

HOUSE BILL No. 2241

By Committee on Health and Human Services

2-9

1 AN ACT concerning the Kansas dental practices act; relating to proprietor
2 arrangements with licensees of dentistry; amending K.S.A. 65-1424
3 *and 65-1425* and K.S.A. 2010 Supp. 65-1435 and 65-1436 and
4 repealing the existing sections.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 65-1424 is hereby amended to read as follows: 65-
8 1424. (a) ~~The term "proprietor" as used in this act includes~~ **As used in**
9 **this act: (1) "Proprietor" means** any person who:

10 (a) employs dentists or dental hygienists in the operation of a dental
11 office.;

12 (2) **"Dental franchisor" means any person or entity, pursuant to a**
13 **written agreement, who provides a licensed dentist any dental practice**
14 **management consulting services, which may include marketing or**
15 **advertising services, signage or branding consulting, or places in**
16 **possession of a licensed dentist such dental material or equipment as**
17 **may be necessary for the management of a dental office on the basis of**
18 **a lease or any other agreement for compensation. A person or entity is**
19 **not a dental franchisor if the agreement with the dentist:**

20 (A) *Permits the person or entity to interfere with the independent*
21 *judgment of the dentist in the performance of such dentist's professional*
22 *duties; or*

23 (B) *contains terms that would constitute a violation of the dental*
24 *practices act, rules and regulations adopted by the board, any orders and*
25 *directives issued by the board or any other applicable law.*

26 (b) ~~places in possession of a dentist or dental hygienists or other~~
27 ~~agent such dental material or equipment as may be necessary for the~~
28 ~~management of a dental office on the basis of a lease or any other~~
29 ~~agreement for compensation for the use of such material, equipment or~~
30 ~~offices; or~~

31 (c) ~~retains the ownership or control of dental equipment or material or~~
32 ~~office and makes the same available in any manner for the use by dentists~~
33 ~~or dental hygienists or other agents except that nothing in this subsection~~
34 (c) shall apply to bona fide sales of dental equipment or material secured

1 by a chattel mortgage or retain title agreement.

2 (3) *"Unlicensed proprietor" means any person or entity not*
3 *authorized to own or operate a dental practice that enters into an*
4 *agreement with a dentist or dental hygienist related to the practice of*
5 *dentistry or dental hygiene which:*

6 (A) *Permits the person or entity to interfere with the independent*
7 *judgment of the dentist in the performance of such dentist's professional*
8 *duties; or*

9 (B) *contains terms that would constitute a violation of the dental*
10 *practices act, rules and regulations adopted by the board, any orders and*
11 *directives issued by the board or any other applicable law.*

12 A licensee of dentistry who enters into any of the above described
13 arrangements any arrangement with an unlicensed proprietor may have
14 such license **limited**, suspended or revoked by the board.

15 (b) The estate or agent for a deceased or substantially disabled dentist
16 may employ dentists, for a period of not more than one year, to provide
17 service to patients until the practice can be sold.

18 *Sec. 2. K.S.A. 65-1425 is hereby amended to read as follows: 65-*
19 *1425. Except as provided in K.S.A. 17-2706 et seq., and amendments*
20 *thereto, no corporation shall practice, offer, or undertake to practice or*
21 *hold itself out as practicing dentistry. Every person practicing dentistry*
22 *as an employee of another shall cause his name to be conspicuously*
23 *displayed and kept in a conspicuous place at the entrance of the place*
24 *where such practice is conducted: Provided, however, That nothing herein*
25 *contained, Nothing in this section shall prohibit a licensed dentist from*
26 *practicing dentistry as the agent or employee of another licensed dentist*
27 *in this state, or from practicing dentistry as the agent or employee of any*
28 *state hospital or state institution where his such dentist's only*
29 *remuneration is from the state, or from any corporation which provides*
30 *dental service for its employees at no profit to the corporation. Nothing*
31 *in this section shall prohibit a licensed dentist from practicing dentistry as*
32 *an employee of a general hospital defined in K.S.A. 65-425, and*
33 *amendments thereto, in a county with population of less than 50,000.*

34 Sec. 3. K.S.A. 2010 Supp. 65-1435 is hereby amended to read as
35 follows: 65-1435. (a) Except as otherwise provided in this section, it shall
36 be unlawful for any person or persons to practice or offer to practice
37 dentistry under any name except such person's own name, which shall be
38 the name used on the license granted to such person as a dentist as
39 provided in *the Kansas dental practices* ~~this~~ act.

40 (b) A licensed dentist may use the name of any association,
41 corporation, clinic, trade name or business name in connection with the
42 practice of dentistry, as defined in *the Kansas dental practices* ~~this~~ act,
43 except that such name may not misrepresent the dentist to the public *as*

1 ~~determined by the Kansas dental board. as determined by the Kansas~~
2 ~~dental board.~~

3 (c) Nothing herein contained shall be construed to prevent two or
4 more licensed dentists:

5 (1) From associating together for the practice of dentistry, each in
6 such person's own proper name; or

7 (2) from associating together for the practice of dentistry, each as
8 owners, in a professional corporation, organized pursuant to the
9 professional corporation law of Kansas, or, each as owners, in a limited
10 liability company organized pursuant to the Kansas revised limited
11 liability company act, and using a name that may or may not contain the
12 proper name of any such person or persons *except that such name may not*
13 *misrepresent the dentist to the public* ~~if such name has been approved by~~
14 ~~the board~~ and from employing nonowning licensees; or

15 (3) from associating together with persons licensed to practice
16 medicine and surgery in a clinic or professional association under a name
17 that may or may not contain the proper name of any such person or
18 persons and may contain the word "clinic."

19 (d) It shall be unlawful, and a licensee may have a license suspended
20 or revoked, for any licensee to conduct a dental office in the name of the
21 licensee, or to advertise the licensee's name in connection with any dental
22 office or offices, or to associate together for the practice of dentistry with
23 other licensed dentists in a professional corporation or limited liability
24 company, under a name that may or may not contain the proper name of
25 any such person or persons or to associate together with persons licensed
26 to practice medicine and surgery in a clinic or professional association
27 under a name that may or may not contain the proper name of any such
28 person or persons and may contain the word "clinic," unless such licensee
29 is personally present in the office operating as a dentist or personally
30 overseeing such operations as are performed in the office or each of the
31 offices during a majority of the time the office or each of the offices is
32 being operated.

33 ~~(e) Nothing in this section shall be construed to permit the franchise~~
34 ~~practice of dentistry.~~

35 ~~(f)~~(e) The violation of any of the provisions of this section by any
36 dentist shall subject such dentist to suspension or revocation of a license.

37 ~~(g)~~(f) Notwithstanding the provisions of *subsection subsections* (d)
38 ~~and (e)~~, a licensee shall be permitted to own two dental offices in addition
39 to the licensee's primary office location under the following conditions:

40 (1) The licensee's secondary dental office is located within a 125 mile
41 radius of the licensee's primary office; and

42 (2) the licensee's secondary dental office is located in a county with a
43 population of less than 10,000 according to the 2000 United States census.

1 Sec. ~~3~~ 4. K.S.A. 2010 Supp. 65-1436 is hereby amended to read as
2 follows: 65-1436. (a) The Kansas dental board may refuse to issue the
3 license *under the Kansas dental practices* ~~provided for in this act~~, or may
4 take any of the actions with respect to any dental or dental hygiene license
5 as set forth in subsection (b), whenever it is established, after notice and
6 opportunity for hearing in accordance with the provisions of the Kansas
7 administrative procedure act, that any applicant for a dental or dental
8 hygiene license or any licensed dentist or dental hygienist practicing in the
9 state of Kansas has:

10 (1) Committed fraud, deceit or misrepresentation in obtaining any
11 license, money or other thing of value;

12 (2) habitually used intoxicants or drugs which have rendered such
13 person unfit for the practice of dentistry or dental hygiene;

14 (3) been determined by the board to be professionally incompetent;

15 (4) committed gross, wanton or willful negligence in the practice of
16 dentistry or dental hygiene;

17 (5) employed, allowed or permitted any unlicensed person or persons
18 to perform any work in the licensee's office which constitutes the practice
19 of dentistry or dental hygiene under the provisions of *the Kansas dental*
20 *practices* ~~this act~~;

21 (6) willfully violated the laws of this state relating to the practice of
22 dentistry or dental hygiene or the rules and regulations of the secretary of
23 health and environment or of the board regarding sanitation;

24 (7) engaged in the division of fees, or agreed to split or divide the fee
25 received for dental service with any person for bringing or referring a
26 patient without the knowledge of the patient or the patient's legal
27 representative, except:

28 (A) The division of fees between dentists practicing in a partnership
29 and sharing professional fees;

30 (B) ~~the division of fees between, or in case of~~ one licensed dentist
31 employing another; *or*

32 (C) ~~the division of fees between a licensed dentist and a proprietor as~~
33 ~~defined in K.S.A. 65-1424, and amendments thereto~~ **dental franchisor**;

34 (8) committed complicity in association with or allowed the use of
35 the licensed dentist's name in conjunction with any person who is engaged
36 in the illegal practice of dentistry;

37 (9) been convicted of a felony or a misdemeanor involving moral
38 turpitude in any jurisdiction and the licensee fails to show that the licensee
39 has been sufficiently rehabilitated to warrant the public trust;

40 (10) prescribed, dispensed, administered or distributed a prescription
41 drug or substance, including a controlled substance, in an excessive,
42 improper or inappropriate manner or quantity outside the scope of practice
43 of dentistry or in a manner that impairs the health and safety of an

1 individual;

2 (11) prescribed, purchased, administered, sold or given away
3 prescription drugs, including a controlled substance, for other than legal
4 and legitimate purposes;

5 (12) violated or been convicted of any federal or state law regulating
6 possession, distribution or use of any controlled substance;

7 (13) failed to pay license fees;

8 (14) used the name "clinic," "institute" or other title that may suggest
9 a public or semipublic activity except that the name "clinic" may be used
10 as authorized in K.S.A. 65-1435, and amendments thereto;

11 (15) committed, after becoming a licensee, any conduct which is
12 detrimental to the public health, safety or welfare as defined by rules and
13 regulations of the board;

14 (16) engaged in a misleading, deceptive, untrue or fraudulent
15 misrepresentation in the practice of dentistry or on any document
16 connected with the practice of dentistry by knowingly submitting any
17 misleading, deceptive, untrue or fraudulent misrepresentation on a claim
18 form, bill or statement, including the systematic waiver of patient co-
19 payment or co-insurance;

20 (17) failed to keep adequate records;

21 (18) the licensee has had a license to practice dentistry revoked,
22 suspended or limited, has been censured or has had other disciplinary
23 action taken, *has had* an application for license denied, or voluntarily
24 surrendered the license after formal proceedings have been commenced by
25 the proper licensing authority or another state, territory or the District of
26 Columbia or other country, a certified copy of the record of the action of
27 the other jurisdiction being conclusive evidence thereof;

28 (19) failed to furnish the board, or its investigators or representatives
29 any information legally requested by the board; or

30 (20) assisted suicide in violation of **K.S.A. 21-3406, prior to its**
31 **repeal, or section 42 of chapter 136 of the 2010 Session Laws of**
32 **Kansas**~~K.S.A. 21-3406~~, and amendments thereto, as established by any of
33 the following:

34 (A) A copy of the record of criminal conviction or plea of guilty for a
35 felony in violation of **K.S.A. 21-3406, prior to its repeal, or section 42**
36 **of chapter 136 of the 2010 Session Laws of Kansas** ~~K.S.A. 21-3406~~, and
37 amendments thereto;:

38 (B) a copy of the record of a judgment of contempt of court for
39 violating an injunction issued under K.S.A. 60-4404, and amendments
40 thereto; *or*:

41 (C) a copy of the record of a judgment assessing damages under
42 K.S.A. 60-4405, and amendments thereto.

43 (b) Whenever it is established, after notice and opportunity for

1 hearing in accordance with the provisions of the Kansas administrative
2 procedure act, that a licensee is in any of the circumstances or has
3 committed any of the acts described in subsection (a), the Kansas dental
4 board may take one or any combination of the following actions with
5 respect to the license of the licensee:

6 (1) Revoke the license;-

7 (2) suspend the license for such period of time as may be determined
8 by the board;-

9 (3) restrict the right of the licensee to practice by imposing limitations
10 upon dental or dental hygiene procedures which may be performed,
11 categories of dental disease which may be treated or types of patients
12 which may be treated by the dentist or dental hygienist. Such restrictions
13 shall continue for such period of time as may be determined by the board,
14 and the board may require the licensee to provide additional evidence at
15 hearing before lifting such restrictions; *or*-

16 (4) grant a period of probation during which the imposition of one or
17 more of the actions described in subsections (b)(1) through (b)(3) will be
18 stayed subject to such conditions as may be imposed by the board
19 including a requirement that the dentist or dental hygienist refrain from
20 any course of conduct which may result in further violation of the dental
21 practice act or the dentist or dental hygienist complete additional or
22 remedial instruction. The violation of any provision of the dental practice
23 act or failure to meet any condition imposed by the board as set forth in the
24 order of the board will result in immediate termination of the period of
25 probation and imposition of such other action as has been taken by the
26 board.

27 (c) As used in this section, "professionally incompetent" means:

28 (1) One or more instances involving failure to adhere to the
29 applicable standard of dental or dental hygienist care to a degree which
30 constitutes gross negligence, as determined by the board;

31 (2) repeated instances involving failure to adhere to the applicable
32 standard of dental or dental hygienist care to a degree which constitutes
33 ordinary negligence, as determined by the board; or

34 (3) a pattern of dental or dental hygienist practice or other behavior
35 which demonstrates a manifest incapacity or incompetence to practice
36 dentistry.

37 (d) In addition to or in lieu of one or more of the actions described in
38 subsections (b)(1) through (b)(4) or in subsection (c) of K.S.A. 65-1444,
39 and amendments thereto, the board may assess a fine not in excess of
40 \$10,000 against a licensee. All fines collected pursuant to this subsection
41 shall be remitted to the state treasurer in accordance with the provisions of
42 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
43 remittance, the state treasurer shall deposit the entire amount in the state

1 treasury and of the amount so remitted, an amount equal to the board's
2 actual costs related to fine assessment and enforcement under this
3 subsection, as certified by the president of the board to the state treasurer,
4 shall be credited to the dental board fee fund and the balance shall be
5 credited to the state general fund.

6 (e) The board, upon its own motion or upon the request of any
7 licensee who is a party to a licensure action, may require a physical or
8 mental examination, or both, of such licensee either prior to a hearing to be
9 held as a part of a licensure action or prior to the termination of any period
10 of suspension or the termination of any restrictions imposed upon the
11 licensee as provided in subsection (b).

12 New Sec. ~~4~~ 5. (a) Any person who is not licensed as a dentist under
13 the Kansas dental practices act, ~~nor~~ **or** any entity that is not a professional
14 corporation or limited liability company composed of dentists which enter
15 into an agreement with a dentist to provide dental office administrative
16 services shall register with the Kansas dental board.

17 (b) (1) The registration shall include the company name, contact
18 information and responsible person of such person or entity along with the
19 address and licensed dentist practice owner names for which
20 administrative services are being provided.

21 (2) ~~Such registered person or entity shall provide~~ **Any person or**
22 **entity registered under this section shall provide** updated information to
23 the Kansas dental board within 30 days **of any changes to the information**
24 **provided in paragraph (1)**. Any person or entity required to register
25 pursuant to this section shall have 30 days from the execution of any
26 contract or agreement with a dentist or professional corporation or limited
27 liability company to complete the registration.

28 (c) Any such person or entity required to register pursuant to this
29 section operating under a contract or agreement executed prior to the
30 effective date of this section shall be subject to the provisions of this
31 section and shall have 30 days from the effective date of this section to
32 complete the registration. A copy of all contracts or agreements providing
33 for dental office administrative services shall be maintained by the
34 registered dental office administrative services company and shall be
35 subject to inspection during regular business hours at any time by the
36 Kansas dental board.

37 New Sec. ~~5~~ 6. (a) As used in this section, "licensed dentist" means
38 a dentist licensed under the Kansas dental practices act.

39 (b) No person who is a licensed dentist or any entity that is not a
40 professional corporation or limited liability company owned by a licensed
41 dentist shall enter into or continue to maintain a contract or agreement
42 with a licensed dentist in which such contract or agreement allows or
43 provides for the following functions to be controlled by any person or

1 entity other than a licensed dentist pursuant to this section:

2 (1) Providing dental treatment to patients;

3 (2) the decision to accept individual patients for treatment;

4 (3) the direction or delegation of all professional dental services;

5 (4) the ownership of dental charts or patient records;

6 (5) except as provided in subsection (d), the ownership of dental

7 equipment or dental materials; and

8 (6) the supervision of clinical dental staff.

9 (c) It shall not be a violation of this section for a person or entity to

10 act on behalf of a licensed dentist to perform or arrange for others to

11 perform office administrative services including, but not limited to:

12 (1) Purchasing, billing or tax preparation;

13 (2) compliance or quality assurance programs;

14 (3) legal advice or representation;

15 (4) payroll, advertising, training, recruiting, recordkeeping,

16 programming or other similar functions under the direction or with the

17 consent or approval of a licensed dentist or professional corporation or

18 limited liability company owned by a licensed dentist.

19 (d) Nothing in this section shall prohibit a licensed dentist,

20 professional corporation or limited liability company owned by a licensed

21 dentist from entering into real estate lease, equipment lease or lease

22 purchase agreement or bona fide sale of dental equipment or material

23 secured by a chattel mortgage or retain title agreements with equipment

24 manufacturers, landlords, lending institutions, leasing companies, dental

25 franchisors or persons or entities providing dental office administrative

26 services or similar commercial financing transactions.

27 **(e) No contract or provision in any such agreement shall require**

28 **either party to indemnify the other party for negligence, intentional**

29 **acts or omissions that constitute a violation of K.S.A. 65-1422 et seq.,**

30 **and amendments thereto.**

31 ~~Sec. 6.~~ 7. K.S.A. 65-1424 *and 65-1425* and K.S.A. 2010 Supp. 65-

32 1435 and 65-1436 are hereby repealed.

33 ~~Sec. 7.~~ 8. This act shall take effect and be in force from and after its

34 publication in the statute book.

35