

MINUTES OF THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

Chairman Jim Barnett was testifying in another Senate Committee, therefore, the meeting was called to order by Vice-Chairperson Vicki Schmidt at 1:30 P.M. on February 21, 2008 in Room 136-N of the Capitol.

All members were present with the exception of Senator Jim Barnett who was testifying in another committee.

Committee staff present:

Emalene Correll, Kansas Legislative Research Department
Terri Weber, Kansas Legislative Research Department
Sara Zafar, Kansas Legislative Research Department
Nobuko Folmsbee, Revisor of Statutes
Rena Jefferies, Revisor of Statutes
Jan Lunn, Committee Secretary

Conferees appearing before the committee:

Ms. Terri Roberts, RN, JD, Executive Director, Kansas State Nurses Association submitted written testimony which is attached, and therefore, incorporated into this record. (Attachment 1)

Others attending:

See attached list.

SB 549- Board of pharmacy; continuous quality improvement programs and nonresident pharmacy.

Senator Vicki Schmidt provided a brief overview of discussion heard on **SB 549** from February 20, 2008. In addition, Senator Schmidt discussed amendments agreed upon by both proponents and opponents noting several unresolved issue(s). Senator Schmidt distributed a handout reflecting the proposed amendments (Attachment 2).

Mr. Steven Borel, an opponent to the **SB 549** in its current format, reiterated his opinion that the Bill should be brought into conformance with the Kansas Supreme Court decision. Mr. Borel distributed his proposed amendment (Attachment 3).

Senator Jim Barnett arrived and assumed the Chair. Discussion from proponents and opponents continued.

Senator Schmidt moved to amend SB 549 with a New Section 1 (a) including an implementation date for a CQI program of July 1, 2009, deleting the last sentence in section 1 (b) and adding a new sub-section (e) into Section 1. Senator Gilstrap seconded the motion. The motion carried.

Senator Schmidt moved to favorably pass out as a substitute bill **SB 549** as amended. Senator Gilstrap seconded the motion. The motion passed.

SB 596 - Board of healing arts; cosmetic or aesthetic purpose included in the practice

Nobuko Folmsbee, Revisor of Statutes office, provided a briefing on the bill. **Senate Bill 596** defines surgery to include services or procedures performed for aesthetic, reconstructive or cosmetic purposes. In addition, the bill lists persons who are exempt from licensure requirements. (Attachment 4)

A copy of the balloon amendment (including technical changes required) is attached, and therefore, is incorporated into the record. (Attachment 5)

Following questions from Senators Brungardt and Wagle regarding exempted groups, the injection of phosphatidylcholine (PPC) used to dissolve fat, and additional discussion Senator Brungardt moved to favorably pass out as a substitute bill **SB 596** as amended. Senator Schmidt seconded

CONTINUATION SHEET

MINUTES OF THE Senate Public Health and Welfare Committee at 1:30 P.M. on February 21, 2008 in Room 136-N of the Capitol.

the motion; the motion carried.

Senator Barnett adjourned the meeting at 2:20pm.

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE GUEST LIST

DATE: February 21, 2008

NAME	REPRESENTING
Emily Bureman	ESU - NDN
Summer Stucker	ESU - NDN
Megan Dreiling	ESU - NDN
Ashley Garnett	ESU - NDN
Kristina Redelfs	ESU - NDN
Kristin Kennedy	ESU - NDN
Steve Borel	Ks A J
Callie Hattle	Ks A J
Mark Stafford	Bd of Hds
DAN MORIN	KS Medical Society
JERRY SLAUGHTER	" " " "
Catherine Wahlberg	Ka MMCO
MIKE LARKIN	KS PHARMACISTS ASSOCIATION
Doc Billnagley	KBOP
RANDY FORBES	KBOP
Julie Hein	KPC
Bob Williams	Ks Assoc Osteopathic Medicine
Maureen Cassidy	ESU - NDN
Rachel Goetz	ESU - NDN

Name

Jessica Ackerman

Todd Fleischer

Michelle Peterson

Terri Roberts

Tony Arvo

Representing

ESU NDN

Ks. Optometric Assoc.

Capital Strategies

Kansas State Nurses Assn.

WU - Nursing Grad. Student.



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 PRESIDENT

THE VOICE AND VISION OF NURSING IN KANSAS

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 EXECUTIVE DIRECTOR

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February 21, 2008

**S.B. 596 AN ACT RELATING TO THE BOARD OF HEALING ARTS; CONCERNING COSMETIC OR AESTHETIC PURPOSE INCLUDED IN THE PRACTICE
 -NEUTRAL-**

Senator Barnett and Members of the Senate Public Health and Welfare Committee, the Kansas State Nurses Association has no formal position on S.B.596 regarding adding a new definition surgery in the Healing Arts Act. This bill adds the following new definition of **surgery** on page 1, line 36.

“Surgery” shall mean the use of any device, procedure or method to sever, remove, destroy or structurally alter body tissue or implant any device, object or tissue into the body of human beings for any purpose, including an aesthetic, reconstructive or cosmetic purpose. Surgery shall not be construed to mean manipulation for adjustment of misplaced tissue or acupuncture.

In K.S.A. 65-2872, there is an exception for registered nurses to perform what otherwise constitutes the Healing Arts Act when they are practicing their licensed profession pursuant to the Kansas Nurse Practice Act (page 3, line 16, number (13)). This is part of the exception clause to the Healing Arts Act, which is also being amended with new language to modify the exceptions section. The proposed new language reads:

(a) The following persons are exempt from the licensure requirements of this act when providing services otherwise constituting the practice of the healing arts:

Many registered nurses in carrying out their daily responsibilities perform a task which falls within this new definition/description of “Surgery.” We would want to ensure that registered nurses in all settings would be in compliance with state law while they are carrying out these tasks essential to their work. These common tasks that meet this definition include but are not limited to: inserting intravenous catheters, PICC lines, NG tubes, foley catheters, wound care and burn debridement, and staple removal.

KSNA wants to insure that Registered Nurses are able to continue to perform these tasks upon the approval of this new language in S.B. 596. **Thank You.**

S.B. 549

AN ACT relating to the board of pharmacy; concerning continuous quality improvement programs and nonresident pharmacy; amending K.S.A. 65-1657 and repealing the existing section.

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

New Section 1. (a) *No later than January 1, 2009, each pharmacy shall establish in a continuous quality improvement (CQI) program. The purpose of the CQI program shall be to assess errors that occur in the pharmacy in dispensing or furnishing prescription medications so that the pharmacy may take appropriate action to prevent a recurrence.*

(b) *Reports memoranda, proceedings, findings and other records generated as part of a pharmacy's CQI program shall be considered confidential and privileged peer review documents and not subject to discovery, subpoena or other means of legal compulsion for their release to any person or entity and shall not be admissible in any civil or administrative action other than an administrative proceeding initiated by the board of pharmacy. Nothing in this section shall be construed to prohibit a patient from accessing his or her own prescription records. Nothing in this section shall affect the discoverability of any record not solely generated for or maintained as a part of a pharmacy's CQI program. Nothing in this section shall affect the discoverability of the facts of an incident as reported pursuant K.A.R. 68-7-12b, as amended*

(c) *No person in attendance at any meeting being conducted as part of a CQI program shall be compelled to testify in any civil, criminal or administrative action, other than an administrative proceeding initiated by the board of pharmacy as to any discussions or decisions which occurred as part of the CQI program.*

(d) *All reports and records generated as part of a pharmacy's CQI program shall be available for inspection by the board of pharmacy within a time period established by the board in rules and regulations.*

(e) *The board of pharmacy in conducting a disciplinary proceeding in which admission of any matters that are confidential and privileged under subsection (b) are proposed shall hold the hearing in closed session when any such report, record or testimony is disclosed. Unless*

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

(f) The board may establish by rules and regulations requirements regarding the functions and record keeping of a pharmacy CQI program.

Sec. 2. K.S.A. 65-1657 is hereby amended to read as follows: 65-1657. (a) No nonresident pharmacy shall ship, mail or deliver, in any manner, prescription drugs to a patient in this state unless registered under this section as a nonresident pharmacy. Applications for a nonresident pharmacy registration under this section shall be made on a form furnished by the board. A nonresident pharmacy registration shall be granted for a period of one year upon compliance by the nonresident pharmacy with the provisions of this section and rules and regulations adopted pursuant to this section and upon payment of the registration fee established under K.S.A. 65-1645, and amendments thereto, for a pharmacy registration. *No nonresident*

pharmacy shall operate for more than 30 days without a designated pharmacist in charge who meets the requirements of this section. A nonresident pharmacy registration shall be renewed annually on forms provided by the board, upon compliance by the nonresident pharmacy with the provisions of this section and rules and regulations adopted pursuant to this section and upon payment of the renewal fee established under K.S.A. 65-1645, and amendments thereto, for the renewal of a pharmacy registration.

(b) As conditions for the granting of a registration and for the renewal of a registration for a nonresident pharmacy, the nonresident pharmacy shall comply with the following:

(1) Provide information to the board to indicate the person or persons applying for the registration, the location of the pharmacy from which the prescription drugs will be dispensed, the names and titles of all principal owners and corporate officers, if any, and the names of all pharmacists dispensing prescription drugs to residents of Kansas;

(2) be registered and in good standing in the state in which such pharmacy is located;

(3) maintain, in readily retrievable form, records of prescription drugs dispensed to Kansas patients;

(4) supply upon request, all information needed by the board to carry out the board's responsibilities under this section and rules and regulations adopted pursuant to this section;

(5) maintain pharmacy hours that permit the timely dispensing of drugs to Kansas patients and provide reasonable access for the patients to consult with a licensed pharmacist about such patients' medications;

(6) provide toll-free telephone communication consultation between a Kansas patient and a pharmacist at the pharmacy who has access to the patient's records, and ensure that the telephone number(s) will be placed upon the label affixed to each prescription drug container dispensed in Kansas; and

(7) *designate a pharmacist in charge who has a license from the board to engage in the practice of pharmacy in the state of Kansas, obtains the minimum passing score on the pharmacist in charge examination administered by the board and agrees to notify the board in writing within five days of ceasing to serve as the pharmacist in charge of the*

nonresident pharmacy, which notice shall include the name of the pharmacist, the name and address of the nonresident pharmacy and the date the pharmacist ceased to serve as the pharmacist in charge of the nonresident pharmacy; and

~~(7)~~ (8) provide to the board such other information as the board may reasonably request to administer the provisions of this section.

(c) Each nonresident pharmacy shall comply with the following unless compliance would be in conflict with specific laws or rules and regulations of the state in which the pharmacy is located:

(1) All statutory and regulatory requirements of Kansas for controlled substances, including those that are different from federal law;

(2) labeling of all prescriptions dispensed, to include but not be limited to identification of the product and quantity dispensed;

(3) all the statutory and regulatory requirements of Kansas for dispensing prescriptions in accordance with the quantities indicated by the prescriber; and

(4) the Kansas law regarding the maintenance and use of the patient medication profile record system.

(d) In addition to subsection (c) requirements, each nonresident pharmacy shall comply with all the statutory and regulatory requirements of Kansas regarding drug product selection laws whether or not such compliance would be in conflict with specific laws or rules and regulations of the state in which the pharmacy is located, except that compliance which constitutes only a minor conflict with specific laws or rules and regulations of the state in which the pharmacy is located would not be required under this subsection.

(e) Each nonresident pharmacy shall develop and provide the board with a policy and procedure manual that sets forth:

(1) Normal delivery protocols and times;

(2) the procedure to be followed if the patient's medication is not available at the nonresident pharmacy, or if delivery will be delayed beyond the normal delivery time;

(3) the procedure to be followed upon receipt of a prescription for an acute illness, which policy shall include a procedure for delivery of the medication to the patient from the nonresident pharmacy at the earliest possible time, or an alternative that assures the

patient the opportunity to obtain the medication at the earliest possible time; and

(4) the procedure to be followed when the nonresident pharmacy is advised that the patient's medication has not been received within the normal delivery time and that the patient is out of medication and requires interim dosage until mailed prescription drugs become available.

(f) Except in emergencies that constitute an immediate threat to the public health and require prompt action by the board, the board may file a complaint against any nonresident pharmacy that violates any provision of this section. This complaint shall be filed with the regulatory or licensing agency of the state in which the nonresident pharmacy is located. If the regulatory or licensing agency of the state in which the nonresident pharmacy is located fails to resolve the violation complained of within a reasonable time, not less than 180 days from the date that the complaint is filed, disciplinary proceedings may be initiated by the board. The board also may initiate disciplinary actions against a nonresident pharmacy if the regulatory or licensing agency of the state in which the nonresident pharmacy is located lacks or fails to exercise jurisdiction.

(g) The board shall adopt rules and regulations that make exceptions to the requirement of registration by a nonresident pharmacy when the out-of-state pharmacy supplies lawful refills to a patient from a prescription that was originally filled and delivered to a patient within the state in which the nonresident pharmacy is located, or when the prescriptions being mailed into the state of Kansas by a nonresident pharmacy occurs only in isolated transactions. In determining whether the prescriptions being mailed into the state of Kansas by a nonresident pharmacy are isolated transactions, the board shall consider whether the pharmacy has promoted its services in this state and whether the pharmacy has a contract with any employer or organization to provide pharmacy services to employees or other beneficiaries in this state.

(h) It is unlawful for any nonresident pharmacy which is not registered under this act to advertise its services in this state, or for any person who is a resident of this state to advertise the pharmacy services of a nonresident pharmacy which has not registered with the board, with the knowledge that the advertisement will or is likely to induce members of the public in this state to use the pharmacy to fill prescriptions. A violation of this section is a class C misdemeanor.

(i) Upon request of the board, the attorney general may bring an action in a court of

competent jurisdiction for injunctive relief to restrain a violation of the provisions of this section or any rules and regulations adopted by the board under authority of this section. The remedy provided under this subsection shall be in addition to any other remedy provided under this section or under the pharmacy act of the state of Kansas.

(j) The board may adopt rules and regulations as necessary and as are consistent with this section to carry out the provisions of this section.

(k) The executive secretary of the board shall remit all moneys received from fees under this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the manner specified under K.S.A. 74-1609, and amendments thereto.

(l) This section shall be part of and supplemental to the pharmacy act of the state of Kansas.

Sec. 3. K.S.A. 65-1657 is hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

New Section 1 (b) Reports, memoranda, proceedings, findings and other records generated as part of a pharmacy's CQI program shall be considered confidential and privileged peer review documents and not subject to discovery, subpoena or other means of legal compulsion for their release to any person or entity and shall not be admissible in any civil or administrative action other than an administrative proceeding initiated by the board of pharmacy, *except that this subsection shall not preclude access to or the discovery of facts in a civil action for damages arising out of any incident or adverse event.* ~~Nothing in this section shall affect the discoverability of any record not solely generated for or maintained as a part of a pharmacy's CQI program.~~

Office of Revisor of Statutes

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MEMORANDUM

To: Senate Committee on Public Health and Welfare
From: Nobuko K. Folmsbee, Assistant Revisor
Date: February 20, 2008
Subject: SB596, Amendments to the Healing Arts Act

SB 596 amends the healing arts act and other health related statutes. First, the bill adds the definition of surgery as “the use of any device, procedure or method to sever, remove, destroy or structurally alter body tissue or implant any device, object or tissue into the body of human beings for any purpose, including an aesthetic, reconstructive or cosmetic purpose.” Manipulation for adjustment of misplaced tissue or acupuncture is not surgery.

Second, the statute dealing with the persons who are exempt from the licensure requirements of the act is amended. The persons whose professional services are performed by referral from a practitioner licensed under the act are no longer exempt from the healing arts licensure requirement. The amendment also added the following to the list of the exempted persons: Electrologists, licensed permanent color technicians and tattoo artists, persons licensed to perform body piercing or tanning facilities, when licensed and acting accordance with the cosmetology act.

Other changes are technical in nature and do not affect the substance of the existing statutes.

SENATE BILL No. 596

By Committee on Public Health and Welfare

2-11

Senate Committee on Public Health and Welfare
Balloon Amendment Proposed by KMS
February 21, 2008

02/21/08
5

9 AN ACT relating to the board of healing arts; concerning cosmetic or
10 aesthetic purpose included in the practice; amending K.S.A. 65-2869
11 and 65-5514 and K.S.A. 2007 Supp. 65-2802, 65-2872, 65-2913 and
12 65-5418 and repealing the existing sections.

by amending the title and repealer according

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

15 Section 1. K.S.A. 2007 Supp. 65-2802 is hereby amended to read as
16 follows: 65-2802. For the purpose of this act the following definitions
17 shall apply:

18 (a) The healing arts include any system, treatment, operation, diag-
19 nosis, prescription, or practice for the ascertainment, cure, relief, pallia-
20 tion, adjustment, or correction of any human disease, ailment, deformity,
21 or injury, and includes specifically but not by way of limitation the practice
22 of medicine and surgery; the practice of osteopathic medicine and sur-
23 gery; and the practice of chiropractic.

24 (b) "Board" shall mean the state board of healing arts.

25 (c) "License" shall mean a license to practice the healing arts granted
26 under this act.

27 (d) "Licensed" or "licensee" shall mean a person licensed under this
28 act to practice medicine and surgery, osteopathic medicine and surgery
29 or chiropractic.

30 (e) "Healing arts school" shall mean an academic institution which
1 grants a doctor of chiropractic degree, doctor of medicine degree or doc-
2 tor of osteopathy degree.

3 ~~(f) Wherever the masculine gender is used it shall be construed to~~
4 ~~include the feminine, and the singular number shall include the plural~~
5 ~~when consistent with the intent of this act.~~

6 (f) "Surgery" shall mean the use of any device, procedure or method
7 to sever, remove, destroy or structurally alter body tissue or implant any
8 device, object or tissue into the body of human beings for any purpose,
9 including an aesthetic, reconstructive or cosmetic purpose. Surgery shall
10 not be construed to mean manipulation for adjustment of misplaced tissue
11 or acupuncture.

12 Sec. 2. K.S.A. 65-2869 is hereby amended to read as follows: 65-
13 2869. For the purpose of this act the following persons shall be deemed

preserving health, diagnosing or treating disease,
repairing injury, reducing closed or open fractures,
correcting deformity or defects, prolonging life or relieving
suffering, or for

PUBLIC HEALTH AND WELFARE
DATE:
ATTACHMENT:

1 to be engaged in the practice of medicine and surgery:

2 (a) Persons who publicly profess to be physicians or surgeons, or pub-
3 licly profess to assume the duties incident to the practice of medicine or
4 surgery or any of their branches.

5 (b) Persons who prescribe, recommend or furnish medicine or drugs,
6 or perform any surgical operation of whatever nature by the use of any
7 surgical instrument, procedure, equipment or mechanical device for *an*
8 *aesthetic or cosmetic purpose, or* the diagnosis, cure or relief of any
9 wounds, fractures, bodily injury, infirmity, disease, physical or mental
10 illness or psychological disorder, of human beings.

11 (c) Persons who attach to their name the title M.D., surgeon, physi-
12 cian, physician and surgeon, or any other word or abbreviation indicating
13 that they are engaged in the treatment or diagnosis of ailments, diseases
14 or injuries of human beings.

15 Sec. 3. K.S.A. 2007 Supp. 65-2872 is hereby amended to read as
16 follows: 65-2872. ~~The practice of the healing arts shall not be construed~~
17 ~~to include the following persons:~~ *(a) The following persons are exempt*
18 *from the licensure requirements of this act when providing services oth-*
19 *erwise constituting the practice of the healing arts:*

20 ~~(a)~~ (1) Persons rendering gratuitous services in the case of an
21 emergency.

22 ~~(b)~~ (2) Persons gratuitously administering ordinary household
23 remedies.

24 ~~(c)~~ (3) The members of any church practicing their religious tenets
25 provided they shall not be exempt from complying with all public health
26 regulations of the state.

27 ~~(d)~~ (4) Students while in actual classroom attendance in an accredited
28 healing arts school who after completing one year's study treat diseases
29 under the supervision of a licensed instructor.

30 ~~(e)~~ (5) Students upon the completion of at least three years study in
31 an accredited healing arts school and who, as a part of their academic
32 requirements for a degree, serve a preceptorship not to exceed 180 days
33 under the supervision of a licensed practitioner.

34 ~~(f)~~ (6) Persons who massage for the purpose of relaxation, muscle
35 conditioning, or figure improvement, provided no drugs are used and
36 such persons do not hold themselves out to be physicians or healers.

37 ~~(g)~~ (7) Persons whose professional services are performed under the
38 supervision or by order of ~~or referral from~~ a practitioner who is licensed
39 under this act.

40 ~~(h)~~ (8) Persons in the general fields of psychology, education and
41 social work, dealing with the social, psychological and moral well-being
42 of individuals ~~and/or~~ or groups provided they do not use drugs and do
43 not hold themselves out to be the physicians, surgeons, osteopathic phy-

1 sicians or chiropractors.

2 ~~(i)~~(9) Practitioners of the healing arts in the United States army, navy,
3 air force, public health service, and coast guard or other military service
4 when acting in the line of duty in this state.

5 ~~(j)~~(10) Practitioners of the healing arts licensed in another state when
6 and while incidentally called into this state in consultation with practi-
7 tioners licensed in this state.

8 ~~(k)~~(11) Dentists practicing their professions, when licensed and practicing
9 in accordance with the provisions of article 14 of chapter 65 of the
10 Kansas Statutes Annotated, and amendments thereto, and any interpretation
11 thereof by the supreme court of this state.

12 ~~(l)~~(12) Optometrists practicing their professions, when licensed and
13 practicing under and in accordance with the provisions of article 15 of
14 chapter 65 of the Kansas Statutes Annotated, and amendments thereto,
15 and any interpretation thereof by the supreme court of this state.

16 ~~(m)~~(13) Nurses practicing their profession when licensed and practicing
17 under and in accordance with the provisions of article 11 of chapter
18 65 of the Kansas Statutes Annotated, and amendments thereto, and any
19 interpretation thereof by the supreme court of this state.

20 ~~(n)~~(14) Podiatrists practicing their profession, when licensed and
21 practicing under and in accordance with the provisions of article 20 of
22 chapter 65 of the Kansas Statutes Annotated, and amendments thereto,
23 and any interpretation thereof by the supreme court of this state.

24 ~~(o)~~ Every act or practice falling in the field of the healing art, not
25 specifically excepted herein, shall constitute the practice thereof.

26 ~~(p)~~(15) Pharmacists practicing their profession, when licensed and
27 practicing under and in accordance with the provisions of article 16 of
28 chapter 65 of the Kansas Statutes Annotated, and amendments thereto,
29 and any interpretation thereof by the supreme court of this state.

30 ~~(q)~~(16) A dentist licensed in accordance with the provisions of article
31 14 of chapter 65 of the Kansas Statutes Annotated who administers general
32 and local anesthetics to facilitate medical procedures conducted by
33 a person licensed to practice medicine and surgery if such dentist is certified
34 by the board of healing arts under K.S.A. 65-2899, and amendments
35 thereto, to administer such general and local anesthetics.

36 ~~(r)~~(17) Practitioners of the healing arts duly licensed under the laws
37 of another state who do not open an office or maintain or appoint a place
38 to regularly meet patients or to receive calls within this state, but who
39 order services which are performed in this state in accordance with rules
40 and regulations of the board. The board shall adopt rules and regulations
41 identifying circumstances in which professional services may be performed
42 in this state based upon an order by a practitioner of the healing
43 arts licensed under the laws of another state.

5-4

1 (18) *Electrologists, licensed permanent color technicians and tattoo*
2 *artists, persons licensed to perform body piercing or tanning facilities,*
3 *when licensed by the state board of cosmetology and acting in accordance*
4 *with the provisions of article 19 of chapter 65 of the Kansas Statutes*
5 *Annotated, and amendments thereto, and any interpretation thereof by*
6 *the supreme court of this state.*

7 (b) *Every act or practice falling in the field of the healing art, not*
8 *specifically excepted herein, shall constitute the practice thereof.*

9 Sec. 4. K.S.A. 2007 Supp. 65-2913 is hereby amended to read as
10 follows: 65-2913. (a) It shall be unlawful for any person who is not licensed
11 under this act as a physical therapist or whose license has been suspended
12 or revoked in any manner to represent oneself as a physical therapist or
13 to use in connection with such person's name the words physical therapist,
14 physiotherapist or licensed physical therapist or use the abbreviations
15 P.T., Ph. T., M.P.T., D.P.T. or L.P.T., or any other letters, words, abbrevi-
16 ations or insignia, indicating or implying that such person is a physical
17 therapist. A violation of this subsection shall constitute a class B nonper-
18 son misdemeanor.

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

27 (c) Nothing in this act is intended to limit, preclude or otherwise
28 interfere with the practices of other health care providers formally trained
29 and practicing their profession. The provisions of article 29 of chapter 65
30 of the Kansas Statutes Annotated and acts amendatory thereof or supple-
31 mental thereto shall not apply to the following individuals so long as they
32 do not hold themselves out in a manner prohibited under subsection (a)
33 or (b) of this section:

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

35 (2) members of any church practicing their religious tenets;

36 (3) persons whose services are performed pursuant to the delegation
37 of and under the supervision of a physical therapist who is licensed under
38 this act;

39 (4) health care providers in the United States armed forces, public
40 health services, federal facilities and coast guard or other military service
41 when acting in the line of duty in this state;

42 (5) licensees under the healing arts act, and practicing their profes-
43 sions, when licensed and practicing in accordance with the provisions of

- 1 law or persons performing services pursuant to the delegation of a li-
- 2 censee under ~~subsection (g)~~ of K.S.A. 65-2872 and amendments thereto;
- 3 (6) dentists practicing their professions, when licensed and practicing
- 4 in accordance with the provisions of law;
- 5 (7) nurses practicing their professions, when licensed and practicing
- 6 in accordance with the provisions of law or persons performing services
- 7 pursuant to the delegation of a licensed nurse under subsection (m) of
- 8 K.S.A. 65-1124 and amendments thereto;
- 9 (8) health care providers who have been formally trained and are
- 10 practicing in accordance with their training or have received specific train-
- 11 ing in one or more functions included in this act pursuant to established
- 12 educational protocols or both;
- 13 (9) students while in actual attendance in an accredited health care
- 14 educational program and under the supervision of a qualified instructor;
- 15 (10) self-care by a patient or gratuitous care by a friend or family
- 16 member;
- 17 (11) optometrists practicing their profession when licensed and prac-
- 18 ticing in accordance with the provisions of article 15 of chapter 65 of the
- 19 Kansas Statutes Annotated and amendments thereto;
- 20 (12) podiatrists practicing their profession when licensed and prac-
- 21 ticing in accordance with the provisions of article 20 of chapter 65 of the
- 22 Kansas Statutes Annotated and amendments thereto;
- 23 (13) occupational therapists practicing their profession when licensed
- 24 and practicing in accordance with the occupational therapy practice act
- 25 and occupational therapy assistants practicing their profession when li-
- 26 censed and practicing in accordance with the occupational therapy prac-
- 27 tice act;
- 28 (14) respiratory therapists practicing their profession when licensed
- 29 and practicing in accordance with the respiratory therapy practice act;
- 30 (15) physician assistants practicing their profession when licensed and
- 31 practicing in accordance with the physician assistant licensure act;
- 32 (16) persons practicing corrective therapy in accordance with their
- 33 training in corrective therapy;
- 34 (17) athletic trainers practicing their profession when licensed and
- 35 practicing in accordance with the athletic trainers licensure act;
- 36 (18) persons who massage for the purpose of relaxation, muscle con-
- 37 ditioning or figure improvement, so long as no drugs are used and such
- 38 persons do not hold themselves out to be physicians or healers;
- 39 (19) barbers practicing their profession when licensed and practicing
- 40 in accordance with the provisions of article 18 of chapter 65 of the Kansas
- 41 Statutes Annotated and amendments thereto;
- 42 (20) cosmetologists practicing their profession when licensed and
- 43 practicing in accordance with the provisions of article 19 of chapter 65 of

1 the Kansas Statutes Annotated and amendments thereto;

2 (21) attendants practicing their profession when certified and practicing
3 in accordance with the provisions of article 61 of chapter 65 of the
4 Kansas Statutes Annotated and amendments thereto;

5 (22) naturopathic doctors practicing their profession when registered
6 and practicing in accordance with the naturopathic doctor registration
7 act.

8 (d) Any patient monitoring, assessment or other procedures designed
9 to evaluate the effectiveness of prescribed physical therapy must be performed
10 by or pursuant to the delegation of a licensed physical therapist
11 or other health care provider.

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

16 Sec. 5. K.S.A. 2007 Supp. 65-5418 is hereby amended to read as
17 follows: 65-5418. (a) Nothing in the occupational therapy practice act is
18 intended to limit, preclude or otherwise interfere with the practices of
19 other health care providers formally trained and licensed, registered, credentialed
20 or certified by appropriate agencies of the state of Kansas.

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

- 23 (1) Persons rendering assistance in the case of an emergency;
- 24 (2) members of any church practicing their religious tenets;
- 25 (3) persons whose services are performed pursuant to the delegation
26 of and under the supervision of an occupational therapist who is licensed
27 under this act;

28 (4) any person employed as an occupational therapist or occupational
29 therapy assistant by the government of the United States or any agency
30 thereof, if such person practices occupational therapy solely under the
31 direction or control of the organization by which such person is employed;

32 (5) licensees under the healing arts act when licensed and practicing
33 in accordance with the provisions of law or persons performing services
34 pursuant to a delegation authorized under ~~subsection (g)~~ of K.S.A. 65-
35 2872 and amendments thereto;

36 (6) dentists practicing their professions, when licensed and practicing
37 in accordance with the provisions of law;

38 (7) nurses practicing their professions, when licensed and practicing
39 in accordance with the provisions of law or persons performing services
40 pursuant to the delegation of a licensed nurse under subsection (m) of
41 K.S.A. 65-1124 and amendments thereto;

42 (8) health care providers who have been formally trained and are
43 practicing in accordance with the training or have received specific train-

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1 not require a referral, supervision, order or direction of a physician, a
2 licensed podiatrist, a licensed dentist or a licensed optometrist. However,
3 when in the course of providing such services an occupational therapist
4 reasonably believes that an individual may have an underlying injury, ill-
5 ness, disease, disorder or impairment, the occupational therapist shall
6 refer the individual to a physician, a licensed podiatrist, a licensed dentist
7 or a licensed optometrist, as appropriate.

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

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

15 Sec. 6. K.S.A. 65-5514 is hereby amended to read as follows: 65-
16 5514. (a) On and after March 1, 2000, it shall be unlawful for any person
17 who is not licensed under this act as a respiratory therapist or whose
18 license has been suspended or revoked to hold themselves out to the
19 public as a licensed respiratory therapist, or use the abbreviation of
20 CRTT, RRT, RCP or the words "respiratory therapist," "respiratory care
21 practitioner", "inhalation therapist" or any other words, letters, abbrevi-
22 ations or insignia indicating or implying that such person is a respiratory
23 therapist, or to practice the art and science of respiratory therapy as
24 herein defined. A violation of this subsection (a) shall constitute a class B
25 misdemeanor.

26 (b) Nothing in this act is intended to limit, preclude or otherwise
27 interfere with the practices of other health care providers formally trained
28 and licensed, registered, credentialed or certified by appropriate agencies
29 of the state of Kansas. The practice of respiratory therapy shall not be
30 construed to include the following individuals:

- 31 (1) Persons rendering assistance in the case of an emergency.
- 32 (2) Members of any church practicing their religious tenets.
- 33 (3) Persons whose services are performed pursuant to the delegation
34 of and under the supervision of a respiratory therapist who is licensed
35 under this act.
- 36 (4) Health care providers in the United States armed forces, public
37 health services, federal facilities and coast guard or other military service
38 when acting in the line of duty in this state.
- 39 (5) Licensees under the healing arts act, and practicing their profes-
40 sions, when licensed and practicing in accordance with the provisions of
41 law or persons performing services pursuant to the delegation of a li-
42 censed physician under ~~subsection (g)~~ of K.S.A. 65-2872 and amendments
43 thereto.

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1 (6) Dentists practicing their professions, when licensed and practicing
2 in accordance with the provisions of law.

3 (7) Nurses practicing their professions, when licensed and practicing
4 in accordance with the provisions of law or persons performing services
5 pursuant to the delegation of a licensed nurse under subsection (m) of
6 K.S.A. 65-1124 and amendments thereto.

7 (8) Health care providers who have been formally trained and are
8 practicing in accordance with the training or have received specific training
9 in one or more functions included in this act pursuant to established
10 educational protocols or both.

11 (9) Students while in actual attendance in an accredited health care
12 occupational educational program and under the supervision of a qualified
13 instructor.

14 (10) Self-care by a patient or gratuitous care by a friend or family
15 member who does not represent or hold oneself out to the public to be
16 a respiratory therapist.

17 (11) Monitoring, installation or delivery of medical devices, gases and
18 equipment and the maintenance thereof by a nonlicensed person for the
19 express purpose of self-care by a patient or gratuitous care by a friend or
20 family member.

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

25 (d) Nothing in this act shall be construed to permit the practice of
26 medicine and surgery. No statute granting authority to licensees of the
27 state board of healing arts shall be construed to confer authority upon
28 respiratory therapists to engage in any activity not conferred by this act.

29 Sec. 7. K.S.A. 65-2869 and 65-5514 and K.S.A. 2007 Supp. 65-2802,
30 65-2872, 65-2913 and 65-5418 are hereby repealed.

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

(4) adapting environments and processes, including the application of ergonomic principles, to enhance performance and safety in daily life roles;

(5) applying physical agent modalities as an adjunct to or in preparation for engagement in occupations;

(6) evaluating and providing intervention in collaboration with the client, family, caregiver or others;

(7) educating the client, family, caregiver or others in carrying out appropriate nonskilled interventions; and

(8) consulting with groups, programs, organizations or communities to provide population-based services.

(d) "Occupational therapist" means a person licensed to practice occupational therapy as defined in this act.

(e) "Occupational therapy assistant" means a person licensed to assist in the practice of occupational therapy under the supervision of an occupational therapist.

(f) "Person" means any individual, partnership, unincorporated organization or corporation.

(g) "Physician" means a person licensed to practice medicine and surgery.

(h) "Occupational therapy aide," "occupational therapy tech" or "occupational therapy paraprofessional" means a person who provides supportive services to occupational therapists and occupational therapy assistants in accordance with .S.A. 65-5419, and amendments thereto.

Sec. 2. K.S.A. 65-28,127 is hereby amended to read as follows: 65-28,127. (a) Every responsible licensee who directs, supervises, orders, refers, accepts responsibility for, enters into practice protocols with, or who delegates acts which constitute the practice of the healing arts to other persons shall:

(1) Be actively engaged in the practice of the healing arts in Kansas;

(2) review and keep current any required practice protocols between the responsible licensee and such persons, as may be determined by the board;

(3) direct, supervise, order, refer, enter into a practice protocol with, or delegate to such persons only those acts and functions which the responsible licensee knows or has reason to believe such person is competent and authorized by law to perform;

(4) direct, supervise, order, refer, enter into a practice protocol with, or delegate to other persons only those acts and functions which are within the normal and customary specialty, competence and lawful practice of the responsible licensee;

(5) provide for a qualified, substitute licensee who accepts responsibility for the direction, supervision, delegation and practice protocols with such persons when the responsible licensee is temporarily absent;

(6) comply with all rules and regulations of the board establishing limits and conditions on the delegation and supervision of services constituting the practice of medicine and surgery.

(b) "Responsible licensee" means a person licensed by the state board of healing arts to practice medicine and surgery or chiropractic who has accepted responsibility for the actions of persons who perform acts pursuant to practice protocols with, or at the order of, or ~~referral,~~ direction, supervision or delegation from such responsible licensee.

(c) Except as otherwise provided by rules and regulations of the board implementing this section, the physician assistant licensure act shall govern the direction and supervision of physician assistants by persons licensed by the state board of healing arts to practice medicine and surgery.

(d) Nothing in subsection (a)(4) shall be construed to prohibit a person licensed to practice

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medicine and surgery from ordering, authorizing or directing anesthesia care by a registered nurse anesthetist pursuant to K.S.A. 65-1158 and amendments thereto.

(e) Nothing in this section shall be construed to prohibit a person licensed to practice medicine and surgery from ordering, authorizing or directing physical therapy services pursuant to K.S.A. 65-2901 et seq. and amendments thereto.

(f) Nothing in this section shall be construed to prohibit a person licensed to practice medicine and surgery from entering into a co-management relationship with an optometrist pursuant to K.S.A. 65-1501 et seq. and amendments thereto.

(g) The board may adopt rules and regulations establishing limits and conditions on the delegation and supervision of services constituting the practice of medicine and surgery.

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