Approved: 3-17-98
Date

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE.

The meeting was called to order by Chair Sandy Praeger at 10:00 a.m. on March 11, 1998 in Room 526-S of the Capitol.

All members were present except:

Committee staff present:
Robin Kempf, Legislative Research Department
Norman Furse, Revisor of Statutes
JoAnn Bunten, Committee Secretary

Conferees appearing before the committee:

Lorraine Forgas, Associate professor, Dept. of Periodontics, UMKC
Cindy Amyot, ADA Commission on Dental Accreditation
Charlie Geer, consumer from Wichita
Pam Overman, Instructor at UMKC
Patty Seery, Kansas Dental Board Vice President
Cecil Little, Consumer from Kansas City
Barbara Burkindine, President, Kansas Dental Hygienists Association
Dr. Hugh Bruner, Kansas City Periodontist
Jeanne McCready, Dental Hygienist in Johnson County area
Eileen Trainer, Dental Hygienist and consumer advocate

Others attending: See attached list

Hearing on HB 2724 - Practice of dental hygiene

The following conferees expressed their opposition to **HB 2724** and provided written testimony for the Committee: Lorraine Forgas, Associate professor, Dept. of Periodontics UMKC, (Attachment 1); Cindy Amyot, ADA Commission on Dental Accreditation, (Attachment 2); Charlie Geer, consumer from Wichita, (Attachment 3); Pam Overman, Instructor at UMKC, (Attachment 4); Patty Seery, Kansas Dental Board Vice President, (Attachment 5); Cecil Little, Consumer from Kansas City, (Attachment 6); Barbara Burkindine, President, Kansas Dental Hygienists Association, (Attachment 7); Dr. Hugh Bruner, Kansas City Periodontist, (Attachment 8); Jeanne McCready, Dental Hygienist in Johnson County area, (Attachment 9); and Eileen Trainer, Dental Hygienist and consumer advocate, (Attachment 10). Additional written testimony from opponents on the bill was received from Dr. Charles Cobb (Attachment 11), Dr. Thane Fraizer,(Attachment 12), Dr. Gregory J. Kilbane (Attachment 13), Cindy Scott (Attachment 14), and M. J. Nigg (Attachment 15).

Opponents of the bill emphasized the educational and training requirements needed to be a dental hygienist, shortages of dental hygienists in the state, lowering of standards of care in using unlicensed personnel by a dentist, and violations made by dentists in using dental assistants in performing various procedures relating to dental hygiene. A copy of the Attorney General's opinion relating to individuals who may perform a prophylaxis is contained in Attachment 7.

Committee discussion related to scaling of teeth by dental assistants, educational requirements of dental hygienists, and whether or not the bill was a money issue between dentists and hygienists or a concern for the consumer. It was suggested that the bill be referred to an ad hoc or subcommittee for further study.

Adjournment

The meeting was adjourned at 11:00 a.m.

The next meeting is scheduled for March 12, 1998.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE
GUEST LIST

DATE: 3-11-98

NAME	REPRESENTING
Jim Yonally	KDHA
CHARLES GEER	CONSUMER
Valerie Blanco Johnson	Self
Karrie Ann Brown	KS Govt Consulting
Julie Meard	
CECIL B. LITTLE	Self
Cindy Amyot	self, KDHA
Hugh H. Bruner Jr	Self
Barbara Burkindine	KDHA
Lorraine Forgas	self (opponent)
Pam Overman	self, my family, the health of Kansans
Susan Rodgers	general public, myself + family
Connie A. Potter	KDHA, myself Family, Patients of Kansas
Elizabeth Olmstead	KDHA, People + patients of KS, myself, family
Laurie Marneau	KDHA, dental health of Kansans! + family
Kim Arnold	self + family + all consumers
Vicki Schaffer	Self & consumers
Reenie Olson	self + consumers
Eileen Trainer	Self/Parent (my children)

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE
GUEST LIST

DATE: 3-11-98

NAME	REPRESENTING
Linda Zoudke	Consumer / Reg Dental Hygienist
Darlene Klassen	RDH
Eldon Klassen	CONSUMER
Heather Calhoun	RDH
Carol A. Cline	RDH
Denise Maus	RDH / KDHA
Connie L. Hiatt	R.DH / KDHA
Jennifer Schultz-Hejans	RDH / KDHA
Vicki Lillig	RDH Basehor, Ks
Sharon Plum	RDH Bonner Springs, Ks
Ruth Parson	RDH Hays KS
Laura Pintcke	RDH - Leawood, KS
PAtriciA Rose	RDH- LeAwood, KS
LINDA PAtterson	RDH LeAWood, KS
Patty Seery	KDB
Mary Jo Nigg	RDH - Wichita KS
Gena Buchez Hofer	Attorney — KDA
KEVIN ROBERTSON	Kansas Dental Association

Good morning and thank you for the opportunity to speak here today . My name is Lorraine Forgas. I live in Kansas. I practice in Kansas. I am a full time faculty member in the Department of Periodontics at the UMKC School of Dentistry. I teach dental students non-surgical periodontics; more specifically, I teach dental students how to assess periodontal disease and scale teeth.

I invite each of you to attend our Tuesday afternoon clinic when the first year dental students practice on manikins and on each other. These are highly intelligent and motivated students. These students have completed one full semester of clinical/laboratory training (16 weeks) in oral diagnosis, periodontal assessment and periodontal instrumentation, and are in their second semester of training. These students, without exception, are not yet ready to deliver patient care. Perhaps the most important testimony comes from the students themselves as they realize they are not yet ready to treat patients. And these students already have far more background and training in instrumentation than a dental assistant will have.

Should this legislation pass, educators need direction. Do we continue to educate our students properly--but inform them that while in school, it is acceptable for them to work on the weekend as an assistant and clean teeth above the gums in Kansas? But when they treat patients in our dental school clinic they are to do it properly and clean below the gums? Or, if they fail their board examination (which now precludes them from patient treatment until they pass), they can work as a dental assistant in Kansas doing substandard care until they pass the exam.

The present bill would require each office to display information outlining what duties are allowed by dental assistants and hygienists. Senators, informing patients they will receive substandard care does not make it right. A patient should not have to ask if the cleaning they get will be above or below the gums anymore than they have to ask the dentist if he/she is going to remove all of the decay or just part of it. It is not the patients responsibility to ask if they'll receive proper care. It is our responsibility to do it right the first time.

To the proponents who feel the educators are speaking from ivory towers, I offer the following: No matter how the information is presented, above the gum cleaning represents substandard care. Periodontal disease is an infection caused by bacteria below the gums. If an otherwise healthy individual receives only cosmetic above-the-gum cleanings, the only predictable outcome over time is periodontal disease. This is scientific and clinical fact and is the philosophy taught in every dental and dental hygiene school in the country. The teaching of supragingival scaling as an entity does not exist within our curriculum. Isn't it strange that the KDA is attempting to develop an entire curriculum around it?

Many dentists openly admit, even testified yesterday, they have been utilizing dental assistants to scale teeth illegally. What reassurance is given that assistants will be required to receive training before treating patients? Are we to believe the offices that have so blatantly ignored the existing law will now dutifully send their

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assistants for training? And what action will be taken by the Kansas Dental Board if the assistants are not properly trained?

Yesterday we were told it is easier to find dental assistants to hire than hygienists, yet want ads in newspapers for assistants usually out number want ads for dental hygienists. (see attachment) Yesterday we were told of a dental office unable to hire a hygienist at $34.00/hour. My colleagues and I gasped at this figure. National average, including the Kansas City area is $20-22/hour. Perhaps there is more to the story of why this office has been unable to recruit a hygienist.

Yesterday we were told that military trained assistants performed quality treatment on patients. I personally worked as a dental hygienist for two years in a military clinic. I frequently saw patients who had previously been scaled by these individuals. I could literally follow the below-the-gum tartar on the x rays over a period of years. And, as easily predicted, these patients had significant gum disease.

Yesterday we were told dentists will perform the subgingival scaling on patients. While these dentists might be sincere in their intent, the likelihood of this happening is not.

This issue is not about who can remove a piece of tartar from a tooth. This issue is about educated, licensed, properly trained professionals who have the ability to assess a patient's needs, identify deviations from normal, identify precautions in a patient's medical history, recognize the need for periodontal therapy, and provide appropriate periodontal therapy.

In no way is my testimony intended to demean the education or abilities of dentists. In fact, I would probably be the first one in this room to defend my dental students and their periodontal education. I also respect the fact that dentists have a tremendous amount of information to absorb and skills to learn in a four year period, much of it being restorative dentistry. Thus, the dental hygienist, because the major focus of her education is in periodontics, is often given the responsibility to coordinate the 'hygiene' or the 'periodontal' portion of the practice. There is more to dental hygiene than removing tartar. There is also more to patient care than removing tartar.

Finally, Senators, you should be aware that dentists who testified in opposition to this bill in the House received harassing, even threatening phonecalls and letters from the bill's supporters. They also received phonecalls from colleagues in agreement with their testimony--from individuals who are hesitant to publicly show their opposition for fear of harassment. This bill does not have the support of the majority of Kansas dentists as has been told to you. This bill has, in fact, driven a wedge between dentists. The proponents have been so vocal, however, opponents are hesitant to voice their opinions.

Senators, please carefully consider the impact of the decision you have before

you. Should this bill pass in Kansas, similar bills are likely across the country. Your decision has the potential to dramatically alter the quality of dental care that should be provided. Kansas would be the first state to accept substandard care. In my opinion, any dental professional who supports this bill cannot possibly understand the progression of periodontal disease--or its prevention.

Lorraine Forgas-Brockmann

KANSAS CITY STAR SUNDAY CLASSIFIED ADS FOR DENTAL ASSISTANTS & DENTAL HYGIENISTS

Attachment B

DATE	DENTAL ASSISTANTS	DENTAL HYGIENISTS
9-21-97	18	11
9-28-97	27	11
10-5-97	21	13
10-12-97	15	15
10-26-97	6	9
11-2-97	10	7
11-9-97	11	9
11-16-97	16	9
11-23-97	19	6
11-29-97	7	7
12-7-97	12	11
12-14-97	8	8
1-18-98	20	12

*******Please note that there are Sundays missing is the sequence - those Sundays are in the process of being counted and added to this list.

Testimony in opposition to House Bill 2724
Presented to the Senate Public Health and Welfare Committee
March 11, 1998
Presented by: Cynthia C. Gadbury-Amyot

Honorable Senators:

My name is Cindy Amyot and I urge you to oppose HB2724 that would allow unlicensed individuals to scale and polish teeth above the gum. I have been a licensed dental hygienist for over 21 years and hold a license in the states of Kansas, Missouri and Michigan. I have been a dental hygiene educator for the past eight year and serve on the Commission on Dental Accreditation for the American Dental Association. Through my own work experience and my interaction with students I can assure you that the provision of oral healthcare is a highly technical job that requires extensive training both in the clinic and classroom setting.

We have been told by many of the Kansas Dental Association members as well as state Representatives that in their opinion the worst that can happen as a result of this bill passing is a "bad cleaning". I am here to tell you that a "bad cleaning" can be harmful to your health. Recent research has demonstrated that bacteria from the mouth is strongly associated with heart attack, stroke, preterm low birth weight, and death at an early age. How does this information relate to HB2724? Because it is the bacteria below the gums that is the dangerous bacteria and this bill does not adequately assure that the bacteria below the gums will be removed. The dentists in the state of Kansas have introduced this bill because they say there aren't enough dental personnel to meet the demand. How will this bill meet the demand? The dentists can't find the time to do the cleanings currently, how will they find time to follow up the "above the gumline" work that the assistant has completed, by scaling below the gum? The most time consuming and technically demanding part of the appointment involves cleaning below the gumline. This legislation as it is currently written would require the dentist to take time away from patients that require more complicated and costly procedures than cleanings and as in all healthcare fields, time is money. In my opinion the below the gumline cleaning will not get done, or at the most will be done inadequately. Dental consumers will receive what they perceive as a "good" cleaning because the stains and tartar they see is removed. Unbeknownst to the dental patient the cosmetic cleaning they have received will result in their susceptibility to the adverse health consequences of heart attack, stroke, preterm low birth weight babies and possible death at an early age.

Most of the medical professions are dealing with a maldistribution and/or shortage of qualified personnel in rural areas and many professions have been successful establishing creative solutions by the use of distance educational media, contracts that exchange years of service for the reimbursement of educational expenses or increased enrollment at existing schools. The answer should not be the lowering of the standard of care by lowering the educational and licensing rigor of the nations healthcare providers. The answer should not result in adverse medical consequences to the patient as a result of lowered standards of practice. The licensing process is in place as a safeguard to the public and I implore you to keep this in mind as you consider HB2724.

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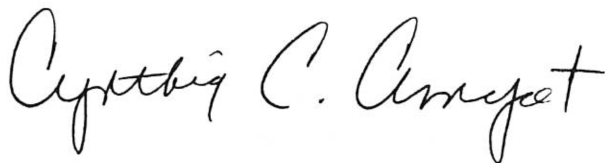
As legislators I'm sure that you have heard time and time again about the changing demographics of our nation. We are aging, and with aging comes medical complications. All patients require thorough assessment prior to initiating dental treatment but with the medically compromised a comprehensive assessment is essential in order to avoid negative consequences. The education it requires to do a complete assessment requires many classroom hours to obtain. So will the dentist provide this assessment before the appointment and then find more time to check the patient after the procedure as well as scale below the gumline? In no time in our history has it been more important that our healthcare providers are educated and able to meet the demands of today's healthcare consumers. If anything our students need additional training in the assessment and treatment of today's consumer, not less.

I believe that their are a large constituent of dentists in the state of Kansas who value quality oral healthcare and value the expertise that each dental healthcare provider brings to the practice of dentistry. Just as a dental hygienist is a valuable member of the profession for his/her knowledge about periodontal issues, so to is the dental assistant a valuable member of the profession for his/her knowledge about dental materials. It is when we allow professionals to work beyond their scope of expertise that we endanger the health and welfare of the public. Please indulge me while I give you an example of the adverse consequences of healthcare professionals working beyond their scope of practice. Recently an article was published in the associated press that addressed the issue of Peruvian physicians performing plastic surgery on patients as a way to earn additional dollars. The effect on the patients and the focus of the article dealt with the disfigurement that resulted as a consequence of these physicians practicing outside the scope of their training. These physicians had not been trained in plastic surgery and had no business performing these procedures. So who was the victim, the patient of course. What does this have to do with HB2724? It has to do with healthcare providers practicing beyond their scope of practice and the patient being a victim of these practices. A "bad cleaning" can be harmful to your health. The removal of harmful bacteria could prevent major health problems and ultimately early death. We are just beginning to understand the impact that oral health has on overall health. One can only guess what additional findings will show in the months and years ahead as we further explore the connection between oral and overall health.

Please do not support HB2724.



Denise Maus
Kansas Dental Hygienist Association
1908 N. Socora
Wichita, KS 67212

March 5, 1998

Dear Denise,

Thank you for your assistance in arranging the opportunity to address the Kansas Senate Sub Committee on Public Health and Welfare regarding HB2724.

My objection to HB2724 is that it is structured to treat the symptoms and not the disease. Said another way it attempts to apply a simple solution to a complex problem. Specifically, HB2724 fails to address the real problem, i.e., the shortage of Registered Dental Hygienists in the State of Kansas. Furthermore it endorses past and ongoing knowing violations of the Kansas Dental Practices Act, i.e., allowing Dental Assistants to provide Dental Hygienist services, by legalizing these violations not only in the underserved areas but throughout the State of Kansas.

This is a complex problem that requires both long term and short term solutions. The long term problem of finding ways to increase the number of Registered Dental Hygienists in Kansas is one that should be addressed jointly by the Legislature and Dental Profession.

The short term problem of maintaining an acceptable level of dental hygiene care for the Kansas dental patient is one the Dental profession should have the opportunity to solve. If they cannot, or will not, agree to a short term solution then and only then should the Legislature become involved.

Thank you for the opportunity to express my views.

Charles W. Geer

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Testimony in opposition to House Bill 2724
Presented to the Senate Public Health and Welfare Committee
March 9, 1998
Presented by: Pamela Overman

My name is Pam Overman. I am a Kansas citizen, a dental hygienist, a dental hygiene educator. I have also been a dental assistant and a dental assisting educator. In the past ten years, I have served the Commission on Dental Accreditation in evaluating dental hygiene, dental assisting, and dental laboratory technology programs. I am very familiar with allied dental education practice and training issues and I bring that broad perspective to this issue.

I am speaking in opposition to House Bill 2724. Dental assistants should not be taught to supragingivally scale and polish. I would like to address three points. The first is this proposal ignores the what it takes to educate a qualified intraoral care provider. The second is that the American Dental Association has already looked at training dental assistants to supragingivally scale and polish ten years ago and abandoned the plan due to concerns for patient safety and quality care. The third is that there is a better way to go about providing expanded access to quality oral health care for Kansans.

First, let me tell you about the national standard for the education of dental hygienists. Dental hygiene program must be accredited. They must be college level. And they may be two, three, or four years in length. All dental hygiene programs, regardless of length include basic sciences courses like anatomy, microbiology, pharmacology, and physiology, dental sciences courses such as radiology, periodontology, and dental materials, dental hygiene science courses such as health promotion, provision and evaluation of dental hygiene care, community health, as well as clinical training that extends throughout the program. The psychomotor skills required for providing care in the mouth require that our students learn by doing. Unlike other health disciplines, we can't send our students out to learn by observing. They must actually practice on live patients. The faculty student ratio is purposefully kept very low so faculty can closely observe their students. The faculty can't be providing care in another room, they must be right there. That is one problem with this proposed bill. In office training would allow the dentist to be providing care in one room, while the trainee is providing care in another. This is a risk to patient safety. The training that prepares dental hygienists to clean teeth parallels that of a dentist. That is because the standard of education and care for patients should be the same no matter who the provider is.

The other unique educational aspect of dental and dental hygiene education is the requirement for a licensure examination on live patients at the conclusion of the educational process. State Boards of Dentistry, who are charged with upholding the law and protecting the public, have concluded again and again in every state of the union that anyone who is providing direct intraoral care to the public, must be certified through objective, external examination on live patients. These two mechanisms, clinical training on patients while faculty supervise and external examinations of patients make dental and dental hygiene educational preparation unique. But it is a system that has assured we provide care of the highest quality.

Should we in Kansas break ground and train our dental assistants to be quasi-hygienists? The

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American Dental Association considered this same issue only a few years ago to cope with perceived nation-wide shortages or maldistributions of dental hygienists. In 1987, consideration was given to delegating supragingival scaling and coronal polishing to dental assistants. After a year long study, the American Dental Association's Councils on Dental Education and Dental Practice concluded that it was not in the best interest of patient safety or quality care to try to train dental assistants to provide these intraoral services. In fact, they concluded that the training to assure competence would take an educational program of approximately two years in length. And that is a dental hygiene program! Therefore, the American Dental Association abandoned this idea. Teaching dental assistants to supragingivally scale and coronally polish was not deemed to be an acceptable solution by the American Dental Association.

I am doubly concerned by this bill's training aspects, since it bypasses all external quality control mechanisms-the dental assistant will not be required to be a graduate of an accredited dental assisting program. They will be trained in a program "to be defined" by the Kansas Dental Board, circumventing the accreditation process. Lastly, there will be no objective, external examination to assure competence.

My third point. There is a better way. Since the American Dental Association's study, numerous states have continued to deal with shortages and maldistributions of dental hygienists. Due to these problems cited above, none of these states have pursued the supragingival scaling solution. Rather, they have pursued a more rationale approach-starting new dental hygiene programs. Since May of 1990, there have been 47 new dental hygiene programs started in 23 states in the U.S. This is the approach that Kansas policy makers should take. This is a state problem, not a dentistry vs. dental hygiene problem. Other states have committed state monies for new dental hygiene program development. Our mistake in Kansas has been that dentistry and dental hygiene are battling each other and not trying to approach this collaboratively with state policy makers. The state has a role in helping solve this. To their credit, the Kansas Dental Association has attempted to start a dental hygiene program at Colby Community College. While the KDA is to be commended for attempting to start a program at Colby, largely through KDA's own dues dollars, this is a statewide problem and it needs a statewide perspective that allows broad participation in the process.

I hope you will consider these three points as you deliberate this issue. There is a good reason why intraoral care providers are educated in on-campus patient care facilities over a period of time and with direct supervision. It takes time to develop the psychomotor skills needed. Accreditation standards serve to protect the public and this proposal circumvents them. In the not too distant past, the ADA studied supragingival scaling and rejected it as not in the best interest of patients or dentistry. Finally, other states have started new programs, not lowered standards. I hope you will consider the same strategy for Kansas.

Pam Overman

March 11, 1998

Senate Public Health and Welfare Committee
Kansas State Senate
Topeka, Kansas

RE: HB 2724

Patricia L. Seery, R.D.H., M.H.S.
Clinical Dental Hygienist for21 years
practice included general dentistry, hospital dentistry, dentistry for handicapped individuals, periodontal specialty practice
Kansas Dental Board, member since 1992
Vice President last three years
Assistant Professor and Clinic Coordinator, Department of Dental Hygiene
Wichita State University, 2 years

14430 Spring Valley Circle
Wichita, Kansas 67230

316-978-5488 (w)
3136-733-6045 (h)

Ladies and Gentlemen of the Committee,

I come before you today as a member of the Kansas Dental Board with grave concerns over the proposals contained in HB 2724. The reported support of this bill by the Dental Board was NOT unanimous. As a small board, it is easy for proportion to be lost.

During my tenure on the Board, the enforceability of our Dental Practice Act has been faced with numerous obstacles. Part of the problem has been the language of the Act. Other problems have centered around the ambiguity of the phrases. The major hurdle to strict enforcement has been fiscal. We have been working to remove these hurdles and now the measures proposed in HB 2724 would add logistics to the list of impediments. How does one enforce a law that puts instruments of preventive care in unqualified hands then tells those hands they can only use them in a defined area that cannot be actually monitored and enforced without someone standing directly over them? Waiting until someone has to "take responsibility" for the care (or attempted care) delivered is too late to protect the consumer - a charge with which we as Dental Board members are entrusted.

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Drivers must have a license to operate a car. Individuals must get a license to get married. Health care providers are required to be credentialed to deliver services. And for over 50 years in the state of Kansas, providing dental hygiene services has required accredited education, demonstration of minimal clinical skills, successful completion of written board examinations, and acquisition of a state license. When those standards are violated, there are consequences - whether it is a ticket for operating a vehicle without a license or overstepping the competency of your education. In the past, there have been complaints registered with the Kansas Dental Board regarding substandard care or illegal use of dental assistants to deliver services beyond their scope of practice. Today is no exception. Disciplinary action has resulted when unlicensed individuals provide care outside the restrictions of the Dental Practice Act and the complaints that lead to such action continue to come forward. The problem is NOT that dental assistants are not a caring, competent part of the dental team. I know I personally wouldn't want to be in a practice without them because they are a valuable asset, as is each individual on the team. But each team player has a role to perform to keep the team operating at a high performance level. Accreditation standards reflect that the level of training (note: this is NOT education) proposed in this bill is NOT adequate to insure public health and safety. With those standards in place throughout the United States, why would we consider delegating licensed procedures to individuals with substantially less education than what is required for a licensed individual? Who would tolerate a medical assistant doing pap smears or prostate exams? What lawyer would allow a para-legal to try his court cases? Will a dentist allow a dental hygienist to do routine restorative care when the number of counties without dentists reaches critical levels in the next ten to 15 years due to unsold practices at retirement?

Trying to enforce not crossing a line when the tools but NOT the education have been provided is a logistics nightmare. Requiring name tags, plaques and brochures is NOT enforcement. It is part of a charade that pretends to be enforcement. Requiring an educational standard then assuring it is maintained is enforcement. Our current law IS enforceable given the motivation of the entire dental board. And that should be the

primary course of action - enforcing the law as it exists NOT changing it to accommodate those who will NOT abide by it.

In order to resolve the real issues at hand, several appropriate steps would effect an acceptable compromise. First, secure funding to expand existing dental hygiene programs and establish additional dental hygiene programs. Both programs within the state would like to expand but have been unable to secure the finances required for capital equipment and the budgetary expansion for additional faculty. Second, allow dental assistants to rubber cup polish. Several dentists have visited with me regarding this bill and have openly stated that all they really want is to be able to allow their dental assistants to polish. To quote one dentist, "I'm afraid if I don't support this bill we won't even get polishing." Third, allow certified orthodontic assistants to remove orthodontic cement. Those two expansions for dental assistants would address the desires of an overwhelming majority of dentists without compromising the public's oral health care or the enforceability of the Dental Practice Act.

I ask you today, then to consider our responsibility to the people of the State of Kansas and commit to assuring quality, enforceable health care motivated by the desire to provide quality health care and do NOT support this bill.

TO: Senate Public Health and Welfare Committee
FROM: Cecil B. Little
SUBJECT: House Bill No. 2724

Senators:

My name is Cecil Little. I come to you as a taxpayer, a voter, a consumer and a senior citizen who is concerned about his pocketbook and his teeth!

I have read House Bill No. 2724, or rather I have tried. I am neither a lawyer nor law student, nor do I have the expertise to fully understand this type of presentation. I am sure it takes a lot of study and training to do so, (just as it does to become a Dental Hygienists). But, from what I can make of it, (with some help from the news media), at least part of it has to do with allowing a person, with less qualifications than a Dental Hygienists, to work on my teeth. This person would be "registered" by "the board" (I take it that's the Kansas Dental Board) who will approve a course of study for them to take. By the way, have any of you seen this course or know if it has been made up yet? Would you vote on a money bill without knowing how much money was at stake?

If this passes I feel that I am going to receive less for my money. Because you can bet your bottom dollar the price will remain the same. Can you remember when candy bars got smaller? They still cost you the same, didn't they.

Although important, the price isn't the main issue to me. It's the quality of care that I am concerned with. I know the dentist will be checking the work, but how much time will he take to do that. And as far as direct supervision - the way I read it the dentist could be 50 feet down the hall and four doors to the right. All he has to be is in the office somewhere. The direct supervision I'm familiar with is when I was digging a slit trench with a sergeant looking down at me saying, "Get your back into it, Soldier". Now to me, that's direct supervision. Sure the dentist will look at me and then tell this "registered person" what needs to be done, and later come back and check it out. But, while he's gone, I'm worried what's going to happen to my teeth, worked on by a person who has, in my opinion, had less adequate training than a Dental Hygienist. Would you trust your teeth to me after I had had too little training?

Thank you for your time,

Cecil B. Little 03/10/98

Cecil B. Little
9544 Haskir
Lenexa, KS

Senate Public Health and Welfare
Date: 3-11-98
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THE KANSAS DENTAL HYGIENISTS' ASSOCIATION

CONSTITUENT OF THE AMERICAN DENTAL HYGIENISTS' ASSOCIATION

P.O. BOX 781056 • WICHITA, KS 67278-1056

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Cindy Scott
Recording Secretary

Lisa K. Ross
Treasurer

Denise Maus
Immediate Past President

Renee Arnett
Trustee

Mary Jo Nigg
Trustee

Jane A. Criser
Trustee

March 11, 1998

Re: HB 2724 - opposition testimony

Dear Senate Public Health & Welfare Committee,

I am the president of the Kansas Dental Hygienists' Association (KDHA). Our continual concern with House Bill #2724 is that it will allow non licensed substandard trained dental assistants to scale above the gumline, the visible surfaces of the teeth. **No state in the United States currently allows dental assistants to scale teeth as part of a prophylaxis - Kansas would be the first to do so if this legislation is allowed to pass.**

During the Spring of 1997, the KDHA was involved with discussions with KDA that has lead to the creation of a new dental hygiene school in Colby, Kansas. The education of more dental hygienists is one of the answers to a mal distribution/shortage of dental hygienists in western Kansas.

KDHA also participated in the KDA Ad Hoc Committee that was formed by KDA this past summer. Although it was noted in testimony yesterday that KDHA did not support the proposal that was presented by the committee, it is important to note that Kansas Dental Association did not support it as well. The Health Care Reform Oversight Committee was presented with information regarding the KDA Ad Hoc committee's work. The Oversight Committee commended the efforts of the KDA Ad Hoc committee, but did not proceed to recommend any legislative action.

KDHA went in good faith to the House Health & Human Services Subcommittee with a compromise to this bill that we felt would be in the best interest of the public. Our compromise was that the non licensed dental assistant would be allowed to polish with proper training but not allowed to scale above the gumline. Our compromise was not given any consideration. During subcommittee testimony, Delta Dental stated "Delta Dental Plan of Kansas only wants what is best for its subscribers and the assurance that those performing dental services are **qualified and licensed** under the law to perform those duties." We hope that this Committee will see the health problems as previous speakers have shown that could result from non licensed substandard trained dental assistants scaling teeth.

The Kansas Dental Board has not taken any action against the dentists who are currently allowing dental assistants to scale and polish even since the 1995 Attorney General's Opinion 95-29. Why the rush on changing the current statute? Interpretations of the statutes by KDA in their Journal and in other correspondence have lead readers to believe that it is legal for assistants to scale and polish teeth. In July of 1993, KDHA wrote to the Kansas Dental Board requesting clarification to all licensees that dental assistants may not scale. No action was taken by the Dental B

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the Attorney General in 1995 to define the term "prophylaxis". To date, the Opinion has not been placed into the statutes as is customary. Please refer to the various attachments related to these issues.

The citizens of Kansas have not requested this change in health care providers. We hope that each Senator on this committee will see the importance of safeguarding the public's health and either vote NO on this bill in its present form or amend it to remove the scaling above the gumline by a non licensed substandard trained dental assistant.

Thank you for your time.

Barbara Burkindine, R.D.H.

Barbara Burkindine, R.D.H.
KDHA President

10/93 KDA

Delegable Functions for Dental Assistants Based on the New Dental Board Regulations

Introduction: New Dental Board regulations became effective in May 1993. The new regulations make significant changes in the duties and functions that may be delegated to auxiliary staff members. The regulations operate on the presumption that a procedure may be delegated unless the delegation of the procedure is explicitly prohibited. As a result of this change, there is a great deal of confusion among Kansas dentists as to the procedures that may be legally delegated.

The KDA Council on Dental Education and Manpower has reviewed the Dental Practice Act, the new regulations, and the ADA Code of Dental Terminology (CDT-1). From that study, the Council outlined the procedures or component parts of procedures that appear to be legally delegable. The following discussion is presented as an effort to assist KDA members by providing a basis for determining which procedures may be delegated to auxiliary staff members. (*Please refer to End Note.)

00100-00999 Diagnostic - Clinical Oral Examinations — It is unclear whether a clinical oral examination or any part of a clinical oral examination is delegable to assistants. The new regulation (K.A.R. 71-1-16(b)(1)) prohibits the delegation of 'a comprehensive examination.' The regulation, however, does not define a 'comprehensive' examination.

00210 - 00340 Radiographs — The taking of radiographs is delegable as it is not prohibited by any of the five prohibitions of K.S.A. 65-1423 (g)(1)-(4).

01110, 01120 Prophylaxis — While the delegation of prophylaxis to an unlicensed person is prohibited under K.S.A. 65-1423, neither the statute nor the regulations define the term. Coronal polishing is generally considered to be a component part of prophylaxis, which has been consistently held by the Dental Board to be delegable, as it does not constitute a prophylaxis nor does it fall under the prohibition against delegating the removal of hard or soft tissue (K.S.A. 65-1423(g)(1)). The scaling of teeth, like coronal polishing, is also a component part of the prophylaxis procedure. Also like coronal polishing, the scaling of teeth does not fall under the prohibition against delegating the removal of hard or soft tissue (K.S.A. 65-1423(g)(1) as defined by K.A.R. 71-1-16(a)(1)). Therefore, scaling and coronal polishing are permitted to be delegated to unlicensed persons since there is no prohibition against such delegation. *Please note:* Root planing removes hard tissue to render smooth the root surface and as such is prohibited from being delegated to unlicensed persons (K.S.A. 65-1423(g)(1) as defined by K.A.R. 71-1-16(a)(1).

01201 - 01205 Topical fluoride treatment — Topical fluoride treatments are delegable as there is no prohibition contained in K.S.A. 65-1423.

01310 - 01351 Other preventive services (nutrition counseling, oral hygiene instruction, sealants) — Each is permitted as there is no prohibition contained in K.S.A. 65-1423 as defined in K.A.R. 71-1-16.

01510 - 01550 Space maintenance (passive appliances) — Impressions for space maintainers are delegable since there is no prohibition against such delegation in either K.S.A. 65-1423(g) or K.A.R. 71-1-16. The cementation of space retainers appears to be delegable, since K.A.R. 71-1-16 only prohibits the 'final placement and intraoral adjustment of a fixed crown or fixed bridge.' When space maintainers are adhered to crowns, the cementation may not be delegated under K.A.R. 71-1-16(a)(3).

02110- 02161 Amalgam Restorations — The cutting of the preparation is not a delegable function as it is a 'surgical or cutting procedure on hard or soft tissue' and is, therefore, prohibited under K.A.R. 71-1-16, which defines K.S.A. 65-1423(g)(1). The placement (packing and carving) of amalgam restorations in a prepared tooth appears to be delegable, however, since the definition of "Any and all removal of or addition to the hard or soft tissue of the oral cavity" at K.S.A. 65-1423(g)(1) is defined at 71-1-16(a)(1) - (4) to mean only a surgical or cutting procedure on hard or soft tissue, the grafting of hard or soft tissue, the final placement or intraoral adjustment of a fixed crown or fixed bridge, and root planing or the smoothing of roughened root surfaces. The placing of an amalgam or other type of restoration in a prepared tooth is not, therefore, prohibited.

02210 Silicate restorations — The placement of silicate restorations is permitted. See discussion under 02110.

02330 - 02387 Resin restorations — The placement of resin restorations is permitted. See discussion under 02110.

(Continued on page 36)

KDA Journal 10\93

7-3

State of Kansas

Office of the Attorney General

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

CARLA J. STOVALL
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
FAX: 296-6296

March 3, 1995

ATTORNEY GENERAL OPINION NO. 95- 29

The Honorable Sandy Praeger
State Senator, Second District
State Capitol, Room 128-S
Topeka, Kansas 66612-1504

Re: Public Health--Regulation of Dentists and Dental Hygienists--Act Inapplicable to Certain Practices, Acts and Operations

Synopsis: The dental act is not applicable to unlicensed individuals who, under the supervision and in the office of a licensed dentist, perform dental services, so long as such persons do not perform any of five dental procedures, including a prophylaxis. The term prophylaxis is not defined by the act but has a commonly accepted definition among dental authorities. Because the legislature clearly intended that unlicensed individuals not perform this procedure, only licensed individuals may perform component parts of a prophylaxis as the term is commonly accepted in the dental profession. Cited herein: K.S.A. 65-1421; K.S.A. 1994 Supp. 65-1423; K.S.A. 65-1456; K.S.A. 1994 Supp. 77-201.

* * *

Dear Senator Praeger:

As senator for the second district you inquire whether an unlicensed individual may perform any component part of a prophylaxis without violating K.S.A. 1994 Supp. 65-1423(h).

K.S.A. 1994 Supp. 65-1423 subsection (h) makes the dental act inapplicable to dental services provided by unlicensed individuals under the supervision and in the office of a licensed dentist so long as the unlicensed individuals do not perform the following:

> "(1) Any and all removal of or addition to the hard or soft tissue of the oral cavity.
>
> "(2) any and all diagnosis of or prescription for treatment for disease, pain, deformity, deficiency, injury or physical condition of the human teeth or jaws, or adjacent structure.
>
> "(3) any and all correction of malformation of teeth or of the jaws.
>
> "(4) any and all administration of general or local anaesthesia of any nature in connection with a dental operation.
>
> "(5) a prophylaxis."

The statutory language clearly prohibits an unlicensed person such as a dental assistant from performing any of the five dental procedures, including a prophylaxis. At issue is what constitutes component parts of a prophylaxis which only licensed individuals may perform. Neither the statute nor the dental practice act, K.S.A. 65-1421 et seq., define a prophylaxis, making the term ambiguous or subject to interpretation.

The interpretation of a statute is a question of law wherein the court's function is to interpret the statute to give it the effect intended by the legislature. Cyr v. Cyr, 249 Kan. 94 (1991). The interpretation is facilitated by rules of construction unless their application is inconsistent with the legislature's intent or repugnant within the statute's context. Of assistance to our question about prophylaxis is a statutory rule of construction that addresses the use of technical terms: "Words and phrases shall be construed according to the context and the approved usage of the language, but technical words and phrases, and other words and phrases that have acquired a peculiar and appropriate meaning in law, shall be construed according to their peculiar and appropriate meanings." K.S.A. 1994 Supp. 77-201, second.

The term prophylaxis is a technical term used in a statute regulating dentistry and in accordance with the rule of construction is to be construed as a term of art in the profession. It is defined by one leading dental authority as:

> "[A] routine dental prophylaxis performed on transitional dentition or permanent dentition. Includes scaling and polishing procedure performed on dental patients in normal or good periodontal health to remove coronal plaque, calculus and stains. Since pockets are absent in a completely normal periodontium, scaling and polishing are performed on the anatomic or clinical crowns and into very shallow, healthy sulci." American Dental Association, Current Dental Terminology, 1st ed. (1991).

See also the American Academy of Periodontology, Glossary of Periodontal Terms (3rd ed., 1992); American Academy of Periodontology Current Procedural Terminology for Periodontics (5th ed. 1986); Zwemer, T.J. Boucher's Clincial Dental Terminology: A Glossary of Accepted Terms in all Disciplines of Dentistry (4th ed. 1982).

get other sources

It is clear from the definition of prophylaxis found in these references that the term has a commonly accepted definition in dentistry. Words used in a statute peculiar to a trade and having a commonly accepted definition within that trade are to be interpreted as having that meaning. Flour Mills of America v. Burrus Mills, Inc., 174 Kan. 709, 716 (1953), citing O'Hara v. Luckenbach S.S. Co., 269 U.S. 364, 46 S.Ct. 157, 70 L.Ed. 313, 316 (1926).

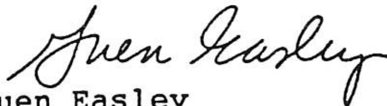
Using a commonly accepted definition in dentistry to define prophylaxis is consistent with the legislative intent of the statute. The legislature intended to prohibit unlicensed individuals from performing these procedures because the procedures that constitute a prophylaxis require the training, education and experience found in those licensed to perform them. See K.A.R. 71-3-3 (authorizing dental hygienists to give fluoride treatments as a prophylactic measure.) The practice of a licensed dental hygienist involves educational, preventive and therapeutic procedures that include the scaling and polishing of the crown surfaces, K.S.A. 65-1456. The prohibition is thus intended to protect the public by assuring

that only licensed individuals perform dental operations that require appropriate training and experience. In our judgment it is inconsistent with both the statutory language and its clear legislative intent to interpret the statute to allow those not licensed to perform any part of procedures or dental operations reserved by the legislature to those licensed to perform them.

We understand that concluding that unlicensed individuals may not perform any component part of a prophylaxis does not establish exactly what dental operations are prohibited. We have interpreted the statutory language to give it a reasonable construction that fully implements the legislature's intent. Statutory language designed to protect the public must be construed in light of legislative intent and broadly enough so that its public purpose may be fully implemented. State ex rel. Stephan v. Kansas Racing Comm'n, 246 Kan. 708, 719 (1990); 73 Am.Jur.2d, Statutes, § 159 (1974). Thus, without action by the legislature to amend K.S.A. 65-1423(h)(5) to specifically include or exclude certain dental measures in the term, it is our opinion that only those licensed by the dental act may perform the dental operations involved in a prophylaxis as the term is commonly accepted by recognized dental authorities. *

Very truly yours,

CARLA J. STOVALL
Attorney General of Kansas



Guen Easley
Assistant Attorney General

CJS:JLM:GE:jm

Gena B. Hofer
Attorney At Law

8139 Parallel Parkway
Kansas City, Kansas 66112
Admitted in Kansas and Missouri

(913) 788-3566
Fax (913) 788-3566

March 25, 1996

Dear Kansas Dentist:

As you are probably aware, the January 1996 report of the Kansas Dental Board addressed the issue of supragingival scaling by unlicensed dental personnel. It is the opinion of the dental board, at this time, that supragingival scaling may only be performed by a licensed individual. This opinion is based on the board's interpretation of the dental statute, K.S.A. 65-1423 and Attorney General Opinion 95-29, dated March 3, 1995.

The Kansas Dental Association has, for some time, strongly supported supragingival scaling by unlicensed personnel. We are in agreement.

The time has come, (and past), for this issue to be resolved within the dental community itself and by statutory law.

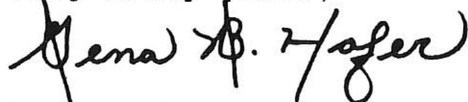
Briefly, we are of the opinion that a new statute should allow delegation of supragingival scaling to dental assistants under the direct supervision of the dentist. In addition, a training program should be required of the dentist and the dental assistants.

This clearification of the law will benefit everyone; the dentist, the dental hygienist, the dental assistant, and most importantly, the patient.

At this point, we need to receive feedback from you and your support in this venture. I have enclosed in this letter a self-addressed, stamped post card for you to return immediately which states your position on this issue. I would also welcome any further comments or questions you may have by telephone or fax.

Thank you for your prompt attention to this matter and to the dental community. I look forward to hearing from you soon.

Very truly yours,



Gena B. Hofer

P.S. The deadline for this action is April 15, 1996.
Please complete the post card now and place it in the mail.

7-8

Delta Dental Plan of Kansas

1010 N. Main St.
P.O. Box 49198
Wichita, KS 67201-9198
Telephone 316-264-1099

TO: House Health & Human Services Subcommittee

FROM: Ronald Gessl, President & CEO
Delta Dental Plan of Kansas, Inc.

DATE: February 9, 1998

Mr. Chairman and Members of the Committee:

We appreciate the opportunity to be here before you today to discuss with you how dental offices bill for services performed and on what basis those services are paid.

All dental services performed in the dental office are billed directly to Delta Dental Plan of Kansas via a completed Attending Dentist Statement or claim form. The services performed are submitted using a set of prescribed procedure codes which identifies the actual treatment(s) rendered to the patient.

The claim submitted to us comes directly from the attending dentist's office although, in some instances, the treatment may have been performed by an employee of the dentist. When we receive a claim, we do not know whether the dental services being submitted for payment were actually performed by the dentist or by one of his staff members, such as in the case of dental hygienists.

Next to oral examinations, the most frequently performed dental procedure in the dental office is a prophylaxis (teeth cleaning). Prophylaxis for adults and children constitutes 20% of the dental procedures performed in the dental office. Last year alone, Delta Dental Plan of Kansas paid for over 150,000 teeth cleanings. Of the total dollar amount paid by Delta Dental last year in dental benefits, 16% of that total went for the payment of teeth cleanings. So the cost and frequency of this procedure is significant.

Delta Dental Plan of Kansas only wants what is best for its subscribers and the assurance that those performing dental services are qualified and licensed under the law to perform those duties.

HHB PERIODONTICS

HUGH H. BRUNER, JR., D.D.S. DIPLOMATE, AMERICAN BOARD OF PERIODONTOLOGY
SUITE 114 4860 COLLEGE BOULEVARD OVERLAND PARK, KANSAS 66211-1224 913/469-1612

My name is Hugh H. Bruner, Jr. My father, two uncles and one cousin were dentists. Two practiced in Wichita. My Dad practiced in Emporia and Olathe. I graduated from Dental School in 1961 and was in the US Army from 1961-1972. Since 1972 I have practiced in Overland Park. I publish this proudly because I'm delighted to be a dentist and grateful to be a Kansan.

I have been a member of the American Dental Association since 1961 and a member of the Kansas Dental Association since 1972. I believe in organized dentistry and I support it with my time and money. However, I come to you today as a member of the loyal opposition.

You have heard tesitmony that the current State Dental Act is not being enforced, that there is a shortage of dental hygienists and that there are Kansas counties that don't even have dentists. You have been told that dental assistants have illegally performed dental prophylaxis for years and as no one has complained--ergo,no harm, no foul! You have heard that dental hygienists are concerned about being replaced by dental assistants because money-grubbing dentists want to hire the less expensive help. Some people appear to advocate dental care on the cheap!

The federal government has acknowledged that in certain areas--i.e., the South Bronx in New York City--Medicaid treatment is rendered by physicians that have not been trained in the U.S. The argument is that ersatz physicians are better than no physicians at

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all. What this does, of course, is to legitimize less than optimum care to people in a certain geographic area.

The dental profession has been challenged in the last several years, as well. The United States Government through the Federal Trade Commision treats dentists like a trade and vigorously attempts to attenuate the concept of dental specialities.

Now, the State of Kansas is considering legalizing artificial dental hygiene.

I respectively request that you consider this carefully.

Do you really want to trivialize the profession?
Do you really believe that since the existing law in unenforceable that the new law will be enforceable?
Do you really think it is proper public policy to have non licensed persons scale teeth?

I personally object to the concept of a dental assistant scaling teeth, and I'll tell you why.

Scaling is considered by me as well as others in the field of periodontics to be one of the most difficult and demanding skills to be learned and properly performed. I consider it to be too important a service to be delegated to a non licensed individual.

But this is just my opinion, and I could be wrong.

Thank you.

My name is Jeanne McCready. I was a dental assistant for ten years before I became a licensed dental hygienist three years ago. I am here today in opposition to HB 2724. You have heard testimony that one office, and I stress one, is paying a hygienist $35.00 per hour plus benefits. The issue here before us is not what hygienists are paid, but rather the quality of care that the general public receives in the dental office. Since money has been made an issue however, I would like to comment to that. That is not what a hygienist earns in a typical office. I spoke with all twenty of my classmates and none makes over $25.00 per hour. I called almost every hygienist in the Johnson County Dental Hygienist's Association's directory and could not find a hygienist making $35.00 per hour. I earn $22.00 per hour which, for the seven hour day I work, earns me $154.00 a day. For this fee I produce about $500.00 a day or three times my daily pay as do most hygienists. Once again I would like to stress that the public's welfare is in question here, not what one dentist had to pay a hygienist. Even is this bill is passed and signed into law I feel it is unethical to treat a patient in this manner. If there is indeed a distribution problem, allowing dental assistants to scale should not be part of the solution. I ask you if subquality care is what you really want for your constituents and if it is what you want for yourselves. Thank you for your time and consideration.

Senate Hearing of House Bill 2724

Thank you for the opportunity to speak before you today. My name is Eileen Trainor. I am a licensed, registered dental hygienist in the state of Kansas. I am a Kansas taxpayer and I selectively buy products and services from Kansas. In particular, dental services. As a parent I am very opposed to HB2724 that would allow dental assistants with minimal training to clean my children's teeth. To me this would be jeopardizing their oral health care. When this bill became a serious issue, I tried to perform the " so called above the gum cleaning and polishing" as it's proposed on children because they are not supposed to have any serious type of gum disease. After air drying around the teeth I could see the tartar below the gum line and under the contact of the back teeth. There wasn't any way for me to remove the tartar on the lower front teeth without going below the gum line. Tartar is not selective about where it grows. Just like you can't clean only above the gums leaving the rest below the gums and say it's clean because the patient is a child.

The Academy of Periodonists are not the ones who set the recommended standard of care for twice a year cleaning that is now practiced in dental offices and paid for by insurance companies, it was a toothpaste commercial from the early sixties. I find it frightening that with this new bill, it will decide who will be cleaning my son's teeth. My son is a mouth breather. Presently, we try to get his teeth cleaned 3-4 times a year. He builds up moderate amounts of tartar just like an adult, on the front and back of his teeth. If he were to get this above the gum cleaning performed, not only would I have to worry about his baby teeth falling out , I would have to also worry about his permanent teeth falling out, due to gum disease! This scares me because it is the tartar left below the gum line that would be causing serious and permanent damage to the bone and tissue.

If this bill passes it will affect every member of the family, but I fear the children will suffer the most. Our parents and grandparents grew up with the idea of the possibility of having partials or dentures when they got older. I never thought it was a possibility for my children too! So on Andrew's 21st birthday, do we celebrate with keys to a new car, or with a new set of dentures?

If this bill was about a cure for cancer that could save my son's teeth, would you tell my son he could have part of the cure or all of the cure. I am praying that you'll tell my son he won't have to worry about who's cleaning his teeth. I am hoping that your answer will be that it is either a registered dental hygienist or a dentist. Thank you!

School of Dentistry

University of Missouri-Kansas City
650 E. 25th Street
Kansas City, Missouri 64108-2784

2 February 1998

House Committee on Health & Human Services
State of Kansas
State Capitol Building
Topeka, Kansas

Re: House Bill No. 2725

Honorable Sir/Madam,

I am writing in regards to House Bill No. 2725 concerning expansion of the Kansas Dental Practice Act to allow dental assistants to perform supragingival scaling and polishing (cleaning of teeth above the gum line). I have grave concerns about this bill and its potential impact on the quality of dentistry in the State of Kansas.

For over 30 years I have held active general dental and specialty licences in the State of Kansas. At one point in my professional career I practiced in Overland Park, Kansas. Thus, to that extent, it would appear that I have both a right and an obligation to express my views concerning the proposed legislation.

Currently, I am a professor of periodontics at the University of Missouri-Kansas City. In that capacity, I was one of 200 individuals selected to participate in the 1996 World Workshop in Clinical Periodontics. The outcome of that conference was a book of almost a thousand pages that serves as a compendium of the clinical science of periodontics -- the state of the art -- and where the specialty is likely to go over the next decade. I wrote the chapter on non-surgical treatment of periodontal disease. Consequently I am quite familiar with the last 40 years of research concerning non-surgical therapy which includes, among other things, the procedure of supragingival scaling and polishing that is addressed in House Bill 2725.

Lastly, I wish to note that I have spent 15 years in full-time private practice and 15 years in full-time academic dentistry. I have, therefore, experienced both the pragmatic and academic issues related to providing patient care.

As regards House Bill 2725, my concerns are several:

1. Dentistry has always prided itself as being a profession and has been recognized by the public for its professionalism. A profession, by definition, is a group of

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individuals with advanced knowledge and skill for the benefits of others. Society recognizes a profession by granting virtual exclusivity in its activities. In return, society expects a profession to do three things: (1) maintain the knowledge and skill base of the profession and use that base in a fiduciary relationship with each patient; (2) maintain self-control and self-regulation of all members of the profession; and (3) place the patient's welfare above all else.

It is my contention that this bill does not place the patient's welfare above all else. Further, it is my opinion that this bill is blatantly self-serving for a relatively vocal but small number of practicing dentists.

2. All research in periodontics concerned with the non-surgical treatment of periodontal disease indicates that supragingival scaling and polishing has little if any therapeutic value. Consequently, the Kansas legislature, if it were to pass the proposed bill, would in essence have given legal precedent to procedures that are cosmetic in effect. Of course the lay public would not understand this to be the case.

   If this bill were to be approved, I would suggest that the Kansas legislature is morally and ethically obligated to require those offices which allow dental assistants to perform supragingival scaling and polishing to inform the public that they are paying for a cosmetic service; and that a cosmetic service is not likely to be reimbursed by dental insurance. Otherwise, passage of the proposed bill as written, would offer an effective legal veil for misrepresentation and insurance fraud.

3. If Kansas dentists were to wrongly succeed in making the argument that supragingival scaling and polishing constitutes a therapeutic procedure, then the State Dental Board of Kansas should be instructed to regulate and examine those wishing to perform these procedures. The regulation should also include periodic examination of the practicing dentist in whose office the training takes place as there is currently no continuing assurance that the dentist is competent to teach such procedures.

   Dentistry, as do most professions, has rigorous accreditation guidelines to maintain consistency of its educations programs and structured examination processes designed to identify the appropriate knowledge base and requisite clinical skill level of beginning practitioners. This same rigor of examination and regulation should carry over to those affected by the proposed bill, the dental assistant and his/her employer.

4. I and my colleagues, because of our positions in academic dentistry, are frequently ask to serve as expert witnesses in dental malpractice litigations, both for defendants and plaintiffs. It has been my experience that Standard of Care issues, as applied to dentistry, are easily established, e.g., the general dentist is obligated to meet the standards of the specialty if he or she is using treatment modalities

routinely performed by a specialist. One can argue that supragingival scaling and polishing of teeth is routine in the general dental office as part of a definitive dental prophylaxis and therefore should not be held to the same Standard of Care as that found in a periodontist's office. However, one can also argue that without subgingival scaling, oral hygiene instructions, periodontal examination, and consultation with the patient concerning existing disease, regardless of how minor or insignificant, that the cosmetic procedure of supragingival scaling and polishing without the attendant procedures is both misleading to the patient and not within the Standard of Care.

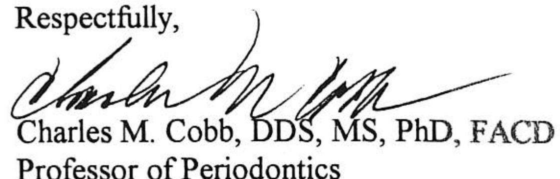
It has been my experience that in a busy practice the dentist does not have sufficient time to perform all the procedures beyond supragingival scaling and polishing that would be required to satisfy the Standard of Care and still provide other types of definitive patient care.

I suspect that due to financial and practice management pressures, that there are dental practices in the State of Kansas that currently use dental assistants to perform many of the duties that only a licensed dental hygienist or dentist can legally discharge. However, these offices do so at the risk of violating the present Kansas Dental Practice Act and, in such cases, have done so knowing that risk. In my opinion, it would be a violation of the public trust for the Kansas Legislature to offer such practices a legal veil that can be used as justification for continuing to violate the law.

5. Lastly, the proposed bill, if passed, present an ethical dilemma for Colleges and Universities. Wichita State University, Johnson County Community College and the University of Missouri-Kansas City have either two year, four year, and graduate programs in dental hygiene. Obviously, these institutions have for many years charged a tuition and other fees for the privilege of being a student in their respective dental hygiene programs. If the Kansas Legislature were to pass the proposed bill, authorizing dental assistants to perform some of the duties ordinarily within the purview of a university/college trained dental hygienist but without equivalent education, the message would appear to be that education is not necessary and that dental hygiene students waste their money? Surely, this is not the message intended by Kansas State Legislature.

In closing, allow me to thank you for taking the time to read my thoughts and opinions. I can only hope that you, as representatives for the voting public, will exercise your votes in a manner that is both ethically and morally in the best interests of the people of the State of Kansas.

Respectfully,



Charles M. Cobb, DDS, MS, PhD, FACD
Professor of Periodontics

My name is Thane Frazier, 7[illegible] years old, and have practiced general dentistry for the past 46 years in Lyons, Kansas. I have been honored to serve my community as well as my profession as President of our Central District Society, President of the Kansas Dental Association, and President of the Kansas Dental Board until my four year appointment expired in May 1991. Perhaps I should just fade away and let "so called" progress infiltrate my profession but before doing so I feel I should at least call attention to the efforts of some of my colleagues to change our dental practice act to suit their personal needs in the name of "progress"

I can assure you I have good friends on both sides of this issue but I feel compelled to take a stand for what I believe is morally correct for the citizens of Kansas. This is not the first time since 1943 that efforts have been made to change the dental practice act. During my presidency of the Kansas Dental Association (1977-78) there was proposed legislation by denturists (dental laboratory technicians) who expressed a desire to take impressions and construct dentures for the general public in their dental laboratories. Some of these technicians had been doing this illegally and even contended they could "save" the aging public a lot of money with their lesser fees. The denturists bill was proposed to make legal what they had been doing illegally for years.

With the support of the American Dental Association, the Kansas Dental Association, and the Kansas Dental Board our testimony in the legislative hearings stressed strongly our belief that anyone working in a patients mouth, making judgments for treatment and evaluating the health of the tissues needed to be someone with an extensive structured education in all phases of dentistry, and that under our current dental practice act these persons following graduation from accredited programs were required to pass dental board exams, licensed, and annual renewals and fees were required with proof of continuing education. These requirements would better assure quality services and also the protection of our general public. In my opinion, the persons who wrote and utlimately passed in to law that section of the dental practice act that certain procedures of treatment would be limited to licensed individuals (dentists and hygienists), certainly felt that this was in the best interests of the citizens of Kansas. When they stated in Sec.1 (h)(5) that an unlicensed person shall not be allowed to perform "a prophylaxis" they were stating unequivocally that unlicensed personnel should not be working in the mouth. They did not intend for exceptions as is now being considered.

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The board then proceeded to write rules and regulations to allow what they wanted. They had fired the former Board's attorney previously because he had informed them that such rules and regulations were unconstitutional. They finally found someone with a different opinion at that time. Ultimately the Kansas Dental Hygienists Association requested an opinion from the Attorney General and only then did they publish a memorandum to all the dentists in Kansas stating that it was illegal to allow dental assistants to do ANY PORTION of a prophylaxis.

Within a few days the Kansas Dental Association membership was made aware that a move was underway within the Association and the Dental Board to "LEGALIZE IT" and, oh yes, please send $500.00 to help with expenses and lobbying costs. If a change in a law is truly in the best interests of the people of Kansas, does someone have to be paid to support it?? I am further concerned with the wording of the proposed changes in the law in that dental assistants would be operating "under the on-site supervision of a dentist" so long as they have completed necessary training as established by the board". That could be anything or nothing. Will the Governor make appointments to the Board based on their qualifications to develop a strong educational program for assistants or will the appointments be made from strong supporters of his political campaign? Will the rules and regulations change as frequently as the composition of the board membership? At the present time we practice dentistry in Kansas as prescribed by law. You are in control of what can and should be done in dental offices across the State for the protection and safety of our citizens. Don't turn over this authority to regulate the practice of dentistry to the Kansas Dental Board by letting them establish rules and regulations which will more than likely be self-serving.

I truly enjoyed my years of service as an officer of the Kansas Dental Association and perhaps even more so the honor and privilege of serving on the Kansas Dental Board, but I always felt that as an officer of the Dental Association my duties were to serve my fellow dentists, but when I became a member of the Board my duty was to the consumer, the people of the state of Kansas, and to enforce the dental practice act. I have always felt that the practice act may need to be changed from time to time but ONLY if it was in the best interests of our patients. Well, I've said enough and if all else fails, I guess I should retire. (But I hope not yet!)

Duane Regier DDS
1-31-98

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Richard Aldritt
Representative, District 105

February 1, 1998

Dear Mr. Aldritt,

As the president of the Southern District Dental Society and a Director for the Kansas Academy of General Dentistry I am very concerned with proposed legislation that would allow unlicenced dental personnel to provide supra-gingival scaling in the dental offices of Kansas. The Kansas Dental Association is making a great effort to get this passed, however there are a significant number of dentist's in this state that are not in agreement with this effort. I have practiced in four states during the past twenty-eight years both in urban and rural areas and during that time I have practiced with a licensed dental hygienist and without one. I believe that the issue at hand is not one of access to care, because the dentist's in this state that have been and are currently providing the care are obligated by the dental practice act to only allow a licensed dental hygienist to scale the teeth or they must do this procedure themselves. The dental practice act for many years was vague and due to lack of resolve, the Kansas Dental Board has not until recently acted to have the law defined and has also failed to uphold this current law.

I don't understand the reason that Kansas has been behind other states in the region in expanding dental hygiene programs to serve the needs of the population. For example, Minnesota has had dental hygiene programs in the junior colleges since the early 1960's and during the 1970's I was on a committee of the Minnesota Dental Association that was charged with examining onsite and certifying all of the dental hygiene and dental assisting programs in the state. Having practiced in Colorado in the late seventies and eighties, I know that they have also had programs in dental hygiene at junior colleges remote as any area in Kansas since the 1960's.

I sincerely believe that it is ill advised to allow unlicenced personnel to provide supra-gingival or any type of scaling services to the public. There is no other state in the nation that allows this procedure to be provided by anyone other than a licensed dentist or dental hygienist. Dental assistants that have been trained in a formal (Vo-tech School) program are able to polish the coronal aspect of the teeth in most states. The KDA and Kansas Dental Board do not propose to advance or increase the training of dental assistant's in this type of formal program and teach them after completion of a certifying exam how to supra-gingival scale. They propose to take a person off of the street and have the employer dentist train them on the job to provide this care and in this way there will be no standard of education or training of any kind. Any rules that are made by the dental board will be as unenforceable as the current law has been. Because of the vague nature of the current law many dentist's have gotten away with allowing employee's to do this procedure and the law was not enforced. I have personally seen the results of this mistake in

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that patient's have come to my practice with early and advanced periodontal disease and have told me that a unlicenced person was doing the scaling not the doctor. I f unlicenced persons are allowed to supra-gingival scale, who is to say that they will stop at supra-gingival scaling. I believe that sub-gingival scaling is being done by unlicenced persons now and that is not ethical or commendable for my profession. Yes, the dentist is ultimately responsible for the care provided, however, few patient's are knowledgeable enough to know the level of care they are receiving and therefore few will complain. Contrary to the position of the KDA, enforcement of the current law should cause disruption in any dental practice that is not in compliance with the law because we are talking about the health of our sons, our daughters, our parents and all of the people of Kansas.

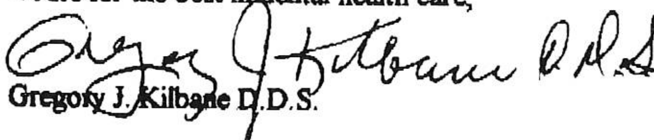
Many dentist's are being pressured by the insurance companies in one way or another to lower fees and I believe that this is a driving force behind this legislation. The insurance industry is not interested in the level of care that is provided, they are only interested in the profit they can make. We as dentist's must be the advocates for the people of the state of Kansas and not allow prurient interests to interfere with the ethical care of our patients. Economics or money should not be an issue when the dental profession considers quality of care issues.

On one hand the KDA says that the number of hygienist's licensed to practice in Kansas is keeping pace with the demand and yet they say in the next breath that the shortage of dental hygienist's affects the ability of dentist's particularly in rural Kansas to provide care. Why wasn't this shortage dealt with long ago? Recently, one dentist in the state has single-handedly taken on the task of getting distance education set-up to increase the number of hygienists through a program in the junior colleges of Kansas. It will take money from the state to fund these programs, but isn't the health of our people worth it?.

There is a great deal of animosity between the dentist's and the dental hygienist's in Kansas and those dentist's that seem to be pushing this legislation the most are not practicing like I am in a rural town of under two thousand population. Fortunately, I have a wonderful, caring, and accomplished dental hygienist currently working with me. I would hate to lose her, however if the law was changed and I happened to be without a hygienist I would do what I have done before and that is put the interest of my patient's first and do the supra and sub-gingival scaling myself rather than delegating this important task to an unlicenced person.

In conclusion, I believe that the people of Kansas deserve the highest standards of care that we can provide as a profession, and we must take the"high road" rather than succumb to pressure from within or without in the quest for the highest degree of dental health for Kansans. Please, urge committee members to join Mr. Morrison from Colby and do not let this legislation get any further in the legislative process because it is a bad idea and a "knee jerk"response to a problem that will take some time to work out in a way that enhances the level of care in this state.

Yours for the best in dental health care,



Gregory J. Kilbane D.D.S.

TESTIMONY OF CINDY K SCOTT, RDH
FEBRUARY 2, 1998

I have been a "Licensed" dental hygienist for 15 years. Currently, I am licensed in 5 states - Kansas being the most recent. My 15 years as a dental hygienist have been spent in private clinical practice with half of that time in the periodontal(gum) specialty. I'm speaking today against HB2725.

One of the states I worked in for 3 years - California - allows dental assistants the legal ability to **polish** as part of a prophylaxis. My testimony today is to share my experience in California with you. Please remember -- that to date **there are no states in the U.S. that allow a dental assistant to scale as part of a prophylaxis - Kansas would be the first.**

In the office which I worked in California, dental assistants that could legally polish saw all the children in the practice - the reasoning being that "kids were easy cleanings and didn't have any tarter". This kept the dental hygienist free to see all the adults and periodontally involved patients in the practice. As a result, this practice **did see a greater volume of patients on a daily basis than compared to the other states I worked in.**

Shortly after beginning work in this office, I asked the question - when is the decision made that this easy child that has no tarter starts to need a therapeutic scaling and polish from the dental hygienist? I thought the answer would be depending on the individual child, when they start forming tarter and begin having gingival infection and exude disease. That's not the answer I got. The answer was it depended on their insurance. I didn't understand. The dentist said some insurance companies allowed adult cleanings to be charged when they were 12 or 13, some when they were 18. This is when they were turned over to a dental hygienist.

In about 6 months, I had seen several handfuls of children. The dental hygienist only saw a child if there was a cancellation that didn't get filled on our book or if it was spring or Christmas break and we would see the overflows. I started to see a distinct pattern that I had not seen in the previous 3 states. These children had calculus above and below the gums, and often it would be heavy calculus under the gums or acute gingivitis infection . I was seeing pubescent, and prepubescent children with beginning crestal bone lose. Remember - if infection is left undisturbed it will begin to eat away the bone around your teeth and once you have bone lose - IT IS GONE FOREVER AND DOES NOT GROW BACK. Only surgical procedures can attempt to replace the missing bone. I was performing scaling and root planing with anesthesia on 9 and 10 year olds and older - a practice that I had never had to perform previously. This greatly disturbed me and is one of the reasons I am here today. I'm somewhat embarrassed to tell you it took a few months for me to figure out the reason for the vast difference in level of health of these children. I compiled the cases for detailed study. I started by classifying the kids to the severity of their disease, putting the worst cases in one stack, all the way up to the least of the worst cases. I thought I would find a big difference in regular checkups, but all of them HAD been seen on a regular basis with only a month or so difference in "cleaning" times. But what I saw in the worst case stack astounded me - those children HAD NEVER SEEN THE DENTAL HYGIENIST FOR THEIR CLEANINGS - STRICTLY THE DENTAL ASSISTANT. The more frequently a child had seen a dental hygienist the better level of health or should I say the lower the amount of infection was evident. Let me make one point here - the dental assistants in our office were trained and career dental assistants. Each had been in the field for 10 and 12 years respectively, and been in this office polishing for at least 5 years. I have great respect for them.

For this reason I firmly believe - **private practice implementation** of a dental assistant doing a scale or polish will not provide appropriate **preventive** care for patients.

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Please know that giving the dental assistant the legal ability to polish will not impact the demand or pay of a dental hygienist. I found that to be true in California. However, I did see the consequences that the patients encountered, and it started with the children.

The point to my story is this - regardless of "perceived shortage", "illegal activity", or "training designated by the dental board", **giving the legal ability to a dental assistant to scale or polish teeth as part of a prophylaxis will only result in a "Cosmetic/substandard" cleaning and does not provide preventive dental health.** In my opinion HB2725 will give the public a false sense of security. They will take their children to the dentist, assume they are getting quality preventive care - after all dentists are licensed and solely responsible - and wake one day and find their teenage children have serious dental problems that could have been easily prevented. **Please do not allow "cosmetic/substandard" dental care - VOTE "NO" on HB 2725. Thank you.**

March 10, 1998

Public Health & Welfare Committee
Kansas Senate, Topeka, Kansas

RE: HB 2724

Dear Chairman Praeger and Committee Members:

I am a registered dental hygienist from Wichita, Kansas. I graduated from Wichita State University with an Associate Degree in Dental Hygiene in 1974, and have been employed in a periodontal practice since 1978. I am an officer (Trustee) of the Kansas Dental Hygienists' Association and I was a member of the Kansas Dental Association Ad Hoc Committee on Preventive Dental Assistants (later changed to Ad Hoc Committee on Expanded Hygiene Dental Assistants and General Supervision).

This proposed legislation is a result of a manpower problem in the dental profession in Kansas. I commend this Committee and Chairman Praeger, the members of the House of Representatives, and the Kansas Dental Association for their efforts to find solutions to the problem.

I oppose allowing unlicensed persons with less education and training than a registered dental hygienist to perform a prophylaxis or above the gum line scaling procedures for two reasons:

1. it would create a more complex and "unenforceable" law than currently exists thus jeopardizing the quality of care, and
2. it would jeopardize the recruitment and retention of dental hygienists and create further manpower and access to care problems.

As I think about this proposal, the phrase "the dumbing of America" comes to mind since the solution offered is lowering the educational requirements for those persons able to perform an above the gum line prophylaxis. For at least as many years as I have been a dental hygienist, dentists across Kansas have been allowing a dental assistant to provide dental hygiene services, which is a blatant violation of the Dental Practice Act. Because the Dental Board has refused to enforce the law, this practice has become either more widespread, or more openly discussed, or both during the past six years. The KDA and the dentists on the Kansas Dental Board defend the practice by saying that the law is ambiguous, and that to enforce the law would create a major disruption to many dental practices, and that there have been very few complaints by patients regarding the illegal use of dental assistants. Then, in an effort to clarify the statute, Attorney General Stovall rendered an opinion regarding the delegation of a prophylaxis to unlicensed persons in 1995. Her opinion however was not what the KDA wanted, so here we are today, with a proposal to reward the violators of the dental practice act. This makes as much sense to me as changing the law to allow those who cannot find money for food or clothing to legally steal food and clothing!

While serving on the Ad Hoc Committee, I believed there was merit to the training component of the proposal because I have been so outraged that the illegal practice of dental hygiene by persons with no training has been condoned and supported by organized dentistry for so many

years. I believed some training is better than no training. But if the current law is not enforceable, how will the proposed change ever be enforced? Will there be "gum line police" to determine who is working above the gums and who is working below the gums? Of course not! And doesn't this promote the idea that there should be a different (lower) standard of care in dental practices with no dental hygienists than in practices with a hygienist? How is this a good deal for Kansas citizens? The proposal states that the dentist or dental hygienist is to complete the prophylaxis provided by the unlicensed dental assistant. I ask you to consider how this is likely to occur in a busy dental practice with no dental hygienist. If the dentist currently does not have time to provide the prophylaxis because he/she is busy providing restorative procedures, how will he/she have time to complete the prophylaxis if the law is changed? I submit that this proposal does not adequately address nor seek to insure quality care.

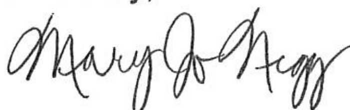
There are many dental hygienists who state that they have been unable to find jobs, especially in western Kansas, because the dentists were already utilizing a dental assistant to provide dental hygiene services, and for a lower wage. I ask you then, is this solely an issue of manpower shortages, as the dental association would have you believe? When I graduated from dental hygiene school, I was told that the average length of time a dental hygienist would practice was seven years. Dental hygiene was promoted as a great career for persons wanting flexibility with part-time and/or full-time opportunities. Many dentists were not in need of a full-time hygienist. Today, the needs are quite different, both for dentists, as employers, and for those persons seeking careers and employment. What has dentistry done to entice dental hygienists to lengthen their time of practice from seven years to ten, fifteen or twenty years? The career life of many dental assistants is shorter than that of hygienists. If hygienists are leaving the dental practice, how will replacing them with dental assistants solve the manpower shortages for the long term? As more and more single persons and single parents enter the work force, how will dentistry attract them away from businesses that provide a more attractive employment package? I submit that a large part of the problem is related to dental labor environment issues which are not being addressed.

Perhaps a solution to the manpower problem is to further amend the statutes to allow entities other than a dentist to own a dental practice. Perhaps if a health clinic or another entity owned a practice, they could attract both dentists and hygienists into the underserved areas of the state. Perhaps there are dentists who would like to practice dentistry without the headaches of managing the business end of a dental practice.

I believe this proposal offers a "band-aid" type of solution to a much more complex problem. Please do not fix a broken arm with a band-aid. Please vote against HB 2724.

Thank you for your time and consideration!

Sincerely,



Mary Jo Nigg, R.D.H.