

CORRECTED
SESSION OF 2004

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2813

As Amended by Senate Committee of the Whole

Brief*

Abandoned Medical Records

New Section 1 of HB 2813 create a new statute that concerns access to the abandoned records of certain health care providers. As defined for the purposes of HB 2813, health care provider is a person licensed to practice a branch of the healing arts, a licensed podiatrist, or a professional corporation, limited liability company, or partnership of which such licensees are a part.

Under the provisions of the bill, the State Board of Healing Arts is to petition the court for the appointment of a custodian of a health care provider's health care records if the Board is notified or has independent knowledge that a health care provider has:

- ! abandoned health care records;
- ! abandoned the health care provider's practice;
- ! had a license suspended or revoked ;
- ! had a license cancelled;
- ! dissolved a business entity; and
- ! is unable or refuses to allow patients access to their health care records as authorized by law;
- ! or has died and patients are unable to access their health care records.

The petition to the court is to nominate a person or business entity to serve as custodian of the health care records. The bill sets out the procedure for naming a health care records custodian and the powers and duties of such custodian. The latter is granted immunity from civil liability for actions undertaken as the records custodian, except for

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

malicious alteration or destruction of the records in custody.

The new statute created by HB 2813 is made a part of and supplemental to the Kansas Healing Arts Act.

**Delegation by Persons Licensed to
Practice Medicine and Surgery
and physician Assistants**

As amended by the Senate, Sections 2 through 14 of HB 2813 make several substantive additions to the laws that govern the delegation of responsibility by persons licensed to practice medicine and surgery.. A general delegation statute that is a part of the Kansas Healing Arts Act is amended by the addition of a new subsection authorizing the Board of Healing Arts to adopt rules and regulations that establish limits and conditions on the delegation and supervision of services constituting the practice of medicine and surgery. A new paragraph added to the same statute requires licensees to comply with any such rules and regulations. A statute that is a part of the Physician Assistant Licensure Act is amended by deleting the absolute prohibition on a responsible physician having more than two physician assistants under such physician's supervision and direction. New language requires the Board of Healing Arts to limit the number of physician assistants a responsible physician may supervise at any one time to the equivalent of two full-time physician assistants as approved by the Board in each case.

HB 2813 also amends a number of other statutes in which there are references to "physician's assistant" to reference the current terminology "physician assistant."

Board of Healing Arts Licensure and Registration

Sections 15 through 26 of HB 2813 concern the Board of Healing Arts and professions and occupations licensed and registered by the Board.

Regarding podiatrists licensed by the Board, the bill:

! authorizes the Board to issue a postgraduate permit to practice

podiatry within a postgraduate study program to those meeting the qualifications for such a license, except the required examination.

- ! creates an inactive license category for those persons who meet the qualifications for licensure, but who do not regularly practice or hold themselves out to the public as engaged in the practice of podiatry;
- ! creates a designation of federally active license for persons who meet the qualifications for licensure and practice solely in the employment of or on active duty with the United States government or any of its departments, bureaus, or agencies;
- ! allows a person whose license has been revoked to apply for reinstatement after the expiration of three years, the payment of a reinstatement fee, and a showing by clear and convincing evidence the applicant is sufficiently rehabilitated to justify reinstatement;
- ! increases the statutory maximum on the amount of fees the Board may charge for the various categories of licensure and authorizes fees for the new types of licenses and permits created by the bill; and
- ! allows the Board to cancel a podiatry license for non-renewal if the licensee has failed to meet renewal requirements after two notices.

For physician assistants, the bill:

- ! removes language related to the Board maintaining a registry and creates a requirement for physician assistants, as a condition to active practice, to file a request to practice signed by the physician assistant and the physician who will be responsible for the physician assistant;
- ! creates an inactive license category for those persons who meet the qualifications for licensure, but who do not regularly practice or have a responsible physician;

- ! creates a designation of federally active license for persons who meet the qualifications for licensure and practice solely in the employment of or active duty with the United States government or any of its departments, bureaus, or agencies; and
- ! changes some fee designations to reflect new license categories, but does not change the maximum amount that can be established by rules and regulations.

For physical therapists, the bill:

- ! creates an inactive license category for those persons who meet the qualifications for licensure, but who do not regularly practice or hold themselves out to the public as engaged in the practice of physical therapy; and
- ! deletes the requirement that mandated professional liability insurance be insurance approved by the Commissioner of Insurance and issued by a company authorized to do business in Kansas.

For occupational therapists, the bill:

- ! authorizes the Board to limit a license or publicly or privately censure a licensee;
- ! provides for reinstatement of a revoked license upon application and payment of a license reinstatement fee;
- ! authorizes the Board to assess a civil fine, after notice and an opportunity for hearing, for unprofessional conduct in an amount not to exceed \$5,000 for the first violation, \$10,000 for the second violation, and \$15,000 for the third and each subsequent violation;
- ! allows the Board to fix the expiration date of a license by rule and regulation;
- ! establishes a process for notice to licensees of the expiration

date; and

- ! provides that failure to renew upon receipt of a second notice will result in the license being deemed cancelled.

For respiratory therapists, the bill:

- ! authorizes the Board to limit a license or publicly or privately censure a licensee;
- ! authorizes the Board to assess a civil fine, after notice and an opportunity for hearing, for unprofessional conduct in an amount not to exceed \$5,000 for the first violation, \$10,000 for the second violation, and \$15,000 for the third and each subsequent violation;
- ! allows the Board to fix the expiration date of a license by rule and regulation;
- ! establishes a process for notice to licensees of the expiration date; and
- ! provides, upon failure to renew upon receipt of a second notice, the license will be deemed cancelled.

For naturopathic doctors, the bill:

- ! authorizes the Board to limit a license or publicly or privately censure a licensee;
- ! authorizes the Board to assess a civil fine, after notice and an opportunity for a hearing, for unprofessional conduct in an amount not to exceed \$5,000 for the first violation, \$10,000 for the second violation, and \$15,000 for the third and each subsequent violation;
- ! allows the Board to fix the expiration date of a license by rule and regulation;
- ! establishes a process for notice to licensees of the license

expiration date and provides, upon failure to renew upon receipt of a second notice, the license will be deemed cancelled;

- ! deletes the requirement that mandated professional liability insurance be approved by the Commissioner of Insurance and issued by a company authorized to do business in Kansas; and
- ! authorizes the Board to fix the amount of professional liability coverage required to be maintained by rule and regulation.

Background

New Sections 1 of HB 2813, as amended by the Senate Committee of the Whole, is identical to the provisions of HB 2813 as amended by Senate Committee.

Sections 2 through 14 in HB 2813, as amended by the Senate Committee of the Whole, are identical to HB 2770 as amended by Senate Committee.

Sections 15 through 26 of the bill, as amended by the Senate Committee of the Whole, are identical to HB 2820 as amended by Senate Committee.