

## 2018 Kansas Statutes

### **65-1436. Grounds for refusal to issue license or for action against license of dentist or dental hygienist; disciplinary action by board; notice and hearing; professionally incompetent defined; physical or mental examination.**

(a) The Kansas dental board may refuse to issue the license under the dental practices act, or may take any of the actions with respect to any dental or dental hygiene license as set forth in subsection (b), whenever it is established, after notice and opportunity for hearing in accordance with the provisions of the Kansas administrative procedure act, that any applicant for a dental or dental hygiene license or any licensed dentist or dental hygienist practicing in the state of Kansas has:

- (1) Committed fraud, deceit or misrepresentation in obtaining any license, money or other thing of value;
  - (2) habitually used intoxicants or drugs which have rendered such person unfit for the practice of dentistry or dental hygiene;
  - (3) been determined by the board to be professionally incompetent;
  - (4) committed gross, wanton or willful negligence in the practice of dentistry or dental hygiene;
  - (5) employed, allowed or permitted any unlicensed person or persons to perform any work in the licensee's office which constitutes the practice of dentistry or dental hygiene under the provisions of the dental practices act;
  - (6) willfully violated the laws of this state relating to the practice of dentistry or dental hygiene or the rules and regulations of the secretary of health and environment or of the board regarding sanitation;
  - (7) engaged in the division of fees, or agreed to split or divide the fee received for dental service with any person for bringing or referring a patient without the knowledge of the patient or the patient's legal representative, except:
    - (A) The division of fees between dentists practicing in a partnership and sharing professional fees;
    - (B) the division of fees between one licensed dentist employing another; or
    - (C) the division of fees between a licensed dentist and a dental franchisor;
  - (8) committed complicity in association with or allowed the use of the licensed dentist's name in conjunction with any person who is engaged in the illegal practice of dentistry;
  - (9) been convicted of a felony or a misdemeanor involving moral turpitude in any jurisdiction and the licensee fails to show that the licensee has been sufficiently rehabilitated to warrant the public trust;
  - (10) prescribed, dispensed, administered or distributed a prescription drug or substance, including a controlled substance, in an excessive, improper or inappropriate manner or quantity outside the scope of practice of dentistry or in a manner that impairs the health and safety of an individual;
  - (11) prescribed, purchased, administered, sold or given away prescription drugs, including a controlled substance, for other than legal and legitimate purposes;
  - (12) violated or been convicted of any federal or state law regulating possession, distribution or use of any controlled substance;
  - (13) failed to pay license fees;
  - (14) used the name "clinic," "institute" or other title that may suggest a public or semipublic activity except that the name "clinic" may be used as authorized in K.S.A. 65-1435, and amendments thereto;
  - (15) committed, after becoming a licensee, any conduct which is detrimental to the public health, safety or welfare as defined by rules and regulations of the board;
  - (16) engaged in a misleading, deceptive, untrue or fraudulent misrepresentation in the practice of dentistry or on any document connected with the practice of dentistry by knowingly submitting any misleading, deceptive, untrue or fraudulent misrepresentation on a claim form, bill or statement, including the systematic waiver of patient co-payment or co-insurance;
  - (17) failed to keep adequate records;
  - (18) the licensee has had a license to practice dentistry revoked, suspended or limited, has been censured or has had other disciplinary action taken, has had an application for license denied, or voluntarily surrendered the license after formal proceedings have been commenced by the proper licensing authority or another state, territory or the District of Columbia or other country, a certified copy of the record of the action of the other jurisdiction being conclusive evidence thereof;
  - (19) failed to furnish the board, or its investigators or representatives any information legally requested by the board; or
  - (20) assisted suicide in violation of K.S.A. 21-3406, prior to its repeal, or K.S.A. 2018 Supp. 21-5407, and amendments thereto, as established by any of the following:
    - (A) A copy of the record of criminal conviction or plea of guilty for a felony in violation of K.S.A. 21-3406, prior to its repeal, or K.S.A. 2018 Supp. 21-5407, and amendments thereto;
    - (B) a copy of the record of a judgment of contempt of court for violating an injunction issued under K.S.A. 60-4404, and amendments thereto; or
    - (C) a copy of the record of a judgment assessing damages under K.S.A. 60-4405, and amendments thereto.
- (b) Whenever it is established, after notice and opportunity for hearing in accordance with the provisions of the Kansas administrative procedure act, that a licensee is in any of the circumstances or has committed any of the acts described in subsection (a), the Kansas dental board may take one or any combination of the following actions with respect to the license of the licensee:
- (1) Revoke the license;
  - (2) suspend the license for such period of time as may be determined by the board;
  - (3) restrict the right of the licensee to practice by imposing limitations upon dental or dental hygiene procedures which may be performed, categories of dental disease which may be treated or types of patients which may be treated by the dentist or dental hygienist. Such restrictions shall continue for such period of time as may be determined by the board, and the board may require the licensee to provide additional evidence at hearing before lifting such restrictions; or
  - (4) grant a period of probation during which the imposition of one or more of the actions described in subsections (b)(1) through (b)(3) will be stayed subject to such conditions as may be imposed by the board including a requirement that the dentist or dental hygienist refrain from any course of conduct which may result in further violation of the dental practice act or the dentist or dental hygienist complete additional or remedial instruction. The violation of any provision of the dental practice act or failure to meet any condition imposed by the board as set forth in the order of the board will result in immediate termination of the period of probation and imposition of such other action as has been taken by the board.
- (c) As used in this section, "professionally incompetent" means:
- (1) One or more instances involving failure to adhere to the applicable standard of dental or dental hygienist care to a degree which constitutes gross negligence, as determined by the board;
  - (2) repeated instances involving failure to adhere to the applicable standard of dental or dental hygienist care to

a degree which constitutes ordinary negligence, as determined by the board; or

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

(d) In addition to or in lieu of one or more of the actions described in subsections (b)(1) through (b)(4) or in subsection (c) of K.S.A. 65-1444, and amendments thereto, the board may assess a fine not in excess of \$10,000 against a licensee. All fines collected pursuant to this subsection shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury and of the amount so remitted, an amount equal to the board's actual costs related to fine assessment and enforcement under this subsection, as certified by the president of the board to the state treasurer, shall be credited to the dental board fee fund and the balance shall be credited to the state general fund.

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

**History:** L. 1943, ch. 221, § 20; L. 1972, ch. 231, § 11; L. 1975, ch. 462, § 86; L. 1983, ch. 209, § 6; L. 1984, ch. 230, § 2; L. 1984, ch. 313, § 99; L. 1986, ch. 234, § 1; L. 1996, ch. 85, § 3; L. 1997, ch. 81, § 2; L. 1998, ch. 142, § 9; L. 2001, ch. 5, § 226; L. 2007, ch. 134, § 2; L. 2011, ch. 114, § 95; June 9.