

STATE OF KANSAS

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B. LANE HEMSLEY, EXECUTIVE DIRECTOR

BEFORE THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE –
VERBAL TESTIMONY OF THE KANSAS DENTAL BOARD
IN OPPOSITION TO SENATE BILL 421

Date of Testimony: Wednesday, March 7, 2018

Bill Number: Senate Bill No. 421; An act concerning labor; relating to licensing of professional occupations; concerning applications of persons with certain criminal records; amending K.S.A. 74-120 and repealing the existing section.

Testimony: B. Lane Hemsley, J.D., Executive Director, Kansas Dental Board

Position: Verbal Testimony of the Kansas Dental Board in Opposition to Senate Bill 421

Thank you for the opportunity to provide verbal opposition testimony on behalf of the Kansas Dental Board (“Board”) to Senate Bill 421 (“SB 421”). I am Lane Hemsley, the Executive Director of the Board. The Board presently licenses and regulates dentists and dental hygienists. A license to practice these related professions is not construed as a property right, but a valuable right contingent upon the actions of each licensee in accordance with applicable provisions of law. *See* K.S.A. 65-1428(c).

SB 421 adversely impacts applicants and agencies alike in two separate, yet interconnected, ways. First, SB 421 would require the Board to unilaterally create a “disqualification list” of each civil record and criminal conviction that would preemptively and automatically bar applicants from qualifying for licensure as a dentist or dental hygienist. *See* Section (b). Short of a person felony or sexually violent crime, this “disqualification list” would have a shelf-life of up to five years for each civil record or criminal conviction. *See* Section (c). As a result, an applicant whose civil record or criminal conviction appeared on the Board’s “disqualification list” would be automatically barred from becoming a dentist or dental hygienist for up to five years. Second, SB 421 discounts, indeed removes, the statutory right to due process for all parties.

Currently, each applicant for initial licensure, renewal, or reinstatement who has a civil record or criminal conviction that might disqualify the applicant has the statutory right to seek an appearance before the Board. While the appearance necessarily triggers a legal hearing, each applicant statutorily retains the right to obtain skilled legal counsel and, concomitantly, an irreplaceable chance to tell their story. These stories are, quite often, about second chances in life, the trials and tribulations of rehabilitation, and the long and arduous road to redemption. Irrespective of the tone or tenor in the presentation, each story is unique and factually sensitive. Admittedly, the Board has granted and denied the call for second chances, sometimes in the face

of extreme public criticism. Be that as it may, the Board thoroughly reviews the facts and then-existing circumstances of each applicant's unique story. If the Board is required to create a preemptive "disqualification list," however, applicants will be automatically disqualified from telling their respective stories and asking the Board for a second chance in life. The Board does not support this proposition.

To that end, the dental practices act (and other substantially similar state licensing acts) already has robust and well-settled laws in relation to the grounds by which the Board is permitted to deny an initial application, deny a renewal application, or otherwise discipline a licensee. The linchpin of these laws is the time-honored rubric of due process, which is firmly supported through the Kansas Administrative Procedure Act, K.S.A. 77-501 *et seq.*, and the Kansas Judicial Review Act, K.S.A. 77-601 *et seq.* In other words, applicants already have ample access to their respective licensing agencies and, if unsatisfied with the outcome at the agency level, the district courts. Accordingly, the list of civil records and criminal convictions that SB 421 seeks to impose already exists in each state licensing act, including the list that currently applies to the Board.

If you have any questions, please do not hesitate to contact me. Your time and attention to this matter is greatly appreciated. Thank you.