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July 12, 2022

Sen. Kellie Warren
Joint Committee on Administrative Rules & Regulations
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RE: KSBHA written testimony regarding the Kansas Board of Nursing proposed amended regulations K.A.R. 60-11-101, K.A.R. 100-11-104, K.A.R. 60-11-105, and K.A.R. 60-11-107.[1]

Dear Chairperson Warren and Honorable Committee Members:

Thank you for the opportunity to present written testimony regarding the Kansas Board of Nursing ("KSBN") proposed regulations as it relates to advance practice registered nurses ("APRN") and the regulation implementation of 2022 S Sub for HB 2279. I am Courtney Cyzman, General Counsel of the Kansas State Board of Healing Arts ("KSBHA" or "Board"). The Board is composed of 15 members, 12 of whom are licensed Kansas healthcare professionals 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). The mission of the KSBHA is patient protection. *See* K.S.A. 65-2801. The function of the KSBHA is executive in nature. We are bound to enforce and abide by Kansas law.

At the outset, it is important to note the KSBHA recognizes and appreciates that healthcare delivery occurs in a complex environment in which practitioners do not work in isolation.[2] APRNs play a unique and vital role in our healthcare system. Physicians and APRNs plan and practice together as colleagues, working interdependently within the boundaries and scopes of their practice with shared values and mutual respect for each other's contribution to care for patients.[3] From a patient safety perspective, it is critical for the healthcare professionals and patients to know and understand what healthcare services they are authorized to provide under the law.

Based on legal concerns outlined in our written testimony, we request proposed amended regulations K.A.R. 60-11-101, K.A.R. 100-11-104, K.A.R. 60-11-105, and K.A.R. 60-11-107, undergo further review and amendment prior to adoption to align with existing Kansas law and legislative

[1] This written testimony is limited to these specific proposed amended regulations.

[2] Federation of State Medical Boards, *Assessing Scope of Practice in Health Care Delivery: Critical Questions in Assuring Public Access and Safety*, 2005, at 6.

[3] *Id*.

authorization. Additionally, the KSBHA has an outstanding AG request pertaining to the authorization of S Sub for HB 2279 that is currently under review. (Attachment 1).

KSBHA Request for AG Opinion

In the 2022 legislative session, the Kansas legislature passed (and Governor Kelly signed) S Sub for HB 2279 (Attachment 2) expanding the scope of practice for APRNs. Found in the plain language of the bill, S Sub for HB 2279 allows APRNs to prescribe, procure, and administer medication (including controlled substances[4]) consistent with their specific role and population focus without a written protocol as authorized by a supervising physician, excluding abortion; and it allows APRNs to prescribe durable medical equipment.

There has been significant public perception this specific piece of legislation completely removes the collaborative practice agreement between a physician and an APRN, which understandably has created some confusion. The KSBHA has also received inquiries from a variety of sources including but not limited to physicians, APRNs, attorneys, and medical care facilities asking what ultimately this bill authorized.

At the June 10, 2022, KSBHA Board meeting, which is an open meeting subject to the Kansas Open Meetings Act ("KOMA"), the Board requested a written opinion of the Kansas Attorney General as it pertains to the specific authorization of S Sub for HB 2279. (Attachment 1). As of today, my understanding is **the KSBHA request for a written AG opinion is under review**.

The Kansas Healing Arts Act, K.S.A. 65-2901 *et seq.*

Under the Kansas Healing Arts Act, unless otherwise specified, it is unlawful for any person who does not have a license to engage in the practice of any profession regulated by the board. K.S.A. 65-2803(a).

Under K.S.A. 65-2802(a), the **healing arts** is defined as:

> "[A]ny system, treatment, operation, diagnosis, prescription or practice for the ascertainment, cure relief, palliation, adjustment or correction of any human disease, ailment, deformity, injury, alteration or enhancement of a condition or appearance and **includes specifically**, but not by way of limitation, **the practice of medicine and surgery; the practice of osteopathic medicine and surgery; and the practice of chiropractic**." (emphasis added).

Persons deemed to be engaged in the **practice of medicine and surgery** include:

> "Persons who prescribe, recommend or furnish medicine or drugs, or perform any surgical operation of whatever nature by the use of any surgical instrument, procedure, equipment or mechanical device for the diagnosis, cure or relief of any wounds, fractures, bodily injury, infirmity, disease or mental illness or psychological disorder, of human beings." K.S.A. 65-2869(b).

[4] Consistent with the Uniform Controlled Substances Act.

A person is not engaged in the practice of the healing arts if their professional services are performed under the supervision or by order of or referral from a practitioner who is licensed under the Healing Arts Act. K.S.A. 65-2872(g). It also does not include "nurses practicing their profession when licensed and practicing under and in accordance with the [Kansas Nurse Practice Act]..." K.S.A. 65-2872(m).

The Healing Arts Act authorizes a physician to delegate the practice of the healing arts to others, as follows:

> "For every supervising or responsible licensee who directs, supervises, orders, refers, accepts responsibility for, enters into written agreements or practice protocols with, or who delegates acts which constitute the practice of the healing arts shall:
>
> (1) Be actively engaged in the practice of healing arts in Kansas;
> (2) Review and keep current any required written agreements or practice protocols between the supervising or responsible licensee and such persons, as may be determined by the board;
> (3) Direct, supervise, order, refer, enter into a written agreement or practice protocol with, or delegate to such persons only those acts and functions which the supervising or responsible licensee knows or has reason to believe can be competently performed by such person and is not in violation of any other statute or regulation;
> (4) Direct, supervise, order, refer, enter into a written agreement or practice protocol with, or delegate to other persons only those acts and functions which are within the normal and customary specialty, competence and lawful practice of the supervising or responsible licensee;
> (5) Provide for a qualified, substitute licensee who accepts responsibility for the direction, supervision, delegation and written agreements or practice protocols with such persons when the supervising or responsible licensee is temporarily absent; and
> (6) Comply with all rules and regulations of the board establishing limits and conditions on the delegation and supervision of services constituting the practice of medicine and surgery." K.S.A. 65-28,127.

A responsible licensee is a physician who has accepted responsibility for the actions of person who perform acts pursuant to a written agreement or practice protocols. K.S.A. 65-28,127(b).

The Kansas Nurse Practice Act, K.S.A. 65-1113 *et seq*.

Except for K.S.A. 65-1130, the remaining portions of the Kansas Nurse Practice Act remain unchanged by S Sub for HB 2279.

The practice of nursing, which is distinct from the practice of the healing arts, is defined under the Kansas Nurse Practice Act as:

> "the process in which substantial specialized knowledge derived from the biological, physical, and behavioral sciences is applied to: the care, diagnosis, treatment, counsel and health teaching of persons who are experiencing changes in the normal health processes or who require assistance in the maintenance of health or the prevention or management of illness, injury or infirmity; administration, supervision or teaching of the process as defined in this section; and

the execution of the medical regimen as prescribed by a person licensed to practice medicine and surgery or a person licensed to practice dentistry." K.S.A. 65-1113(d)(1).

Diagnosis in the context of nursing is the "identification of and discrimination between physical and psychosocial signs and symptoms essential to effective execution and management of the nursing regimen and **shall be construed as distinct from a medical diagnosis**." K.S.A. 65-113(b)(emphasis added).

K.S.A. 65-1113(g) defines an APRN as, "a professional nurse who holds a license from the board to function as a professional nurse in an advance role, and this advance role shall be defined by rules and regulations adopted by the board."

Contextually unaltered in 2022 S Sub for HB 2279, **K.S.A. 65-1130(c) outlines the regulatory authority and scope for which the KSBN must create regulations applicable to APRNs**. K.S.A. 65-1130(c)(3) requires the KSBN to define the role of an APRN and "establish limitations on such role." More specifically, it states:

> "…The board shall adopt a definition of the role under this paragraph which is consistent with the education and qualifications required to obtain a license as an advance practice registered nurse, which protects the public from persons performing functions and procedures as advanced practice registered nurses for which they lack adequate education and qualifications and which authorizes the advance practice registered nurses to perform acts generally recognized by the profession of nursing as capable of being performed, in a manner consistent with the public health and safety, by persons with postbasic education in nursing. In defining such role the board shall consider: (A) the education required for licensure as an advance practice registered nurse; (B) the type of nursing practice and preparation in specialized advance practice skills involved in each role of advance practice registered nurse established by the board; (C) the scope and limitations of advance practice nursing prescribed by national advance practice organizations; and (D) acts recognized by the nursing profession as appropriate to be performed by persons with postbasic education in nursing." *Id*.

2022 S Sub for HB 2287

S Sub for HB 2279 amends only K.S.A. 65-1130 of the Kansas Nurse Practice Act, K.S.A. 65-1113 *et seq*. (and modifies the definition of a mid-level practitioner in the Pharmacy Act and Uniform Controlled Substances Act to conform with the amendments to the written protocol). In most relevant part, S Sub for HB 2279 does the following: (1) requires APRNs to have a current APRN certification in their "specific role and population focus;" (2) allows APRNs to prescribe, procure, and administer medication (including controlled substances[5]) consistent with their specific role and population focus without a written protocol as authorized by a supervising physician, excluding abortion; (3) allows APRNs to prescribe durable medical equipment; and (4) requires APRNs to maintain malpractice insurance coverage.

The expansion of the APRN scope of practice as it relates to prescribing is found in Section 1(d)(1) amending K.S.A. 65-1130 as follows:

[5] Consistent with the Uniform Controlled Substances Act.

(d) *(1)* An advanced practice registered nurse may prescribe ~~drugs pursuant to a written protocol as authorized by a responsible physician. Each written protocol shall contain a precise and detailed medical plan of care for each classification of disease or injury for which the advanced practice registered nurse is authorized to prescribe and shall specify all drugs which may be prescribed by the advanced practice registered nurse. Any written~~ *durable medical equipment and prescribe, procure and administer any drug consistent with such licensee's specific role and population focus, except an advanced practice registered nurse shall not prescribe any drug that is intended to cause an abortion. Any drug that is a controlled substance shall be prescribed, procured or administered in accordance with the uniform controlled substances act.*

Here, it is clear from the plain language of the bill that the previous APRN requirement to enter into a "written protocol as authorized by a responsible physician detailing the medical plan of care for each classification of disease and injury for which the APRN is authorized to prescribe" is removed; and an APRN may now prescribe durable medical equipment and prescribe, procure and administer any drug consistent with such licensee's specific role and population focus, excluding abortions. **Any additional practice of the healing arts is not included in S Sub for HB 2279**. It is solely limited to the context of prescribing.

Legal concerns with the KSBN proposed amended regulations K.A.R. K.A.R. 60-11-101, K.A.R. 100-11-104, K.A.R. 60-11-105, and K.A.R. 60-11-107.[6]

From a patient safety perspective, it is critical for the healthcare professionals and patients to know and understand what healthcare services they are authorized to provide under the law. In accordance with our mission of patient protection, our written testimony is simply limited to legal considerations of the proposed amendments to K.A.R. 60-11-101, 104, 105, 107. From a legal perspective, the proposed amendments to these regulations are in direct conflict with existing Kansas law, specifically the Kansas Healing Arts Act; and appear to go beyond the scope of what was authorized in S Sub for HB 2279. It is not to dispute or attempt to amend the policy decision made by the Kansas legislature in S Sub for HB 2279.[7]

K.A.R. 60-11-101. Definition of expanded role; limitations; restrictions.

(a) Each "advanced practice registered nurse" (APRN), as defined by K.S.A. 65-1113 and amendments thereto, shall function in an expanded role to provide primary, secondary, and tertiary health care in the APRN's role of advanced practice. Each APRN shall be

[6] This written testimony does not address proposed amended K.A.R. 60-11-103, K.A.R. 60-11-104a, and K.A.R. 60-11-113. The proposed amendments in K.A.R. 60-11-103, K.A.R. 60-11-104a, and K.A.R. 60-11-113 appear to be consistent with the authorization in S Sub for HB 2279.

[7] We are cognizant there may be differing opinions regarding what the legislature intended to accomplish with S Sub for HB 2279, however this bill is unambiguous as it pertains to the removal of the written protocol for APRNs to prescribe medication. "When a statute is plain and unambiguous, courts are not to speculate about the legislative intent behind that clear language, and it should refrain from reading something into the statute that is not readily found in its words." *University of Kansas Hospital Authority v. Board of County Commissioners for Franklin County*, 314. Kan. 74, 81 (2021); *Nauheim v. City of Topeka*, 309 Kan. 145, 149-50 (2019).

authorized to make independent decisions about advanced practice nursing needs of families, patients, and clients and medical decisions ~~based on the authorization for collaborative practice with one or more physicians. This regulation shall not be deemed to require the immediate and physical presence of the physician when care is given by an APRN.~~ Each APRN shall be directly accountable and responsible to the consumer.

~~(b) "Authorization for collaborative practice" shall mean that an APRN is authorized to develop and manage the medical plan of care for patients or clients based upon an agreement developed jointly and signed by the APRN and one or more physicians. Each APRN and physician shall jointly review the authorization for collaborative practice annually. Each authorization for collaborative practice shall include a cover page containing the names and telephone numbers of the APRN and the physician, their signatures, and the date of review by the APRN and the physician. Each authorization for collaborative practice shall be maintained in either hard copy or electronic format at the APRN's principal place of practice.~~

The proposed amendments to this regulation appear to be in **direct conflict with existing Kansas law and exceeds the scope of authorization contained in S Sub for HB 2279**. *See* K.S.A. 65-2802(a); K.S.A. 65-2869(b). Making *medical decisions* and developing and managing the *medical plan* of care for patients is the practice of the healing arts, specifically the practice of medicine. S Sub for HB 2279 does not authorize the proposed amendment in the above referenced subsection (a). Also, subsection (b) could remain, as a collaborative practice agreement could still be utilized by APRNs voluntarily to the extent the APRN is engaging in acts that constitute the practice of the healing arts, excluding prescribing within their specific role and population focus.

K.A.R. 60-11-104. Functions of the advance practice registered nurse in the role of nurse practitioner.

Each APRN in the role of nurse practitioner shall function in an advance role at a specialized level, through the application of advanced knowledge and skills and shall be authorized to perform the following:

(b) develop and manage the medical plan of care for patients or clients~~, based on the authorization for collaborative practice~~.

The proposed amendment to this regulation appears to be in **direct conflict with existing Kansas law and exceeds the scope of authorization contained in S Sub for HB 2279**. *See* K.S.A. 65-2802(a); K.S.A. 65-2869(b). Developing and managing the *medical plan* of care for patients is the practice of the healing arts, specifically the practice of medicine. S Sub for HB 2279 does not authorize an APRN to practice the healing arts, including the practice of medicine.

K.A.R. 60-11-105. Functions of the advanced practice registered nurse in the role of nurse-midwife.

Each advance practice registered nurse in the role of nurse-mid-wife shall function in an advanced role through the application of advanced skills and knowledge of women's health care through the life span and shall be authorized to perform the following:

(b) develop and manage the medical plan of care for patients or clients~~, based on the authorization for collaborative practice~~.

The proposed amendments to this regulation appear to be in **direct conflict with existing Kansas law and exceeds the scope of authorization contained in S Sub for HB 2279**. *See* K.S.A. 65-2802(a); K.S.A. 65-2869(b). Developing and managing the *medical plan* of care for patients is the practice of the healing arts, specifically the practice of medicine. S Sub for HB 2279 does not authorize an APRN to practice the healing arts, including the practice of medicine.

K.A.R. 60-11-107. Functions of the advanced practice registered nurse in the role of clinical nurse specialist.

Each advance practice registered nurse in the role of clinical nurse specialist shall function in an advanced role to provide evidence-based nursing practice within a specialty area focused on specific patients or clients, populations, settings, and types of care. Each clinical nurse specialist shall be authorized to perform the following:

(b) develop and manage the medical plan of care for patients or clients~~, based on the authorization for collaborative practice~~.

The proposed amendment to this regulation appears to be in **direct conflict with existing Kansas law and exceeds the scope of authorization contained in S Sub for HB 2279**. *See* K.S.A. 65-2802(a); K.S.A. 65-2869(b). Developing and managing the *medical plan* of care for patients is the practice of the healing arts, specifically the practice of medicine. S Sub for HB 2279 does not authorize an APRN to practice the healing arts, including the practice of medicine.

|We request the proposed amended regulations K.A.R. 60-11-101, K.A.R. 100-11-104, K.A.R. 60-11-105, and K.A.R. 60-11-107, undergo further review and amendment prior to adoption to align with existing Kansas law and legislative authorization. Additionally, the KSBHA has an outstanding AG request that is currently under review.

Should you have any questions or concerns, please feel free to contact me at any time at (785) 250-8021 or courtney.cyzman@ks.gov. Thank you for your work.

Sincerely,

Courtney Cyzman
General Counsel

Enclosures
cc: Rep. Barbara Wasinger (barbwasinger@me.com)
Sen. Oletha Faust-Goudeau (Oletha29th@aol.com)

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Laura Kelly, Governor

June 10, 2022

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Attorney General Schmidt,

Pursuant to K.S.A. 75-704 and the policy of the Attorney General Relating to the Furnishing of Written Opinions ("AG Policy"), the Kansas State Board of Healing Arts ("KSBHA") respectfully requests a written opinion of the Kansas Attorney General concerning the following question:

QUESTION OF LAW

Whether 2022 S Sub for HB 2279 authorizes only removal of the requirement of an advance practice registered nurse ("APRN") having a written protocol with a responsible physician as it pertains to prescribing within the APRN's designated specific role and population focus, and accordingly a collaborative practice agreement is still required for all other acts or practices of the APRN that would be considered the practice of the healing arts.

BACKGROUND

Healthcare delivery occurs in a complex environment in which practitioners do not work in isolation.[1] APRNs play a unique and vital role in our healthcare system. Physicians and APRNs plan and practice together as colleagues, working interdependently within the boundaries and scopes of their practice with shared values and mutual respect for each other's contribution to care for patients.[2] Physicians often work collaboratively with APRNs and other allied health professions, such as (but not limited to), physician assistants, physical therapists, occupational therapists, and athletic trainers. Patient safety, accountability, and consistency should be the most important factors in establishing expectations and limitations associated with scope of practice changes.[3]

[1] Federation of State Medical Boards, *Assessing Scope of Practice in Health Care Delivery: Critical Questions in Assuring Public Access and Safety*, 2005, at 6.

[2] *Id*.

[3] *Id*. at 2

Attachment 1

The KSBHA is the executive body tasked with licensing and regulating 16 healthcare professions in Kansas, including physicians. *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 physicians, three chiropractors, one podiatrist, and three public members. The statutory mission of the Board is patient protection. *See* K.S.A. 65-2801. The function of the KSBHA is executive in nature. We are bound to enforce and abide by Kansas law.

In the 2022 legislative session, the Kansas legislature passed (and Governor Kelly signed) S Sub for HB 2279 expanding the scope of practice for APRNs. There has been significant public perception this specific piece of legislation completely removes the collaborative practice agreement between a physician and an APRN, which understandably has created some confusion. The KSBHA has also received inquiries from a variety of sources including but not limited to physicians, APRNs, attorneys, and medical care facilities asking what ultimately this bill authorized. **From a patient safety perspective, it is critical for the providers and patients to know and understand what healthcare services they are authorized to provide under the law.**

LEGAL RESEARCH AND CONCLUSIONS OF AGENCY GENERAL COUNSEL

Pursuant to AG Policy, at ¶9, the research and conclusions of the agency General Counsel are as follows:

I. 2022 S Sub for HB 2279 authorizes only removal of the requirement of a written protocol with a responsible physician for APRNs as it pertains to prescribing within their designated specific role and population focus, and accordingly a collaborative practice agreement is still required for all other acts or practices of the APRN that would be considered the practice of the healing arts.

A. 2022 S Sub for HB 2279

S Sub for HB 2279 amends only K.S.A. 65-1130 of the Kansas Nurse Practice Act, K.S.A. 65-1113 *et seq*. (and modifies the definition of a mid-level practitioner in the Pharmacy Act and Uniform Controlled Substances Act to conform with the amendments to the written protocol). The expansion of the APRN scope of practice as it relates to prescribing is found in Section 1(d)(1) amending K.S.A. 65-1130 as follows:

> (d)(1) An advance practice registered nurse may prescribe ~~drugs pursuant to a written protocol as authorized by a responsible physician. Each written protocol shall contain a precise and detailed medical plan of care for each classification of disease or injury for which the advance practice registered nurse is authorized to prescribe and shall specify all drugs which may be prescribed by the advanced practice registered nurse. Any written~~ durable medical equipment and prescribe, procure and administer any drug consistent with such licensee's specific role and population focus, except an advanced practice registered nurse shall not prescribe any drug that is intended to cause an abortion. Any drug that is a controlled substance shall be prescribed, procured or administered in accordance with the uniform controlled substances act.

B. The Healing Arts Act, K.S.A. 65-2801 *et seq*.

Unless otherwise specified, it is unlawful for any person who does not have a license to engage in the practice of any profession regulated by the board. K.S.A. 65-2803(a).

Under K.S.A. 65-2802(a), the healing arts is defined as:

> "[A]ny system, treatment, operation, diagnosis, prescription or practice for the ascertainment, cure relief, palliation, adjustment or correction of any human disease, ailment, deformity, injury, alteration or enhancement of a condition or appearance and includes specifically, but not by way of limitation, the practice of medicine and surgery; the practice of osteopathic medicine and surgery; and the practice of chiropractic."

Persons deemed to be engaged in the practice of medicine and surgery include:

> "Persons who prescribe, recommend or furnish medicine or drugs, or perform any surgical operation of whatever nature by the use of any surgical instrument, procedure, equipment or mechanical device for the diagnosis, cure or relief of any wounds, fractures, bodily injury, infirmity, disease or mental illness or psychological disorder, of human beings." K.S.A. 65-2869(b).

A person is not engaged in the practice of the healing arts if their professional services are performed under the supervision or by order of or referral from a practitioner who is licensed under the Healing Arts Act. K.S.A. 65-2872(g). It also does not include "nurses practicing their profession when licensed and practicing under and in accordance with the [Kansas Nurse Practice Act] and any interpretation thereof by the supreme court of this state." K.S.A. 65-2872(m). Every act or practice falling in the field of the healing arts, not specifical excepted herein, is the practice of the healing arts. K.S.A. 65-2872(o).

The Healing Arts Act authorizes a physician to delegate to others, as follows:

> "For every supervising or responsible licensee who directs, supervises, orders, refers, accepts responsibility for, enters into written agreements or practice protocols with, or who delegates acts which constitute the practice of the healing arts shall:
>
> (1) Be actively engaged in the practice of healing arts in Kansas;
> (2) Review and keep current any required written agreements or practice protocols between the supervising or responsible licensee and such persons, as may be determined by the board;
> (3) Direct, supervise, order, refer, enter into a written agreement or practice protocol with, or delegate to such persons only those acts and functions which the supervising or responsible licensee knows or has reason to believe can be competently performed by such person and is not in violation of any other statute or regulation;
> (4) Direct, supervise, order, refer, enter into a written agreement or practice protocol with, or delegate to other persons only those acts and functions which are within the normal and customary specialty, competence and lawful practice of the supervising or responsible licensee;

(5) Provide for a qualified, substitute licensee who accepts responsibility for the direction, supervision, delegation and written agreements or practice protocols with such persons when the supervising or responsible licensee is temporarily absent; and
(6) Comply with all rules and regulations of the board establishing limits and conditions on the delegation and supervision of services constituting the practice of medicine and surgery." K.S.A. 65-28,127.

A responsible licensee is a physician who has accepted responsibility for the actions of person who perform acts pursuant to a written agreement or practice protocols. K.S.A. 65-28,127(b). Unprofessional conduct includes delegating professional responsibilities to a person a licensee knows or has reason to know is not qualified by training, experience or licensure; or failing to properly supervise, direct or delegate acts that constitute the healing arts to a person who performs professional services pursuant to licensee's direction, supervision, order, referral, delegation, or practice protocols. K.S.A. 65-2837(b)(26), (30).

Several Attorney General opinions dealing with the delegated practice have been issued subsequent to the passage of and amendments to K.S.A. 65-28,127. The most relevant is Kan. Att'y Gen. Op. No. 2020-2 (Feb. 4, 2020). This opinion dealt with physician delegation of the determination of cardiopulmonary death pursuant to acceptable medical standards to a physician assistant ("PA") or APRN. The opinion noted the Healing Arts Act "gives a physician broad authority to delegate acts which would constitute the practice of the healing arts to a PA or an APRN if the PA or APRN is competent to perform the delegated act or function; the delegated act and function is within the supervising physician's specialty, competence, and lawful practice; and delegation does not violate any law." Kan. Att'y Gen. Op. No. 2020-2 (Feb. 4, 2020). The opinion concluded:

> "[A] physician licensed by the Kansas State Board of Healing Arts to practice medicine and surgery may delegate acts which would constitute the practice of healing arts to…a person licensed by the Kansas State Board of Nursing as an advance practice registered nurse in the role of clinical nurse specialist or nurse practitioner pursuant to a collaborative practice agreement with the physician. No statutes or regulations limit or prohibit such delegation for the determination of cardiopulmonary death. However, whether a PA or APRN practicing as a clinical nurse specialist or nurse practitioner can make a determination of cardiopulmonary death 'in accordance with acceptable medical standards' is a question of fact and, as such, is outside the scope of this opinion."

Kan. Att'y Gen. Op. No. 2020-2 (Feb. 4, 2020).

C. The Kansas Nurse Practice Act, K.S.A. 65-1113 *et seq*.

Except for K.S.A. 65-1130, the remaining portions of the Kansas Nurse Practice Act remain unchanged. There are several key provisions that are critical to consider when analyzing S Sub for HB 2279.

The practice of nursing is defined in pertinent part as:

> "the process in which substantial specialized knowledge derived from the biological, physical, and behavioral sciences is applied to: the care, diagnosis, treatment, counsel and health teaching of persons who are experiencing changes in the normal health processes or who require assistance in the maintenance of health or the prevention or management of illness, injury or infirmity; administration, supervision or teaching of the process as defined in this section; and

the execution of the medical regimen as prescribed by a person licensed to practice medicine and surgery or a person licensed to practice dentistry." K.S.A. 65-1113(d)(1).

K.S.A. 65-1113(g) defines an APRN as, "a professional nurse who holds a license from the board to function as a professional nurse in an advance role, and this advance role shall be defined by rules and regulations adopted by the board."

Contextually unaltered in 2022 S Sub for HB 2279, K.S.A. 65-1130(c) outlines the regulatory authority and scope for which the KSBN must create regulations applicable to APRNs. K.S.A. 65-1130(c)(3) requires the KSBN to define the role of an APRN and "establish limitations on such role." More specifically, it states:

> "…The board shall adopt a definition of the role under this paragraph which is consistent with the education and qualifications required to obtain a license as an advance practice registered nurse, which protects the public from persons performing functions and procedures as advanced practice registered nurses for which they lack adequate education and qualifications and which authorizes the advance practice registered nurses to perform acts generally recognized by the profession of nursing as capable of being performed, in a manner consistent with the public health and safety, by persons with postbasic education in nursing. In defining such role the board shall consider: (A) the education required for licensure as an advance practice registered nurse; (B) the type of nursing practice and preparation in specialized advance practice skills involved in each role of advance practice registered nurse established by the board; (C) the scope and limitations of advance practice nursing prescribed by national advance practice organizations; and (D) acts recognized by the nursing profession as appropriate to be performed by persons with postbasic education in nursing." *Id*.

The collaborative practice agreement is implemented through *regulation* by the Kansas State Board of Nursing ("KSBN") while the written protocol for prescribing was established in *statute* by the Legislature.

The main regulation authorizing the collaborative practice agreement is K.A.R. 60-11-101. K.A.R. 60-11-101(a) states, "Each APRN shall be authorized to make independent decisions about advance practice nursing needs of families, patients, and clients **and make medical decisions based on the authorization for collaborative practice with one or more physicians**…" (emphasis added). K.A.R. 60-11-101(b) defines "authorization for collaborative practice" as "…[A]n APRN is authorized to **develop and manage the medical plan of care for patients or clients based upon an agreement developed jointly and signed by the APRN and one or more physicians**. Each APRN and physician shall jointly review the authorization for collaborative practice annually…" (emphasis added). Additionally, K.A.R. 60-11-104(d) allows an APRN in the role of nurse practitioner in to develop and manage the medical plan of care for patients or clients based on the authorization for collaborative practice. *See also* K.A.R. 60-11-105(b)(APRN-CNM); K.A.R. 100-60-11-107(b)(APRN-Clinical nurse specialist).

In *Gorenc, Winkler, and Midwife Partners in Women's Wellness v. Klaassen*, 421 F.Supp.3d 1131 (D. Kan. 2019), nurse mid-wives brought action against the President of the KSBN in part, asserting Kansas collaborative practice statutes and regulations were unconstitutional. The federal United States District Court, District Court of Kansas dismissed all counts against Klaassen on immunity and jurisdictional grounds, however the Court explained the *permissive* collaborative practice agreement between a physician and an APRN, and that such collaborative practice agreements furthered a legitimate state interest in protecting the health and welfare of the public. *Id*. at 1161.

D. Analysis

A person prescribing medication is deemed to be practicing medicine under the Healing Arts Act. *See* K.S.A. 65-2869(b). However, this session, the Kansas legislature in S Sub for HB 2279, made a policy decision to remove the requirement that an APRN have a written protocol with a responsible physician for prescribing within their specific role and population focus.

In most pertinent part, S Sub for HB 2279 does the following: (1) requires APRNs to have a current APRN certification in their "specific role and population focus;" (2) allows APRNs to prescribe, procure, and administer medication (including controlled substances[4]) consistent with their specific role and population focus without a written protocol as authorized by a supervising physician, excluding abortion; (3) allows APRNs to prescribe durable medical equipment; and (4) requires APRNs to maintain malpractice insurance coverage.

The expansion of the scope of practice as it relates to prescribing is found in Section 1(d)(1) amending K.S.A. 65-1130 as follows:

> (d) *(1)* An advanced practice registered nurse may prescribe ~~drugs pursuant to a written protocol as authorized by a responsible physician. Each written protocol shall contain a precise and detailed medical plan of care for each classification of disease or injury for which the advanced practice registered nurse is authorized to prescribe and shall specify all drugs which may be prescribed by the advanced practice registered nurse. Any written~~ *durable medical equipment and prescribe, procure and administer any drug consistent with such licensee's specific role and population focus, except an advanced practice registered nurse shall not prescribe any drug that is intended to cause an abortion. Any drug that is a controlled substance shall be prescribed, procured or administered in accordance with the uniform controlled substances act.*

The amendment to this section is unambiguous as it pertains to authority to prescribe. "When a statute is plain and unambiguous, courts are not to speculate about the legislative intent behind that clear language, and it should refrain from reading something into the statute that is not readily found in its words." *University of Kansas Hospital Authority v. Board of County Commissioners for Franklin County*, 314. Kan. 74, 81 (2021); *Nauheim v. City of Topeka*, 309 Kan. 145, 149-50 (2019).

Here, it is clear from the bill that the previous APRN requirement to enter into a "written protocol as authorized by a responsible physician detailing the medical plan of care for each classification of disease and injury for which the APRN is authorized to prescribe" is removed; and an APRN may now prescribe durable medical equipment and prescribe, procure and administer any drug consistent with such licensee's specific role and population focus, excluding abortions. Any additional practice of the healing arts is not included in S Sub for HB 2279. It is solely limited to the context of prescribing. Any practice of the healing arts outside of prescribing within an APRNs specific role and population focus must be covered under a collaborative practice

[4] Consistent with the Uniform Controlled Substances Act.

agreement with a supervising physician. *See* K.S.A. 65-2802; K.S.A. 65-2869; K.S.A. 65-2872(g); K.S.A. 65-28,127; K.S.A. 65-1113; K.A.R. 60-11-101; K.A.R. 60-11-104; K.A.R. 60-11-105; and K.A.R. 60-11-107.

It is also important to understand what S Sub for HB 2279 does not do. This bill does not: (1) prevent an APRN from voluntarily entering into or continuing under a collaborative practice agreement with a supervising physician; or (2) Remove the authorization for collaborative practice agreement for the practice of the healing arts by APRNs outside of prescribing within their specific role and population focus.

S Sub for HB 2279 simply removes the requirement that an APRN have a written protocol with a responsible physician for prescribing within the APRNs specific role and population focus, excluding abortions.

To the extent there is any ambiguity in what S Sub for HB 2279 authorizes, it is clear from legislative history it is limited to the removal of the written protocol *for prescribing*. This includes, but is not limited to the following:

- Title of the bill – "An Act concerning health professions and practices; related to advance practice registered nurses; licensure thereof; **authorizing the prescribing of drugs without a supervising physician**; requirement malpractice insurance coverage; rules and regulations…" (emphasis added).

- Kansas Legislative Research Department Legislative Summary for S Sub for HB 2279 – "S Sub for HB 2279 amends provisions in the Kansas Nurse Practice Act ("Act") governing the licensure of advance practice registered nurses (APRNs) to among other things, allow an APRN to prescribe drugs without a written protocol as authorized by a responsible physician…The bill removes language in the Act that currently permits an APRN to prescribe drugs pursuant to a written protocol as authorized by a responsible physician. The bill instead allows an APRN to prescribe durable medical equipment and prescribe, procure, and administer any drug consistent with such licensee's specific role and population focus…"

- Committee Report from the Committee on Public Health and Welfare recommending HB 2279 be amended as recommended by the Committee on Public Health and Welfare to read as Senate Substitute for House Bill No. 2279 – and included the title of the bill "authorizing the prescribing of drugs without a supervising physician."

Any acts or practice of the healing arts by an APRN outside of prescribing within the APRNs specific role and population focus must be covered under a collaborative practice agreement with a supervising physician. Any notion to the contrary is outside the scope of what S Sub for HB 2279 authorizes.

CONCLUSION

The KSBHA respectfully requests the legal opinion of the Attorney General on the question of law stated above. If you need any further information or clarification, please do not hesitate to contact me.

TTY (HEARING IMPAIRED) 711 OR 1.800.766.3777 VOICE/TTY • E-MAIL: KSBHA_HEALINGARTS@KS.GOV

Sincerely,

Courtney Cyzman
General Counsel

TTY (HEARING IMPAIRED) 711 OR 1.800.766.3777 VOICE/TTY • E-MAIL: KSBHA_HEALINGARTS@KS.GOV

Senate Substitute for HOUSE BILL NO. 2279

AN ACT concerning health professions and practices; relating to advanced practice registered nurses; licensure thereof; authorizing the prescribing of drugs without a supervising physician; requiring malpractice insurance coverage; rules and regulations; amending K.S.A. 65-1130 and K.S.A. 2021 Supp. 65-1626 and 65-4101 and repealing the existing sections.

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

Section 1. K.S.A. 65-1130 is hereby amended to read as follows: 65-1130. (a) No professional nurse shall announce or represent to the public that such person is an advanced practice registered nurse unless such professional nurse has complied with requirements established by the board and holds a valid license as an advanced practice registered nurse in accordance with the provisions of this section.

(b) *(1)* The board shall establish standards and requirements for any professional nurse who desires to obtain licensure as an advanced practice registered nurse. Such standards and requirements shall include, but not be limited to, standards and requirements relating to the education of advanced practice registered nurses. The board may give such examinations and secure such assistance as it deems necessary to determine the qualifications of applicants.

(2) (A) On and after July 1, 2023, an applicant for initial licensure as an advanced practice registered nurse shall have a current advanced practice registered nurse certification in such applicant's specific role and population focus that has been granted by a national certifying organization recognized by the board and whose certification standards are approved by the board as equal to or greater than the corresponding standards established by the board; and

(B) an advanced practice registered nurse whose initial licensure is prior to July 1, 2023, may submit evidence of such certification to the board upon renewal.

(c) The board shall adopt rules and regulations *consistent with the Kansas nurse practice act* applicable to advanced practice registered nurses ~~which~~ *that*:

(1) Establish roles and identify titles and abbreviations of advanced practice registered nurses ~~which~~ *that* are consistent with nursing practice specialties recognized by the nursing profession.

(2) Establish education and qualifications necessary for licensure for each role of advanced practice registered nurse established by the board at a level adequate to assure the competent performance by advanced practice registered nurses of functions and procedures which advanced practice registered nurses are authorized to perform. Advanced practice registered nursing is based on knowledge and skills acquired in basic nursing education, licensure as a registered nurse and graduation from or completion of a master's or higher degree in one of the advanced practice registered nurse roles approved by the board of nursing.

(3) Define the role of advanced practice registered nurses and establish limitations and restrictions on such role. The board shall adopt a definition of the role under this paragraph ~~which~~ *that* is consistent with the education and qualifications required to obtain a license as an advanced practice registered nurse~~, which~~ *that* protects the public from persons performing functions and procedures as advanced practice registered nurses for which they lack adequate education and qualifications and ~~which~~ *that* authorizes advanced practice registered nurses to perform acts generally recognized by the profession of nursing as capable of being performed, in a manner consistent with the public health and safety, by persons with postbasic education in nursing. In defining such role the board shall consider:

(A) The education required for a licensure as an advanced practice registered nurse;

(B) the type of nursing practice and preparation in specialized advanced practice skills involved in each role of advanced practice registered nurse established by the board;

(C) the scope and limitations of advanced practice nursing prescribed by national advanced practice organizations *in accordance*

with the laws of this state; and

(D) acts recognized by the nursing profession as appropriate to be performed by persons with postbasic education in nursing.

(d) *(1)* An advanced practice registered nurse may prescribe ~~drugs pursuant to a written protocol as authorized by a responsible physician. Each written protocol shall contain a precise and detailed medical plan of care for each classification of disease or injury for which the advanced practice registered nurse is authorized to prescribe and shall specify all drugs which may be prescribed by the advanced practice registered nurse. Any written~~ *durable medical equipment and prescribe, procure and administer any drug consistent with such licensee's specific role and population focus, except an advanced practice registered nurse shall not prescribe any drug that is intended to cause an abortion. Any drug that is a controlled substance shall be prescribed, procured or administered in accordance with the uniform controlled substances act.*

(2) A prescription order shall include the name, address and telephone number of the ~~responsible physician~~ *advanced practice registered nurse*. ~~The~~ *An* advanced practice registered nurse may not dispense drugs~~,~~ but may request, receive and sign for professional samples and may distribute professional samples to patients ~~pursuant to a written protocol as authorized by a responsible physician~~.

(3) In order to prescribe controlled substances, the advanced practice registered nurse shall:

~~(1)~~ *(A)* Register with the federal drug enforcement administration; and

~~(2) notify the board of the name and address of the responsible physician or physicians. In no case shall the scope of authority of the advanced practice registered nurse exceed the normal and customary practice of the responsible physician~~

(B) comply with federal drug enforcement administration requirements related to controlled substances.

(4) An advanced practice registered nurse certified in the role of registered nurse anesthetist while functioning as a registered nurse anesthetist under K.S.A. 65-1151 through 65-1164, and amendments thereto, shall be subject to the provisions of K.S.A. 65-1151 through 65-1164, and amendments thereto, with respect to drugs and anesthetic agents and shall not be subject to the provisions of this subsection. ~~For the purposes of this subsection, "responsible physician" means a person licensed to practice medicine and surgery in Kansas who has accepted responsibility for the protocol and the actions of the advanced practice registered nurse when prescribing drugs.~~

(5) An advanced practice registered nurse shall maintain malpractice insurance coverage as a condition of rendering professional clinical services as an advanced practice registered nurse in this state and shall provide proof of insurance at the time of licensure and renewal of license. The requirements of this subsection shall not apply to an advanced practice registered nurse who:

(i) Practices solely in employment for which the advanced practice registered nurse is covered under the federal tort claims act or the Kansas tort claims act;

(ii) practices solely as a charitable healthcare provider under K.S.A. 75-6102, and amendments thereto; or

(iii) is serving on active duty in the armed forces of the United States.

(e) As used in this section, "drug" means those articles and substances defined as drugs in K.S.A. 65-1626 and 65-4101, and amendments thereto.

(f) A person registered to practice as an advanced registered nurse practitioner in the state of Kansas immediately prior to the effective date of this act shall be deemed to be licensed to practice as an advanced practice registered nurse under this act and such person shall not be required to file an original application for licensure under this act. Any application for registration filed which has not been granted

prior to the effective date of this act shall be processed as an application for licensure under this act.

(g) An advanced practice registered nurse certified in the role of certified nurse-midwife and engaging in the independent practice of midwifery under the independent practice of midwifery act with respect to prescribing drugs shall be subject to the provisions of the independent practice of midwifery act and shall not be subject to the provisions of this section.

(h) This section shall not supersede the requirements outlined in K.S.A. 65-4a08(b), and amendments thereto.

Sec. 2. K.S.A. 2021 Supp. 65-1626 is hereby amended to read as follows: 65-1626. As used in the pharmacy act of the state of Kansas:

(a) "Address" means, with respect to prescriptions, the physical address where a patient resides, including street address, city and state.

(b) "Administer" means the direct application of a drug, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by:

(1) A practitioner or pursuant to the lawful direction of a practitioner;

(2) the patient or research subject at the direction and in the presence of the practitioner; or

(3) a pharmacist as authorized in K.S.A. 65-1635a*, and amendments thereto,* or K.S.A. 2021 Supp. 65-16,129, and amendments thereto.

(c) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, repackager, wholesale distributor, third-party logistics provider or dispenser but does not include a common carrier, public warehouseman or employee of the carrier or warehouseman when acting in the usual and lawful course of the carrier's or warehouseman's business.

(d) "Automated dispensing system" means a robotic or mechanical system controlled by a computer that:

(1) Performs operations or activities, other than compounding or administration, relative to the storage, packaging, labeling, dispensing or distribution of drugs;

(2) collects, controls and maintains all transaction information; and

(3) operates in accordance with the board's rules and regulations.

(e) "Biological product" means the same as defined in 42 U.S.C. § 262(i), as in effect on January 1, 2017.

(f) "Board" means the state board of pharmacy created by K.S.A. 74-1603, and amendments thereto.

(g) "Brand exchange," in the case of a drug prescribed, means the dispensing of a different drug product of the same dosage form and strength and of the same generic name as the brand name drug product prescribed, and in the case of a biological product prescribed, means the dispensing of an interchangeable biological product.

(h) "Brand name" means the registered trademark name given to a drug product by its manufacturer, labeler or distributor.

(i) "Co-licensed partner" means a person or pharmaceutical manufacturer that has entered into an agreement with another pharmaceutical manufacturer or an affiliate of the manufacturer to engage in a business activity or occupation related to the manufacture or distribution of a product.

(j) "Common carrier" means any person who undertakes, whether directly or by any other arrangement, to transport property, including drugs, for compensation.

(k) (1) "Compounding" means the combining of components into a compounded preparation under either of the following conditions:

(A) As the result of a practitioner's prescription drug order or initiative based on the practitioner-patient-pharmacist relationship in the course of professional practice to meet the specialized medical need of an individual patient of the practitioner that cannot be filled by an FDA-approved drug; or

(B) for the purpose of, or incidental to, research, teaching or chemical analysis, and not for sale or dispensing.

(2) Compounding includes the preparation of drugs or devices in anticipation of receiving prescription drug orders based on routine, regularly observed prescribing patterns.

(3) Compounding does not include reconstituting any mixed drug according to the FDA-approved labeling for the drug.

(l) "Current good manufacturing practices" or "CGMP" means the requirements for ensuring that drugs and drug products are consistently manufactured, repackaged, produced, stored and dispensed in accordance with 21 C.F.R. §§ 207, 210 and 211.

(m) "DEA" means the United States department of justice, drug enforcement administration.

(n) "Deliver" or "delivery" means the actual, constructive or attempted transfer from one person to another of any drug whether or not an agency relationship exists.

(o) "Device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article, including a component part or accessory that:

(1) (A) Is recognized in the official national formulary, or the United States pharmacopoeia, or any supplement thereof;

(B) is intended for use in the diagnosis of disease or other conditions;

(C) is used for the cure, mitigation, treatment or prevention of disease in human or other animals; or

(D) is intended to affect the structure or any function of the body of human or other animals; and

(2) (A) does not achieve its primary intended purposes through chemical action within or on the body of human or other animals; and

(B) is not dependent upon being metabolized for the achievement of any of its primary intended purposes.

(p) "Direct supervision" means the process by which the responsible pharmacist shall observe and direct the activities of a pharmacist intern or pharmacy technician, be readily and immediately available at all time activities are performed, provide personal assistance, direction and approval throughout the time the activities are performed and complete the final check before dispensing.

(q) "Dispense" or "dispensing" means to deliver prescription medication to the ultimate user or research subject by or pursuant to the lawful order of a practitioner or pursuant to the prescription of a mid-level practitioner, including, but not limited to, delivering prescription medication to a patient by mail, common carrier, personal delivery or third-party delivery to any location requested by the patient.

(r) "Dispenser" means:

(1) A practitioner or pharmacist who dispenses prescription drugs or devices or a physician assistant who has authority to dispense prescription-only drugs in accordance with K.S.A. 65-28a08(b), and amendments thereto; or

(2) a retail pharmacy, hospital pharmacy or group of pharmacies under common ownership and control that do not act as a wholesale distributor.

(s) "Distribute" or "distribution" means to deliver, offer to deliver, sell, offer to sell, purchase, trade, transfer, broker, give away, handle, store or receive, other than by administering or dispensing, any product, but does not include dispensing a product pursuant to a prescription executed in accordance with 21 U.S.C. § 353 or the dispensing of a product approved under 21 U.S.C. § 360b.

(t) "Distributor" means a person or entity that distributes a drug or device.

(u) "Diversion" means the transfer of a controlled substance from a lawful to an unlawful channel of distribution or use.

(v) "Drop shipment" means the sale, by a manufacturer, repackager or exclusive distributor, of the manufacturer's prescription drug to a wholesale distributor whereby the wholesale distributor takes

title but not possession of such prescription drug and the wholesale distributor invoices the dispenser, and the dispenser receives delivery of the prescription drug directly from the manufacturer, repackager, third-party logistics provider or exclusive distributor, of such prescription drug.

(w) "Drug" means *articles*:

(1) ~~Articles~~ Recognized in the official United States pharmacopeia, or other such official compendiums of the United States, or official national formulary, or any supplement to any of them;

(2) ~~articles~~ intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in human or other animals;

(3) ~~articles,~~ other than food, intended to affect the structure or any function of the body of human or other animals; and

(4) ~~articles~~ intended for use as a component of any articles specified in paragraph (1), (2) or (3); but does not include devices or their components, parts or accessories, except that the term "drug" ~~shall~~ *does* not include amygdalin (laetrile) or any livestock remedy, if such livestock remedy had been registered in accordance with the provisions of article 5 of chapter 47 of the Kansas Statutes Annotated, prior to its repeal.

(x) "Durable medical equipment" means equipment that:

(1) Provides therapeutic benefits or enables an individual to perform certain tasks that the individual is unable to otherwise undertake due to certain medical conditions or illnesses;

(2) is primarily and customarily used to serve a medical purpose;

(3) generally is not useful to a person in the absence of an illness or injury;

(4) can withstand repeated use;

(5) is appropriate for use in the home, long-term care facility or medical care facility, but may be transported to other locations to allow the individual to complete instrumental activities of daily living that are more complex tasks required for independent living; and

(6) may include devices and medical supplies or other similar equipment determined by the board in rules and regulations adopted by the board.

(y) "Electronic prescription" means an electronically prepared prescription that is authorized and transmitted from the prescriber to the pharmacy by means of electronic transmission.

(z) "Electronic prescription application" means software that is used to create electronic prescriptions and that is intended to be installed on the prescriber's computers and servers where access and records are controlled by the prescriber.

(aa) "Electronic signature" means a confidential personalized digital key, code, number or other method for secure electronic data transmissions that identifies a particular person as the source of the message, authenticates the signatory of the message and indicates the person's approval of the information contained in the transmission.

(bb) "Electronic transmission" means the transmission of an electronic prescription, formatted as an electronic data file, from a prescriber's electronic prescription application to a pharmacy's computer, where the data file is imported into the pharmacy prescription application.

(cc) "Electronically prepared prescription" means a prescription that is generated using an electronic prescription application.

(dd) "Exclusive distributor" means the wholesale distributor that directly purchased the product from the manufacturer and is the sole distributor of that manufacturer's product to a subsequent repackager, wholesale distributor or dispenser.

(ee) "FDA" means the United States department of health and human services, food and drug administration.

(ff) "Facsimile transmission" or "fax transmission" means the transmission of a digital image of a prescription from the prescriber or the prescriber's agent to the pharmacy. "Facsimile transmission" includes, but is not limited to, transmission of a written prescription

between the prescriber's fax machine and the pharmacy's fax machine; transmission of an electronically prepared prescription from the prescriber's electronic prescription application to the pharmacy's fax machine, computer or printer; or transmission of an electronically prepared prescription from the prescriber's fax machine to the pharmacy's fax machine, computer or printer.

(gg) "Generic name" means the established chemical name or official name of a drug or drug product.

(hh) "~~Health care~~*Healthcare* entity" means any person that provides diagnostic, medical, surgical or dental treatment or rehabilitative care but does not include any retail pharmacy or wholesale distributor.

(ii) (1) "Institutional drug room" means any location where prescription-only drugs are stored and from which prescription-only drugs are administered or dispensed and that is maintained or operated for the purpose of providing the drug needs of:

(A) Inmates of a jail or correctional institution or facility;

(B) residents of a juvenile correctional facility or juvenile detention facility, as defined in K.S.A. 38-2302, and amendments thereto;

(C) students of a public or private university or college, a community college or any other institution of higher learning that is located in Kansas;

(D) employees of a business or other employer; or

(E) persons receiving inpatient hospice services.

(2) "Institutional drug room" does not include:

(A) Any registered pharmacy;

(B) any office of a practitioner; or

(C) a location where no prescription-only drugs are dispensed and no prescription-only drugs other than individual prescriptions are stored or administered.

(jj) "Interchangeable biological product" means a biological product that the FDA has identified in the "purple book: lists of licensed biological products with reference product exclusivity and biosimilarity or interchangeability evaluations" as meeting the standards for "interchangeability" as defined in 42 U.S.C. § 262(k), as in effect on January 1, 2017.

(kk) "Intracompany transaction" means any transaction or transfer between any division, subsidiary, parent or affiliated or related company under common ownership or control of a corporate entity, or any transaction or transfer between co-licensed partners.

(ll) "Label" means a display of written, printed or graphic matter upon the immediate container of any drug.

(mm) "Labeling" means the process of preparing and affixing a label to any drug container, exclusive of the labeling by a manufacturer, packer or distributor of a non-prescription drug or commercially packaged legend drug.

(nn) "Long-term care facility" means "nursing facility," as defined in K.S.A. 39-923, and amendments thereto.

(oo) "Medical care facility" means the same as defined in K.S.A. 65-425, and amendments thereto,~~ except that the term~~ *and* also includes psychiatric hospitals and psychiatric residential treatment facilities as defined by K.S.A. 39-2002, and amendments thereto.

(pp) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a drug either directly or indirectly by extraction from substances of natural origin, independently by means of chemical or biological synthesis or by a combination of extraction and chemical or biological synthesis or the packaging or repackaging of the drug or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a drug by an individual for the individual's own use or the preparation, compounding, packaging or labeling of a drug by:

(1) A practitioner or a practitioner's authorized agent incident to such practitioner's administering or dispensing of a drug in the course

of the practitioner's professional practice;

(2) a practitioner, by a practitioner's authorized agent or under a practitioner's supervision for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale; or

(3) a pharmacist or the pharmacist's authorized agent acting under the direct supervision of the pharmacist for the purpose of, or incident to, the dispensing of a drug by the pharmacist.

(qq) "Manufacturer" means:

(1) A person that holds an application approved under section 505 of the federal food, drug and cosmetic act or a license issued under section 351 of the federal public health service act for such drug or, if such drug is not the subject of an approved application or license, the person who manufactured the drug;

(2) a co-licensed partner of the person described in paragraph (1) that obtains the drug directly from a person described in paragraph (1) or (3); or

(3) an affiliate of a person described in paragraph (1) or (2) that receives the product directly from a person described in paragraph (1) or (2).

(rr) "Medication order" means a written or oral order by a prescriber or the prescriber's authorized agent for administration of a drug or device to a patient in a Kansas licensed medical care facility or in a Kansas licensed nursing facility or nursing facility for mental health, as such terms are defined by K.S.A. 39-923, and amendments thereto.

(ss) "Mid-level practitioner" means a certified nurse-midwife engaging in the independent practice of midwifery under the independent practice of midwifery act, an advanced practice registered nurse issued a license pursuant to K.S.A. 65-1131, and amendments thereto, who has authority to prescribe drugs ~~pursuant to a written protocol with a responsible physician~~ under K.S.A. 65-1130, and amendments thereto, or a physician assistant licensed pursuant to the physician assistant licensure act who has authority to prescribe drugs pursuant to a written agreement with a supervising physician under K.S.A. 65-28a08, and amendments thereto.

(tt) "Nonresident pharmacy" means a pharmacy located outside of Kansas.

(uu) "Outsourcing facility" means a facility at one geographic location or address that is engaged in the compounding of sterile drugs and has registered with the FDA as an outsourcing facility pursuant to 21 U.S.C. § 353b.

(vv) "Person" means individual, corporation, government, governmental subdivision or agency, partnership, association or any other legal entity.

(ww) "Pharmacist" means any natural person licensed under this act to practice pharmacy.

(xx) "Pharmacist-in-charge" means the pharmacist who is responsible to the board for a registered establishment's compliance with the laws and regulations of this state pertaining to the practice of pharmacy, manufacturing of drugs and the distribution of drugs. The pharmacist-in-charge shall supervise such establishment on a full-time or a part-time basis and perform such other duties relating to supervision of a registered establishment as may be prescribed by the board by rules and regulations. Nothing in this definition shall relieve other pharmacists or persons from their responsibility to comply with state and federal laws and regulations.

(yy) "Pharmacist intern" or "intern" means:

(1) A student currently enrolled in and in good standing with an accredited pharmacy program;

(2) a graduate of an accredited pharmacy program serving an internship; or

(3) a graduate of a pharmacy program located outside of the United States that is not accredited and who has successfully passed equivalency examinations approved by the board.

(zz) "Pharmacy," "drugstore" or "apothecary" means premises, laboratory, area or other place, including any electronic medium:

(1) Where drugs are offered for sale where the profession of pharmacy is practiced and where prescriptions are compounded and dispensed;

(2) that has displayed upon it or within it the words "pharmacist," "pharmaceutical chemist," "pharmacy," "apothecary," "drugstore," "druggist," "drugs," "drug sundries" or any of these words or combinations of these words or words of similar import in any language or on any sign containing any of these words as used in the context of health, medical or pharmaceutical care or services; or

(3) where the characteristic symbols of pharmacy or the characteristic prescription sign "Rx" may be exhibited in the context of health, medical or pharmaceutical care or services. As used in this subsection, premises refers only to the portion of any building or structure leased, used or controlled by the licensee in the conduct of the business registered by the board at the address for which the registration was issued.

(aaa) "Pharmacy prescription application" means software that is used to process prescription information and is either installed on a pharmacy's computers or servers and is controlled by the pharmacy or is maintained on the servers of an entity that sells electronic pharmacy prescription applications as a hosted service where the entity controls access to the application and maintains the software and records on its server.

(bbb) "Pharmacy technician" means an individual who, under the direct supervision and control of a pharmacist, may perform packaging, manipulative, repetitive or other nondiscretionary tasks related to the processing of a prescription or medication order and who assists the pharmacist in the performance of pharmacy-related duties, but who does not perform duties restricted to a pharmacist.

(ccc) "Practitioner" means a person licensed to practice medicine and surgery, dentist, podiatrist, veterinarian, optometrist or scientific investigator or other person authorized by law to use a prescription-only drug in teaching or chemical analysis or to conduct research with respect to a prescription-only drug.

(ddd) "Preceptor" means a licensed pharmacist who possesses at least two years' experience as a pharmacist and who supervises and is responsible for the actions of pharmacist interns obtaining pharmaceutical experience.

(eee) "Prescriber" means a practitioner or a mid-level practitioner.

(fff) "Prescription" or "prescription order" means the front and back of a lawful written, electronic or facsimile order from a prescriber or an oral order from a prescriber or the prescriber's authorized agent that communicates the prescriber's instructions for a prescription drug or device to be dispensed.

(ggg) "Prescription medication" means any drug, including label and container according to context, that is dispensed pursuant to a prescription order.

(hhh) "Prescription-only drug" means any drug whether intended for use by human or animal, required by federal or state law, including 21 U.S.C. § 353, to be dispensed only pursuant to a written or oral prescription or order of a practitioner or is restricted to use by practitioners only.

(iii) "Probation" means the practice or operation under a temporary license, registration or permit or a conditional license, registration or permit of a business or profession for which a license, registration or permit is granted by the board under the provisions of the pharmacy act of the state of Kansas requiring certain actions to be accomplished or certain actions not to occur before a regular license, registration or permit is issued.

(jjj) "Product" means the same as defined by part H of the federal drug supply chain security act, 21 U.S.C. § 351 et seq. and 21 U.S.C. § 360eee.

(lll) "Professional incompetency" means:

(1) One or more instances involving failure to adhere to the applicable standard of pharmaceutical care to a degree that constitutes gross negligence, as determined by the board;

(2) repeated instances involving failure to adhere to the applicable standard of pharmaceutical care to a degree that constitutes ordinary negligence, as determined by the board; or

(3) a pattern of pharmacy practice or other behavior that demonstrates a manifest incapacity or incompetence to practice pharmacy.

(mmm) "Readily retrievable" or "readily available" means that records kept in hard copy or by automatic data processing applications or other electronic or mechanized record-keeping systems can be separated out from all other records quickly and easily during an inspection or investigation, or within a reasonable time not to exceed 48 hours of a written request from the board or other authorized agent.

(nnn) "Repackage" means changing the container, wrapper, quantity or label of a drug to further the distribution of the drug.

(ooo) "Repackager" means a person who owns or operates a facility that repackages.

(ppp) "Retail dealer" means a person selling at retail nonprescription drugs that are prepackaged, fully prepared by the manufacturer or distributor for use by the consumer and labeled in accordance with the requirements of the state and federal food, drug and cosmetic acts. Such nonprescription drugs shall not include: (1) A controlled substance; (2) a prescription-only drug; or (3) a drug intended for human use by hypodermic injection.

(qqq) "Reverse distributor" means a person who owns or operates an establishment that disposes of or otherwise processes saleable or nonsaleable products received from an authorized trading partner such that the product may be processed for credit to the purchaser, manufacturer or seller or disposed of for no further distribution.

(rrr) "Secretary" means the executive secretary of the board.

(sss) "Third-party logistics provider" means an entity that provides or coordinates warehousing or other logistic services of a product in interstate commerce on behalf of a manufacturer, wholesale distributor or dispenser, but does not take ownership of the product or have responsibility to direct the sale or disposition of the product.

(ttt) "Trading partner" means:

(1) A manufacturer, repackager, wholesale distributor or dispenser from whom a manufacturer, repackager, wholesale distributor or dispenser accepts direct ownership of a product or to whom a manufacturer, repackager, wholesale distributor or dispenser transfers direct ownership of a product; or

(2) a third-party logistics provider from whom a manufacturer, repackager, wholesale distributor or dispenser accepts direct possession of a product or to whom a manufacturer, repackager, wholesale distributor or dispenser transfers direct possession of a product.

(uuu) "Transaction" means the transfer of product between persons in which a change of ownership occurs.

(vvv) "Unprofessional conduct" means:

(1) Fraud in securing a registration or permit;

(2) intentional adulteration or mislabeling of any drug, medicine, chemical or poison;

(3) causing any drug, medicine, chemical or poison to be adulterated or mislabeled, knowing the same to be adulterated or mislabeled;

(4) intentionally falsifying or altering records or prescriptions;

(5) unlawful possession of drugs and unlawful diversion of drugs to others;

(6) willful betrayal of confidential information under K.S.A. 65-1654, and amendments thereto;

(7) conduct likely to deceive, defraud or harm the public;

(8) making a false or misleading statement regarding the licensee's

professional practice or the efficacy or value of a drug;

(9) commission of any act of sexual abuse, misconduct or exploitation related to the licensee's professional practice; or

(10) performing unnecessary tests, examinations or services that have no legitimate pharmaceutical purpose.

(www) "Vaccination protocol" means a written protocol, agreed to and signed by a pharmacist and a person licensed to practice medicine and surgery by the state board of healing arts, that establishes procedures and recordkeeping and reporting requirements for administering a vaccine by the pharmacist for a period of time specified therein, not to exceed two years.

(xxx) "Valid prescription order" means a prescription that is issued for a legitimate medical purpose by an individual prescriber licensed by law to administer and prescribe drugs and acting in the usual course of such prescriber's professional practice. A prescription issued solely on the basis of an internet-based questionnaire or consultation without an appropriate prescriber-patient relationship is not a valid prescription order.

(yyy) "Veterinary medical teaching hospital pharmacy" means any location where prescription-only drugs are stored as part of an accredited college of veterinary medicine and from which prescription-only drugs are distributed for use in treatment of or administration to a nonhuman.

(zzz) "Virtual manufacturer" means an entity that engages in the manufacture of a drug or device for which it:

(1) Owns the new drug application or abbreviated new drug application number, if a prescription drug;

(2) owns the unique device identification number, as available, for a prescription device;

(3) contracts with a contract manufacturing organization for the physical manufacture of the drug or device;

(4) is not involved in the physical manufacture of the drug or device; and

(5) does not store or take physical possession of the drug or device.

(aaaa) "Virtual wholesale distributor" means a wholesale distributor that sells, brokers or transfers a drug or device but never physically possesses the product.

(bbbb) "Wholesale distributor" means any person engaged in wholesale distribution or reverse distribution of drugs or devices, other than a manufacturer, co-licensed partner or third-party logistics provider.

(cccc) "Wholesale distribution" means the distribution or receipt of drugs or devices to or by persons other than consumers or patients, in which a change of ownership occurs. "Wholesale distribution" does not include:

(1) The dispensing of a drug or device pursuant to a prescription;

(2) the distribution of a drug or device or an offer to distribute a drug or device for emergency medical reasons, including a public health emergency declaration pursuant to section 319 of the public health service act, except that, for purposes of this paragraph, a drug or device shortage not caused by a public health emergency shall not constitute an emergency medical reason;

(3) intracompany distribution;

(4) the distribution of a drug or device, or an offer to distribute a drug or device, among hospitals or other ~~health care~~ *healthcare* entities under common control;

(5) the distribution of a drug or device, or the offer to distribute a drug or device, by a charitable organization described in section 501(c)(3) of the internal revenue code of 1986 to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

(6) the distribution of an intravenous drug used to maintain the equilibrium of water and minerals in the body, such as dialysis solutions; or

(7) the sale or transfer from a retail pharmacy of expired, damaged, returned or recalled prescription drugs to the original manufacturer, originating wholesale distributor or to a reverse distributor registered in accordance with the board's rules and regulations.

Sec. 3. K.S.A. 2021 Supp. 65-4101 is hereby amended to read as follows: 65-4101. As used in this act:

(a) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by:

(1) A practitioner or pursuant to the lawful direction of a practitioner; or

(2) the patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser. ~~It~~ *"Agent"* does not include a common carrier, public warehouseman or employee of the carrier or warehouseman.

(c) "Application service provider" means an entity that sells electronic prescription or pharmacy prescription applications as a hosted service where the entity controls access to the application and maintains the software and records on its server.

(d) "Board" means the state board of pharmacy.

(e) "Bureau" means the bureau of narcotics and dangerous drugs, United States department of justice, or its successor agency.

(f) "Controlled substance" means any drug, substance or immediate precursor included in any of the schedules designated in K.S.A. 65-4105, 65-4107, 65-4109, 65-4111 and 65-4113, and amendments thereto.

(g) (1) "Controlled substance analog" means a substance that is intended for human consumption, and at least one of the following:

(A) The chemical structure of the substance is substantially similar to the chemical structure of a controlled substance listed in or added to the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto;

(B) the substance has a stimulant, depressant or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance included in the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto; or

(C) with respect to a particular individual, such individual represents or intends the substance to have a stimulant, depressant or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance included in the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto.

(2) "Controlled substance analog" does not include:

(A) A controlled substance;

(B) a substance for which there is an approved new drug application; or

(C) a substance with respect to which an exemption is in effect for investigational use by a particular person under section 505 of the federal food, drug and cosmetic act, 21 U.S.C. § 355, to the extent conduct with respect to the substance is permitted by the exemption.

(h) "Counterfeit substance" means a controlled substance that, or the container or labeling of which, without authorization bears the trademark, trade name or other identifying mark, imprint, number or device or any likeness thereof of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the substance.

(i) "Cultivate" means the planting or promotion of growth of five or more plants that contain or can produce controlled substances.

(j) "DEA" means the U.S. department of justice, drug enforcement

administration.

(k) "Deliver" or "delivery" means the actual, constructive or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

(l) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the packaging, labeling or compounding necessary to prepare the substance for that delivery, or pursuant to the prescription of a mid-level practitioner.

(m) "Dispenser" means a practitioner or pharmacist who dispenses, or a physician assistant who has authority to dispense prescription-only drugs in accordance with K.S.A. 65-28a08(b), and amendments thereto.

(n) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(o) "Distributor" means a person who distributes.

(p) "Drug" means *substances*:

(1) ~~Substances~~ Recognized as drugs in the official United States pharmacopeia, official homeopathic pharmacopoeia of the United States or official national formulary or any supplement to any of them;

(2) ~~substances~~ intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in human or animals;

(3) ~~substances (~~other than food~~)~~*,* intended to affect the structure or any function of the body of human or animals; and

(4) ~~substances~~ intended for use as a component of any article specified in paragraph (1), (2) or (3). ~~It~~ *"Drug"* does not include devices or their components, parts or accessories.

(q) "Immediate precursor" means a substance that the board has found to be and by rule and regulation designates as being the principal compound commonly used or produced primarily for use and that is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

(r) "Electronic prescription" means an electronically prepared prescription that is authorized and transmitted from the prescriber to the pharmacy by means of electronic transmission.

(s) "Electronic prescription application" means software that is used to create electronic prescriptions and that is intended to be installed on the prescriber's computers and servers where access and records are controlled by the prescriber.

(t) "Electronic signature" means a confidential personalized digital key, code, number or other method for secure electronic data transmissions that identifies a particular person as the source of the message, authenticates the signatory of the message and indicates the person's approval of the information contained in the transmission.

(u) "Electronic transmission" means the transmission of an electronic prescription, formatted as an electronic data file, from a prescriber's electronic prescription application to a pharmacy's computer, where the data file is imported into the pharmacy prescription application.

(v) "Electronically prepared prescription" means a prescription that is generated using an electronic prescription application.

(w) "Facsimile transmission" or "fax transmission" means the transmission of a digital image of a prescription from the prescriber or the prescriber's agent to the pharmacy. "Facsimile transmission" includes, but is not limited to, transmission of a written prescription between the prescriber's fax machine and the pharmacy's fax machine; transmission of an electronically prepared prescription from the prescriber's electronic prescription application to the pharmacy's fax machine, computer or printer; or transmission of an electronically prepared prescription from the prescriber's fax machine to the pharmacy's fax machine, computer or printer.

(x) "Intermediary" means any technology system that receives and transmits an electronic prescription between the prescriber and the

pharmacy.

(y) "Isomer" means all enantiomers and diastereomers.

(z) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance either directly or indirectly or by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance by an individual for the individual's own lawful use or the preparation, compounding, packaging or labeling of a controlled substance:

(1) By a practitioner or the practitioner's agent pursuant to a lawful order of a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

(2) by a practitioner or by the practitioner's authorized agent under such practitioner's supervision for the purpose of or as an incident to research, teaching or chemical analysis or by a pharmacist or medical care facility as an incident to dispensing of a controlled substance.

(aa) "Marijuana" means all parts of all varieties of the plant Cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. It does not include:

(1) The mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil or cake or the sterilized seed of the plant that is incapable of germination;

(2) any substance listed in schedules II through V of the uniform controlled substances act;

(3) cannabidiol (other trade name: 2-[(3-methyl-6-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol); or

(4) industrial hemp as defined in K.S.A. 2021 Supp. 2-3901, and amendments thereto, when cultivated, produced, possessed or used for activities authorized by the commercial industrial hemp act.

(bb) "Medical care facility" shall have the meaning ascribed to that term in K.S.A. 65-425, and amendments thereto.

(cc) "Mid-level practitioner" means a certified nurse-midwife engaging in the independent practice of midwifery under the independent practice of midwifery act, an advanced practice registered nurse issued a license pursuant to K.S.A. 65-1131, and amendments thereto, who has authority to prescribe drugs ~~pursuant to a written protocol with a responsible physician~~ under K.S.A. 65-1130, and amendments thereto, or a physician assistant licensed under the physician assistant licensure act who has authority to prescribe drugs pursuant to a written agreement with a supervising physician under K.S.A. 65-28a08, and amendments thereto.

(dd) "Narcotic drug" means any of the following whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis:

(1) Opium and opiate and any salt, compound, derivative or preparation of opium or opiate;

(2) any salt, compound, isomer, derivative or preparation thereof that is chemically equivalent or identical with any of the substances referred to in paragraph (1) but not including the isoquinoline alkaloids of opium;

(3) opium poppy and poppy straw;

(4) coca leaves and any salt, compound, derivative or preparation of coca leaves, and any salt, compound, isomer, derivative or preparation thereof that is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or

extractions of coca leaves that do not contain cocaine or ecgonine.

(ee) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under K.S.A. 65-4102, and amendments thereto, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

(ff) "Opium poppy" means the plant of the species Papaver somniferum l. except its seeds.

(gg) "Person" means an individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership or association or any other legal entity.

(hh) "Pharmacist" means any natural person licensed under K.S.A. 65-1625 et seq., and amendments thereto, to practice pharmacy.

(ii) "Pharmacist intern" means:

(1) A student currently enrolled in an accredited pharmacy program;

(2) a graduate of an accredited pharmacy program serving such person's internship; or

(3) a graduate of a pharmacy program located outside of the United States that is not accredited and who had successfully passed equivalency examinations approved by the board.

(jj) "Pharmacy prescription application" means software that is used to process prescription information, is installed on a pharmacy's computers and servers, and is controlled by the pharmacy.

(kk) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(ll) "Practitioner" means a person licensed to practice medicine and surgery, dentist, podiatrist, veterinarian, optometrist, or scientific investigator or other person authorized by law to use a controlled substance in teaching or chemical analysis or to conduct research with respect to a controlled substance.

(mm) "Prescriber" means a practitioner or a mid-level practitioner.

(nn) "Production" includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.

(oo) "Readily retrievable" means that records kept by automatic data processing applications or other electronic or mechanized recordkeeping systems can be separated out from all other records within a reasonable time not to exceed 48 hours of a request from the board or other authorized agent or that hard-copy records are kept on which certain items are asterisked, redlined or in some other manner visually identifiable apart from other items appearing on the records.

(pp) "Ultimate user" means a person who lawfully possesses a controlled substance for such person's own use or for the use of a member of such person's household or for administering to an animal owned by such person or by a member of such person's household.

Sec. 4. K.S.A. 65-1130 and K.S.A. 2021 Supp. 65-1626 and 65-4101 are hereby repealed.

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

I hereby certify that the above BILL originated in the House, and passed that body

_____

HOUSE concurred in
SENATE amendments _____

_____
Speaker of the House.

_____
Chief Clerk of the House.

Passed the SENATE
as amended _____

_____
President of the Senate.

_____
Secretary of the Senate.

APPROVED _____

_____
Governor.