

Approved 3-27-1984
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MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE

The meeting was called to order by Marvin L. Littlejohn at
Chairperson

1:30 a.m. on March 20, 1984 in room 423-S of the Capitol.

All members were present except:

Rep. Bill Reinhardt, excused

Committee staff present:

Emalene Correll, Research
Bill Wolff, Research
Norm Furse, Revisor
Sue Hill, Secy. to Committee

Conferees appearing before the committee:

Phil Elwood, Attorney for Dental Board of Kansas
Edward Siems, D.D.S., Wichita, Ks.
Ed. Hall, D.D.S., Wichita, Ks.
Del Rensner, D.D.S., Wichita, Ks.
Tony Martin, D.D.S., Garden City, Kansas
Jerry Nossaman, D.D.S., Lawrence, Kansas
Carl Schmitthenner, Executive Director of Ks. Dental Board

Visitor's register, (Attachment No. 1.)

Chairman called meeting to order notifying committee they would be in receipt of a Post Audit Report on Administrative costs from Trudy Racine. On Monday, March 26, 1984, Ms. Racine will attend committee meeting to explain this Post Audit Report, and bring members up to date on what is planned for the fourth phase of Audit in regard to Nursing Homes.

Hearings began on SUB. SB 660:--

Phil Elwood, Attorney for Kansas Dental Board distributed hand-out to committee, (see Attachment No. 2.), for details. He stated that in 1943 statutes were adopted that make it unlawful to practice under any name except the dentist's own name. Today, there are problems with this statute and they feel they are addressing the problems with SUB. SB 660. The proposed amendment to SUB. SB 660 will keep the present law in place, but carve out two large exceptions which are cited on page 3, item 3 of his printed text. (This is a very comprehensive report.) One real problem he said, is that the present law has been ignored for several years. The Kansas Dental Board has attempted to solve the problems, but felt to have an equitable and enforceable law they would come to the Legislature and ask for laws to be changed to address these problems. He then answered lengthy questions from committee and staff, i.e., yes, there are enforcement problems; a dentist working two separate clinics must be in one location a majority of the time; yes, there is a special provision for the Wichita Clinic; all names of the practicing professionals must be used at all times on stationary, billing and etc.; cost to the state would be very difficult to determine, etc.

Ed Siems, D.D.S. from Wichita gave hand-out to Committee, (see Attachment No. 3.), for details. He stated that without this proposed legislation, or some similar change in the law by the Dental Board to allow practice under an assumed name, he would not be allowed to continue practice in the group practice he is currently associated with as he has done for the last two years. Further, he spoke in support of allowing dental practices to exist under assumed names, stating there should be provisions to insure the dentist be required to prominently display his own name and license, thus assuring the patient knowledge of the individual or individuals in said practice.

Ed. Hall, D.D.S. spoke in support of SUB SB 660, saying they are in support of this needed housekeeping change in their current practice act which was introduced by the State Dental Board. He strongly urged committee to con-

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFAREroom 423-S Statehouse, at 1:30 a/m/p.m. on March 20, 1984

SUB SB 660 continues:

sider passage of SUB SB 660 in the best interests of the dentists and public. Group practices Dr. Hall continued, are growing all over the country, and it is felt that this type of practice can be more effective to the public and the business demand. Dentists today are looking to the needs of the public, i.e., expansion of hours for evening dental care, emergency coverage on week-ends, reasonable costs. We are addressing the cost concerns, he said, by sharing personnel, equipment, facilities, management expertise, and the purchase of supplies in quantities, etc. Group practices, whether it be with other dentists, or other physician colleagues are going to grow. Under this 40 year old rule he said, they have had to seek variances from the Board to practice under Professional Group names. The Dental Board has done a good job in trying to meet the current trends in Dental practice by asking this legislation be introduced. He urged committee to support favorable passage of SUB SB 660.

Dr. Resner, a member of the Wichita Clinic as are others who have spoken before him this date, urged for support of SUB SB 660. He has been a member of this clinic for 33 years. He stated many times there are consultations with physicians in their group practice and this consultation is done as a service to the patient, there isn't a charge. If there is a real dental problem diagnosed, the patient is referred/released back to their own dentist. We don't try to hold the patient, he said. The dentists in our group practice do practice under their own names, we bill by computer billing under our own names, so it is my belief, he said, the patient is not being misled about dentists practicing in group practice. Questions followed his testimony.

Tony Martin, D.D.S., Garden City, Ks. spoke in support of SUB SB 660. He said that group practice offers advantages to the patient. A patient can have several consultations at one time if necessary and at no extra cost; 24 hour emergency service can be provided, etc. (See Attachment No. 4.), for details.

Jerry Nossaman, D.D.S., spoke in opposition of SUB SB 660. He stated he felt in many cases a trade name for a group practice was used more for business convenience than professional promotion. He felt that honest advertising by dentists certainly has a place in dental care provider market today, and he believes the patient will benefit from it. He said he had practiced as a military dentist on both coasts in this country, and had observed the quality of dental care in Kansas is of the highest quality, and feels that integrity should be protected. Further, he feels that SUB SB 660 was hastily written and often changed and does not serve any benefit to the consumer patient. (See Attachment No. 5.), for details. He then answered questions from committee.

Carl Schmitthenner, Executive Director of the Ks. Dental Association spoke in opposition of SUB SB 660. (See Attachment No. 6.), for details. He stated the Kansas Dental Association finds no benefit to the public by allowing the practice of dentistry under an assumed or fictitious name. It is beneficial to the patient to know the name of the dentist who renders treatment. Further, they believe, the Dental Association feels the current statute is clear and appropriate in requiring a health professional to practice under his own name. He then answered questions from committee and staff.

Hearings closed on SUB SB 660.

Chair recognized Rep. Niles and there was discussion in regard to HR 6126.

Discussion on HR 6126:--

Rep. Niles spoke to an amendment for HR 6126. Line 37, after the first word "to", strike the rest of line 37 and line 38 and add in lieu thereof,

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON PUBLIC HEALTH AND WELFARE,
room 423-S, Statehouse, at 1:30 ~~a.m.~~/p.m. on March 20, 1984

HR 6126 continues:--

"permit pets on the premises". Rep. Niles moved this amendment be adopted, motion seconded by Rep. Branson. Discussion followed, i.e., problems directed to sanitation problems, health problems and concerns, etc. Question called, vote taken and indicated 5 for and 8 against, motion loses.

Rep. Buehler moved to report HR 6126 out of committee unfavorably for passage, seconded by Rep. Rogers.

Rep. Kline made a substitute motion to table HR 6126, seconded by Rep. Hassler, question called by Rep. Cribbs, vote taken, motion carried.

Meeting adjourned until 1:30 p.m. on March 21, 1984.

Date: 3-20-84

GUEST REGISTER
HOUSE
PUBLIC HEALTH AND WELFARE

Please Print

NAME	ORGANIZATION	ADDRESS
DR Ed HALL	WICHITA CLINIC	3244 EAST DOUGLAS WICHITA KS 67208
DR Tony Martin	DENTAL ASSOCIATES CHARTERED	1620 KANSAS AVE GARDEN CITY KANSAS 67846
Dr. P. H. Sems Jr.	Practicing Dentist Wichita, KS	2225. Ridge Rd. Wichita, KS. 67209
Dr. R. L. HART	Dental Assoc. Chartered	1620 E. Kansas Ave Garden City, Ks 67846
DR. DEL. RENSNER	WICHITA CLINIC	3244 E DOUGLAS. WICHITA KS. 67208
H Philip Flwood	Ks. Dent. Bd.	215 E. 8th. Topeka, KS.
Cynthia Barrett	Ks. DENTAL BD	4301 HUNTON TOPEKA
Carl Schmitthauer	Ks Dental Assn.	Topeka
JERRY NASSAMAN	Ks Dental Assn.	831 Vermont Lawrence KS 66044

Attn. # 1
3-20-1984

*Attn. # 2
3-20-4*

THE PROPOSED AMENDMENT TO
K.S.A. 65-1435
SET OUT IN SB-660

Presented By:

H. PHILIP ELWOOD
215 East 8th Street
Topeka, Kansas 66603

A. The present Statute was adopted in 1943 and provides:

1. It is unlawful to practice under any name except the dentist' own name.
2. It is unlawful to use in connection with the practice the name of any -

company	clinic
association	trade name
corporation	business name
3. It is unlawful to conduct or advertise a dental practice in the name of a dentist unless the dentist is in the office a majority of the time it is operated.
4. Dentists may practice in groups if each name appears.
5. The penalty is suspension or revocation of the license.

B. The Problem

1. There are some technical problems.
 - a. The professional corporation code (K.S.A. 17-2706 et seq.) now allows dentists to practice in a professional corporation. The right to so organize will involve the use of a corporate name. This is arguably at odds with the K.S.A. 65-1435.
 - b. The application of the law to a group practice of 15 dentists is unclear. - Do all of the names have to appear?
2. There is an overriding practical problem - The Law has been ignored.
 - a. Dentists began to practice in the Wichita Clinic in the late 1940's.

*Attn. # 2
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- b. A large number of dental practices have in recent years started to use various assumed names.
 - i) When this started and the number of such names in use have not been determined.
 - ii) The practices known to be using assumed names includes both sole practitioners and groups.
- c. The Kansas Dental Board (the Board) approved seven assumed names for professional corporations between 1970 and 1977.
 - i) The persons so acting and the reasons therefore are unknown and irrelevant.
 - ii) The practice was stopped when I pointed out the Board had no authority to approve a name in contravention of the law.

C. Addressing the Problem

- 1. Refusing to approve new corporate names unless they complied with the law was not adequate or fair.
 - a. There resulted two classes of corporate names.
 - b. Anyone operating alone or in a partnership can use a name without clearing it with the Board.
- 2. Certain dentists, when notified of the law, voluntarily agreed to comply.
 - a. Dave Seager and others.
 - b. Not all have come to the attention of the Board.

D. Alternative solutions to the problem - Enforce the law or change it.

- 1. Enforcement of a law long ignored is difficult and expensive.
 - a. At a minimum it would be necessary to publish notice of the intent to enforce the law.
 - b. A period of amnesty has been recommended.
 - c. It is expected that if enforced one or more groups will defend themselves vigorously at significant cost to the state.

2. There is a significant question of public policy raised by enforcement of the present law. "Does the practice of dentistry under an assumed name threaten the people of Kansas?"
 - a. The principle purpose of the Dental Practice Act (and of the Board) is to protect the public health and welfare.
 - i) If the public is protected and the quality of dental care enhanced by requiring dentists to practice only under their own names then the law should not be changed.
 - ii) If the enforcement of the present law does not provide a benefit to the public commensurate with its cost, the law should be changed.
 - b. The conduct of other professions under assumed names does not threaten the public.
 - i) The physicians have no prohibitions and many practice under trade names. i.e. - "Internal Medicine P.A."; - "Radiology and Nuclear Medicine P.A."
 - ii) The realtors now widely use tradenames.
 - c. If physicians can use assumed names what public policy purpose is served by denying the same privilege to dentists.
3. The proposed amendment will keep the present law in place but carve out two large exceptions.
 - a. Two or more dentists practicing with physicians in a "clinic" or P.A.
 - b. Two or more dentists practicing in a P.A.
 - c. This solves a number of enforcement problems.
4. The proposed amendment creates a problem of enforcement.
 - a. Two classes of dentists are created.
 - i) Groups of two or more dentists practicing in a P.A. with or without physicians may use tradenames.

- ii) Dentists practicing alone, in P.A.'s or otherwise and dentists practicing in groups organized as partnerships may not use tradenames.
- b. In the exercise of the states' police power this is broad authority to establish classifications for application of the law.
- c. The Dental Board will support and enforce the law as amended, if passed.
- d. The law may be subject to attack on equal protection grounds; therefore enforcement may result in judicial elimination of this act.

Attn. # 3

3-20-84

TESTIMONY IN FAVOR OF A "TRADE NAME"
BILL FOR DENTISTRY

My name is Edward H. Siems, Jr. I hold the degree of Doctor of Dental Surgery from the University of Minnesota, granted in 1976. I am currently licensed to and have practiced dentistry in Kansas for the past seven years. My practice is full time general dentistry.

My practice experience includes two years as a commissioned officer (Senior Assistant Dental Surgeon) with the U.S. Public Health Service, solo private general practice for three years and group practice, in association with four other dentists and over 70 other health professionals for two years.

Present professional memberships include The American Dental Association, The Kansas Dental Association and the Wichita District Dental Society. Professional service includes current Chairman of the Council on Dental Education and Manpower of the Kansas Dental Association, Co-Chairman of the Wichita District Dental Society, peer review committee and chairman of Dental Advisory Committee for The Wichita Urban Indian Health Center.

As I understand the proposed legislation, it would allow me to legally continue practicing dentistry as a member of the group I am now associated with. Without this or some similar change in the law for a continued variance by The Dental Board to allow practice under an assumed name, I will not be allowed to continue practice in the group I am currently associated with in the manner I have for the past two years. To force a change in our entire association structure seems needless and would cause me personal hardship.

In support of allowing dental practices to exist under assumed names, let me first address the issue of protecting the public from deception. Not just any name should be allowed. There should be a provision against false or misleading names enforceable by the Board of Dentistry. A practicing dentist should be required to prominently display his own name and license, thus assuring patients knowledge of the individual practitioner. I believe the public is wise enough not to be unduly influenced by only given assumed names. Medical practices in Kansas are allowed to use assumed practice names and I am not aware of any complaint or problem from their patients as a result of this. It is still true in dentistry that most new patients are referred by existing satisfied patients. This satisfaction does not come from a assumed name, but from the individual practicing dentist and confidence in his or her skill and ability. Referrals are to individual practitioners, not a assumed name.

Allowing the use of assumed names has general potential benefits to the public. In developing a name for a practice, if a concept such as preventive is incorporated, this conveys information an individual seeking care can utilize. Allowing a group of individual health practitioners to associate under one name, develop a group identity and present themselves to the public as representing comprehensive care makes sense.

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To my knowledge, no complaint, problem or criticism has arisen as a result of my practicing dentistry under an assumed group name during the past two years. Please allow me to continue to do so.

Thank you.

Edward H. Siems, Jr., D.D.S.
222 S. Ridge Road
Wichita, KS 67209

DENTAL ASSOCIATES, CHARTERED

1620 East Kansas
Garden City, Kansas 67846
Telephone 316-276-7681

Attn. #4
3-20-84 Dennis D. Parsons, D.D.S., P.A.
Robert L. Hart, D.D.S., P.A.
Anthony W. Martin, D.D.S., P.A.
Michael M. Gorsky, D.D.S.

TO: House - Public Health and Welfare Committee

RE: Substitute for Senate Bill #660

Considering:

- 1) That the Kansas Dental Board is an appointed board of professional and lay people to govern the activities of Kansas dentists.
- 2) That the Kansas Dental Board is charged with responsibility to protect the public welfare as far as dentistry is concerned.
- 3) That K.S.A. 65-1435 is considered to be outdated and unworkable by the Kansas Dental Board.
- 4) That the Kansas Dental Board has asked the legislature to amend KSA 65-1435 to bring it to current levels of demands of the consuming public.

We would like to point out a few areas concerning group practice which is a benefit to the consuming public.

Group Practices offer advantages to the public by:

- 1) Built in peer review. The practice of observing the quality of each others work and making suggestions on ways to improve quality.
- 2) Dentistry is a complex field. A group practice allows each individual to exercise his continuing education in one or two fields, therefore creating extensive knowledge in all areas of dentistry within the same office.



Attn. #4
3-20-84

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Michael M. Gorsky, D.D.S.

- 3) Within a group practice, free consultations are available at one appointment rather than sending the patient to another office at another time.
- 4) Group practices can provide 24-hour emergency services even when several of the professionals are unavailable.
- 5) By using a descriptive name for a group dental practice the public will therefore realize there is more than one professional and they will be able to receive the above services. Without a group name, the public would not know the above services were available.

The Kansas Dental Board has an excellent record of enforcing Kansas statutes as they pertain to dentistry. One would have to believe the board knows more than anyone else the need to amend the present KSA 65-1435.

At this time we would lend our support to the Kansas Dental Board in asking you to vote favorably on Senate Bill #660.

A.W.Martin, D.D.S.

R.L.Hart, D.D.S.

D.D.Parsons, D.D.S.

M.M.Gorsky, D.D.S.



Attn #
3-20-84

My name is Jerry Nossaman, I am a dentist from Lawrence and I am here on behalf of the Kansas Dental Association to speak in opposition to Senate Substitute Bill 660.

As you are aware, the Kansas Dental Practice Act now states that you may not practice dentistry under any name other than your own. Over the years a few Kansas dentists have ignored this law, some even have obtained a letter from past Dental Boards granting them this favor. In most cases this trade name was used more for business convenience than professional promotion, for example: group practice corporation profit sharing plans and the names of the buildings in which a practice is located. When the restrictions on health care professional advertising was lifted we have seen an increased number of trade names solely for advertising purposes. Honest advertising by dentists certainly has a place in the dental care provider market today and I believe the patient will benefit from it. I believe the patient is best served if they are aware of exactly who is making claims or promises in dental advertising and exactly who is responsible for dental health care rendered or to be rendered.

I have served as a military dentist on both coasts in this country and have observed the quality of dental care from every area of the country and I truly believe that no area enjoys more responsible dental care than the State of Kansas. We want to protect the integrity of our profession, we believe the people of the State of Kansas benefit from this.

This law in no way is being proposed to aid the people of Kansas in obtaining better or less expensive dental care, it is being proposed to allow those now practicing illegally in the State to avoid the inconvenience of having to use their own name in place of the trade names they are now using.

I have empathy for some of these dentists and I believe there may be a solution to their corporate profit sharing name problems, this legislation is not that solution. This has been a hastily written often changed bill. As now written, individual dentist practitioners could not use a trade name, but practices of 2 or more could, what is rational or equitable about that. As written it does not limit the number of fictitious names 2 or more dentists may use. Does

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the consumer patient in any way benefit from such a practice? Does this increase the likelihood of deception and fraud? In states that do allow trade names (there are only 16) most stipulate approval of such names by the State Dental Board based on certain standards and criteria. This bill does not in any way involve the State Dental Board.

I believe the State Dental Board is backing this proposed legislation out of fear of a lawsuit, which I believe they have been threatened with, yet laws similar to ours have been upheld by both state and federal courts.

In closing I would again ask why are you being asked to pass this bill? Will the consumer patient in Kansas receive better or less expensive dental care or will he be more likely the victim of fraud and deception.



*Attn. #6
3-20-84*

TESTIMONY BEFORE THE
HOUSE PUBLIC HEALTH AND WELFARE COMMITTEE
SUBSTITUTE FOR SENATE BILL 660

Mr. Chairman and members of the Committee, I am Carl Schmitthenner, Executive Director of the Kansas Dental Association.

I am here today to oppose the passage of Substitute Senate Bill 660.

The Kansas Dental Association finds no benefit to the public by allowing the practice of Dentistry under an assumed or fictitious name. It is beneficial to the patient to know the name of the Dentist who renders treatment. Dentists are licensed as individuals based on their qualifications and abilities and they should be responsible for the treatment they provide as individuals.

Patients need a basis to assist them in deciding which dentist should render care. The Dentists reputation is one gauge which has been used in the past. This bill would render a Dentist's reputation meaningless. We feel that there is a high potential for patients to be misled by fictitious names. Because of this high potential for abuse we believe that the Dental Board as it is currently structured would be unable to regulate this situation.

This type of statute has been upheld by the Supreme Court in the Friedman vs. Rogers case in 1979 and upheld again in 1982 in Barnett vs. the State Board of Dentistry in Maryland.

The Kansas Dental Association believes that the current statute is clear and appropriate in requiring a health professional to practice under his own proper name.

*Attn. #6
3-20-1984*