attorney for health care decisions, com-  
17 monly referred to as advanced directives, wherein the individual may  
18 direct the withholding or withdrawal of life-sustaining procedures in a  
19 terminal condition; and

declaration, commonly referred to as a living will

20 WHEREAS, Under Kansas law, a Kansas citizen may execute a docu-  
21 ment termed a declaration, commonly referred to as a living will, au-  
22 thorizing another individual to act for an ill person upon the ill person's  
23 subsequent disability or incapacity; and

durable power of attorney for health care decisions,  
designating

24 WHEREAS, Unless a person has a living will or advanced directives,  
25 such person when hospitalized for a life-threatening condition may be  
26 subject to being treated with life-saving measures against the person's will  
27 and desire; and

advance directives,

durable power of attorney for health care decisions,  
or both

28 WHEREAS, The unnecessary use of life saving measures increases the  
29 costs of health care for all citizens of the state of Kansas; Now, therefore,

30 *Be it resolved by the House of Representatives of the State of Kansas,*  
31 *the Senate concurring therein:* That the Legislature strongly urges the  
32 insurance industry to consider providing rate reductions or other incen-  
33 tives for policyholders or applicants for health insurance, particularly any  
34 person who is at least 40 years of age, to have a current living will and  
35 durable power of attorney for health care decisions, and

citizens of Kansas

36 Be it further resolved: That the Secretary of State provide an en-  
37 rolled copy of this resolution to the Commissioner of Insurance who is  
38 hereby directed to send a copy of this resolution to each insurance com-  
39 pany which sells health insurance in this state.

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