

HOUSE BILL No. 2071

By Committee on Health and Human Services

Requested by Representative Bryce

1-23

1 AN ACT concerning children and minors; relating to healthcare of minors;
2 enacting ~~the help not harm act; prohibiting healthcare providers from~~
3 ~~treating~~ a child whose gender identity is inconsistent with the child's
4 sex; ~~authorizing a civil cause of action against healthcare providers for~~
5 ~~providing such treatments; restricting use of state funds to promote~~
6 ~~gender transitioning; prohibiting professional liability insurance from~~
7 ~~covering damages for healthcare providers that provide gender~~
8 ~~transition treatment to children; requiring professional discipline~~
9 ~~against a healthcare provider who performs such treatments;~~ adding
10 violation of the act to the definition of unprofessional conduct for
11 physicians; amending K.S.A. 65-2837 and repealing the existing
12 section.
13

performing gender transition surgery on

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

15 New Section 1. (a) The provisions of sections 1 through ~~6~~, and
16 amendments thereto, shall be known and may be cited as the help not harm
17 act.

2

18 (b) As used in this act:

19 (1) "Child" means an individual less than 18 years of age.

20 (2) "Female" means an individual who is a member of the female sex.

21 (3) "Gender" means the psychological, behavioral, social and cultural
22 aspects of being male or female.

23 (4) "Gender dysphoria" is the diagnosis of gender dysphoria in the
24 fifth edition of the diagnostic and statistical manual of mental disorders.

25 (5) "Healthcare provider" means an individual who is licensed,
26 certified or otherwise authorized by the laws of this state to administer
27 healthcare services in the ordinary course of the practice of such
28 individual's profession.

29 (6) "Male" means an individual who is a member of the male sex.

30 (7) "Perceived sex" is an individual's internal sense of such
31 individual's sex.

32 (8) "Perceived gender" is an individual's internal sense of such
33 individual's gender.

34 (9) "Sex" means the biological indication of male and female in the
35 context of reproductive potential or capacity, including sex chromosomes,

1 naturally occurring sex hormones, gonads and nonambiguous internal and
2 external genitalia present at birth, without regard to an individual's
3 psychological, chosen or subjective experience of gender.

4 ~~(10) "Social transitioning" means acts other than medical or surgical
5 interventions that are undertaken for the purpose of presenting as a
6 member of the opposite sex, including the changing of an individual's
7 preferred pronouns or manner of dress.~~

8 New Sec. 2. (a) A recipient of state funds shall not use such funds to
9 provide or subsidize medication or surgery as provided in section 3, and
10 amendments thereto, as a treatment for a child's perception of gender or
11 sex that is inconsistent with such child's sex.

12 (b) An individual or entity that receives state funds to pay for or
13 subsidize the treatment of children for psychological conditions, including
14 gender dysphoria, shall not prescribe, dispense or administer medication or
15 perform surgery as provided in section 3, and amendments thereto, or
16 provide a referral to another healthcare provider for such medication or
17 surgery for a child whose perceived gender or perceived sex is inconsistent
18 with such child's sex.

19 (c) The Kansas program of medical assistance and its managed care
20 organizations shall not reimburse or provide coverage for medication or
21 surgery as provided in section 3, and amendments thereto, as a treatment
22 for a child whose perceived gender or perceived sex is inconsistent with
23 such child's sex.

24 (d) Except to the extent required by the first amendment to the United
25 States constitution, a state property, facility or building shall not be used to
26 promote or advocate the use of social transitioning, medication or surgery
27 as provided in section 3, and amendments thereto, as a treatment for a
28 child whose perceived gender or perceived sex is inconsistent with such
29 child's sex.

30 (e) A state property, facility or building shall not be used to prescribe,
31 dispense or administer medication or perform surgery as provided in
32 section 3, and amendments thereto, as a treatment for a child whose
33 perceived gender or perceived sex is inconsistent with such child's sex.

34 (f) A state employee whose official duties include the care of children
35 shall not, while engaged in those official duties, promote the use of social
36 transitioning or provide or promote medication or surgery as provided in
37 section 3, and amendments thereto, as a treatment for a child whose
38 perceived gender or perceived sex is inconsistent with such child's sex.

39 New Sec. 3. (a) Except as provided in subsection (c) or (d), a
40 healthcare provider shall not knowingly perform the following surgical
41 procedures or ~~prescribe, dispense or administer the following medications~~
42 to a female child for the purpose of treatment for distress arising from such
43 female child's perception that such child's gender or sex is not female:

*Striking section 2 and
renumbering remaining
sections accordingly*

1 ~~(1) Surgical procedures, including, but not limited to, a vaginectomy,~~
2 hysterectomy, oophorectomy, ovariectomy, reconstruction of the urethra,
3 metoidioplasty, phalloplasty, scrotoplasty, implantation of erection or
4 testicular prostheses, subcutaneous mastectomy, voice surgery, liposuction,
5 lipofilling or pectoral implants;

6 ~~(2) supraphysiologic doses of testosterone or other androgens; or~~

7 ~~(3) puberty blockers such as GnRH agonists or other synthetic drugs~~
8 ~~that suppress the production of estrogen and progesterone to delay or~~
9 ~~suppress pubertal development in female children.~~

10 (b) Except as provided in subsection (c) or (d), a healthcare provider
11 shall not knowingly perform the following surgical procedures ~~or~~
12 ~~prescribe, dispense or administer the following medications~~ to a male child
13 for the purpose of treatment for distress arising from such male child's
14 perception that such child's gender or sex is not male:

15 ~~(1) Surgical procedures, including, but not limited to, a penectomy,~~
16 orchietomy, vaginoplasty, clitoroplasty, vulvoplasty, augmentation
17 mammoplasty, facial feminization surgery, liposuction, lipofilling, voice
18 surgery, thyroid cartilage reduction or gluteal augmentation;

19 ~~(2) supraphysiologic doses of estrogen; or~~

20 ~~(3) puberty blockers such as GnRH agonists or other synthetic drugs~~
21 ~~that suppress the production of testosterone or delay or suppress pubertal~~
22 ~~development in male children.~~

23 (c) The treatments prohibited by subsections (a) and (b) shall not
24 apply to treatment provided for other purposes, including:

25 (1) Treatment for individuals born with a medically verifiable
26 disorder of sex development, including:

27 (A) An individual born with external biological sex characteristics
28 that are irresolvably ambiguous, including an individual born with 46 XX
29 chromosomes with virilization, 46 XY chromosomes with under
30 virilization or having both ovarian and testicular tissue; or

31 (B) an individual whom a physician has otherwise diagnosed with a
32 disorder of sexual development that the physician has determined through
33 genetic or biochemical testing that such individual does not have normal
34 sex chromosome structure, sex steroid hormone production or sex steroid
35 hormone action for a male or female; and

36 (2) treatment of any infection, injury, disease or disorder that has
37 been caused or exacerbated by the performance of a procedure listed in
38 subsections (a) or (b).

39 ~~(d) If a healthcare provider has initiated a course of treatment for a~~
40 ~~child that includes prescribing, administering or dispensing of a drug~~
41 ~~prohibited by subsection (a)(2), (a)(3), (b)(2) or (b)(3) prior to the effective~~
42 ~~date of this act, the healthcare provider may continue such course of~~
43 ~~treatment if the healthcare provider:~~

- 1 ~~(1) Develops a plan to systematically reduce the child's use of such~~
- 2 ~~drug;~~
- 3 ~~(2) determines and documents in the child's medical record that~~
- 4 ~~immediately terminating the child's use of such drug would cause harm to~~
- 5 ~~the child; and~~
- 6 ~~(3) such course of treatment shall not extend beyond December 31,~~
- 7 ~~2025.~~

8 New Sec. 4. (a) If a healthcare provider violates the provisions of
 9 section 3, and amendments thereto:

10 (1) The healthcare provider has engaged in unprofessional conduct
 11 and, notwithstanding any provision of law to the contrary, the license of
 12 such healthcare provider shall be revoked by the appropriate licensing
 13 entity or disciplinary review board with competent jurisdiction in this
 14 state.

15 (b) A healthcare provider who provides treatment to a child in
 16 violation of section 3(a) or (b), and amendments thereto, shall be held
 17 strictly liable to such child if the treatment or effects of such treatment
 18 results in any physical, psychological, emotional or physiological harms to
 19 such child in the next 10 years from the date that the individual turns 18
 20 years of age.

21 (c) The parents of a child who has experienced violation of section
 22 3(a) or (b), and amendments thereto, shall have a private cause of action
 23 against a healthcare provider for damages and equitable relief as the court
 24 may determine is justified. A prevailing party may recover the costs of the
 25 suit and reasonable attorney fees.

26 (d) (1) An individual who was provided treatment as a child in
 27 violation of section 3(a) or (b), and amendments thereto, shall have a
 28 private cause of action against the healthcare provider who provided such
 29 treatment for actual damages, punitive damages, injunctive relief, the cost
 30 of the suit and reasonable attorney fees.

31 (2) An action against a healthcare provider pursuant to this subsection
 32 shall be filed within 10 years from the date that the individual turns 18
 33 years of age.

34 New Sec. 5. A professional liability insurance policy issued to a
 35 healthcare provider shall not include coverage for damages assessed
 36 against the healthcare provider who provides treatment to a child in
 37 violation of section 3(a) or (b), and amendments thereto.

38 New Sec. 6. If any provision or clause of this act or application
 39 thereof to any person or circumstance is held invalid, such invalidity shall
 40 not affect other provisions or applications of this act that can be given
 41 effect without the invalid provision or application, and to this end the
 42 provisions of this act are declared to be severable.

43 Sec. 7. K.S.A. 65-2837 is hereby amended to read as follows: 65-

*Striking sections 4-6 and
renumbering remaining
sections accordingly*

1 2837. As used in K.S.A. 65-2836, and amendments thereto, and in this
2 section:

3 (a) "Professional incompetency" means:

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

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

10 (3) A pattern of practice or other behavior that demonstrates a
11 manifest incapacity or incompetence to practice the healing arts.

12 (b) "Unprofessional conduct" means:

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

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

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

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

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

25 (6) Willful betrayal of confidential information.

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

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

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

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

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

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

41 (13) Making a false or misleading statement regarding the licensee's
42 skill or the efficacy or value of the drug, treatment or remedy prescribed
43 by the licensee or at the licensee's direction in the treatment of any disease

- 1 or other condition of the body or mind.
- 2 (14) Aiding or abetting the practice of the healing arts by an
3 unlicensed, incompetent or impaired person.
- 4 (15) Allowing another person or organization to use the licensee's
5 license to practice the healing arts.
- 6 (16) Commission of any act of sexual abuse, misconduct or other
7 improper sexual contact that exploits the licensee-patient relationship with
8 a patient or a person responsible for ~~health care~~ *healthcare* decisions
9 concerning such patient.
- 10 (17) The use of any false, fraudulent or deceptive statement in any
11 document connected with the practice of the healing arts including the
12 intentional falsifying or fraudulent altering of a patient or medical care
13 facility record.
- 14 (18) Obtaining any fee by fraud, deceit or misrepresentation.
- 15 (19) Directly or indirectly giving or receiving any fee, commission,
16 rebate or other compensation for professional services not actually and
17 personally rendered, other than through the legal functioning of lawful
18 professional partnerships, corporations, limited liability companies or
19 associations.
- 20 (20) Failure to transfer patient records to another licensee when
21 requested to do so by the subject patient or by such patient's legally
22 designated representative.
- 23 (21) Performing unnecessary tests, examinations or services that have
24 no legitimate medical purpose.
- 25 (22) Charging an excessive fee for services rendered.
- 26 (23) Prescribing, dispensing, administering or distributing a
27 prescription drug or substance, including a controlled substance, in an
28 improper or inappropriate manner, or for other than a valid medical
29 purpose, or not in the course of the licensee's professional practice.
- 30 (24) Repeated failure to practice healing arts with that level of care,
31 skill and treatment that is recognized by a reasonably prudent similar
32 practitioner as being acceptable under similar conditions and
33 circumstances.
- 34 (25) Failure to keep written medical records that accurately describe
35 the services rendered to the patient, including patient histories, pertinent
36 findings, examination results and test results.
- 37 (26) Delegating professional responsibilities to a person when the
38 licensee knows or has reason to know that such person is not qualified by
39 training, experience or licensure to perform them.
- 40 (27) Using experimental forms of therapy without proper informed
41 patient consent, without conforming to generally accepted criteria or
42 standard protocols, without keeping detailed legible records or without
43 having periodic analysis of the study and results reviewed by a committee

1 or peers.

2 (28) Prescribing, dispensing, administering or distributing an anabolic
3 steroid or human growth hormone for other than a valid medical purpose.
4 Bodybuilding, muscle enhancement or increasing muscle bulk or strength
5 through the use of an anabolic steroid or human growth hormone by a
6 person who is in good health is not a valid medical purpose.

7 (29) Referring a patient to a ~~health-care~~ *healthcare* entity for services
8 if the licensee has a significant investment interest in the ~~health-care~~
9 *healthcare* entity, unless the licensee informs the patient in writing of such
10 significant investment interest and that the patient may obtain such
11 services elsewhere.

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

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

17 (32) *Violating the help not harm act, sections 1 through 6, and*
18 *amendments thereto.*

2

19 (33) Charging, billing or otherwise soliciting payment from any
20 patient, patient's representative or insurer for anatomic pathology services,
21 if such services are not personally rendered by the licensee or under such
22 licensee's direct supervision. As used in this subsection, "anatomic
23 pathology services" means the gross or microscopic examination of
24 histologic processing of human organ tissue or the examination of human
25 cells from fluids, aspirates, washings, brushings or smears, including blood
26 banking services, and subcellular or molecular pathology services,
27 performed by or under the supervision of a person licensed to practice
28 medicine and surgery or a clinical laboratory. Nothing in this subsection
29 shall be construed to prohibit billing for anatomic pathology services by:

30 (A) A hospital;

31 (B) a clinical laboratory when samples are transferred between
32 clinical laboratories for the provision of anatomic pathology services; or

33 (C) a physician providing services to a patient pursuant to a medical
34 retainer agreement in compliance with K.S.A. 65-4978, and amendments
35 thereto, when the bill to the patient for such services:

36 (i) Identifies the laboratory or physician that performed the services;

37 (ii) discloses in writing to the patient the actual amount charged by
38 the physician or laboratory that performed the service; and

39 (iii) is consistent with rules and regulations adopted by the board for
40 appropriate billing standards applicable to such services when furnished
41 under these agreements.

42 ~~(33)~~(34) Engaging in conduct that violates patient trust and exploits
43 the licensee-patient relationship for personal gain.

- 1 ~~(34)~~(35) Obstructing a board investigation including, but not limited
2 to, engaging in one or more of the following acts:
- 3 (A) Falsifying or concealing a material fact;
- 4 (B) knowingly making or causing to be made any false or misleading
5 statement or writing; or
- 6 (C) other acts or conduct likely to deceive or defraud the board.
- 7 (c) "False advertisement" means any advertisement that is false,
8 misleading or deceptive in a material respect. In determining whether any
9 advertisement is misleading, there shall be taken into account not only
10 representations made or suggested by statement, word, design, device,
11 sound or any combination thereof, but also the extent to which the
12 advertisement fails to reveal facts material in the light of such
13 representations made.
- 14 (d) "Advertisement" means all representations disseminated in any
15 manner or by any means for the purpose of inducing, or that are likely to
16 induce, directly or indirectly, the purchase of professional services.
- 17 (e) "Licensee" for purposes of this section and K.S.A. 65-2836, and
18 amendments thereto, means all persons issued a license, permit or special
19 permit pursuant to article 28 of chapter 65 of the Kansas Statutes
20 Annotated, and amendments thereto.
- 21 (f) "License" for purposes of this section and K.S.A. 65-2836, and
22 amendments thereto, means any license, permit or special permit granted
23 under article 28 of chapter 65 of the Kansas Statutes Annotated, and
24 amendments thereto.
- 25 (g) "~~Health-care~~Healthcare entity" means any corporation, firm,
26 partnership or other business entity that provides services for diagnosis or
27 treatment of human health conditions and that is owned separately from a
28 referring licensee's principle practice.
- 29 (h) "Significant investment interest" means ownership of at least 10%
30 of the value of the firm, partnership or other business entity that owns or
31 leases the ~~health-care~~ healthcare entity, or ownership of at least 10% of the
32 shares of stock of the corporation that owns or leases the ~~health-care~~
33 healthcare entity.
- 34 Sec. 8. K.S.A. 65-2837 is hereby repealed.
- 35 Sec. 9. This act shall take effect and be in force from and after its
36 publication in the statute book.