RECENT AND UPCOMING ISSUES IN PROFESSIONAL LICENSING LAW AND LEGISLATION

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Roadmap

- Licensure portability issues
- Scope of practice issues
- Newly licensed professions
- COVID-19 Emergency Statute
- New/updated regulations
- New/updated Board policies
Who we are

• A regulatory Board of healthcare providers and members of the public
• Statutory mission: public protection
• K.S.A. 65-2801: “[T]he practice of the healing arts is a privilege . . . and is not a natural right of individuals” and “the granting of that privilege and its subsequent use, control and regulation” should 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.”
Who we license
32,613
• Licensure Portability

• Area of recent focus
• Legitimate issues
  ➢ Some solution-focused approaches in response
  ➢ Also attracts opportunistic interest groups with political, economic, ideological motivations
• **Legitimate issues**: *Increasing need for practice across state lines vs. increasing scope of state-based professional regulation*

  ➢ Increasingly mobile economy – increasing role of remote services

  ➢ Increasing # of state-licensed professions
    
    o Approximately 1,100 licensed occupations
    o Significant increase over past 50 years:
      
      o 1 in 5 in 2017
      o 1 in 20 in 1950
• Some solution-focused approaches

- Licensure compacts
  - Examples: Interstate Medical Licensure Compact; Nurse Licensure Compact; Emergency Medical Services Compact; Physical Therapy Compact
  - More information – National Center for Interstate Compacts: [https://licensing.csg.org/compacts/](https://licensing.csg.org/compacts/)

- Updating state endorsement/reciprocal licensing statutes in a manner that protects quality/safety
• Solution-focused approaches: Interstate Medical Licensure Compact

- Currently 30 states, with more joining
- Physicians fill out one application in home state and qualify for expedited licensure in all member states.
- Qualifications: accredited medical school; accredited post graduate training; passage of USMLE within 3 or fewer attempts for each step; no disciplinary or criminal record.
  - Approximately 80% of U.S. physicians meet the criteria

✓ More info: www.imlcc.org
• Solution-focused approaches

➢ Updating state endorsement/reciprocal licensing statutes *in a manner that preserves quality* of care

  o Example: Prior to pandemic, Kansas legislature was considering a new reciprocal licensing statute for occupational licensing.
• Solution-focused approaches

➢ Council of State Governments (CSG), National Conference of State Legislatures (NCSL), and National Governors Association Center for Best Practices (NGA Center)

   ▪ Occupational Licensing Policy Learning Consortium
     ▪ Experts and stakeholders from 17 states – focused on process and results.
Solution-focused approaches

  - Results from 17 states over 4 years
  - Success factors included:
    - Early stakeholder engagement: regulators, professional associations, employers, etc.
    - Targeting professions – one size does not fit all – consortium found that most healthcare professions were not appropriate for reduced licensing requirements/regulation
• Politics invade

- In contrast to pragmatic, solution-focused, evidence-based, approaches...
  - Interest groups with political, economic, or ideological motivations push legislation and misleading “studies.”
  - More extreme approaches -- AZ
Recent Scope of Practice Issues

• New scope of independent licensed practice for certified nurse midwives (K.S.A. 65-28b01) (2018)
• Direct access (no physician referral) for Physical Therapists (2014)
• APRN continue to seek independent practice legislation
• AT and OT scope changes?
New and potentially upcoming licensed professions

• Acupuncture (LAc) (2017)
• Certified Anesthesiologist Assistants (CAA)?
  ➢ 17 states, including Missouri, Colorado, Oklahoma
• Licensed Massage Therapists???
New scope of corporate practice of medicine

- Generally stated:
  1. Employee worksite clinics
  2. Clinics owned by insurance carriers providing care for their insureds
**"Kansas Telemedicine [Coverage Parity] Act"**

- K.S.A.40-2,211 (2019)
- **Poorly named!**
- **What it is:** Coverage parity act.
- **What it is not:** A law allowing or prohibiting telemedicine.
COVID-19 Emergency Statute

• Expires January 26, 2021
• Necessary emergency provisions, but also some problematic provisions
COVID-19 Emergency Statute

• Provisions included in collaboration with Board:
  ➢ Emergency temporary licenses
  ➢ Telemedicine waiver process
Emergency Temporary License

Must hold a valid, full, active, and unencumbered license in another state to engage in the same profession, and are not subject to investigation in another state

Have held an active or exempt license in KS within past 2 years

Currently hold a valid federally active license

Meet all requirements for licensure in KS but are unable to pay fee due to effects of pandemic

Meet all requirements for licensure in KS except licensing exam due to exam cancellation and no temporary license/permit available

Available for all professions we regulate

Free

January 26, 2021

As of Dec. 9, 2020 – 184 issued
Telemedicine Waiver

Out of state healthcare professionals of professions we regulate may utilize telemedicine when treating patients in KS without a license, provided they hold an unrestricted license to practice and are not subject to discipline.

Must submit telemedicine waiver form to KSBHA

Free

January 26, 2021

As of Dec. 9, 2020 - 435 received (+4,400 through large telemedicine company & 1,100+ to large Cancer Center)
• Problem provision:
  ➢ Unrestricted ability for out of state licensees to practice in Kansas without state regulation.
COVID-19 Emergency Statute (HB2016)

• Problem provision:
  ➢ Removing limitations on the scope of practice of many mid-level providers, because “appropriate to [the provider’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 includes essentially any location in the state at which healthcare is delivered...
  ➢ Creates a patchwork of subjectively determined scopes of care for mid-level practitioners
COVID-19 Emergency Statute

- The Board is confident the problem provisions will be addressed in any extension of the emergency statute that expires on January 26, 2021
Recent or Pending Regs

- USMLE passage attempt limitation (K.A.R. 100-7-1) (now in effect)
- Post-graduate training update requiring all initial applicants to have completed a postgraduate training program of at least 36 months (K.A.R. 100-6-2) (pending)
- Regulation implementing new “resident active” license aka “moonlighting license (K.A.R. 100-6-2a) (pending)
Board Policies

- 21-02 Telemedicine
- 21-01 Profession Corporation Ownership
- 20-01 Conflict of Interest - KSBHA Oversight
- 19-01 Conflict of Interest - Legal Counsel Appearing Before the Board
- 18-02 Authority to Appoint Presiding Officers in Administrative Cases
- 18-01 Procedural Issues in Administrative Cases
- 10-02 Petition for Reconsideration Delegated Authority (Updated December 13, 2019)
- 95-01 Press Releases Regarding Disciplinary Actions (Updated December 13, 2019)
Professional Corporation/LLC Shareholder Ownership – Exempt/Federally Active Licensees

• Approved by the Board on June 12, 2020

• An exempt or federally active licensee is a qualified person “licensed to practice” for purposes of shareholder ownership of Kansas professional corporations and professional LLCs.
KSBHA
Board Policy
#21-02

Telemedicine

• Approved by the Board on Oct. 9, 2020
• Handling patients that present with concerns that cannot safely be evaluated or treated from a distance.
• Clarifying the telemedicine is not prohibited by the Board (never has been), even outside the scope of care included in the Telemedicine (coverage parity) Act.
• http://www.ksbha.org/publicinformation/boardpolicies.shtml
KSBHA
Board Policy
#21-03

Postgraduate training accreditations that are substantially equivalent to ACGME for medicine and surgery licensure in Kansas

• Approved by the Board on Dec. 9, 2020
• Royal College of Physicians and Surgeons (“RCPSC”) – Canada – is substantially equivalent to ACGME accreditation for purposes of medicine and surgery licensure in Kansas.
KSBHA Board Policy #21-04

Examinations which are the substantial equivalent to USMLE or COMLEX-USA

- Approved by the Board on Dec. 9, 2020
- Successful completion of Part I and Part II of the LMCC (Canadian medical examination) is substantially equivalent to USMLE
- As a predecessor to the USMLE, successful completion of the Federation Licensing Examination (“FLEX”) Components I and 2, or successful completion of the National Board of Medical Examiners (“NBME”) Part I, Part II, and Part III, were substantially equivalent to the USMLE, in the year it was completed, from 1968-1993.
- As a predecessor to COMLEX-USA, successful completion of the National Board of Osteopathic Medical Examiners Examination (“NBOME”) Part I, Part II, and Part III were substantially equivalent to the COMLEX-USA, in the year it was completed, from 1961-1998.
KSBHA Resources

• Practice Handbooks
• Policies
• KSBHA_Licensing@ks.gov
• KSBHA_Complaints@ks.gov
• KSBHA_LegalQuestions@ks.gov
• Education & Outreach
  ➢ Website page at http://www.ksbha.org/education.shtml
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