

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE

The meeting was called to order by Senator Jan Meyers at
Chairperson

10 a.m./~~p.m.~~ on February 21, 1984 in room 526-S of the Capitol.

All members were present ~~except~~

Committee staff present:

Emalene Correll, Legislative Research Department
Bill Wolff, Legislative Research Department
Norman Furse, Revisor of Statutes office

Conferees appearing before the committee:

Philip Elwood, Kansas Dental Board
Dr. Ed Hall, Wichita Clinic, Wichita
Dr. Delmar Rensner, Wichita Clinic, Wichita
Dr. Edward Siems, Wichita Clinic, Wichita
Dr. Michael Wamsley, Dental Center, Hutchinson
Carl Schmitthenner, Kansas Dental Association

Others present: see attached list

SB 660 - Dentistry, regulation of names used

Philip Elwood spoke in support of SB 660 on behalf of The Kansas Dental Board. The Board thinks the public interest of the people of Kansas will not be well served by the enforcement of the present law forbidding the use of assumed names.

Also speaking in support of the bill were Dr. Ed Hall, Dr. Delmar Rensner, and Dr. Edward Siems, all of the Wichita Clinic. Dr. Michael Wamsley of Hutchinson also supported the bill.

Senator Morris inquired the position of each of the conferees on an amendment which he had suggested as a simpler way of addressing the problem. All agreed that a compromise probably could be reached. Testimony is attached.

Carl Schmitthenner, lobbyist for the Kansas Dental Association, opposed the bill stating that the KDA finds no benefit to the public by allowing the practice of dentistry under an assumed or fictitious name.

The Chairman requested Dr. Hollowell to return the following day to testify on SB 658.

The meeting was adjourned.

SENATE
PUBLIC HEALTH AND WELFARE COMMITTEE

DATE 2-21-84

(PLEASE PRINT)

NAME AND ADDRESS

ORGANIZATION

Paul Kuebler Hutchinson	Dental Century P.A.
H.M. Wamsley DDS 800 E 30th HUTCHINSON KS 67502	DENTAL CENTER P.A.
Edward H. Siems Jr. 005 2225 Ridge Rd. Wichita	Dental Practitioner
Delmer B. Penner 3244 E. Douglas Wichita	Dentist - Wichita Clinic
Quoniam Barnett	Ks. Dental Boards
Philip Good 215 E 8th Topeka	Ks Dental Bd. - alt.
Ed Hail DDS 3244 E. Douglas Wichita	Dentist - Wichita Clinic
Carl Schmitt-Hannon	Ks Dental Assn.
JERRY JAWLTON	Ks MEDICAL SOCIETY
Elizabeth E. Taylor	Ks Dental Hygienists Assn
PAT SCHAFFER	BUDGET
HAROLD E. KIERMA	Ks Assn OSTEOP. MED
Don Strode	Bd of Public Hlth
JG Hollowell	KDHE - Topeka
Marjorie Van Buren	Office of Judicial Administ.

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.

- 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 purpose of the new law (S.B. 660) is to allow the use of assumed names by dentists in the practice of dentistry [Sect. 1(a)].
 - a. The use of assumed names is to be subject to reasonable limitations designed to protect the public.
 - b. There is a limitation on the use of a name implying practice of a dental specialty. i.e. You can't use a name like "Orthodontics P.A." unless there is at least one orthodontist in the group.
 - c. There is a key U.S. Supreme Court case in the area of trade names. Friedman v. Rogers, 99 S.Ct. 887 (1979) (the case involved optometrists).

- d. The case states that there are several basic concerns with the use of trade names.
- i) The name stays the same while the professionals delivering the service change.
-The proposed law meets this concern by requiring:
 - (1) The names of all dentists practicing under the name to be set out in all signs and advertising. Sect. 1(a)(3).
 - (2) A directory of all dentists to be located in the office entry way. Sect. 1(a)(4).
 - ii) The trade name frees the dentist of dependence on personal reputation. S.B. 660 requires use of the dentists name with the trade name to assure the connection between quality service and reputation is maintained.
 - iii) A new trade name may be assumed if negligence or misconduct shadows the old one.
-The new law meets this concern by requiring:
 - (1) Ten days notice of the name to the Dental Board before publication or other use. Sect. 1(a)(5).
 - (2) Continued use of any assumed name for at least twelve months. Sect. 1(a)(5).
 - (3) Publication of notice of any change in the assumed name showing both the old and new names. Sect. 1(a)(6).
 - iv) By using different names in different offices a dentist could create a false impression of competition.
-The new law requires wide publication of all dentists names with the trade name to prevent such deception. Sect. 1(a)(3)(4)(6).
 - v) The proposed law adopts the philosophy stated by Justices Blackman and Marshall:
 - ...By disclosing his individual name along with his trade name, the commer-

cial optometrist acts in the spirit of our First Amendment jurisprudence, where traditionally "the remedy to be applied is more speech not enforced silence....

(99 Sup.Ct. at 902, 440 U.S. 24)

- e. S.B. 660 will also allow the dentists to be a part of several practices. The time required in an office to allow use of the dentist's name with the office is reduced from majority (51%) to 20% of the time the office is operated.
 - i) A chain of "Col. Sanders, D.D.S." dental offices will be limited to 5!
 - ii) If the dentist is to be represented as a part of the practice the dentist should be there a reasonable part of the time.

E. What will it Cost?

- 1. S.B. 660 requires of the dentist:
 - Written notice to the Board of the assumed name before use or change
 - Inclusion of the dentists' names with the assumed name in all signs and advertising
 - Use of a directory with the assumed name and the names of the dentists
 - Printed publication notice of each change of assumed name.

The cost of these requirements is not known but is thought to be limited.
- 2. S.B. 660 requires of the Board:
 - Receipt and filing of notification (no approval).
 - Enforcement
- 3. Enforcement would be handled as with the rest of the act.
 - a. Notification of the new requirements to all dentists.
 - b. Response to complainants .
 - i) It is reasonable to expect substantial voluntary compliance.
 - ii) A letter request is frequently adequate.
 - c. Commence disciplinary proceedings where warranted.

- The costs of these requirements cannot be projected with any accuracy.

F. What is the Controversy?

1. A substantial part of the dental profession in Kansas feels itself threatened by the concept of Franchised Dentistry.
2. As pointed out in the Friedman case:

"The use of a trade name also facilitates the advertising essential to large-scale commercial practices with numerous branch offices, conduct the State rationally may wish to discourage...."
3. The Friedland case makes clear that the State may constitutionally prohibit the use of tradenames where a reasonable public purpose exists.
 - a. The limitation of the use of assumed names also involves a potential limitation on competition in the delivery of dental services which involves a policy question beyond the perview of the Board.
 - b. The state through the legislature may consider matters affecting competition.

G. Conclusion

1. The Board has determined that in its judgment the public interest of the people of Kansas will not be well served by the enforcement of the present law. *prohibiting use of assumed names*
2. The present situation of partial compliance and substantial non-compliance cannot continue.
3. The use of assumed names by dentists does not threaten the people of Kansas so long as it is accompanied by the disclosures required in S.B. 660.
4. In short, more information not enforced silence is the proposed solution to the problem.

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.

Page Two

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

February 20, 1984

Dr. Ed Hall
3244 E. Douglas
Wichita, KS 67208
Phone (316) 689-9357

Speaking in support of the need for a "house keeping" change in the current dental practice act, I feel it is important to first review for those of you who don't know me, my credentials that have prepared me to speak to this issue.

I have been licensed to practice dentistry in Kansas for the last 22 years since my graduation from dental school in Kansas City. After two years in the service as a dentist, I have practiced the last 20 years in a multi specialty health group whose mission is to provide quality comprehensive health care to the public at the most reasonable cost possible. I have been active in the affairs of dentistry serving as President of the Wichita District Dental Society in 1974-75. I have served as a member of the Council on Dental Care programs for the Kansas Dental Association for some eight years, was President of the Kansas Dental Association 1980-81 and represented The Kansas Dental Association as a delegate to the American Dental Association for five years. I am currently a board member of Delta Dental Plans of Kansas which is a board of ten members, four of whom are dentists. I am also Secretary Treasurer of the Kansas City Midwest Section of The American College of Dentists.

The problem the Dental Board is addressing has to do with clarification of the 40 year old practice act so that it is in concert with the corporate statute passed in the 60's. The current practice act states "it shall be unlawful to practice dentistry under any name except the dentists own name used in his license certificate and unlawful to use the name of any company, association, corporation, clinic, trade name or business name." K.S.A. 17-2710 specifically authorizes a professional corporation to render professional services of any two or more of the following professions -- dentist, doctor of medicine, osteopathic physician, etc.

To speak specifically to dentistry and the need for a legislative change, I strongly urge your favorable action on this needed legislation that is in the best interest of both dentistry and the public.

This updating of the statute has had the attention of the Kansas Dental Board for the past year. After several meetings to discuss and study this issue the past six months, the Board voted in November and reaffirmed its decision in December to submit legislation to spell out the condition under which a dentist could practice under a name other than his own. At both of these Board meetings, it was the lay member of the Board, Mr. Bob Stephens, a realtor from Lawrence, who introduced the motion and stated that his responsibility on the Board was to serve and protect the public and that this legislation was in the best interest of the citizens of Kansas. His motion was voted on favorably by all the dentists on the Board both times.

Group practices are growing all over the country and will continue to proliferate and expand as those of us in health care deal more effectively with the public and business demand for improved delivery system and cost containment. Almost all physician groups that a dentist might properly associate with practice under a professional corporate name.

Words that are on the lips of all health care purchasers today --comprehensiveness, accessibility, availability and reasonable cost demand that we look at and evaluate our delivery systems. We are looking toward the needs of the public to have expanded evening hours, weekend and holiday emergency coverage and we are addressing the cost question by sharing personnel, equipment, facilities, management expertise and purchasing in quantities that substantially reduce costs. The ease of readily available consultation with our colleagues is certainly a benefit to both patient and dentist.

The demand for dental services in our multi specialty group of 77 is evidenced by the fact that our dental department is larger than dermatology, ear, nose and throat, orthopedics, ophthalmology, and surgery to name a few. In fact, of 16 departments in our group, only internal medicine and pediatrics have larger staffs.

Group practice, whether it be with other dentists, or with our physician colleagues, are going to grow. Under this 40 year old practice act, we in groups have had to seek variances from the Dental Board to practice under professional group names. The Dental Board has done a good job of evaluating whether the name requested was proper or whether it was false or misleading to the public and it will continue to have this responsibility under the proposed legislation. There is merely a need to clarify the dental practice act as it relates to the professional corporation statutes.

After a year of study, and with the advice of their legal council, the Kansas Dental Board is requesting this committees assistance in adapting this 40 year old statute to meet the current trends in dental practice. Please support the Kansas Dental Board in their effort to better serve both dentistry and the public by supporting a legislative change to meet the needs of dentistry in the coming years.

The present Dental Practice Act:

- 1) Restricts dentists from using corporate or "assumed" names, thereby discouraging dentists from incorporating in groups with other dentists or health care providers.
- 2) Most larger groups, either single specialty or multi-specialty, practice under a corporate or "assumed" name.
- 3) To enjoy the corporate benefits (tax, etc.), groups must hold themselves out to the public under their corporate name.
- 4) All dental practitioners either solo or groups, are subject to the jurisdiction of the State Dental Board.
- 5) The public should be given the choice of selecting care in a group setting if they so desire.
- 6) Groups tend to:
 - a) Have built in peer review.
 - b) Be more cost effective through group purchasing, sharing of equipment, space, personnel, etc.
 - c) Easier access to consultation when needed.
 - d) Provide better after hours, weekend and holiday coverage through rotation of "on call" schedule.
- 7) The State Dental Board has allowed a number of exceptions to this provision over the past 15 years as long as the name was not "false or misleading".

The purposed legislation is simply a "housekeeping" measure. This will allow dentists the same privileges and rights of group practice enjoyed by the other nine health care professions under K.S.A. 17-2710.

CURRENT DENTAL PRACTICE ACT:

65-1435. Improper use of name; suspension or revocation of license. On and after the passage of this act, it shall be unlawful for any person or persons to practice or offer to practice dentistry under any name except his own name, which shall be the name used in his license certificate granted to him as a dentist as provided in this act; and unlawful to use the name of any company, association, corporation, clinic, trade name, or business name in connection with the practice of dentistry as defined in this act: Provided, nothing herein contained shall be so construed as to prevent two or more licensed dentists from associating together for the practice of dentistry, each in his own proper name. The violation of any of the provisions of this section by any dentist shall subject such dentist to suspension or revocation of his license. It shall be unlawful, and a licensee may have his license suspended or revoked, for any licensee to conduct a dental office in his name, or advertise his name in connection with any dental office or offices, unless such person is personally present in said office operating as a dentist or personally overseeing such operations as are performed in said office or each of said offices during a majority of the time said office or each of said offices is being operated.

History: L. 1943, ch. 221, § 19; June 28.

K.S.A. 17-2710 specifically authorizes a professional corporation to render professional services of any two or more of the following types within a single corporate entity. The medical professions which may practice together include the following:

- A chiropractor;
- A dentist;
- An optometrist;
- An osteopathic physician or surgeon;
- An physician, surgeon, or doctor of medicine;
- A podiatrist;
- A pharmacist;
- A certified psychologist;
- A registered physical therapist;
- A registered professional nurse.

2/21/84



TESTIMONY BEFORE THE
SENATE PUBLIC HEALTH AND WELFARE COMMITTEE
SENATE BILL 660

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

I am here today to oppose the passage of 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.

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.

KANSAS DENTAL BOARD CERTIFICATE

The Kansas Dental Board does hereby certify that each of the following incorporators is duly licensed to practice dentistry in the State of Kansas, to-wit:

- J. Robert Hopkins,
- Eugene R. Wells,
- Willis R. Esau, and
- Howard M. Hollingsworth.

This is to further certify that the proposed name of the professional corporation of "Dental Center, P.A.", is hereby approved.

Dated this 24th day of February, 1970.

THE KANSAS DENTAL BOARD

BY Robert E. Shoup
Secretary-Treasurer