

January 18, 2022

Written and Oral Neutral Testimony in the Senate Judiciary Committee regarding HB 2477

Dear Chair and Honorable Committee Members:

The Kansas State Board of Healing Arts (“Board”) submits this testimony to assist legislators in evaluating HB 2477. I am Susan Gile, Interim Executive Director of the Board. Courtney Cyzman, General Counsel of the Board, will be presenting oral testimony. The Board is the executive body tasked with licensing and regulating 16 healthcare professions in Kansas, including many of our frontline healthcare workers. *See* K.S.A. 65-2801. The Board is composed of 15 members, 12 of whom are licensed healthcare professionals from various professions, including eight licensed physicians. The statutory mission of the Board is patient protection. *See* K.S.A. 65-2801.

Although there are many aspects of the bill that the Board supports continuing during the existence of the state of emergency declared by the Governor, such as temporary regulatory flexibility to facilitate the state’s response to COVID-19, the Board believes it is duty-bound to advise the legislature that **the Board has public safety concerns related to some provisions of the bill**. The Board respectfully suggests the legislature amend the bill in a manner that retains the Board’s ability to protect public safety. **The most vital revision can be achieved through deleting subsection (h) of Section 2**. This revision would not undermine your policy goals.

The Board’s most pressing concerns with HB 2477, in descending order of concern, are as follows:

Section 2 at subsection (h)

This is the most problematic subsection in the Act. The Board believes this subsection endangers public safety because it allows any “health care professional” (a term not defined) licensed and in good standing in any state or territory to practice within Kansas without the need for a Kansas license.

- The Board’s jurisdiction to remove unsafe providers from practice in Kansas or otherwise discipline providers for misconduct is under K.S.A. 65-2836 and is attached to licensure. **In other words, we can only regulate licensees.**
- This subsection allows individuals from out of state to practice in Kansas with no Kansas regulatory oversight.
- Absent criminal activity, no Kansas authority has the jurisdiction to regulate the practice of these individuals.
- This subsection is not limited in scope in any manner – **it includes services completely unrelated to the pandemic.**

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- **Potential fix:**

Delete subsection (h); or at a minimum, amend Section (2)(h) to state the following:

Notwithstanding any statute to the contrary, a healthcare professional licensed and in good standing in another state may practice such profession in the state of Kansas for the purpose of preparing for, responding to or mitigating any effect of COVID-19. For purposes of this subsection, a license that has been suspended or revoked or a licensee that is subject to pending license-related disciplinary action shall not be considered to be in good standing. Any license that is subject to limitation in another state shall be subject to the same limitation in the state of Kansas. Such healthcare professional shall not be liable in any criminal prosecution, civil action or administrative proceeding arising out of such healthcare profession's lack of licensure in the state of Kansas. Nothing in this subsection shall be construed to authorize a healthcare profession that is not authorized by law in the state of Kansas. Such healthcare professional shall notify the applicable regulatory body in Kansas they are practicing in Kansas pursuant to this provision, on a form created by such regulatory body, within 7 days of initiating practice in Kansas. Any healthcare professional practicing in Kansas pursuant to this subsection shall be subject to all rules and regulations pertaining to the practice of the licensed profession in this state and shall be considered a licensee for the purposes of the professional practice acts administered by the applicable regulatory body.

- This amendment would narrow it to healthcare professionals providing services in response to COVID-19.
- It would also allow healthcare professionals practicing pursuant to this subsection to begin work immediately but would be required to notify the applicable regulatory agency and treat them as a licensee for purposes of jurisdiction.

Of note, these healthcare professionals already have access to:

- The free [temporary emergency license](#) authorized in K.S.A. 48-965. (The Board originally created this license under executive order 20-08).
 - Since creation, the Board has issued 330 emergency temporary licenses.
 - Emergency temporary licenses are currently processed within three business days of a complete application.
- Kansas now has a [permanent telemedicine waiver](#) for all healthcare professions regulated by the KSBHA. K.S.A. 65-28,135.
 - Since creation of the permanent telemedicine waiver under K.S.A. 65-28,135, the Board has issued 92.
 - Previously when telemedicine waivers were temporarily available under Executive Order and the Kansas Emergency Management Act, we issued 6,532. (4,000 were for a large telemedicine company, 1,462 were for a large cancer center, and the remaining were miscellaneous)

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- Telemedicine waivers are currently issued within three business days of a complete application.
- Fast-track reciprocal license via the [Interstate Medical Licensure Compact](#) (IMLC), pursuant to K.S.A. 65-28,133, which now includes at least 31 member states.
- Existing licensing options – The Board created a document to help medical facilities with licensing options that currently exist to facilitate immediate access to care during COVID-19 for our professions.
 - This link is available on our website [here](#).

Section 2 at subsection (j)

Subsection (j) has language that could be interpreted to require the Board to issue renewals and reinstatement licenses without charging any fee. If this interpretation were accepted by courts, this would eliminate the revenue of the agency which is solely fee funded.

- **Potential fix:** Delete subsection (j)(4).

Section 2 at subsections (a), (b), and (c)

Subsections (a) through (c) remove supervision requirements for midlevel practitioners (physician assistants and advance practice nurses). Similarly, subsection (g)(3) creates a vague category of “respiratory therapist extender” that would be permitted to provide “other healthcare services” determined by their employer.

- Although the language of section 2 limits this to “designated healthcare facilities”, the definition of designated healthcare facilities (**subsection (m)**) references a definition from a different statute (K.S.A. 40-3401(f)) that includes essentially every location in the state at which healthcare is provided, not just hospitals and large clinics that have well-structured organizational oversight from medical leadership.
- These subsections remove any meaningful limitation of the scope of practice of these providers, because “appropriate to [the professional’s] education, training and experience” is subjective and subsection (m) leaves the discretion solely to the “designated healthcare facility” at which they’re practicing, which, again, includes essentially any location in the state in which healthcare is delivered.
- This allows each employer to determine the scope of practice permitted at their location rather than the scope of practice being determined by Kansas law and/or by the body of experts designated under Kansas law to regulate those healthcare professionals, the Board of Healing Arts.
- In addition to the public safety concerns associated with eliminating supervision requirements, allowing each location to determine the scope of practice for their midlevel practitioners could create a patchwork of inconsistent scopes of practice.
- **Potential fix:** Rather than simply removing physician supervision of midlevel providers and removing the scope of practice limitations contained in Kansas law, use the provision that was

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included in Executive Order 20-08: “the Board is authorized to temporarily waive, to the extent the Board determines such waiver will not harm public safety and welfare, any regulatory requirements falling under the Board’s enforcement authorities for the purpose of preparing for, responding to, and mitigating any effect of COVID-19.”

Section 2 at subsection (e)

Subsection (e) allows pharmacists to practice medicine to a limited extent (routine health maintenance care for chronic diseases or “similar conditions”) without physician supervision currently required under Kansas law (collaborative practice agreement with physician). The Board does not believe it is safe for pharmacists to provide medical care without the supervision and defined limits and protocols that come with a collaborative practice agreement.

- **Potential fix:** Delete subsection (e).

I welcome any comments, questions, or further dialogue with members of the committee. Please feel free to contact me at (785) 296-3680 or at any time via email at susan.gile@ks.gov.

Sincerely,



Susan Gile
Interim Executive Director