

Kansas State Board of Healing Arts
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Tucker Poling, Acting Executive Director

Laura Kelly, Governor

December 28, 2020

Representative Caryn Tyson, Chairperson
Joint Committee on Administrative Rules & Regulations
PO Box 191
Parker, Kansas 66072

RE: KAR 100-6-2; K.A.R. 100-8-3

Dear Chairperson Tyson and Honorable Committee Members:

I am Tucker Poling, Acting Executive Director of the Kansas State Board of Healing Arts. The Kansas State Board of Healing Arts is composed of 15 members, 12 of whom are licensed Kansas healthcare providers and 3 of whom are public members (5 medical doctors, 3 doctors of osteopathy, 3 doctors of chiropractic, 1 doctor of podiatric medicine, and 3 members of the public from geographically diverse areas of the state). The mission of the Board is public protection, based on the statutory recognition “that the practice of the healing arts is a privilege . . . and is not a natural right of individuals” and that “provisions covering the granting of that privilege and its subsequent use, control and regulation” be directed toward “the end that the public shall be properly protected against unprofessional, improper, unauthorized and unqualified practice of the healing arts and from unprofessional conduct by persons licensed to practice under this act.” See K.S.A. 65-2801.

I come before the committee to provide the committee the opportunity for review and comment pursuant to K.S.A. 77-436 on two proposed regulations. The two proposed regulations are K.A.R. 100-6-2 and K.A.R. 100-8-3.

I. K.A.R. 100-6-2. Education and Training.

Summary

The proposed revised K.A.R. 100-6-2 updates the minimum post-graduate medical training required to obtain an initial full and unrestricted license to practice medicine and surgery in Kansas. The requirement currently contained in K.A.R. 100-6-2 reflects the training standards and practices that existed in the 1960s, in which some accredited post-graduate training programs were one year in length. The proposed revised regulation reflects the modern baseline standard in the healthcare industry that a medical residency program for a physician must include at least 36 months of clinical training.

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Statutory basis

This regulation is authorized by K.S.A. 65-2865 and K.S.A. 65-2873. Most specifically, K.S.A. 65-2873, describing the requirements for licensure by examination states, in relevant part:

“. . . Any person seeking a license to practice medicine and surgery shall present proof that such person *has completed acceptable postgraduate study as may be required by the board by regulations. . . .*”

(Emphasis added). *Id.*

Purpose and background

When K.A.R. 100-6-2 was initially promulgated in the 1960s, there were accredited medical residency programs that were only 1 year in clinical length. The structure and practice in the healthcare field changed over the decades to the point that residency programs found that they could no longer expose trainees to an adequate volume of patients and clinical subject matter experience in one year. In fact, most residency programs in North America are now 4 or more years in length (Canada, for example, requires 5 year residency programs for most physicians). The modern U.S. accreditation standard for post-graduate medical training programs is the Accreditation Council for Graduate Medical Education (ACGME). The ACGME minimum clinical length for a residency program to be accredited is 3 years.

By the mid-2010s, many in the Kansas healthcare community had grown concerned that the “loophole” caused by the anachronistic Kansas regulation (K.A.R. 100-6-2) allowing full and unlimited licensure after completing only 1 year of residency was unsafe for patients and negatively affected trainees’ clinical residency training. Therefore, under the leadership of former Board President Kimberly Templeton, M.D., a group of stakeholders including Kansas graduate medical education program leaders, the Kansas Hospital Association, the Kansas Medical Association, and others came together to consider updates to the Kansas post-graduate training regulation. The final recommendation of that group was to update the post-graduate training regulation to require at least 36 months of clinical residency for full licensure, but also recommend a statutory change to create a new license type to allow medical residency trainees to “moonlight” with appropriate approval from their residency program director after their first year of residency. The recommended statutory change to create a new “moonlighting” license for trainees was based on similar license types that exist in some other states.

Related statute and regulation: K.S.A. 65-2873b and K.A.R. 100-6-2a.

There was a desire that the statutory change to create the new “moonlighting” license type be completed prior to the regulatory update to the length of training requirement for full licensure contained in K.A.R. 100-6-2. As such, K.S.A. 65-2873b was passed in anticipation of the eventual update to K.A.R. 100-6-2.

We recently came before this committee on December 2, 2020 to allow the committee to review and comment on K.A.R. 100-6-2a, the regulation that will implement the “moonlighting”

license statute. As referenced in my December 18, 2020 follow-up letter to this committee, a copy of proposed K.A.R. 100-6-2a is attached again here for the committee’s reference and to allow the committee the opportunity to provide any additional comment regarding K.A.R. 100-6-2a.

II. K.A.R. 100-8-3. Endorsement licenses; active practice requirements.

Summary

The proposed K.A.R. 100-8-3 codifies the Board’s existing standing authorization to staff regarding “the qualitative and quantitative practice activities which qualify as active practice” (see K.S.A. 65-2833, below) for applicants seeking licensure by endorsement based on licensed practice in another state. The proposed regulation states a general requirement that applicants must have engaged in clinical patient care for, at minimum, the immediately preceding year. The regulation also provides discretion for the Board to reasonably account for unique circumstances or gaps in active practice necessitated by military service or the birth or adoption of a child.

Statutory basis

This regulation is authorized by K.S.A. 65-2865 and K.S.A. 65-2833. Most specifically, K.S.A. 65-2833, describing the requirements for licensure by endorsements states, in relevant part:

“ . . . The board . . . may issue a license to a person who has been in the active practice of a branch of the healing arts in some other state, territory, the District of Columbia or other country upon certificate of the proper licensing authority of that state, territory, District of Columbia or other country certifying that the applicant is duly licensed, that the applicant's license has never been limited, suspended or revoked, that the licensee has never been censured or had other disciplinary action taken and that, so far as the records of such authority are concerned, the applicant is entitled to its endorsement. The applicant shall also present proof satisfactory to the board:

...

(d) That the applicant has been actively engaged in practice under such license or licenses since issued. The *board may adopt rules and regulations establishing qualitative and quantitative practice activities which qualify as active practice.* ..

...”

(Emphasis added). *Id.*

Purpose and background

K.S.A. 65-2833 allows the Board to grant licensure based on endorsement from the licensing body of another state when the applicant has been “actively engaged” in licensed practice in the endorsing state. The statute also allows the Board to codify rules “establishing qualitative and quantitative practice activities which qualify as active practice.” *Id.* This proposed regulation provides a working definition to advise applicants of the qualitative and quantitative practice activities that constitute active practice for the purpose of licensure by endorsement.

Should you have any questions or concerns, please feel free to contact me at any time.
Thank you for your work.

Sincerely,

Tucker L. Poling
Tucker L. Poling
Acting Executive Director

Enclosures

cc: Representative Ron Highland, Vice-Chairperson (rep.highland@gmail.com)
Senator Oletha Faust-Goudeau (oletha29th@aol.com)
Representative John Carmichael (john@carmichaelforkansas.com)