

HOUSE BILL No. 2109

By Committee on Judiciary

1-27

9 AN ACT concerning health care; enacting the Kansas uniform health
10 care decisions act; amending K.S.A. 39-1401, 40-2130 and 65-1734 and
11 K.S.A. 2008 Supp. 58-654, 59-3075, 65-2837 and 65-4974 and repeal-
12 ing the existing sections; also repealing K.S.A. 58-625, 58-626, 58-627,
13 58-628, 58-629, 58-630, 58-631, 58-632, 65-28,101, 65-28,102, 65-
14 28,103, 65-28,104, 65-28,105, 65-28,106, 65-28,108, 65-28,109, 65-
15 4941, 65-4942, 65-4943, 65-4944, 65-4945, 65-4946, 65-4947 and 65-
16 4948 and K.S.A. 2008 Supp. 65-28,107.

17

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

19 New Section 1. Sections 1 through 16, and amendments thereto,
20 shall be known and may be cited as the Kansas uniform health care de-
21 cisions act.

22 New Sec. 2. As used in the Kansas uniform health care decisions act:

23 (a) “Advance health care directive” means an individual instruction
24 or a power of attorney for health care.

25 (b) “Agent” means an individual designated in a power of attorney
26 for health care to make a health care decision for the individual granting
27 the power.

28 (c) “Capacity” means an individual’s ability to understand to a mini-
29 mally reasonable extent the significant benefits, risks and alternatives to
30 proposed health care and to make and communicate a health care deci-
31 sion with reasonable accommodation, interpreter or assistive technology
32 when needed. A determination by a physician that an individual lacks
33 capacity does not constitute a determination that the individual is incom-
34 petent as a matter of law.

35 (d) “Guardian” means a judicially appointed guardian as defined in
36 subsection (e) of K.S.A. 59-3051, and amendments thereto, having au-
37 thority to make a health care decision for an individual.

38 (e) “Health care” means any care, treatment, service or procedure to
39 maintain, diagnose or otherwise affect an individual’s physical or mental
40 condition.

41 (f) “Health care decision” means a decision made by an individual or
42 the individual’s agent, guardian or surrogate, regarding the individual’s
43 health care, including:

- 1 (1) Selection and discharge of health care providers and institutions;
2 (2) approval or disapproval of diagnostic tests, surgical procedures,
3 programs of medication and orders not to resuscitate; and
4 (3) directions to provide, withhold or withdraw nutrition and hydra-
5 tion provided through medical intervention and all other forms of health
6 care.
- 7 (g) "Health care institution" means an institution, facility or agency
8 licensed, certified or otherwise authorized or permitted by law to provide
9 health care in the ordinary course of business.
- 10 (h) "Health care provider" means an individual licensed, certified or
11 otherwise authorized or permitted by Kansas law to provide health care
12 in the ordinary course of business or practice of a profession.
- 13 (i) "Individual instruction" means an individual's direction concern-
14 ing a health care decision for the individual.
- 15 (j) "Life-sustaining procedure" means any medical procedure or in-
16 tervention which, when applied to a patient, would serve only to prolong
17 the dying process and where, in the judgment of the primary physician,
18 death will occur whether or not such procedure or intervention is utilized.
19 "Life-sustaining procedure" shall not mean the administration of medi-
20 cation or the performance of any medical procedure deemed necessary
21 to provide comfort care or to alleviate pain.
- 22 (k) "Person" means an individual, corporation, business trust, estate,
23 trust, partnership, association, joint venture, government, governmental
24 subdivision, agency or instrumentality, or any other legal or commercial
25 entity.
- 26 (l) "Physician" means a person licensed to practice medicine or sur-
27 gery by the state board of healing arts.
- 28 (m) "Power of attorney for health care" means the designation of an
29 agent to make health care decisions for the individual granting the power.
- 30 (n) "Primary physician" means a physician designated by an individ-
31 ual or the individual's agent, guardian or surrogate, to have primary re-
32 sponsibility for the individual's health care or, in the absence of a desig-
33 nation or if the designated physician is not reasonably available, a
34 physician who undertakes the responsibility.
- 35 (o) "Reasonably available" means readily able to be contacted without
36 undue effort and willing and able to act in a timely manner considering
37 the urgency of the person's health care needs.
- 38 (p) "Reasonable medical judgment" means a medical judgment that
39 would be made by a reasonably prudent physician who is knowledgeable
40 about the case and the treatment possibilities with respect to the medical
41 conditions involved.
- 42 (q) "State" means a state of the United States, the District of Colum-
43 bia, the commonwealth of Puerto Rico or a territory or insular possession

1 subject to the jurisdiction of the United States.

2 (r) “Supervising health care provider” means the primary physician
3 or, if there is no primary physician or the primary physician is not rea-
4 sonably available, the health care provider who has undertaken primary
5 responsibility for an individual’s health care.

6 (s) “Surrogate” means an individual, other than a person’s agent or
7 guardian, authorized under this act to make a health care decision for the
8 person.

9 New Sec. 3. (a) An adult or emancipated minor may give an individ-
10 ual instruction. The instruction may be oral or written, except that an
11 instruction directing the withholding or withdrawal of life-sustaining pro-
12 cedures shall be in writing and signed by the principal or by another
13 person in the principal’s presence and by the principal’s expressed direc-
14 tion. The instruction may be limited to take effect only if a specified
15 condition arises.

16 (b) An adult or emancipated minor may execute a power of attorney
17 for health care, which may authorize the agent to make any health care
18 decision the principal could have made while having capacity. The power
19 must be in writing and signed by the principal. The power remains in
20 effect notwithstanding the principal’s later incapacity and may include
21 individual instructions. Unless related to the principal by blood, marriage
22 or adoption, an agent may not be an owner, operator or employee of an
23 adult care home or a long-term care unit of the medical care facility at
24 which the principal is receiving care.

25 (c) An individual instruction directing the withholding or withdrawal
26 of life-sustaining procedures or a power of attorney for health care shall
27 be:

28 (1) Signed in the presence of two or more witnesses at least 18 years
29 of age, neither of whom shall be the agent, the person who signed the
30 individual instruction on behalf of the principal, related to the principal
31 by blood, marriage or adoption, entitled to any portion of the estate of
32 the principal according to the laws of intestate succession of this state or
33 under any will of the principal or codicil thereto, or directly financially
34 responsible for the principal’s medical care; or

35 (2) acknowledged before a notary public.

36 (d) If a person has executed, and has not revoked, an individual in-
37 struction directing the withholding or withdrawal of life-sustaining pro-
38 cedures or a power of attorney for health care, and if withholding or
39 withdrawal of nutrition or hydration provided through medical interven-
40 tion would in reasonable medical judgment be likely to result in or hasten
41 the death of the person, it may be withheld or withdrawn only if the
42 instruction specifically authorizes the withholding or withdrawal of nu-
43 trition or hydration or both provided through medical intervention, or the

1 power of attorney for health care either specifically authorizes its with-
2 holding or withdrawal or authorizes the agent to direct its withholding or
3 withdrawal, either by a statement in the signer's own words or in a sep-
4 arate section, separate paragraph or other separate subdivision that deals
5 only with nutrition or hydration or both provided through medical inter-
6 vention and which section, paragraph or other subdivision is separately
7 initialed, separately signed or otherwise separately marked by the person
8 executing the directive.

9 (e) Unless otherwise specified in a power of attorney for health care,
10 the authority of an agent becomes effective only upon a determination
11 that the principal lacks capacity and ceases to be effective upon a deter-
12 mination that the principal has recovered capacity.

13 (f) Unless otherwise specified in a written advance health care direc-
14 tive, a determination that an individual lacks or has recovered capacity,
15 or that another condition exists that affects an individual instruction or
16 the authority of an agent, must be made by the primary physician.

17 (g) An agent shall make a health care decision in accordance with the
18 principal's individual instructions, if any, and other wishes to the extent
19 known to the agent. The powers of an agent shall be limited to the extent
20 set out in writing in the power of attorney for health care and shall not
21 include the power to revoke or invalidate a previously existing individual
22 instruction by the principal.

23 (h) A health care decision made by an agent for a principal is effective
24 without judicial approval.

25 (i) A written advance health care directive may include the individ-
26 ual's nomination of a guardian of the person.

27 (j) An advance health care directive is valid for purposes of this act if
28 it complies with this act, regardless of when or where executed or
29 communicated.

30 (k) An individual instruction made before July 1, 2009, shall not be
31 limited or otherwise affected by the provisions of this act. A power of
32 attorney executed before July 1, 2009, that specifically authorizes the
33 attorney in fact or agent to make decisions relating to the health care of
34 the principal, shall not be limited or otherwise affected by the provisions
35 of this act.

36 (l) Any individual instruction which is valid under the laws of the state
37 of the principal's residence at the time the individual instruction was
38 made shall be an individual instruction under this act. Any power of at-
39 torney for health care which is valid under the laws of the state of the
40 principal's residence at the time the power of attorney for health care was
41 signed shall be a power of attorney for health care under this act. All acts
42 taken by an agent in this state under such a power of attorney for health
43 care, which would be valid under the laws of this state, shall be valid acts.

1 All acts taken by an agent for a principal whose residence is Kansas at the
2 time the power of attorney for health care is signed shall be valid if valid
3 under Kansas law.

4 New Sec. 4. (a) An individual may revoke a written advance health
5 care directive at any time by any of the following methods:

6 (1) By obliterating, burning, tearing or otherwise destroying or de-
7 facing the advance health care directive in a manner indicating intent to
8 cancel;

9 (2) by a written revocation of the advance health care directive signed
10 and dated by the individual or person acting at the direction of the in-
11 dividual; or

12 (3) by a verbal expression of the intent to revoke the advance health
13 care directive, in the presence of a witness at least 18 years of age who
14 signs and dates a writing confirming that such expression of intent was
15 made. Any verbal revocation shall become effective upon receipt by the
16 supervising health care provider of the above-mentioned writing. The
17 supervising health care provider shall record in the person's medical re-
18 cord the time, date and place when the provider received notice of the
19 revocation.

20 (b) A health care provider, agent, guardian or surrogate who is in-
21 formed of a revocation shall promptly communicate the fact of the re-
22 vocation to the supervising health care provider and to any health care
23 institution at which the person is receiving care.

24 (c) A decree of annulment, divorce, dissolution of marriage or legal
25 separation revokes a previous designation of a spouse as agent unless
26 otherwise specified in the decree or in a power of attorney for health
27 care. The designation of an agent shall be revoked effective upon the
28 filing of an order of protection by the principal against the agent. The
29 agent shall be reinstated upon the termination of the order of protection.

30 (d) An advance health care directive that conflicts with an earlier
31 advance health care directive revokes the earlier directive to the extent
32 of the conflict.

33 New Sec. 5. An advance health care directive shall be deemed suf-
34 ficient if in substantial compliance with the form set forth by the Kansas
35 judicial council.

36 New Sec. 6. (a) A surrogate may make a health care decision for a
37 person who is an adult or emancipated minor if the person has been
38 determined by the primary physician to lack capacity and no agent or
39 guardian has been appointed or the agent or guardian is not reasonably
40 available.

41 (b) An adult or emancipated minor may designate any individual to
42 act as surrogate by personally informing the supervising health care pro-
43 vider. In the absence of a designation, or if the designee is not reasonably

- 1 available, any member of the following classes of the person's family who
2 is reasonably available, in descending order of priority, may act as
3 surrogate:
- 4 (1) The spouse, unless legally separated;
 - 5 (2) an adult child;
 - 6 (3) a parent; or
 - 7 (4) an adult brother or sister.
- 8 (c) If none of the individuals eligible to act as surrogate under sub-
9 section (b) are reasonably available, an adult who has exhibited special
10 care and concern for the person, who is familiar with the person's personal
11 values and who is reasonably available, may act as surrogate.
- 12 (d) A person shall be disqualified from acting as surrogate if the pa-
13 tient has filed an order of protection against that person and the order is
14 still in effect.
- 15 (e) A surrogate shall communicate the surrogate's assumption of au-
16 thority as promptly as practicable to the members of the person's family
17 specified in subsection (b) who can be readily contacted.
- 18 (f) If more than one member of a class assumes authority to act as
19 surrogate and they do not agree on a health care decision and the super-
20 vising health care provider is so informed, the supervising health care
21 provider shall comply with the decision of a majority of the members of
22 that class who have communicated their views to the provider. If the class
23 is evenly divided concerning the health care decision and the supervising
24 health care provider is so informed, that class and all individuals having
25 lower priority are disqualified from making the decision.
- 26 (g) A surrogate shall make a health care decision in accordance with
27 the person's individual instructions, if any, and other wishes to the extent
28 known to the surrogate. Otherwise, the surrogate shall make the decision
29 in accordance with the surrogate's determination of the person's best
30 interest. In determining the person's best interest, the surrogate shall
31 consider the person's personal values to the extent known to the
32 surrogate.
- 33 (h) A health care decision made by a surrogate for a person is effec-
34 tive without judicial approval.
- 35 (i) An individual at any time may disqualify another, including a mem-
36 ber of the individual's family, from acting as the individual's surrogate by
37 a signed writing or by personally informing the supervising health care
38 provider of the disqualification.
- 39 (j) Unless related to the person by blood, marriage or adoption, a
40 surrogate may not be an owner, operator or employee of an adult care
41 home or a long-term care unit of the medical care facility at which the
42 person is receiving care.
- 43 (k) A supervising health care provider may require an individual

1 claiming the right to act as surrogate for a person to provide a written
2 declaration under penalty of perjury stating facts and circumstances rea-
3 sonably sufficient to establish the claimed authority.

4 New Sec. 7. (a) If, following execution of a power of attorney for
5 health care, a court of the principal's domicile appoints a guardian
6 charged with the responsibility for the principal's person, the guardian
7 has the same power to revoke or amend the power of attorney for health
8 care that the principal would have had if the principal were not impaired.

9 (b) In exercising the authority provided for in subsection (a), a guard-
10 ian remains subject to the provisions of K.S.A. 59-3075, and amendments
11 thereto.

12 (c) A health care decision made by a guardian for the ward is effective
13 without judicial approval.

14 New Sec. 8. (a) Before implementing a health care decision made
15 for a patient, a supervising health care provider, if possible, shall promptly
16 communicate to the patient the decision made and the identity of the
17 person making the decision.

18 (b) A supervising health care provider who knows of the existence of
19 an advance health care directive, a revocation of an advance health care
20 directive or a designation or disqualification of a surrogate, shall promptly
21 record its existence in the patient's health care record and, if it is in
22 writing, shall request a copy and if one is furnished shall arrange for its
23 maintenance in the health care record.

24 (c) A primary physician who makes or is informed of a determination
25 that a patient lacks or has recovered capacity, or that another condition
26 exists which affects an individual instruction or the authority of an agent,
27 guardian or surrogate, shall promptly record the determination in the
28 patient's health care record and communicate the determination to the
29 patient, if possible, and to any person then authorized to make health
30 care decisions for the patient.

31 (d) Except as provided in subsections (e) and (f), a health care pro-
32 vider or institution providing care to a patient shall:

33 (1) Comply with an individual instruction of the patient and with a
34 reasonable interpretation of that instruction made by a person then au-
35 thorized to make health care decisions for the patient; and

36 (2) comply with a health care decision for the patient made by a
37 person then authorized to make health care decisions for the patient to
38 the same extent as if the decision had been made by the patient while
39 having capacity.

40 (e) A health care provider may decline to comply with an individual
41 instruction or health care decision for reasons of conscience. A health
42 care institution may decline to comply with an individual instruction or
43 health care decision if the instruction or decision is contrary to a policy

1 of the institution which is expressly based on reasons of conscience and
2 if the policy was timely communicated to the patient or to a person then
3 authorized to make health care decisions for the patient.

4 (f) A health care provider or institution may decline to comply with
5 an individual instruction or health care decision that requires medically
6 ineffective health care or health care contrary to generally accepted health
7 care standards applicable to the health care provider or institution.

8 (g) A health care provider or institution that declines to comply with
9 an individual instruction or health care decision shall:

10 (1) Promptly so inform the patient, if possible, and any person then
11 authorized to make health care decisions for the patient;

12 (2) provide continuing care to the patient until a transfer can be ef-
13 fected; and

14 (3) unless the patient or person then authorized to make health care
15 decisions for the patient refuses assistance, immediately make all reason-
16 able efforts to assist in the transfer of the patient to another health care
17 provider or institution that is willing to comply with the instruction or
18 decision.

19 (h) A health care provider or institution may not require or prohibit
20 the execution or revocation of an advance health care directive as a con-
21 dition for providing health care.

22 New Sec. 9. Unless otherwise specified in an advance health care
23 directive, a person then authorized to make health care decisions for a
24 patient has the same rights as the patient to request, receive, examine,
25 copy and consent to the disclosure of medical or any other health care
26 information.

27 New Sec. 10. (a) A health care provider or institution acting in good
28 faith and in accordance with generally accepted health care standards
29 applicable to the health care provider or institution is not subject to civil
30 or criminal liability or to discipline for unprofessional conduct for:

31 (1) Complying with a health care decision of a person apparently
32 having authority to make a health care decision for a patient, including a
33 decision to withhold or withdraw health care;

34 (2) declining to comply with a health care decision of a person based
35 on a belief that the person then lacked authority; or

36 (3) complying with an advance health care directive and assuming
37 that the directive was valid when made and has not been revoked or
38 terminated.

39 (b) An individual acting as agent or surrogate under this act is not
40 subject to civil or criminal liability or to discipline for unprofessional con-
41 duct for health care decisions made in good faith.

42 New Sec. 11. (a) A health care provider or institution that intention-
43 ally violates this act is subject to liability to the aggrieved individual for

1 damages of \$500 or actual damages resulting from the violation, which-
2 ever is greater, plus reasonable attorney's fees.

3 (b) A person who intentionally falsifies, forges, conceals, defaces or
4 obliterates an individual's advance health care directive or a revocation of
5 an advance health care directive without the individual's consent, or who
6 coerces or fraudulently induces an individual to give, revoke or not to
7 give an advance health care directive, is subject to liability to that indi-
8 vidual for damages of \$2,500 or actual damages resulting from the action,
9 whichever is greater, plus reasonable attorney's fees.

10 New Sec. 12. (a) This act does not affect the right of an individual
11 to make health care decisions while having capacity to do so.

12 (b) An individual is presumed to have capacity to make a health care
13 decision, to give or revoke an advance health care directive and to des-
14 ignate or disqualify a surrogate.

15 New Sec. 13. A copy of a written advance health care directive, rev-
16 ocation of an advance health care directive or designation or disqualifi-
17 cation of a surrogate has the same effect as the original.

18 New Sec. 14. (a) This act does not create a presumption concerning
19 the intention of an individual who has not made or who has revoked an
20 advance health care directive.

21 (b) Death resulting from the withholding or withdrawal of health care
22 in accordance with this act does not for any purpose constitute a suicide
23 or homicide or legally impair or invalidate a policy of insurance or an
24 annuity providing a death benefit, notwithstanding any term of the policy
25 or annuity to the contrary.

26 (c) This act does not authorize mercy killing, assisted suicide, eutha-
27 nasia or the provision, withholding or withdrawal of health care, to the
28 extent prohibited by other statutes of this state.

29 (d) This act does not authorize or require a health care provider or
30 institution to provide health care contrary to generally accepted health
31 care standards applicable to the health care provider or institution except
32 as provided by section 8, and amendments thereto.

33 (e) This act does not authorize an agent or surrogate to consent to
34 the admission of an individual to a mental health care institution unless
35 the individual's written advance health care directive expressly so
36 provides.

37 (f) This act does not affect other statutes of this state governing treat-
38 ment for mental illness of an individual involuntarily committed pursuant
39 to the provisions of the care and treatment act for mentally ill persons,
40 K.S.A. 59-2945 et seq., and amendments thereto.

41 New Sec. 15. On petition of a person, the person's agent, guardian
42 or surrogate, a health care provider or institution involved with the per-
43 son's care, or an individual described in subsections (b) or (c) of section

1 6, and amendments thereto, the court may enjoin or direct a health care
2 decision or order other equitable relief. A proceeding under this section
3 is governed by the provisions of K.S.A. 60-901 et seq., and amendments
4 thereto.

5 New Sec. 16. If any provision of this act or its application to any
6 person or circumstance is held invalid, the invalidity does not affect other
7 provisions or applications of this act which can be given effect without
8 the invalid provision or application, and to this end the provisions of this
9 act are severable.

10 Sec. 17. K.S.A. 39-1401 is hereby amended to read as follows: 39-
11 1401. As used in this act:

12 (a) "Resident" means:

13 (1) Any resident, as defined by K.S.A. 39-923 and amendments
14 thereto; or

15 (2) any individual kept, cared for, treated, boarded or otherwise ac-
16 commodated in a medical care facility; or

17 (3) any individual, kept, cared for, treated, boarded or otherwise ac-
18 commodated in a state psychiatric hospital or state institution for the
19 mentally retarded.

20 (b) "Adult care home" has the meaning ascribed thereto in K.S.A.
21 39-923 and amendments thereto.

22 (c) "In need of protective services" means that a resident is unable
23 to perform or obtain services which are necessary to maintain physical or
24 mental health, or both.

25 (d) "Services which are necessary to maintain physical and mental
26 health" include, but are not limited to, the provision of medical care for
27 physical and mental health needs, the relocation of a resident to a facility
28 or institution able to offer such care, assistance in personal hygiene, food,
29 clothing, adequately heated and ventilated shelter, protection from health
30 and safety hazards, protection from maltreatment the result of which
31 includes, but is not limited to, malnutrition, deprivation of necessities or
32 physical punishment and transportation necessary to secure any of the
33 above stated needs, except that this term shall not include taking such
34 person into custody without consent, except as provided in this act.

35 (e) "Protective services" means services provided by the state or other
36 governmental agency or any private organizations or individuals which are
37 necessary to prevent abuse, neglect or exploitation. Such protective serv-
38 ices shall include, but not be limited to, evaluation of the need for serv-
39 ices, assistance in obtaining appropriate social services and assistance in
40 securing medical and legal services.

41 (f) "Abuse" means any act or failure to act performed intentionally
42 or recklessly that causes or is likely to cause harm to a resident, including:

43 (1) Infliction of physical or mental injury;

- 1 (2) any sexual act with a resident when the resident does not consent
2 or when the other person knows or should know that the resident is
3 incapable of resisting or declining consent to the sexual act due to mental
4 deficiency or disease or due to fear of retribution or hardship;
- 5 (3) unreasonable use of a physical restraint, isolation or medication
6 that harms or is likely to harm a resident;
- 7 (4) unreasonable use of a physical or chemical restraint, medication
8 or isolation as punishment, for convenience, in conflict with a physician's
9 orders or as a substitute for treatment, except where such conduct or
10 physical restraint is in furtherance of the health and safety of the resident
11 or another resident;
- 12 (5) a threat or menacing conduct directed toward a resident that re-
13 sults or might reasonably be expected to result in fear or emotional or
14 mental distress to a resident;
- 15 (6) fiduciary abuse; or
- 16 (7) omission or deprivation by a caretaker or another person of goods
17 or services which are necessary to avoid physical or mental harm or illness.
- 18 (g) "Neglect" means the failure or omission by one's self, caretaker
19 or another person with a duty to provide goods or services which are
20 reasonably necessary to ensure safety and well-being and to avoid physical
21 or mental harm or illness.
- 22 (h) "Caretaker" means a person or institution who has assumed the
23 responsibility, whether legally or not, for the care of the resident volun-
24 tarily, by contract or by order of a court of competent jurisdiction.
- 25 (i) "Exploitation" means misappropriation of resident property or in-
26 tentiously taking unfair advantage of an adult's physical or financial re-
27 sources for another individual's personal or financial advantage by the use
28 of undue influence, coercion, harassment, duress, deception, false rep-
29 resentation or false pretense by a caretaker or another person.
- 30 (j) "Medical care facility" means a facility licensed under K.S.A. 65-
31 425 *et seq.* and amendments thereto but shall not include, for purposes
32 of this act, a state psychiatric hospital or state institution for the mentally
33 retarded, including Larned state hospital, Osawatomie state hospital and
34 Rainbow mental health facility, Kansas neurological institute and Parsons
35 state hospital and training center.
- 36 (k) "Fiduciary abuse" means a situation in which any person who is
37 the caretaker of, or who stands in a position of trust to, a resident, takes,
38 secretes, or appropriates the resident's money or property, to any use or
39 purpose not in the due and lawful execution of such person's trust.
- 40 (l) "State psychiatric hospital" means Larned state hospital, Osawa-
41 tomie state hospital and Rainbow mental health facility.
- 42 (m) "State institution for the mentally retarded" means Kansas neu-
43 rological institute and Parsons state hospital and training center.

1 (n) “Report” means a description or accounting of an incident or
2 incidents of abuse, neglect or exploitation under this act and for the pur-
3 poses of this act shall not include any written assessment or findings.

4 (o) “Law enforcement” means the public office which is vested by
5 law with the duty to maintain public order, make arrests for crimes and
6 investigate criminal acts, whether that duty extends to all crimes or is
7 limited to specific crimes.

8 (p) “Legal representative” means an agent designated in a durable
9 power of attorney, power of attorney or ~~durable~~ power of attorney for
10 health care ~~decisions~~ or a court appointed guardian, conservator or
11 trustee.

12 (q) “Financial institution” means any bank, trust company, escrow
13 company, finance company, saving institution or credit union, chartered
14 and supervised under state or federal law.

15 (r) “Governmental assistance provider” means an agency, or em-
16 ployee of such agency, which is funded solely or in part to provide assis-
17 tance within the Kansas senior care act, K.S.A. 75-5926 *et seq.*, and
18 amendments thereto, including medicaid and medicare.

19 No person shall be considered to be abused, neglected or exploited or
20 in need of protective services for the sole reason that such person relies
21 upon spiritual means through prayer alone for treatment in accordance
22 with the tenets and practices of a recognized church or religious denom-
23 ination in lieu of medical treatment.

24 Sec. 18. K.S.A. 40-2130 is hereby amended to read as follows: 40-
25 2130. The association or a member insurer thereof shall provide every
26 applicant for health coverage under the provisions of this act with a form
27 for making a ~~declaration~~ *an individual instruction* directing the withhold-
28 ing or withdrawal of life-sustaining procedures ~~in a terminal condition~~ in
29 substantial conformance with ~~subsection (c) of K.S.A. 65-28,103; the pro-~~
30 *visions of the Kansas uniform health care decisions act, sections 1 through*
31 *16*, and amendments thereto. If such applicant elects to execute ~~such~~
32 ~~declaration~~ *an individual instruction*, the applicant shall submit a copy of
33 ~~such declaration~~ *the individual instruction* to the association or member
34 insurer thereof, and such copy shall be retained and made a part of the
35 applicant’s permanent records.

36 Sec. 19. K.S.A. 2008 Supp. 58-654 is hereby amended to read as
37 follows: 58-654. (a) A principal may delegate to an attorney in fact in a
38 power of attorney general powers to act in a fiduciary capacity on the
39 principal’s behalf with respect to all lawful subjects and purposes or with
40 respect to one or more express subjects or purposes. A power of attorney
41 with general powers may be durable or nondurable.

42 (b) If the power of attorney states that general powers are granted to
43 the attorney in fact and further states in substance that it grants power

1 to the attorney in fact to act with respect to all lawful subjects and pur-
2 poses or that it grants general powers for general purposes or does not
3 by its terms limit the power to the specific subject or purposes set out in
4 the instrument, then the authority of the attorney in fact acting under
5 the power of attorney shall extend to and include each and every action
6 or power which an adult who is not disabled may carry out through an
7 agent specifically authorized in the premises, with respect to any and all
8 matters whatsoever, except as provided in subsection (f) and (g). When
9 a power of attorney grants general powers to an attorney in fact to act
10 with respect to all lawful subjects and purposes, the enumeration of one
11 or more specific subjects or purposes does not limit the general authority
12 granted by that power of attorney, unless otherwise provided in the power
13 of attorney. An attorney in fact vested with general powers shall be au-
14 thorized to execute a power of attorney required by any governmental
15 agency or other legal entity on behalf of the principal, naming such at-
16 torney in fact as the attorney in fact authorized to enter into any trans-
17 action with such agency or legal entity.

18 (c) If the power of attorney states that general powers are granted to
19 an attorney in fact with respect to one or more express subjects or pur-
20 poses for which general powers are conferred, then the authority of the
21 attorney in fact acting under the power of attorney shall extend to and
22 include each and every action or power, but only with respect to the
23 specific subjects or purposes expressed in the power of attorney that an
24 adult who is not disabled may carry out through an agent specifically
25 authorized in the premises, with respect to any and all matters whatso-
26 ever, except as provided in subsection (f) and (g).

27 (d) Except as provided in subsections (f) and (g), an attorney in fact
28 with general powers has, with respect to the subjects or purposes for
29 which the powers are conferred, all rights, power and authority to act for
30 the principal that the principal would have with respect to the principal's
31 own person or property, including property owned jointly or by the en-
32 tireties with another or others, as an adult who is not disabled. Without
33 limiting the foregoing an attorney in fact with general powers has, with
34 respect to the subject or purposes of the power, complete discretion to
35 make a decision for the principal, to act or not act, to consent or not
36 consent to, or withdraw consent for, any act, and to execute and deliver
37 or accept any deed, bill of sale, bill of lading, assignment, contract, note,
38 security instrument, consent, receipt, release, proof of claim, petition or
39 other pleading, tax document, notice, application, acknowledgment or
40 other document necessary or convenient to implement or confirm any
41 act, transaction or decision. An attorney in fact with general powers,
42 whether power to act with respect to all lawful subjects and purposes, or
43 only with respect to one or more express subjects or purposes, shall have

1 the power, unless specifically denied by the terms of the power of attor-
2 ney, to make, execute and deliver to or for the benefit of or at the request
3 of a third person, who is requested to rely upon an action of the attorney
4 in fact, an agreement indemnifying and holding harmless any third person
5 or persons from any liability, claims or expenses, including legal expenses,
6 incurred by any such third person by reason of acting or refraining from
7 acting pursuant to the request of the attorney in fact. Such indemnity
8 agreement shall be binding upon the principal who has executed such
9 power of attorney and upon the principal's successor or successors in
10 interest. No such indemnity agreement shall protect any third person
11 from any liability, claims or expenses incurred by reason of the fact that,
12 and to the extent that, the third person has honored the power of attorney
13 for actions outside the scope of authority granted by the power of attor-
14 ney. In addition, the attorney in fact has complete discretion to employ
15 and compensate real estate agents, brokers, attorneys, accountants and
16 subagents of all types to represent and act for the principal in any and all
17 matters, including tax matters involving the United States government or
18 any other government or taxing entity, including, but not limited to, the
19 execution of supplemental or additional powers of attorney in the name
20 of the principal in form that may be required or preferred by any such
21 taxing entity or other third person, and to deal with any or all third persons
22 in the name of the principal without limitation. No such supplemental or
23 additional power of attorney shall broaden the scope of authority granted
24 to the attorney in fact in the original power of attorney executed by the
25 principal.

26 (e) An attorney in fact, who is granted general powers for all subjects
27 and purposes or with respect to any express subjects or purposes, shall
28 exercise the powers conferred according to the principal's instructions, in
29 the principal's best interest, in good faith, prudently and in accordance
30 with K.S.A. 58-655 and 58-656, and amendments thereto.

31 (f) Any power of attorney, whether or not it grants general powers
32 for all subjects and purposes or with respect to express subjects or pur-
33 poses, shall be construed to grant power or authority to an attorney in
34 fact to carry out any of the actions described in this subsection only if the
35 actions are expressly enumerated and authorized in the power of attorney.
36 Any power of attorney may grant power or authority to an attorney in fact
37 to carry out any of the following actions if the actions are expressly au-
38 thorized in the power of attorney:

- 39 (1) To execute, amend or revoke any trust agreement;
- 40 (2) to fund with the principal's assets any trust not created by the
41 principal;
- 42 (3) to make or revoke a gift of the principal's property in trust or
43 otherwise;

- 1 (4) to disclaim a gift or devise of property to or for the benefit of the
2 principal;
- 3 (5) to create or change survivorship interests in the principal's prop-
4 erty or in property in which the principal may have an interest. The in-
5 clusion of the authority set out in this paragraph shall not be necessary
6 in order to grant to an attorney in fact acting under a power of attorney
7 granting general powers with respect to all lawful subjects and purposes
8 the authority to withdraw funds or other property from any account, con-
9 tract or other similar arrangement held in the names of the principal and
10 one or more other persons with any financial institution, brokerage com-
11 pany or other depository to the same extent that the principal would be
12 authorized to do if the principal were present, not disabled and seeking
13 to act in the principal's own behalf;
- 14 (6) to designate or change the designation of beneficiaries to receive
15 any property, benefit or contract right on the principal's death;
- 16 (7) to give or withhold consent to an autopsy or postmortem
17 examination;
- 18 (8) to make a gift of, or decline to make a gift of, the principal's body
19 parts under the revised uniform anatomical gift act, K.S.A. 2008 Supp.
20 65-3220 through 65-3244, and amendments thereto;
- 21 (9) to nominate a guardian or conservator for the principal; and if so
22 stated in the power of attorney, the attorney in fact may nominate such
23 attorney in fact's self as such;
- 24 (10) to give consent on behalf of the principal to the sale, gift, trans-
25 fer, mortgage or other alienation of the principal's homestead or interest
26 therein if:
- 27 (A) The principal's spouse, personally or through such spouse's at-
28 torney in fact, has also consented to such alienation;
- 29 (B) the power of attorney specifically describes the homestead by
30 reference to a legal description and the street address of the property;
31 and
- 32 (C) the principal's spouse, in a written document duly acknowledged
33 by the spouse, has stated such spouse's consent that the attorney in fact
34 may alienate the interests, in whole or in part, of the principal in the
35 described homestead and, further, the spouse agrees that the consent of
36 the attorney in fact will constitute the consent of the principal required
37 by Article 15, Section 9 of the Kansas Constitution. Nothing herein shall
38 be construed as a limitation or abridgement of the right of the spouse of
39 the principal to consent or withhold such spouse's consent to the alien-
40 ation of the spouse's homestead, or any rights therein, under Article 15,
41 section 9 of the Kansas Constitution;
- 42 (11) to designate one or more substitute or successor or additional
43 attorneys in fact;

- 1 (12) to delegate any or all powers granted in a power of attorney
2 pursuant to subsection (a) of K.S.A. 58-660, and amendments thereto; or
- 3 (13) to pay reasonable expenses incurred for the funeral and burial
4 or other disposition of the body of the principal.
- 5 (g) No power of attorney, whether or not it delegates general powers,
6 may delegate or grant power or authority to an attorney in fact to do or
7 carry out any of the following actions for the principal:
- 8 (1) To make, publish, declare, amend or revoke a will for the
9 principal;
- 10 (2) to make, execute, modify or revoke ~~a declaration under K.S.A. 65-~~
11 ~~28,101 et seq., and amendments thereto, for the principal or to make,~~
12 ~~execute, modify or revoke a do not resuscitate directive under K.S.A. 65-~~
13 ~~4041, and amendments thereto, for the principal or to make, execute,~~
14 ~~modify or revoke a durable power of attorney for health care decisions~~
15 ~~pursuant to K.S.A. 58-625, et seq. an advance health care directive pur-~~
16 ~~suant to the provisions of the Kansas uniform health care decisions act,~~
17 ~~sections 1 through 16, and amendments thereto, for the principal;~~
- 18 (3) to require the principal, against the principal's will, to take any
19 action or to refrain from taking any action; or
- 20 (4) to carry out any actions specifically forbidden by the principal
21 while not under any disability or incapacity.
- 22 (h) A third person may freely rely on, contract and deal with an at-
23 torney in fact delegated general powers with respect to the subjects and
24 purposes encompassed or expressed in the power of attorney without
25 regard to whether the power of attorney expressly identifies the specific
26 property, account, security, storage facility or matter as being within the
27 scope of a subject or purpose contained in the power of attorney, and
28 without regard to whether the power of attorney expressly authorizes the
29 specific act, transaction or decision by the attorney in fact.
- 30 (i) It is the policy of this state that an attorney in fact acting pursuant
31 to the provisions of a power of attorney granting general powers shall be
32 accorded the same rights and privileges with respect to the personal wel-
33 fare, property and business interests of the principal, and if the power of
34 attorney enumerate some express subjects or purposes, with respect to
35 those subjects or purposes, as if the principal was personally present and
36 acting or seeking to act; and any provision of law and any purported
37 waiver, consent or agreement executed or granted by the principal to the
38 contrary shall be void and unenforceable.
- 39 (j) K.S.A. 58-650 through 58-665, and amendments thereto, shall not
40 be construed to preclude any person or business enterprise from provid-
41 ing in a contract with the principal as to the procedure that thereafter
42 must be followed by the principal or the principal's attorney in fact in
43 order to give a valid notice to the person or business enterprise of any

1 modification or termination of the appointment of an attorney in fact by
2 the principal. Any such contractual provision for notice shall be valid and
3 binding on the principal and the principal's successors so long as such
4 provision is reasonably capable of being carried out.

5 Sec. 20. K.S.A. 2008 Supp. 59-3075 is hereby amended to read as
6 follows: 59-3075. (a) (1) The individual or corporation appointed by the
7 court to serve as the guardian shall carry out diligently and in good faith,
8 the general duties and responsibilities, and shall have the general powers
9 and authorities, provided for in this section as well as any specific duties,
10 responsibilities, powers and authorities assigned to the guardian by the
11 court. In doing so, a guardian shall at all times be subject to the control
12 and direction of the court, and shall act in accordance with the provisions
13 of any guardianship plan filed with the court pursuant to K.S.A. 59-3076,
14 and amendments thereto. The court shall have the authority to appoint
15 counsel for the guardian, and the fees of such attorney may be assessed
16 as costs pursuant to K.S.A. 59-3094, and amendments thereto.

17 (2) A guardian shall become and remain personally acquainted with
18 the ward, the spouse of the ward and with other interested persons as-
19 sociated with the ward and who are knowledgeable about the ward, the
20 ward's needs and the ward's responsibilities. A guardian shall exercise
21 authority only as necessitated by the ward's limitations. A guardian shall
22 encourage the ward to participate in making decisions affecting the ward.
23 A guardian shall encourage the ward to act on the ward's own behalf to
24 the extent the ward is able. A guardian shall encourage the ward to de-
25 velop or regain the skills and abilities necessary to meet the ward's own
26 essential needs and to otherwise manage the ward's own affairs. In making
27 decisions on behalf of the ward, a guardian shall consider the expressed
28 desires and personal values of the ward to the extent known to the guard-
29 ian. A guardian shall strive to assure that the personal, civil and human
30 rights of the ward are protected. A guardian shall at all times act in the
31 best interests of the ward and shall exercise reasonable care, diligence
32 and prudence.

33 (b) A guardian shall have the following general duties, responsibili-
34 ties, powers and authorities:

35 (1) If the ward is a minor, to have the custody and control of the
36 minor, and to provide for the minor's care, treatment, habilitation, edu-
37 cation, support and maintenance;

38 (2) if the ward is an adult, to take charge of the person of the ward,
39 and to provide for the ward's care, treatment, habilitation, education,
40 support and maintenance;

41 (3) to consider and either provide on behalf of the ward necessary or
42 required consents or refuse the same;

43 (4) to assure that the ward resides in the least restrictive setting ap-

- 1 appropriate to the needs of the ward and which is reasonably available;
- 2 (5) to assure that the ward receives any necessary and reasonably
3 available medical care, consistent with the provisions of K.S.A. 59-3077,
4 and amendments thereto, when applicable, and any reasonably available
5 nonmedical care or other services as may be needed to preserve the health
6 of the ward or to assist the ward to develop or retain skills and abilities;
- 7 (6) to promote and protect the comfort, safety, health and welfare of
8 the ward;
- 9 (7) to make necessary determinations and arrangements for, and to
10 give the necessary consents in regard to, the ward's funeral arrangements,
11 burial or cremation, the performance of an autopsy upon the body of the
12 ward, and anatomical gifts of the ward, subject to the provisions and
13 limitations provided for in K.S.A. 2008 Supp. 65-3228, K.S.A. 65-2893
14 and 65-1734, and amendments thereto; and
- 15 (8) to exercise all powers and to discharge all duties necessary or
16 proper to implement the provisions of this section.
- 17 (c) A guardian shall not be obligated by virtue of the guardian's ap-
18 pointment to use the guardian's own financial resources for the support
19 of the ward.
- 20 (d) A guardian shall not be liable to a third person for the acts of the
21 ward solely by virtue of the guardian's appointment, nor shall a guardian
22 who exercises reasonable care in selecting a third person to provide any
23 medical or other care, treatment or service for the ward be liable for any
24 injury to the ward resulting from the wrongful conduct of that third
25 person.
- 26 (e) A guardian shall not have the power:
- 27 (1) To prohibit the marriage or divorce of the ward;
- 28 (2) to consent, on behalf of the ward, to the termination of the ward's
29 parental rights;
- 30 (3) to consent to the adoption of the ward, unless approved by the
31 court;
- 32 (4) to consent, on behalf of the ward, to any psychosurgery, removal
33 of any bodily organ, or amputation of any limb, unless such surgery, re-
34 moval or amputation has been approved in advance by the court, except
35 in an emergency and when necessary to preserve the life of the ward or
36 to prevent serious and irreparable impairment to the physical health of
37 the ward;
- 38 (5) to consent, on behalf of the ward, to the sterilization of the ward,
39 unless approved by the court following a due process hearing held for
40 the purposes of determining whether to approve such, and during which
41 hearing the ward is represented by an attorney appointed by the court;
- 42 (6) to consent, on behalf of the ward, to the performance of any
43 experimental biomedical or behavioral procedure on the ward, or for the

1 ward to be a participant in any biomedical or behavioral experiment, with-
2 out the prior review and approval of such by either an institutional review
3 board as provided for in title 45, part 46 of the code of federal regulations,
4 or if such regulations do not apply, then by a review committee estab-
5 lished by the agency, institution or treatment facility at which the pro-
6 cedure or experiment is proposed to occur, composed of members se-
7 lected for the purposes of determining whether the proposed procedure
8 or experiment:

9 (A) Does not involve any significant risk of harm to the physical or
10 mental health of the ward, or the use of aversive stimulants, and is in-
11 tended to preserve the life or health of the ward or to assist the ward to
12 develop or regain skills or abilities; or

13 (B) involves a significant risk of harm to the physical or mental health
14 of the ward, or the use of an aversive stimulant, but that the conducting
15 of the proposed procedure or experiment is intended either to preserve
16 the life of the ward, or to significantly improve the quality of life of the
17 ward, or to assist the ward to develop or regain significant skills or abilities,
18 and that the guardian has been fully informed concerning the potential
19 risks and benefits of the proposed procedure or experiment or of any
20 aversive stimulant proposed to be used, and as to how and under what
21 circumstances the aversive stimulant may be used, and has specifically
22 consented to such;

23 (7) to consent, on behalf of the ward, to the withholding or with-
24 drawal of life-saving or life sustaining medical care, treatment, services
25 or procedures, except:

26 (A) In accordance with the provisions of any ~~declaration individual~~
27 ~~instruction~~ of the ward made pursuant to the provisions of ~~K.S.A. 65-~~
28 ~~28,101 through 65-28,109, the Kansas uniform health care decisions act,~~
29 ~~sections 1 through 16,~~ and amendments thereto; or

30 (B) if the ward, prior to the court's appointment of a guardian pur-
31 suant to K.S.A. 59-3067, and amendments thereto, shall have executed a
32 ~~durable~~ power of attorney for health care ~~decisions~~ pursuant to ~~K.S.A.~~
33 ~~58-629, the provisions of the Kansas uniform health care decisions act,~~
34 ~~sections 1 through 16,~~ and amendments thereto, and such shall not have
35 been revoked by the ward prior thereto, and there is included therein
36 any provision relevant to the withholding or withdrawal of life-saving or
37 life-sustaining medical care, treatment, services or procedures, then the
38 guardian shall have the authority to act as provided for therein, even if
39 the guardian has revoked or otherwise amended that power of attorney
40 pursuant to the authority of ~~K.S.A. 58-627, section 7,~~ and amendments
41 thereto, or the guardian may allow the agent appointed by the ward to
42 act on the ward's behalf if the guardian has not revoked or otherwise
43 amended that power of attorney; or

1 (C) in the circumstances where the ward's treating physician shall
2 certify in writing to the guardian that the ward is in a persistent vegetative
3 state or is suffering from an illness or other medical condition for which
4 further treatment, other than for the relief of pain, would not likely pro-
5 long the life of the ward other than by artificial means, nor would be likely
6 to restore to the ward any significant degree of capabilities beyond those
7 the ward currently possesses, and which opinion is concurred in by either
8 a second physician or by any medical ethics or similar committee to which
9 the health care provider has access established for the purposes of re-
10 viewing such circumstances and the appropriateness of any type of phy-
11 sician's order which would have the effect of withholding or withdrawing
12 life-saving or life-sustaining medical care, treatment, services or proce-
13 dures. Such written certification shall be approved by an order issued by
14 the court;

15 (8) to exercise any control or authority over the ward's estate, except
16 if the court shall specifically authorize such. The court may assign such
17 authority to the guardian, including the authority to establish certain
18 trusts as provided in K.S.A. 59-3080, and amendments thereto, and may
19 waive the requirement of the posting of a bond, only if:

20 (A) Initially, the combined value of any funds and property in the
21 possession of the ward or in the possession of any other person or entity,
22 but which the ward is otherwise entitled to possess, equals \$10,000 or
23 less; and

24 (B) either the court requires the guardian to report to the court the
25 commencement of the exercising of such authority, or requires the guard-
26 ian to specifically request of the court the authority to commence the
27 exercise of such authority, as the court shall specify; and

28 (C) the court also requires the guardian, whenever the combined
29 value of such funds and property exceeds \$10,000, to:

30 (i) File a guardianship plan as provided for in K.S.A. 59-3076, and
31 amendments thereto, which contains elements similar to those which
32 would be contained in a conservatorship plan as provided for in K.S.A.
33 59-3078, and amendments thereto;

34 (ii) petition the court for appointment of a conservator as provided
35 for in K.S.A. 59-3058, 59-3059 or 59-3060, and amendments thereto; or

36 (iii) notify the court as the court shall specify that the value of the
37 conservatee's estate has equaled or exceeded \$10,000, if the court has
38 earlier appointed a conservator but did not issue letters of conservatorship
39 pending such notification; and

40 (9) to place the ward in a treatment facility as defined in K.S.A. 59-
41 3077, and amendments thereto, except if authorized by the court as pro-
42 vided for therein.

43 (f) The guardian shall file with the court reports concerning the status

1 of the ward and the actions of the guardian as the court shall direct
 2 pursuant to K.S.A. 59-3083, and amendments thereto.

3 Sec. 21. K.S.A. 65-1734 is hereby amended to read as follows: 65-
 4 1734. (a) The following persons, in order of priority stated, may order any
 5 lawful manner of final disposition of a decedent’s remains including bur-
 6 ial, cremation, entombment or anatomical donation:

7 (1) The agent for health care decisions established by a ~~durable~~ power
 8 of attorney for health care ~~decisions~~ pursuant to ~~K.S.A. 58-625, et seq.~~
 9 *the provisions of the Kansas uniform health care decisions act, sections 1*
 10 *through 16*, and amendments thereto, if such power of attorney conveys
 11 to the agent the authority to make decisions concerning disposition of the
 12 decedent’s remains;

13 (2) the spouse of the decedent;

14 (3) the decedent’s surviving adult children. If there is more than one
 15 adult child, any adult child who confirms in writing the notification of all
 16 other adult children, may direct the manner of disposition unless the
 17 funeral establishment or crematory authority receives written objection
 18 to the manner of disposition from another adult child;

19 (4) the decedent’s surviving parents;

20 (5) the persons in the next degree of kinship under the laws of de-
 21 scent and distribution to inherit the estate of the decedent. If there is
 22 more than one person of the same degree, any person of that degree may
 23 direct the manner of disposition;

24 (6) a guardian of the person of the decedent at the time of such
 25 person’s death;

26 (7) the personal representative of the decedent; or

27 (8) in the case of indigents or any other individuals whose final dis-
 28 position is the responsibility of the state or county, the public official
 29 charged with arranging the final disposition pursuant to K.S.A. 2002 Supp.
 30 22a-215 and amendments thereto.

31 (b) A funeral director, funeral establishment or crematory shall not
 32 be subject to criminal prosecution or civil liability for carrying out the
 33 otherwise lawful instructions of the person or persons under subsection
 34 (a) if the funeral director reasonably believes such person is entitled to
 35 control final disposition.

36 Sec. 22. K.S.A. 2008 Supp. 65-2837 is hereby amended to read as
 37 follows: 65-2837. As used in K.S.A. 65-2836, and amendments thereto,
 38 and in this section:

39 (a) “Professional incompetency” means:

40 (1) One or more instances involving failure to adhere to the appli-
 41 cable standard of care to a degree which constitutes gross negligence, as
 42 determined by the board.

43 (2) Repeated instances involving failure to adhere to the applicable

- 1 standard of care to a degree which constitutes ordinary negligence, as
2 determined by the board.
- 3 (3) A pattern of practice or other behavior which demonstrates a
4 manifest incapacity or incompetence to practice the healing arts.
- 5 (b) “Unprofessional conduct” means:
- 6 (1) Solicitation of professional patronage through the use of fraudu-
7 lent or false advertisements, or profiting by the acts of those representing
8 themselves to be agents of the licensee.
- 9 (2) Representing to a patient that a manifestly incurable disease, con-
10 dition or injury can be permanently cured.
- 11 (3) Assisting in the care or treatment of a patient without the consent
12 of the patient, the attending physician or the patient’s legal
13 representatives.
- 14 (4) The use of any letters, words, or terms, as an affix, on stationery,
15 in advertisements, or otherwise indicating that such person is entitled to
16 practice a branch of the healing arts for which such person is not licensed.
- 17 (5) Performing, procuring or aiding and abetting in the performance
18 or procurement of a criminal abortion.
- 19 (6) Willful betrayal of confidential information.
- 20 (7) Advertising professional superiority or the performance of pro-
21 fessional services in a superior manner.
- 22 (8) Advertising to guarantee any professional service or to perform
23 any operation painlessly.
- 24 (9) Participating in any action as a staff member of a medical care
25 facility which is designed to exclude or which results in the exclusion of
26 any person licensed to practice medicine and surgery from the medical
27 staff of a nonprofit medical care facility licensed in this state because of
28 the branch of the healing arts practiced by such person or without just
29 cause.
- 30 (10) Failure to effectuate the ~~declaration~~ *individual instruction* of a
31 qualified patient as provided in ~~subsection (a) of K.S.A. 65-28,107, section~~
32 ~~8, and amendments thereto.~~
- 33 (11) Prescribing, ordering, dispensing, administering, selling, supply-
34 ing or giving any amphetamines or sympathomimetic amines, except as
35 authorized by K.S.A. 65-2837a, and amendments thereto.
- 36 (12) Conduct likely to deceive, defraud or harm the public.
- 37 (13) Making a false or misleading statement regarding the licensee’s
38 skill or the efficacy or value of the drug, treatment or remedy prescribed
39 by the licensee or at the licensee’s direction in the treatment of any dis-
40 ease or other condition of the body or mind.
- 41 (14) Aiding or abetting the practice of the healing arts by an unli-
42 censed, incompetent or impaired person.
- 43 (15) Allowing another person or organization to use the licensee’s

1 license to practice the healing arts.

2 (16) Commission of any act of sexual abuse, misconduct or other im-
3 proper sexual contact, which exploits the licensee-patient relationship,
4 with a patient or a person responsible for health care decisions concerning
5 such patient.

6 (17) The use of any false, fraudulent or deceptive statement in any
7 document connected with the practice of the healing arts including the
8 intentional falsifying or fraudulent altering of a patient or medical care
9 facility record.

10 (18) Obtaining any fee by fraud, deceit or misrepresentation.

11 (19) Directly or indirectly giving or receiving any fee, commission,
12 rebate or other compensation for professional services not actually and
13 personally rendered, other than through the legal functioning of lawful
14 professional partnerships, corporations or associations.

15 (20) Failure to transfer patient records to another licensee when re-
16 quested to do so by the subject patient or by such patient's legally des-
17 ignated representative.

18 (21) Performing unnecessary tests, examinations or services which
19 have no legitimate medical purpose.

20 (22) Charging an excessive fee for services rendered.

21 (23) Prescribing, dispensing, administering or distributing a prescrip-
22 tion drug or substance, including a controlled substance, in an improper
23 or inappropriate manner, or for other than a valid medical purpose, or
24 not in the course of the licensee's professional practice.

25 (24) Repeated failure to practice healing arts with that level of care,
26 skill and treatment which is recognized by a reasonably prudent similar
27 practitioner as being acceptable under similar conditions and
28 circumstances.

29 (25) Failure to keep written medical records which accurately de-
30 scribe the services rendered to the patient, including patient histories,
31 pertinent findings, examination results and test results.

32 (26) Delegating professional responsibilities to a person when the
33 licensee knows or has reason to know that such person is not qualified by
34 training, experience or licensure to perform them.

35 (27) Using experimental forms of therapy without proper informed
36 patient consent, without conforming to generally accepted criteria or stan-
37 dard protocols, without keeping detailed legible records or without having
38 periodic analysis of the study and results reviewed by a committee or
39 peers.

40 (28) Prescribing, dispensing, administering or distributing an ana-
41 bolic steroid or human growth hormone for other than a valid medical
42 purpose. Bodybuilding, muscle enhancement or increasing muscle bulk
43 or strength through the use of an anabolic steroid or human growth hor-

- 1 none by a person who is in good health is not a valid medical purpose.
- 2 (29) Referring a patient to a health care entity for services if the
3 licensee has a significant investment interest in the health care entity,
4 unless the licensee informs the patient in writing of such significant in-
5 vestment interest and that the patient may obtain such services elsewhere.
- 6 (30) Failing to properly supervise, direct or delegate acts which con-
7 stitute the healing arts to persons who perform professional services pur-
8 suant to such licensee's direction, supervision, order, referral, delegation
9 or practice protocols.
- 10 (31) Violating K.S.A. 65-6703 and amendments thereto.
- 11 (32) Charging, billing or otherwise soliciting payment from any pa-
12 tient, patient's representative or insurer for anatomic pathology services,
13 if such services are not personally rendered by the licensee or under such
14 licensee's direct supervision. As used in this subsection, "anatomic pa-
15 thology services" means the gross or microscopic examination of histo-
16 logic processing of human organ tissue or the examination of human cells
17 from fluids, aspirates, washings, brushings or smears, including blood-
18 banking services, and subcellular or molecular pathology services, per-
19 formed by or under the supervision of a person licensed to practice med-
20 icine and surgery or a clinical laboratory. Nothing in this subsection shall
21 be construed to prohibit billing for anatomic pathology services by a hos-
22 pital, or by a clinical laboratory when samples are transferred between
23 clinical laboratories for the provision of anatomic pathology services.
- 24 (33) Engaging in conduct which violates patient trust and exploits the
25 licensee-patient relationship for personal gain.
- 26 (c) "False advertisement" means any advertisement which is false,
27 misleading or deceptive in a material respect. In determining whether
28 any advertisement is misleading, there shall be taken into account not
29 only representations made or suggested by statement, word, design, de-
30 vice, sound or any combination thereof, but also the extent to which the
31 advertisement fails to reveal facts material in the light of such represen-
32 tations made.
- 33 (d) "Advertisement" means all representations disseminated in any
34 manner or by any means, for the purpose of inducing, or which are likely
35 to induce, directly or indirectly, the purchase of professional services.
- 36 (e) "Licensee" for purposes of this section and K.S.A. 65-2836, and
37 amendments thereto, shall mean all persons issued a license, permit or
38 special permit pursuant to article 28 of chapter 65 of the Kansas Statutes
39 Annotated.
- 40 (f) "License" for purposes of this section and K.S.A. 65-2836, and
41 amendments thereto, shall mean any license, permit or special permit
42 granted under article 28 of chapter 65 of the Kansas Statutes Annotated.
- 43 (g) "Health care entity" means any corporation, firm, partnership or

1 other business entity which provides services for diagnosis or treatment
2 of human health conditions and which is owned separately from a refer-
3 ring licensee's principle practice.

4 (h) "Significant investment interest" means ownership of at least 10%
5 of the value of the firm, partnership or other business entity which owns
6 or leases the health care entity, or ownership of at least 10% of the shares
7 of stock of the corporation which owns or leases the health care entity.

8 Sec. 23. K.S.A. 2008 Supp. 65-4974 is hereby amended to read as
9 follows: 65-4974. (a) In accordance with the provisions of 21 C.F.R.
10 56.101, et seq., and amendments thereto, and 45 C.F.R. 46.101, et seq.,
11 and amendments thereto, in the case of an adult or emancipated minor
12 who: (1) Is being treated by a person licensed to practice medicine and
13 surgery and who has medical staff membership with a medical care fa-
14 cility, as defined in K.S.A. 65-4921, and amendments thereto, that has its
15 own, or contracts with, an independent institutional review board; and
16 (2) is incapable of giving informed consent for the research protocol,
17 which has been approved by an institutional review board, the research
18 protocol may proceed upon obtaining the informed consent of the adult
19 or emancipated minor's legal guardian or the attorney in fact with the
20 authority to make health care decisions for that person pursuant to ~~K.S.A.~~
21 ~~58-625, et seq.~~ *the provisions of the Kansas uniform health care decisions*
22 *act, sections 1 through 16*, and amendments thereto.

23 (b) If neither of the designations described in subsection (a) has been
24 made or neither of the parties described in subsection (a) can be con-
25 tacted using reasonably diligent efforts, any member of the adult or eman-
26 cipated child's family, in the order listed in this subsection, who has the
27 capacity to provide informed consent and can be contacted using reason-
28 ably diligent efforts may provide informed consent to a research protocol,
29 as described in subsection (a). The order of priority for family members
30 to provide consent is as follows:

31 (1) The adult or emancipated minor's spouse, unless they are legally
32 separated;

33 (2) an adult child;

34 (3) a parent; or

35 (4) an adult relative by blood or marriage.

36 (c) Nothing in this section shall authorize a legal guardian, attorney
37 in fact with the authority to make health care decisions or family member
38 authorized to provide informed consent pursuant to subsection (b) to
39 provide informed consent as to research protocols that are contrary to
40 the incapacitated person's permission, expressed orally or in writing, re-
41 garding such research protocols.

42 Sec. 24. K.S.A. 39-1401, 40-2130, 58-625, 58-626, 58-627, 58-628,
43 58-629, 58-630, 58-631, 58-632, 65-1734, 65-28,101, 65-28,102, 65-

1 28,103, 65-28,104, 65-28,105, 65-28,106, 65-28,108, 65-28,109, 65-4941,
2 65-4942, 65-4943, 65-4944, 65-4945, 65-4946, 65-4947 and 65-4948 and
3 K.S.A. 2008 Supp. 58-654, 59-3075, 65-2837, 65-28,107 and 65-4974 are
4 hereby repealed.

5 Sec. 25. This act shall take effect and be in force from and after its
6 publication in the statute book.