

SESSION OF 2014

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2673

As Amended by House Committee of the Whole

Brief*

HB 2673, as amended, would update and modernize provisions and terminology in the Kansas Healing Arts Act (HAA) and the Kansas Physician Assistant Licensure Act. The changes that would be made by the bill include, in part, terminology and definition changes, requiring participation in the Health Care Stabilization Fund as a “health care provider”, replacing the statutory limitation on the number of Physician Assistants (PAs) that could be supervised by a physician and directing the Kansas State Board of Healing Arts (Board) to establish regulations imposing limits appropriate to different patient care settings, making uniform the administrative and regulatory structures among the 13 health professions licensed by the Board, addressing the discipline of professions regulated by the Board and of PAs, and creating a new category of physician “re-entry” license and new licensure designations for PAs.

Changes also would be made to statutes outside of the Kansas HAA and the Physician Assistant Licensure Act to replace references to designated or responsible physician with “supervising physician” or correct references to physician’s assistant by removing the apostrophe. Technical amendments also would be made. Specific changes that would be made by the bill are described below.

The bill would take effect and be in force from and after July 1, 2015, and its publication in the statute book.

*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>

Terminology Changes

The bill would make the following terminology changes in various statutes:

- References to physician's assistants would be replaced with physician assistants; and
- "Supervising physician" would replace "responsible physician" and "designated physician." [This change would not be made when referencing the authority of an advanced practice registered nurse to prescribe drugs pursuant to a written protocol in the definition of a mid-level practitioner in the Kansas Uniform Controlled Substances Act and the Kansas Pharmacy Act.]

Healing Arts Act

Definition and Terminology Changes

The following changes would be made:

- The term "healing arts" would be expanded to include the alteration or enhancement of a condition or appearance, to reflect preventative and elective procedures;
- Conditions that constitute the unlawful practice of professions licensed by the Board are expanded beyond references to licensure to include references to those engaging in the practice of professions licensed by the Board without a registration, permit or certificate, or practicing with a revoked or suspended registration, permit or certificate;
- References to a licensee in the active practice or regularly engaged in the practice of the healing arts

within the state would be replaced with the reference to an active licensee; and

- References to the healing arts would be replaced with any profession regulated by the Board.

Changes to the Board

The bill would require a list of three or more names of licensed podiatrists be submitted to the Governor by the professional society or association from the podiatry branch of healing arts for consideration in appointing the licensed podiatrist member to the Board.

Penalties for Unlawful Practice

The bill would establish penalties for the unlawful practice of a profession regulated by the Board that may result in the violator being liable to the state or county for the payment of a civil penalty of up to \$1,000 per day for each day the person engages in such unlawful practice or in being assessed for the reasonable costs of investigation and prosecution. Violations for the unlawful practice would increase from a class B misdemeanor to a severity level 10, nonperson felony.

Licensure Changes

Active License

The specific designation of an “active license” would be created and issued to any licensees upon written application and payment of the established fee for an active license.

Exempt License

The Board would have the option to require persons who hold an exempt license to provide proof of completion of

continuing education. The Board also would be authorized to establish requirements for continuing education for exempt licensees of each branch of the healing arts by rules and regulations.

Reentry License

The new designation of a “reentry license” would be created to allow for the licensure of a licensee who has not been in the active practice for more than two years but meets all the qualifications for licensure and desires to return to active practice.

Before issuing a reentry license, the Board may require the individual applying for such license to meet requirements deemed necessary to establish the individual’s present ability to practice with reasonable skill and safety. The requirements for issuing, renewing, and scope of practice for a reentry license would be established by the Board through rules and regulations.

Licensure by Endorsement

The requirement that an individual seeking licensure by endorsement provide the Board with the time and reason for being out of practice would be removed. The Board would be authorized to adopt rules and regulations establishing qualitative and quantitative practice activities that qualify as active practice. The requirement that those seeking licensure by endorsement meet all the Kansas legal requirements would be changed to allow for recognition of equivalent standards for endorsement, as determined by the Board.

Fees

The fees’ provisions established by the Board by rules and regulations and collected by the Board would be amended to remove a reference to examinations given by the Board.

Grounds for Disciplinary Action Against a Licensee

The grounds allowing for the revocation, suspension, or limitation of a license, censure or probation of a licensee, or denial of an application for license or for reinstatement of a license would be amended to include the following:

- An offense in another jurisdiction that is substantially similar to a felony or class A misdemeanor;
- A conviction in a special or general court-martial, whether or not related to the practice of healing arts [A person who has been convicted of a felony or convicted in a general court-martial, who applies for an original license or for reinstatement of a canceled license, would have his or her license denied unless approved by a two-thirds majority of the Board upon determination of fitness for practice.];
- The impairment of a licensee's ability to practice by reason of physical or mental illness, or condition or use of alcohol, drugs or controlled substances. Information, reports, findings, and other records relating to the impairment would be confidential and not subject to discovery by or release to any person or entity outside of a Board proceeding. [Provisions in statute applicable only to licensees addressing access to information and the process of investigations or disciplinary proceedings by the Board in cases involving suspected impairment would be deleted and replaced with a universal procedure for any profession regulated by the Board.];
- The licensee has given a worthless check or stopped payment on a debit or credit card for fees or moneys legally due to the Board; and

- The licensee has knowingly or negligently abandoned medical records.

Unprofessional conduct giving rise to grounds for discipline would be expanded to include:

- A limited liability company would be added to those entities through which a licensee could receive or give compensation for professional services not actually and personally rendered; and
- The obstruction of a Board investigation, including falsifying or concealing a material fact, knowingly making or causing any false or misleading statement or writing to be made, or other acts or conduct likely to deceive or defraud the Board.

Provisions Applicable to All Board-Regulated Professions in Disciplinary Actions

With regard to disciplinary actions, the following would apply to all professions regulated by the Board:

- Ability to enter into a stipulation;
- Participation in emergency adjudicative proceedings when grounds exist for disciplinary action under the applicable practice act;
- Participation in non-disciplinary resolutions with the Board or a committee of the Board, including professional development plans and letters of concern (Peer review committees would no longer be involved in non-disciplinary resolutions);
- Application of Board investigative procedures, subpoena authority, and the process for challenging subpoenas in all investigations and proceedings conducted by the Board; and

- Authority of the Board to compel the production of evidence upon noncompliance with an investigative subpoena, if in the opinion of the Board or its designee, the following specific conditions are present:
 - The evidence demanded relates to a practice which may be grounds for disciplinary action;
 - The evidence is relevant to the charge which is the subject of the investigation; and
 - The physical evidence required to be produced is described with sufficient particularity.

- Jurisdiction of the District Court to issue an order requiring the person to appear before the Board or its authorized agent and produce the demanded evidence or to revoke, limit, or modify the subpoena upon application by the Board after exhaustion of available administrative remedies;

- Board authority to obtain criminal history information necessary to determine initial and continuing qualifications would be extended to allow such information to be obtained for permit holders and certificate holders. Disciplinary measures for unauthorized disclosure of this information would extend to permits and certificates issued under the HAA. Unless otherwise specified, it would not be unlawful for the Board to disclose such information in a hearing held pursuant to the practice act of any profession regulated by the Board;

- Provisions of law making communications between a licensee, registrant, permit holder, or a certificate holder and the patient privileged would not apply to any investigations or proceedings of the Board.

Presently, this applies only to communications between a physician and a patient; and

- Disciplinary counsel authority to investigate matters involving professional incompetency, unprofessional conduct, or any other matter which may result in disciplinary action would be expanded beyond licensees to include all professions regulated by the Board.

Impairment of Ability to Practice

Procedures used to address situations where a reasonable suspicion exists that a person's ability to practice a profession regulated by the Board with reasonable skill and safety to the patient is impaired by reason of physical or mental illness or condition, or use of alcohol, drugs or controlled substances would apply to all professions regulated by the Board. The procedures would allow for the following:

- Board authority to compel the person to submit to a mental or physical examination, substance abuse evaluation or drug screen, or a combination of these, by persons designated by the Board in the course of an investigation or a disciplinary proceeding;
- To determine whether reasonable suspicion of impaired ability exists, the investigative information would be presented to the Board or a committee of the officers of the Board and the executive director or to a presiding officer, with the determination to be made by the majority vote of the entity reviewing the investigative information;
- The information submitted for use in making a determination of impairment and all reports, findings, and other records would be confidential

and not subject to discovery by or release to any person or entity;

- The person would be required to submit a release of information authorizing the Board to obtain a copy of the examination or drug screen, or both;
- Persons would be offered an opportunity to demonstrate the ability to resume the competent practice of their profession with reasonable skill and safety to patients;
- Persons accepting the privilege to practice a profession regulated by the Board by practicing or by making and filing a renewal application in the state would be deemed to have consented to submit to a mental or physical evaluation, substance abuse evaluation or a drug screen, or any combination of these, when directed in writing by the Board. Such persons would be deemed to have waived all objections to the admissibility of the testimony, drug screen or examination report of the person conducting the examination or drug screen at any Board hearing or proceeding on the ground that it is privileged communication;
- Records of any board proceedings regarding the ability of a person to practice due to an impairment would be considered confidential would not be allowed to be used in any civil, criminal, or administrative action, other than an administrative or disciplinary proceeding by the Board; and
- The time from the Board's directive to any person regulated by the Board to submit to a physical or mental examination, substance abuse evaluation or drug screen until the submission to the Board of these reports would not be included in the computation of the time limit for hearing under the Kansas Administrative Procedure Act (KAPA).

Reinstatement of Revoked License, Registration, Permit, or Certificate

Procedures available to licensees for reinstatement of a license would apply to all professions regulated by the Board. Application for reinstatement would be made on a form provided by the Board and accompanied by the fee for reinstatement of a revoked license, registration, permit, or certificate established by the Board under the applicable practice act.

Penalties in Disciplinary Actions

For all professions regulated by the Board, if the Board issues an order against the licensee, registrant, permit holder, certificate holder, or applicant for reinstatement of a license, costs incurred by the Board in conducting any investigation or proceeding under the KAPA could be assessed against the parties to the proceeding in such proportion as determined by the Board. The costs assessed would be considered costs in an administrative matter pursuant to federal law. Reasonable investigative costs would be added to the list cost incurred, and such list would not be limited to the costs itemized in statute.

A bond, in the form of cash or professional surety, would be required when a licensee appeals a Board decision to the District Court. The KAPA would apply to all administrative proceedings provided for by the practice act of each profession regulated by the Board.

Injunctive remedies for unlawful practice would be available against any profession regulated by the Board or any profession defined by the practice acts administered by the Board without being duly licensed. The authority to prosecute criminally for unlawful practice would apply to all professions regulated by the Board.

The penalty for false impersonation of a person issued a license, registration, permit, or certificate by the Board or for presenting a diploma or certificate belonging to another person for the purpose of obtaining a license would be an unclassified nonperson felony and could subject the person to civil penalties and reasonable costs of the investigation and prosecution, unless otherwise specified. Civil fines assessed for a violation of the HAA would be considered administrative fines pursuant to federal law.

The Board would enforce provisions of all practice acts administered by the Board and make all necessary investigations relative to those practice acts. The requirement to furnish the Board with evidence the person has of any alleged violation being investigated by the Board or to provide the Board with the name of persons practicing without a license would apply to all professions regulated by the Board.

The Board would have authority to promulgate all necessary rules and regulations to carry out the provisions of any practice act administered by the Board and to adopt rules and regulations to supplement provisions consistent with any such practice act.

The attorney general and the county attorney or district attorney would be allowed to sue for and collect reasonable expenses and investigation fees in cases brought in the name of the state or county under the HAA. Civil penalties or contempt penalties recovered by the attorney general would be paid in to the State General Fund, and the same penalties recovered by the county or district attorney would be paid in to the General Fund of the county where the proceedings were instituted.

An exemption to unlawful practice due to practicing with an expired or lapsed license that is reinstated within a six month period would be removed.

Provision Added to the Kansas Healing Arts Act

The bill would add a provision stating the administration and procedural provisions of the Kansas HAA would apply to any profession regulated by the Board, unless otherwise specified.

Physician Assistant Licensure Act

Terminology and Definition Changes

The following terminology and definition changes would be made to the Physician Assistant (PA) Licensure Act:

- References to the State Board of Healing Arts would be changed to “Board” and references to protocol are updated with “agreement”; and
- The definition of a responsible physician would be changed to refer to a “supervising physician,” the definition of a designated physician would be removed, and references to a responsible or designated physician would be changed to a supervising physician.

PA Licensure

Active License

A designation of active license for a PA would be created, with Board authority to issue an active license upon written application and payment of the fee for an active license. Renewal of an active license would require the licensee to submit to the Board evidence that the licensee is maintaining a required policy of professional liability insurance and has paid the required premium surcharges under the Health Care Stabilization Fund.

An inactive licensee would be able to apply to engage in the active practice by written application and payment of the active license fee, submission of proof of professional liability insurance and payment of the required premium surcharges under the Health Care Stabilization Fund, and such other information required by rules and regulations adopted by the Board.

Licensure by Endorsement

A licensure by endorsement for PAs would be created. The Board would be authorized to issue a license by endorsement without examination to a person who has been in active practice as a PA in another state, territory, District of Columbia, or other country upon certificate of the proper licensing authority of those jurisdiction certifying that:

- The applicant is duly licensed;
- The applicant's license has never been limited, suspended, or revoked;
- The licensee has never been censured or had other disciplinary action taken; and
- So far as the records of such authority are concerned, the applicant is entitled to its endorsement.

The applicant for licensure by endorsement would be required to present proof satisfactory to the Board as follows:

- That the state, territory, District of Columbia, or country in which the applicant last practiced has and maintains standards at least equal to those of Kansas;
- That the applicant's original license was based on an examination at least equal in quality to that required in Kansas and that the passing grade

required to obtain the original license was comparable to that required in this state;

- The date of the applicant's original and all endorsed licenses, and the date and place from which any license was obtained;
- That the applicant has been actively engaged in practice under such license or licenses since issuance (The Board would be authorized to adopt rules and regulations establishing appropriate qualitative and quantitative practice activities to qualify as an active practice.); and
- That the applicant has a reasonable ability to communicate in English.

No licensure by endorsement would be granted unless the Board determines the applicant's qualifications are substantially equivalent to this state's requirements.

In place of any other requirement required by law for satisfactory passage of any examination for PAs, the Board would be allowed to accept evidence demonstrating that the applicant or licensee has satisfactorily passed an equivalent examination given by a national board of examiners for PAs.

Changes to Other PA Licensure Designations

The designation of a federally active license would be eliminated. The bill also would change the length of time a temporary license for new graduates is valid from one year to six months.

License Fees

The following license fee changes would be made:

- Fees for a PA license would be changed to fees for an active license, with no increase in cost;
- The fee for any license by endorsement would not exceed \$200; and
- References to fees for a federally active license would be removed.

Grounds for Disciplinary Action

Additional grounds for disciplinary action against a licensed PA would be created as follows:

- 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 is incompetent to stand trial by a court of competent jurisdiction;
- The licensee has violated a federal law or regulation relating to controlled substances;
- The licensee has failed to report to the Board any adverse action taken against the licensee in another state or licensing jurisdiction, a peer review body, a health care facility, a professional association or society, a governmental agency, or by a law enforcement agency or a court for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action;
- The licensee had surrendered a license for authorization to practice as a PA 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 the investigation for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action;

- The licensee has failed to report to the Board the surrender of the licensee's license for authorization to practice as a PA in another state or jurisdiction or the 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;
- 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, or had failed to report any such action to the Board; or
- The licensee's ability to practice with reasonable skill and safety to patients is impaired by reason of physical or mental illness, or condition or use of alcohol, drugs, or controlled substances. All information, reports, findings, and other records relating to impairment would be confidential and not subject to discovery by or release to any person or entity outside of a Board proceeding.

Penalties for Violations of the PA Licensure Act

The following provisions would be added regarding penalties for violations of the PA Licensure Act:

- Any violation would be a class B misdemeanor;
- The Board would be authorized to bring a court action in the name of the state for an injunction against violations of the PA Licensure Act, regardless of whether Board proceedings or

criminal proceedings have been or may be instituted;

- In addition to any other penalty in the PA Licensure Act and after proper notice to a licensee and an opportunity to be heard, the Board would be allowed to assess a civil fine against a licensee for a violation of the PA Licensure Act not to exceed the following amounts:
 - \$5,000 for the first violation;
 - \$10,000 for the second violation; and
 - \$15,000 for the third and subsequent violations;

All such fines assessed and collected would be remitted to the State Treasurer to be deposited in the State General Fund. If the Board is the unsuccessful party, the costs would be paid from the Healing Arts Fee Fund.

- A licensee requirement to notify the Board in writing within 30 days of any changes in the licensee's home mailing address or primary practice address would be created. The Board would be authorized to assess a civil fine for violation of the change of address notice requirement not to exceed \$100 for the first violation and \$150 for each subsequent violation. These civil fines would be in addition to any other penalty prescribed in the PA Licensure Act. If the Board is an unsuccessful party, the costs would be paid from the Healing Arts Fee Fund; and
- Civil fines assessed by the Board would be considered costs in an administrative matter pursuant to federal law.

Exemptions from the PA Licensure Act

The bill would exempt all PA program students from the requirement of the PA Licensure Act and provide a new definition for federal service PAs, who also would be exempt.

Practice of a PA; Prescription-only Drugs

The practice of a PA would be expanded to allow a PA, when authorized by a supervising physician, to dispense prescription-only drugs under the following conditions:

- According to rules and regulations adopted by the Board governing prescription-only drugs;
- When dispensing is in the best interests of the patient and pharmacy services are not readily available; and
- Not in excess of the quantity necessary for a 72-hour supply.

Rules and Regulations Applicable to PAs

The bill would add the following language regarding rules and regulations applicable to PAs:

- Require the Board to adopt rules and regulations governing the practice of PAs, including the delegation, direction, and supervision responsibilities of a supervising physician;
- Rules and regulations would be required to establish conditions and limitations determined by the Board to be necessary to protect the public health and safety, and may include a limit on the number of PAs that a supervising physician is able to safely and properly supervise; and

- In developing rules and regulations, the Board would be required to consider the:
 - Amount of training and capabilities of PAs;
 - Different practice settings in which PAs and supervising physicians practice;
 - Needs of the geographic area of the state in which the PA and the supervising physician practice; and
 - Differing degrees of direction and supervision by a supervising physician appropriate for such settings and areas.

Both a supervising physician and a PA would be required to notify the Board when the supervision and direction of the PA has terminated.

Amendments to Other Statutes

The following statutes would be amended to replace references to a responsible physician with a supervising physician or to correct references to physician's assistant:

- Kansas Uniform Controlled Substances Act;
- Kansas Pharmacy Act;
- Revised Kansas Juvenile Justice Code;
- Kansas Insurance Code; and
- Statutes relating to the following:
 - The Kansas Board of Emergency Medical Services;
 - The organization, powers, and finances of Boards of Education regarding policies to allow a student to self-administer certain medications; and

- Driving under the influence of alcohol and drugs.

The definition of “dispenser” would be amended under the Kansas Uniform Controlled Substances Act and the Kansas Pharmacy Act to include a PA who has authority to dispense prescription-only drugs.

The provision of the Juvenile Justice Act included in the bill would be updated to reflect changes in agency names. The Department of Social and Rehabilitation Services would be changed to the Department for Children and Families, and the Juvenile Justice Authority would be changed to the Department of Corrections.

Background

The House Committee on Health and Human Services introduced the bill at the request of the Kansas Academy of Physician Assistants. At the House Committee hearing, representatives of the Kansas Academy of Physician Assistants, the Kansas Medical Society (KMS), and the Kansas State Board of Healing Arts (Board) testified in favor of the bill. The proponents stated the bill was the coordinated effort of the Board and representatives from the Kansas Academy of Physician Assistants, the KMS, the Kansas Association of Osteopathic Medicine (KAOM) and a variety of health care stakeholders including all of the professions regulated by the Board, in order to update and enhance the Healing Arts Act and the Physician Assistant Licensure Act and to make the administrative and regulatory processes uniform across professions regulated by the Board.

Written-only testimony in favor of the bill was provided by the KAOM. No opponent or neutral testimony was provided.

The House Committee amended the bill by removing language that would have created an interim license for physicians.

The House Committee of the Whole amended the bill by making changes to definitions, changing agency names to reflect presently used names, increasing the penalty for unlawful practice under the Healing Arts Act, and making technical amendments.

According to the fiscal note on the original bill prepared by the Division of the Budget, the Board indicates the proposed amendments in the bill would require the agency to update rules and regulations, applications, forms, booklets, and other affected online or agency website items to reflect the new information and requirements. The Board indicates it could perform the work with existing staff and supplies.