

MINUTES OF THE SENATE HEALTH CARE STRATEGIES COMMITTEE

The meeting was called to order by Chairperson Susan Wagle at 1:30 P.M. on March 25, 2008 in Room 136-N of the Capitol.

Committee members absent: Senator James Barnett- excused  
Senator Nick Jordan- excused

Committee staff present: Ms. Emalene Correll, Kansas Legislative Research Department  
Mrs. Terri Weber, Kansas Legislative Research Department  
Ms. Renae Jefferies, Revisor of Statutes Office  
Ms. Margaret Cianciarulo, Committee Secretary

Conferees appearing before the Committee: Ms. Callie Denton Hartle, Kansas Association for Justice  
Mr. Jerry Slaughter, Executive Director,  
Kansas Medical Society

Others in attendance: Please see attached Guest List

**Final action on HB2620 - an act concerning the State Board of Healing Arts, relating to non-disciplinary resolution; fingerprinting and criminal history records checks.**

Upon calling the meeting to order, the Chair mentioned that in yesterday's meeting there were questions regarding confidentiality of disciplinary proceedings for licensees of the Board of Healing Arts and today, Ms. Callie Denton Hartle, Kansas Association for Justice, has brought a handout. The Chair called upon Ms. Hartle who said her memo is intended to offer more information about KsAJ's position and stated that if trained litigators find it difficult to obtain information about licensees and disciplinary proceedings, such information is likely not as readily available to members of the public as the Board believes. She went on to say:

- under HB2620 there are specific limitations on the public's access to non-disciplinary resolutions;
- Meetings of the Board for the purpose of discussing or adopting a non-disciplinary resolution are not subject to Kansas Administrative Procedures Act (KAPA) or the Kansas Open Meetings Act (KOMA), but appear to be consistent with other current statutory limits on disclosure and transparency.
- Identified several barriers to transparency, ex. specific laws requiring confidentiality and provisions in the law that give the Board the discretion over the information that is disclosed to the public.
- Regarding KAPA:
  - Although KAPA requires that hearings be open to public observation, a presiding officer may close portions pursuant to a provision of law, expressly authorizing closure and while the Board must record the hearing, it is not required to produce a transcript.
  - KAPA requires that the Board create an official record of each formal hearing, presumably subject to disclosure under the Kansas Open Records Act (KORA), there are specific exemptions in KORA for records and reports relating to health care providers and if otherwise privileged or part of peer review are not subject to disclosure.

She summarized by saying that KsAJ's intent is to clarify their opinion that there are currently several provisions of law that limit the transparency of information to the public. If it is difficult for KsAJ members to gain access to information about licensees because of the operation of these laws, they believe it is even more difficult for Kansas health care consumers. A copy of her memorandum is (Attachment 1) attached hereto and incorporated into the Minutes by reference

## CONTINUATION SHEET

MINUTES OF THE Senate Health Care Strategies Committee at 1:30 P.M. on March 25, 2008 in Room 136-N of the Capitol.

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The Chair thanked Ms. Hartle and asked if there were questions of the Committee. Seeing none, the Chair asked Mr. Larry Buening, Executive Director, Kansas Board of Healing Arts, if she could ask him questions about confidentiality

- When there is a complaint, does it go before their review committee? Are the review committee and the disciplinary panel made up of the same members? How many members are on the review committee? If disciplinary action is recommended does it then go to the full Board?

- At what point does the public know when this is happening? In a meeting where an offer is discussed or a meeting where a suit is being filed, that is still not public yet?

The Chair recognized Senator Brungardt who commented pretty much everything we are talking about in this bill is still under that shield of confidentiality, however, the one link he would like to have assurance on would be the Board would retain knowledge of this action so that sometime later if they had similar action against this licensee they would retain the memory of having that transaction. He also said he would like to consider the balloons offered by KMS as they seem to be quite sensible.

The Chair agreed and recognized Mr. Jerry Slaughter, Executive Director, KMS who offered an outline of his amendments and addressed the transparency issues that the Committee addressed in yesterday's Committee meeting. Mr. Slaughter stated that in the handout there is only one substantive change, but noted that they had made a couple of technical changes that were pointed out during the hearing. He feels the main issue can be found on pages eight and nine addressing the issue that was raised by the Kansas Trial Lawyers Association on the issue of transparency.

-Again, he said KMS did not oppose the notion of transparency as long as it is meaningful and is not going to penalize the vast majority of physicians, licensees of the Board, that conduct themselves ethically.

- He expressed their concerns yesterday about posting of information relating to medical malpractice cases and we don't believe it's appropriate because it is not reliable.

-KMS looked at the Colorado Act, pulling out all information that is currently required by their Board and virtually it is everything that is required under the Colorado Act. The difference is they are not required to post in Kansas as they are now in Colorado, effective January 1, 2008.

- Their Amendment #6 is what is called a transparency amendment and is intended to direct the Board to create a website that we hope will be user friendly, and contains all this information listed on his outline.

- They gave the Board rules and regs to direct licensees to complete this information and get it submitted

- Lastly, they added on © it allows a licensee to add a statement to their profile on the website if they have concern about the accuracy of the information and this is consistent with the national data bank.

The only other change is found on page 8, Amendment #4, Section 2(b) regarding criminal background checks and fingerprinting, adjusting an earlier amendment deleting juvenile records and expungement.

A copy of his handout is (Attachment 2) attached hereto and incorporated into the Minutes by reference.

The Chair asked for questions for Mr. Slaughter. As there were none, the Chair announced they were back on the bill and did anyone want to entertain a motion.

Senator Brungardt made a motion, subject to the Revisors expertise, to offer the balloon presented by KMS including the transparencies and the new Amendment #6. It was seconded by Senator Haley and the motion passed.

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A discussion ensued between Senators Haley and Wagle, Ms. Correll, Mrs. Weber and Mr. Buening regarding:

- last year's SB81 and amended in HB2681 regarding fingerprinting is permissive,
- may require a person to be fingerprinted and submit to a state and national criminal history check and is related to the original application or someone who is under investigation,
- and you may fix or collect a fee if you need to use this authority.

The Chair then asked the Committee the will of the bill.

Senator Brungardt recommended the bill be moved favorably as amended. It was seconded by Senator Haley and the motion carried.

**Adjournment**

As there was no further business, the Chair stated the Committee's work is done and the meeting was adjourned. The time was 2:30 p.m.



SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

GUEST LIST

DATE: Tuesday, March 25, '08

NAME	REPRESENTING
Austin Unruh	Don Dahl
Marius Schrewe	Germany
Wes Schmidt-Tieszen	Marc Rhodes
Stefan Henkel	Germany
Kendall Voth	Don Dahl
Rinda Duerksen	Don Dahl
Anthony Esau	Don Dahl
Austin Hayden	Hein Law Firm
Chip Wheeler	HCSF Board of Gov.s
Sky Wurtzbael	KS Chapter, NASW
Bob Williams	KS Assoc of Osteopathic Med.
John Peterman	Capital Strategies
Tim Carpenter	(-)
Cecile Hartle	KS Assn for Justice

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*Your rights. Our mission.*

To: Senator Susan Wagle, Chairperson  
Members of the Senate Health Care Strategies Committee

From: Callie Denton Hartle

Date: March 25, 2008

Re: HB 2620 Non-disciplinary resolutions; additional information  
relating to confidentiality

There were Committee questions regarding the confidentiality of disciplinary proceedings for licensees of the Board of Healing Arts. This memo is intended to offer more information about KsAJ's position.

It is KsAJ's experience that in many cases it is difficult to gain access to information from the Board relating to licensees and disciplinary proceedings. We believe that if trained litigators find it difficult to obtain information about licensees, such information is likely not as readily available to members of the public as the Board believes.

In fact, under HB 2620, there are specific limitations on the public's access to non-disciplinary resolutions. Meetings of the Board for the purpose of discussing or adopting a non-disciplinary resolution are not subject to Kansas Administrative Procedures Act (KAPA) or the Kansas Open Meetings Act (KOMA). Such resolutions are specifically required to be confidential under KSA 65-2898a. These restrictions appear to be consistent with other current statutory limits on disclosure and transparency.

We have identified several barriers to transparency: specific laws requiring confidentiality; provisions in the law that give the Board the discretion over the information that is disclosed to the public; and lack of a user-friendly, coordinated, collated source of public information relating

Senate Health Care Strategies  
Committee

Date: March 25, 2008

Attachment 1

to Board licensees. Fairness may justify confidentiality in certain instances. But in other instances, we believe there are unreasonable limitations on ready access to information that is relevant to the public interest.

While the Board must comply with KAPA in conducting hearings, KAPA is not synonymous with disclosure nor does it guarantee the public's reasonable access to information. Although KAPA requires that hearings be open to public observation, a presiding officer may close portions pursuant to a provision of law expressly authorizing closure. And while the Board must record the hearing, it is not required to produce a transcript.

KAPA also requires that the Board create an official record of each formal hearing, which is presumably subject to disclosure under the Kansas Open Records Act (KORA). However, there are specific exemptions in KORA for records and reports relating to health care providers. Such records and reports, if otherwise privileged or part of peer review, are not subject to disclosure.

Our memo is not intended to be a detailed or exhaustive analysis of KAPA, KORA, KOMA, or the Healing Arts Act. Instead, it is our intent to clarify our opinion that there are currently several provisions of law that limit the transparency of information to the public. In KsAJ members' experience, the operation of these laws makes it difficult to gain access to information about licensees. We believe it is even more difficult for Kansas health care consumers.

**KMS Amendments to HB 2620 (as amended by HCW)  
Senate Health Care Strategies Committee  
March 25, 2008**

- 1) KSA 65-2836 (a) and (b); relating to taking disciplinary action on the basis of a single act which, if continued, would reasonably be expected to constitute professional incompetency or unprofessional conduct (page 1);**
- 2) KSA 65-2837 (b) (16) and new (33); relating to improper sexual conduct and exploitative conduct (page 4, 5 & 6);**
- 3) KSA 65-2878 new (e); relating to granting authority to the board to contract with physicians and other licensees to assist with complaints, clinical matters, and professional practices issues (page 7);**
- 4) Section 2 (b) of HB 2620; relating to criminal background checks (page 8);**
- 5) Section 3 (a) of HB 2620; relating to the list of graduated sanctions being developed by the Board (page 8);**
- 6) New Section 4 of HB 2620; relating to transparency of licensure and disciplinary information (page 8 & 9).**

## Proposed Amendments to HB 2620 by the Kansas Medical Society

### Amendment #1

**65-2836. Revocation, suspension, limitation or denial of licenses; censure of licensee; grounds; consent to submit to mental or physical examination or drug screen, or any combination thereof, implied.** A licensee's license may be revoked, suspended or limited, or the licensee may be publicly or privately censured or placed under probationary conditions, or an application for a license or for reinstatement of a license may be denied upon a finding of the existence of any of the following grounds:

(a) The licensee has committed fraud or misrepresentation in applying for or securing an original, renewal or reinstated license.

(b) The licensee has committed an act of unprofessional or dishonorable conduct or professional incompetency. **Provided however, that the board may take appropriate disciplinary action or enter into a non-disciplinary resolution when a licensee has engaged in any conduct or professional practice on a single occasion that, if continued, would reasonably be expected to constitute professional incompetency or unprofessional conduct, as defined in KSA 65-2837.**

(c) The licensee has been convicted of a felony or class A misdemeanor, whether or not related to the practice of the healing arts. The board shall revoke a licensee's license following conviction of a felony occurring after July 1, 2000, unless a 2/3 majority of the board members present and voting determine by clear and convincing evidence that such licensee will not pose a threat to the public in such person's capacity as a licensee and that such person has been sufficiently rehabilitated to warrant the public trust. In the case of a person who has been convicted of a felony and who applies for an original license or to reinstate a canceled license, the application for a license shall be denied unless a 2/3 majority of the board members present and voting on such application determine by clear and convincing evidence that such person will not pose a threat to the public in such person's capacity as a licensee and that such person has been sufficiently rehabilitated to warrant the public trust.

(d) The licensee has used fraudulent or false advertisements.

(e) The licensee is addicted to or has distributed intoxicating liquors or drugs for any other than lawful purposes.

(f) The licensee has willfully or repeatedly violated this act, the pharmacy act of the state of Kansas or the uniform controlled substances act, or any rules and regulations adopted pursuant thereto, or any rules and regulations of the secretary of health and environment which are relevant to the practice of the healing arts.

(g) The licensee has unlawfully invaded the field of practice of any branch of the healing arts in which the licensee is not licensed to practice.

(h) The licensee has engaged in the practice of the healing arts under a false or assumed name, or the impersonation of another practitioner. The provisions of this subsection relating to an assumed name shall not apply to licensees practicing under a professional corporation or other legal entity duly authorized to provide such professional services in the state of Kansas.

(i) The licensee has the inability to practice the healing arts with reasonable skill and safety to patients by reason of physical or mental illness, or condition or



use of alcohol, drugs or controlled substances. In determining whether or not such inability exists, the board, upon reasonable suspicion of such inability, shall have authority to compel a licensee to submit to mental or physical examination or drug screen, or any combination thereof, by such persons as the board may designate either in the course of an investigation or a disciplinary proceeding. To determine whether reasonable suspicion of such inability exists, the investigative information shall be presented to the board as a whole, to a review committee of professional peers of the licensee established pursuant to K.S.A. 65-2840c and amendments thereto or to a committee consisting of the officers of the board elected pursuant to K.S.A. 65-2818 and amendments thereto and the executive director appointed pursuant to K.S.A. 65-2878 and amendments thereto or to a presiding officer authorized pursuant to K.S.A. 77-514 and amendments thereto. The determination shall be made by a majority vote of the entity which reviewed the investigative information. Information submitted to the board as a whole or a review committee of peers or a committee of the officers and executive director of the board and all reports, findings and other records shall be confidential and not subject to discovery by or release to any person or entity. The licensee shall submit to the board a release of information authorizing the board to obtain a report of such examination or drug screen, or both. A person affected by this subsection shall be offered, at reasonable intervals, an opportunity to demonstrate that such person can resume the competent practice of the healing arts with reasonable skill and safety to patients. For the purpose of this subsection, every person licensed to practice the healing arts and who shall accept the privilege to practice the healing arts in this state by so practicing or by the making and filing of a renewal to practice the healing arts in this state shall be deemed to have consented to submit to a mental or physical examination or a drug screen, or any combination thereof, when directed in writing by the board and further to have waived all objections to the admissibility of the testimony, drug screen or examination report of the person conducting such examination or drug screen, or both, at any proceeding or hearing before the board on the ground that such testimony or examination or drug screen report constitutes a privileged communication. In any proceeding by the board pursuant to the provisions of this subsection, the record of such board proceedings involving the mental and physical examination or drug screen, or any combination thereof, shall not be used in any other administrative or judicial proceeding.

(j) The licensee has had a license to practice the healing arts revoked, suspended or limited, has been censured or has had other disciplinary action taken, or an application for a license denied, by the proper licensing authority of another state, territory, District of Columbia, or other country, a certified copy of the record of the action of the other jurisdiction being conclusive evidence thereof.

(k) The licensee has violated any lawful rule and regulation promulgated by the board or violated any lawful order or directive of the board previously entered by the board.

(l) The licensee has failed to report or reveal the knowledge required to be reported or revealed under K.S.A. 65-28,122 and amendments thereto.

(m) The licensee, if licensed to practice medicine and surgery, has failed to inform in writing a patient suffering from any form of abnormality of the breast tissue for which surgery is a recommended form of treatment, of alternative methods of treatment recognized by licensees of the same profession in the same or similar communities as being acceptable under like conditions and

circumstances.

(n) The licensee has cheated on or attempted to subvert the validity of the examination for a license.

(o) The licensee has been found to be mentally ill, disabled, not guilty by reason of insanity, not guilty because the licensee suffers from a mental disease or defect or incompetent to stand trial by a court of competent jurisdiction.

(p) The licensee has prescribed, sold, administered, distributed or given a controlled substance to any person for other than medically accepted or lawful purposes.

(q) The licensee has violated a federal law or regulation relating to controlled substances.

(r) The licensee has failed to furnish the board, or its investigators or representatives, any information legally requested by the board.

(s) Sanctions or disciplinary actions have been taken against the licensee by a peer review committee, health care facility, a governmental agency or department or a professional association or society for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(t) The licensee has failed to report to the board any adverse action taken against the licensee by another state or licensing jurisdiction, a peer review body, a health care facility, a professional association or society, a governmental agency, by a law enforcement agency or a court for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(u) The licensee has surrendered a license or authorization to practice the healing arts in another state or jurisdiction, has surrendered the authority to utilize controlled substances issued by any state or federal agency, has agreed to a limitation to or restriction of privileges at any medical care facility or has surrendered the licensee's membership on any professional staff or in any professional association or society while under investigation for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(v) The licensee has failed to report to the board surrender of the licensee's license or authorization to practice the healing arts in another state or jurisdiction or surrender of the licensee's membership on any professional staff or in any professional association or society while under investigation for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(w) The licensee has an adverse judgment, award or settlement against the licensee resulting from a medical liability claim related to acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(x) The licensee has failed to report to the board any adverse judgment, settlement or award against the licensee resulting from a medical malpractice liability claim related to acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

(y) The licensee has failed to maintain a policy of professional liability insurance as required by K.S.A. 40-3402 or 40-3403a and amendments thereto.

(z) The licensee has failed to pay the premium surcharges as required by K.S.A. 40-3404 and amendments thereto.

(aa) The licensee has knowingly submitted any misleading, deceptive, untrue or fraudulent representation on a claim form, bill or statement.

(bb) The licensee as the responsible physician for a physician assistant has failed to adequately direct and supervise the physician assistant in accordance with the physician assistant licensure act or rules and regulations adopted under such act.

(cc) The licensee has assisted suicide in violation of K.S.A. 21-3406 as established by any of the following:

(A) A copy of the record of criminal conviction or plea of guilty for a felony in violation of K.S.A. 21-3406 and amendments thereto.

(B) A copy of the record of a judgment of contempt of court for violating an injunction issued under K.S.A. 2002 Supp. 60-4404 and amendments thereto.

(C) A copy of the record of a judgment assessing damages under K.S.A. 2002 Supp. 60-4405 and amendments thereto.

## Amendment #2

**65-2837. Definitions.** As used in K.S.A. 65-2836, and amendments thereto, and in this section:

(a) "Professional incompetency" means:

(1) One or more instances involving failure to adhere to the applicable standard of care to a degree which constitutes gross negligence, as determined by the board.

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

(3) A pattern of practice or other behavior which demonstrates a manifest incapacity or incompetence to practice **the healing arts medicine**.

(b) "Unprofessional conduct" means:

(1) Solicitation of professional patronage through the use of fraudulent or false advertisements, or profiting by the acts of those representing themselves to be agents of the licensee.

(2) Representing to a patient that a manifestly incurable disease, condition or injury can be permanently cured.

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

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

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

(6) Willful betrayal of confidential information.

(7) Advertising professional superiority or the performance of professional services in a superior manner.

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

(9) Participating in any action as a staff member of a medical care facility which is designed to exclude or which results in the exclusion of any person licensed to practice medicine and surgery from the medical staff of a nonprofit medical care facility licensed in this state because of the branch of the healing

arts practiced by such person or without just cause.

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

(11) Prescribing, ordering, dispensing, administering, selling, supplying or giving any amphetamines or sympathomimetic amines, except as authorized by K.S.A. 65-2837a, and amendments thereto.

(12) Conduct likely to deceive, defraud or harm the public.

(13) Making a false or misleading statement regarding the licensee's skill or the efficacy or value of the drug, treatment or remedy prescribed by the licensee or at the licensee's direction in the treatment of any disease or other condition of the body or mind.

(14) Aiding or abetting the practice of the healing arts by an unlicensed, incompetent or impaired person.

(15) Allowing another person or organization to use the licensee's license to practice the healing arts.

**(16) Commission of any act of sexual abuse, misconduct or exploitation related to the licensee's professional practice. other improper sexual contact with a patient, patient surrogates or key third parties, which exploits the licensee-patient relationship.**

(17) The use of any false, fraudulent or deceptive statement in any document connected with the practice of the healing arts including the intentional falsifying or fraudulent altering of a patient or medical care facility record.

(18) Obtaining any fee by fraud, deceit or misrepresentation.

(19) Directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered, other than through the legal functioning of lawful professional partnerships, corporations or associations.

(20) Failure to transfer patient records to another licensee when requested to do so by the subject patient or by such patient's legally designated representative.

(21) Performing unnecessary tests, examinations or services which have no legitimate medical purpose.

(22) Charging an excessive fee for services rendered.

(23) Prescribing, dispensing, administering or distributing a prescription drug or substance, including a controlled substance, in an improper or inappropriate manner, or for other than a valid medical purpose, or not in the course of the licensee's professional practice.

(24) Repeated failure to practice healing arts with that level of care, skill and treatment which is recognized by a reasonably prudent similar practitioner as being acceptable under similar conditions and circumstances.

(25) Failure to keep written medical records which accurately describe the services rendered to the patient, including patient histories, pertinent findings, examination results and test results.

(26) Delegating professional responsibilities to a person when the licensee knows or has reason to know that such person is not qualified by training, experience or licensure to perform them.

(27) Using experimental forms of therapy without proper informed patient consent, without conforming to generally accepted criteria or standard protocols, without keeping detailed legible records or without having periodic analysis of the study and results reviewed by a committee or peers.

(28) Prescribing, dispensing, administering or distributing an anabolic steroid



or human growth hormone for other than a valid medical purpose. Bodybuilding, muscle enhancement or increasing muscle bulk or strength through the use of an anabolic steroid or human growth hormone by a person who is in good health is not a valid medical purpose.

(29) Referring a patient to a health care entity for services if the licensee has a significant investment interest in the health care entity, unless the licensee informs the patient in writing of such significant investment interest and that the patient may obtain such services elsewhere.

(30) Failing to properly supervise, direct or delegate acts which constitute the healing arts to persons who perform professional services pursuant to such licensee's direction, supervision, order, referral, delegation or practice protocols.

(31) Violating K.S.A. 65-6703 and amendments thereto.

(32) Charging, billing or otherwise soliciting payment from any patient, patient's representative or insurer for anatomic pathology services, if such services are not personally rendered by the licensee or under such licensee's direct supervision. As used in this subsection, "anatomic pathology services" means the gross or microscopic examination of histologic processing of human organ tissue or the examination of human cells from fluids, aspirates, washings, brushings or smears, including bloodbanking services, and subcellular or molecular pathology services, performed by or under the supervision of a person licensed to practice medicine and surgery or a clinical laboratory. Nothing in this subsection shall be construed to prohibit billing for anatomic pathology services by a hospital, or by a clinical laboratory when samples are transferred between clinical laboratories for the provision of anatomic pathology services.

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

(c) "False advertisement" means any advertisement which is false, misleading or deceptive in a material respect. In determining whether any advertisement is misleading, there shall be taken into account not only representations made or suggested by statement, word, design, device, sound or any combination thereof, but also the extent to which the advertisement fails to reveal facts material in the light of such representations made.

(d) "Advertisement" means all representations disseminated in any manner or by any means, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of professional services.

(e) "Licensee" for purposes of this section and K.S.A. 65-2836, and amendments thereto, shall mean all persons issued a license, permit or special permit pursuant to article 28 of chapter 65 of the Kansas Statutes Annotated.

(f) "License" for purposes of this section and K.S.A. 65-2836, and amendments thereto, shall mean any license, permit or special permit granted under article 28 of chapter 65 of the Kansas Statutes Annotated.

(g) "Health care entity" means any corporation, firm, partnership or other business entity which provides services for diagnosis or treatment of human health conditions and which is owned separately from a referring licensee's principle practice.

(h) "Significant investment interest" means ownership of at least 10% of the value of the firm, partnership or other business entity which owns or leases the health care entity, or ownership of at least 10% of the shares of stock of the corporation which owns or leases the health care entity.

### Amendment #3

**65-2878. Executive director; appointment; confirmation by senate; employment of administrative assistant and other employees; representation of board by attorney appointed by attorney general.** (a) The board shall appoint an executive director, subject to confirmation by the senate as provided in K.S.A. 75-4315b and amendments thereto. The executive director shall be in the unclassified service under the Kansas civil service act and shall receive a salary fixed by the board and approved by the governor. The executive director shall not be a member of the board. Under the supervision of the board, the executive director shall be the chief administrative officer of the board and shall perform such duties as may be specified by the board and as may be required by law. The executive director shall be the custodian of the common seal of the board, the books and records of the board and shall keep minutes of all board proceedings.

(b) The board may employ an administrative assistant. The administrative assistant shall be in the unclassified service under the Kansas civil service act and shall receive a salary fixed by the board and approved by the governor. Under the supervision of the executive director, the administrative assistant shall assist the executive director in the performance of the duties of the executive director.

(c) The board may employ such clerical and other employees, who shall be in the classified service under the Kansas civil service act, as it considers necessary in order to administer and execute, under the supervision of the executive director, the provisions of this act or other statutes delegating duties and responsibilities to the board, except that any attorney employed by the board shall be in the unclassified service under the Kansas civil service act and shall receive a salary fixed by the board and approved by the governor.

(d) As necessary, the board shall be represented by an attorney appointed by the attorney general as provided by law, whose compensation shall be determined and paid by the board with the approval of the governor.

**(e) The board may contract with one or more persons who are licensed to practice the healing arts in this state and who are not members of the board to provide such advice and assistance as necessary on licensure matters; review, investigation and disposition of complaints; clinical and patient care matters; and the ethical conduct and professional practices of licensees; or to perform other duties as assigned by the executive director or the board.**

### Amendment #4

Sec. 2. (a) As part of an original application for or reinstatement of any license, registration, permit or certificate or in connection with any investigation of any holder of a license, registration, permit or certificate, the state board of healing arts may require a person to be fingerprinted and submit to a state and national criminal history record check. The fingerprints shall be used to identify the person and to determine whether the person has a record of criminal history in this state or other jurisdiction.

The state board of healing arts is authorized to submit the fingerprints to the Kansas bureau of investigation and the federal bureau of investigation for a state and national criminal history record check. The state board of healing arts may use the information

obtained from fingerprinting and the criminal history for purposes of verifying the identification of the person and in the official determination of the qualifications and fitness of the person to be issued or to maintain a license, registration, permit or certificate.

(b) Local and state law enforcement officers and agencies shall assist the state board of healing arts in taking and processing of fingerprints of applicants for and holders of any license, registration, permit or certificate and shall release all records of adult and juvenile convictions, adjudications, expungements and nonconvictions to the state board of healing arts.

(c) The state board of healing arts may fix and collect a fee as may be required by the board in an amount necessary to reimburse the board for the cost of fingerprinting and the criminal history record check. Any moneys collected under this subsection shall be deposited in the state treasury and credited to the healing arts fee fund.

(d) This section shall be part of and supplemental to the Kansas healing arts act.

#### **Amendment #5**

Sec. 3. (a) The board shall adopt, ~~through rules and regulations,~~ a formal list of graduated sanctions for violations of the Kansas healing arts act which shall specify the number and severity of violations **may be used by the board as a reference guide** for the imposition of each level of sanction.

(b) This section shall be part of and supplemental to the Kansas healing arts act.

#### **Amendment #6**

**(a) On and after July 1, 2010, the board shall make available on a searchable website which shall be accessible by the public, the following information regarding licensees:**

**(1) the licensee's full name, business address, telephone number, license number, type, status and expiration date;**

**(2) the licensee's practice specialty, if any, and board certifications, if any;**

**(3) any public disciplinary action taken against the licensee by the board or by the licensing agency of any state or other country which the licensee is currently licensed or has been licensed in the past;**

**(4) any involuntary limitation, denial, revocation or suspension of the licensee's staff membership or clinical privileges at any hospital or other health care facility, and the name of the hospital or facility, the date the action was taken, a description of the action, including any terms and conditions of the action, and whether the licensee has fulfilled the conditions of the action;**

**(5) any involuntary surrender of the licensee's drug enforcement administration registration; and**

**(6) any final criminal conviction or plea arrangement resulting from the commission or alleged commission of a felony in any state or country.**

**(b) Any person applying for an active license, including a renewal or reinstatement license shall provide the information required in subsection (a) on forms or in a manner determined by the board by rule and regulation.**

**(c) At the time of licensure or renewal, a licensee may add a statement to such licensee's profile as it appears on the website created herein. Such statement may provide further explanation of any disciplinary information contained in such licensee's profile.**