

As Further Amended by Senate Committee

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As Amended by House Committee

Session of 2011

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; ~~or~~

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 ~~professional judgment of the dentist in the performance of such dentist's~~
22 ~~professional 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~~

1 or dental hygienists or other agents except that nothing in this subsection
2 (c) shall apply to bona fide sales of dental equipment or material secured
3 by a chattel mortgage or retain title agreement.

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

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

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

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

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

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

36 *Sec. ~~2~~ 3. K.S.A. 2010 Supp. 65-1435 is hereby amended to read as*
37 *follows: 65-1435. (a) Except as otherwise provided in this section, it shall*
38 *be unlawful for any person or persons to practice or offer to practice*
39 *dentistry under any name except such person's own name, which shall be*
40 *the name used on the license granted to such person as a dentist as*
41 *provided in the ~~Kansas~~ dental practices ~~this~~ act.*

42 (b) A licensed dentist may use the name of any association,
43 corporation, clinic, trade name or business name in connection with the

1 practice of dentistry, as defined in *the Kansas dental practices* this act,
2 except that such name may not misrepresent the dentist to the public *as*
3 *determined by the Kansas dental board.* ~~as determined by the Kansas~~
4 ~~dental board.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 (10) prescribed, dispensed, administered or distributed a prescription
43 drug or substance, including a controlled substance, in an excessive,

1 improper or inappropriate manner or quantity outside the scope of practice
2 of dentistry or in a manner that impairs the health and safety of an
3 individual;

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

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

9 (13) failed to pay license fees;

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

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

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

22 (17) failed to keep adequate records;

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

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

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

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

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

43 (C) a copy of the record of a judgment assessing damages under

1 K.S.A. 60-4405, and amendments thereto.

2 (b) Whenever it is established, after notice and opportunity for
3 hearing in accordance with the provisions of the Kansas administrative
4 procedure act, that a licensee is in any of the circumstances or has
5 committed any of the acts described in subsection (a), the Kansas dental
6 board may take one or any combination of the following actions with
7 respect to the license of the licensee:

8 (1) Revoke the license;-

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

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

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

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

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

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

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

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

1 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
2 remittance, the state treasurer shall deposit the entire amount in the state
3 treasury and of the amount so remitted, an amount equal to the board's
4 actual costs related to fine assessment and enforcement under this
5 subsection, as certified by the president of the board to the state treasurer,
6 shall be credited to the dental board fee fund and the balance shall be
7 credited to the state general fund.

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

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

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

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

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

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

41 (b) No person who is a licensed dentist or any entity that is not a
42 professional corporation or limited liability company owned by a licensed
43 dentist shall enter into or continue to maintain a contract or agreement

1 with a licensed dentist in which such contract or agreement allows or
2 provides for the following functions to be controlled by any person or
3 entity other than a licensed dentist pursuant to this section:

- 4 (1) Providing dental treatment to patients;
- 5 (2) the decision to accept individual patients for treatment;
- 6 (3) the direction or delegation of all professional dental services;
- 7 (4) the ownership of dental charts or patient records;
- 8 (5) except as provided in subsection (d), the ownership of dental
9 equipment or dental materials; and
- 10 (6) the supervision of clinical dental staff.

11 (c) It shall not be a violation of this section for a person or entity to
12 act on behalf of a licensed dentist to perform or arrange for others to
13 perform office administrative services including, but not limited to:

- 14 (1) Purchasing, billing or tax preparation;
- 15 (2) compliance or quality assurance programs;
- 16 (3) legal advice or representation; *and*
- 17 (4) payroll, advertising, training, recruiting, recordkeeping,
18 programming or other similar functions under the direction or with the
19 consent or approval of a licensed dentist or professional corporation or
20 limited liability company owned by a licensed dentist.

21 (d) Nothing in this section shall prohibit a licensed dentist,
22 professional corporation or limited liability company owned by a licensed
23 dentist from entering into real estate lease, equipment lease or lease
24 purchase agreement or bona fide sale of dental equipment or material
25 secured by a chattel mortgage or retain title agreements with equipment
26 manufacturers, landlords, lending institutions, leasing companies, dental
27 franchisors or persons or entities providing dental office administrative
28 services or similar commercial financing transactions.

29 **(e) No contract or provision in any such agreement shall require**
30 **either party to indemnify the other party for negligence, intentional**
31 **acts or omissions that constitute a violation of K.S.A. 65-1422 et seq.,**
32 **and amendments thereto.**

33 *New Sec. 7. (a) The Kansas dental board may seek declaratory*
34 *judgment pursuant to K.S.A. 60-1701 et seq., and amendments thereto,*
35 *against any dentist or franchisor or other entity that contracts with a*
36 *dentist, if any contract between the dentist and franchisor or any other*
37 *entity appears to the board to be in violation of the dental practices act.*
38 *Upon a finding that a dentist, franchisor or other entity is a party to an*
39 *agreement that is in violation of state law, or the dental practices act, or*
40 *both, the court may enjoin the enforcement of the contract provisions*
41 *determined to be in violation of state law, or the dental practices act, or*
42 *both. The court may award reasonable attorney fees to the prevailing*
43 *party in any action for declaratory judgment brought pursuant to this*

1 *section.*

2 *(b) This section shall be part of and supplemental to the dental*
3 *practices act.*

4 Sec. ~~6-7~~ 8. K.S.A. 65-1424 *and 65-1425* and K.S.A. 2010 Supp. 65-
5 1435 and 65-1436 are hereby repealed.

6 Sec. ~~7-8~~ 9. This act shall take effect and be in force from and after
7 its publication in the ~~statute book~~ *Kansas register*.

8