

CHAPTER 134
HOUSE BILL No. 2214

AN ACT concerning the Kansas dental board; relating to permits; amending K.S.A. 65-1436 and K.S.A. 2006 Supp. 65-1444, 65-1447 and 65-1456 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2006 Supp. 65-1444 is hereby amended to read as follows: 65-1444. (a) A dentist shall have the right to prescribe drugs or medicine, perform such surgical operations, administer analgesia, local anaesthetics and use such appliances as may be necessary to the proper practice of dentistry. Dentists may be authorized by the board to administer sedation and general anaesthetics subject to rules and regulations concerning qualifications of such dentists as may be adopted by the board. *The board shall have authority to issue sedation permits to administer sedation and general anaesthetics.* The board may establish different requirements and qualifications based upon the type of sedation or general anaesthetics the dentist is authorized by the board to use. The board may also establish by rules and regulations the requirement that the authorization to administer sedation and general anaesthetics be periodically renewed and the requirements that must be met to obtain such renewal. Any office of a dentist who is authorized by the board to administer sedation or general anaesthetics shall be subject to inspection by the board for purposes of determining if the dentist is in compliance with the board's rules and regulations.

(b) A dentist may utilize an assistant not licensed by the board in the administration and monitoring of nitrous oxide or oxygen, or both, if that person is certified in cardiopulmonary resuscitation and has satisfactorily completed a course of instruction which has been approved by the board. To be approved by the board, the course of instruction shall include a minimum of six hours of instruction at a teaching institution accredited by the American dental association and include satisfactory completion of courses which offer both didactic and clinical instruction in: (A) Theory of pain control; (B) anatomy; (C) medical history; (D) pharmacology; and (E) emergencies and complications.

(c) *The board may deny, revoke, suspend or limit a sedation permit for violation by the permit holder of the requirements established by the board by rules and regulations or in lieu thereof or in addition thereto may assess a fine in accordance with K.S.A. 65-1436, and amendments thereto.*

Sec. 2. K.S.A. 65-1436 is hereby amended to read as follows: 65-1436. (a) The Kansas dental board may refuse to issue the license provided for in this act, or may take any of the actions with respect to any dental or dental hygiene license as set forth in subsection (b), whenever it is established, after notice and opportunity for hearing in accordance with the provisions of the Kansas administrative procedure act, that any applicant for a dental or dental hygiene license or any licensed dentist or dental hygienist practicing in the state of Kansas has:

- (1) Committed fraud, deceit or misrepresentation in obtaining any license, money or other thing of value;
- (2) habitually used intoxicants or drugs which have rendered such person unfit for the practice of dentistry or dental hygiene;
- (3) been determined by the board to be professionally incompetent;
- (4) committed gross, wanton or willful negligence in the practice of dentistry or dental hygiene;
- (5) employed, allowed or permitted any unlicensed person or persons to perform any work in the licensee's office which constitutes the practice of dentistry or dental hygiene under the provisions of this act;
- (6) willfully violated the laws of this state relating to the practice of dentistry or dental hygiene or the rules and regulations of the secretary of health and environment or of the board regarding sanitation;
- (7) engaged in the division of fees, or agreed to split or divide the fee received for dental service with any person for bringing or referring a patient without the knowledge of the patient or the patient's legal representative, except the division of fees between dentists practicing in a partnership and sharing professional fees, or in case of one licensed dentist employing another;
- (8) committed complicity in association with or allowed the use of

the licensed dentist's name in conjunction with any person who is engaged in the illegal practice of dentistry;

(9) been convicted of a felony or a misdemeanor involving moral turpitude in any jurisdiction and the licensee fails to show that the licensee has been sufficiently rehabilitated to warrant the public trust;

(10) prescribed, dispensed, administered or distributed a prescription drug or substance, including a controlled substance, in an excessive, improper or inappropriate manner or quantity outside the scope of practice of dentistry or in a manner that impairs the health and safety of an individual;

(11) prescribed, purchased, administered, sold or given away prescription drugs, including a controlled substance, for other than legal and legitimate purposes;

(12) violated or been convicted of any federal or state law regulating possession, distribution or use of any controlled substance;

(13) failed to pay license fees;

(14) used the name "clinic," "institute" or other title that may suggest a public or semipublic activity except that the name "clinic" may be used as authorized in K.S.A. 65-1435, and amendments thereto;

(15) committed, after becoming a licensee, any conduct which is detrimental to the public health, safety or welfare as defined by rules and regulations of the board;

(16) engaged in a misleading, deceptive, untrue or fraudulent misrepresentation in the practice of dentistry or on any document connected with the practice of dentistry by knowingly submitting any misleading, deceptive, untrue or fraudulent misrepresentation on a claim form, bill or statement, including the systematic waiver of patient co-payment or co-insurance;

(17) failed to keep adequate records;

(18) the licensee has had a license to practice dentistry revoked, suspended or limited, has been censured or has had other disciplinary action taken, an application for license denied, or voluntarily surrendered the license after formal proceedings have been commenced by the proper licensing authority or another state, territory or the District of Columbia or other country, a certified copy of the record of the action of the other jurisdiction being conclusive evidence thereof;

(19) failed to furnish the board, or its investigators or representatives any information legally requested by the board; or

(20) assisted suicide in violation of K.S.A. 21-3406, and amendments thereto, as established by any of the following:

(A) A copy of the record of criminal conviction or plea of guilty for a felony in violation of K.S.A. 21-3406, and amendments thereto.

(B) A copy of the record of a judgment of contempt of court for violating an injunction issued under K.S.A. 2002 Supp. 60-4404, and amendments thereto.

(C) A copy of the record of a judgment assessing damages under K.S.A. 2002 Supp. 60-4405, and amendments thereto.

(b) Whenever it is established, after notice and opportunity for hearing in accordance with the provisions of the Kansas administrative procedure act, that a licensee is in any of the circumstances or has committed any of the acts described in subsection (a), the Kansas dental board may take one or any combination of the following actions with respect to the license of the licensee:

(1) Revoke the license.

(2) Suspend the license for such period of time as may be determined by the board.

(3) Restrict the right of the licensee to practice by imposing limitations upon dental or dental hygiene procedures which may be performed, categories of dental disease which may be treated or types of patients which may be treated by the dentist or dental hygienist. Such restrictions shall continue for such period of time as may be determined by the board, and the board may require the licensee to provide additional evidence at hearing before lifting such restrictions.

(4) Grant a period of probation during which the imposition of one or more of the actions described in subsections (b)(1) through (b)(3) will be stayed subject to such conditions as may be imposed by the board including a requirement that the dentist or dental hygienist refrain from any course of conduct which may result in further violation of the dental practice act or the dentist or dental hygienist complete additional or re-

medial instruction. The violation of any provision of the dental practice act or failure to meet any condition imposed by the board as set forth in the order of the board will result in immediate termination of the period of probation and imposition of such other action as has been taken by the board.

(c) As used in this section, “professionally incompetent” means:

- (1) One or more instances involving failure to adhere to the applicable standard of dental or dental hygienist care to a degree which constitutes gross negligence, as determined by the board;
- (2) repeated instances involving failure to adhere to the applicable standard of dental or dental hygienist care to a degree which constitutes ordinary negligence, as determined by the board; or
- (3) a pattern of dental or dental hygienist practice or other behavior which demonstrates a manifest incapacity or incompetence to practice dentistry.

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

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

Sec. 3. K.S.A. 2006 Supp. 65-1447 is hereby amended to read as follows: 65-1447. (a) On or before October 1 of each year, the Kansas dental board shall determine the amount of funds which will be required during the ensuing fiscal year to properly administer the laws which the board is directed to enforce and administer and shall fix fees in accordance with this section in such reasonable sums as may be necessary for such purposes, within the limitations prescribed by subsection (b).

(b) The board shall collect fees provided for in this act as follows:

Examination fee for dental applicants—not more than	\$200
Subsequent examination fee for dental applicants—not more than	100
Examination fee for specialty qualifications—not more than	200
Credentials/qualifications fee—not more than	300
Duplicate certificate fee—not more than	25
Certificate fee, including certificate for credentials/qualifications, for dentists and dental hygienists—not more than	25
Biennial license renewal fee for dentists—not more than	325
Examination fee for dental hygienist applicants—not more than	100
Subsequent examination fee for dental hygienist applicants—not more than	100
Biennial license renewal fee for dental hygienists—not more than	160
Reinstatement of a revoked license—not more than	2,000
Processing fee for failure to notify of change of address—not more than	100
Registration fee to operate a mobile dental facility or portable dental operation—not more than	500
Biennial registration renewal fee for mobile dental facility or portable dental operation—not more than	350
Sedation permit—not more than	200

(c) The amounts of fees in effect on the day preceding the effective date of this act and the act of which this section is amendatory shall remain in effect until fixed in different amounts by the board under this section. The board may adopt rules and regulations for the proration of fees for a license issued for a period of time less than the biennial licensure period.

Sec. 4. K.S.A. 2006 Supp. 65-1456 is hereby amended to read as follows: 65-1456. (a) The board may suspend or revoke the license of any dentist who shall permit any dental hygienist operating under such dentist’s supervision to perform any operation other than that permitted under the provisions of article 14 of chapter 65 of the Kansas Statutes Annotated, or acts amendatory thereof, and may suspend or revoke the license of any hygienist found guilty of performing any operation other

than those permitted under article 14 of chapter 65 of the Kansas Statutes Annotated, or acts amendatory thereof. No license of any dentist or dental hygienist shall be suspended or revoked in any administrative proceedings without first complying with the notice and hearing requirements of the Kansas administrative procedure act.

(b) The practice of dental hygiene shall include those educational, preventive, and therapeutic procedures which result in the removal of extraneous deposits, stains and debris from the teeth and the rendering of smooth surfaces of the teeth to the depths of the gingival sulci. Included among those educational, preventive and therapeutic procedures are the instruction of the patient as to daily personal care, protecting the teeth from dental caries, the scaling and polishing of the crown surfaces and the planing of the root surfaces, in addition to the curettage of those soft tissues lining the free gingiva to the depth of the gingival sulcus and such additional educational, preventive and therapeutic procedures as the board may establish by rules and regulations.

(c) Subject to such prohibitions, limitations and conditions as the board may prescribe by rules and regulations, any licensed dental hygienist may practice dental hygiene and may also perform such dental service as may be performed by a dental assistant under the provisions of K.S.A. 65-1423 and amendments thereto.

(d) Except as otherwise provided in this section, the practice of dental hygiene shall be performed under the direct or general supervision of a licensed dentist at the office of such licensed dentist. The board shall designate by rules and regulations the procedures which may be performed by a dental hygienist under direct supervision and the procedures which may be performed under general supervision of a licensed dentist. As used in this section: (1) "Direct supervision" means that the dentist is in the dental office, personally diagnoses the condition to be treated, personally authorizes the procedure and before dismissal of the patient evaluates the performance; and (2) "general supervision" means a Kansas licensed dentist may delegate verbally or by written authorization the performance of a service, task or procedure to a licensed dental hygienist under the supervision and responsibility of the dentist, if the dental hygienist is licensed to perform the function, and the supervising dentist examines the patient at the time the dental hygiene procedure is performed, or during the 12 calendar months preceding the performance of the procedure, except that the licensed hygienist shall not be permitted to diagnose a dental disease or ailment, prescribe any treatment or a regimen thereof, prescribe, order or dispense medication or perform any procedure which is irreversible or which involves the intentional cutting of the soft or hard tissue by any means. A dentist is not required to be on the premises at the time a hygienist performs a function delegated under part (2) of this subsection.

(e) The practice of dental hygiene may be performed at an adult care home, hospital long-term care unit, state institution, local health department or indigent health care clinic on a resident of a facility, client or patient thereof so long as:

(1) A licensed dentist has delegated the performance of the service, task or procedure;

(2) the dental hygienist is under the supervision and responsibility of the dentist;

(3) either the supervising dentist is personally present or the services, tasks and procedures are limited to the cleaning of teeth, education and preventive care;

(4) the supervising dentist examines the patient at the time the dental hygiene procedure is performed or has examined the patient during the 12 calendar months preceding performance of the procedure; and

(f) The practice of dental hygiene may be performed ~~at a public school or accredited nonpublic school, as defined in K.S.A. 72-89b02, and amendments thereto, and any head start program~~ with consent of the parent or legal guardian, *on children participating in residential and non-residential centers for therapeutic services, on all children in families which are receiving family preservation services, on all children in the custody of the secretary of social and rehabilitation services or the commissioner of juvenile justice authority and in an out-of-home placement residing in foster care homes, on children being served by runaway youth programs and homeless shelters; and on children birth to five and children in public and nonpublic schools kindergarten through grade 12 regardless*

of the time of year and children participating in youth organizations, so long as such children birth to five, in public or nonpublic schools or participating in youth organizations also meet the requirements of medicaid, healthwave, or free or reduced lunch programs or Indian health services; at any state correctional institution, local health department or indigent health care clinic, as defined in K.S.A. 65-1466, and amendments thereto, on a person who meets the requirements of medicaid, healthwave or the federal free and reduced lunch program, an inmate, client or patient thereof and at any federally qualified health center, federally qualified health center look-alike or a community health center that receives funding from section 330 of the health center consolidation act, on a person, inmate, client or patient thereof and on other persons as may be defined by the board; so long as:

(1) The dental hygienist has received an “extended care permit” from the Kansas dental board specifying that the dental hygienist has performed ~~1,800~~ 1,200 hours of dental hygiene care *within the past three years* or has been an instructor at an accredited dental hygiene program for ~~four semesters during the three years prior~~ *two academic years within the past three years*;

(2) the dental hygienist shows proof of professional liability insurance;

(3) the dental hygienist is sponsored by a dentist licensed in the state of Kansas, including a signed agreement stating that the dentist shall monitor the dental hygienist’s activities, except such dentist shall not monitor more than five dental hygienists with an extended care permit;

(4) the tasks and procedures are limited to: (A) removal of extraneous deposits, stains and debris from the teeth and the rendering of smooth surfaces of the teeth to the depths of the gingival sulci; (B) *the application of topical anesthetic if the dental hygienist has completed the required course of instruction approved by the dental board*; ~~(B)~~ (C) the application of fluoride; ~~(C)~~ (D) dental hygiene instruction; ~~(D)~~ (E) assessment of the patient’s apparent need for further evaluation by a dentist to diagnose the presence of dental caries and other abnormalities; and ~~(E)~~ (F) other duties as may be delegated verbally or in writing by the sponsoring dentists consistent with this act;

(5) the dental hygienist advises the patient and legal guardian that the services are preventive in nature and do not constitute a comprehensive dental diagnosis and care;

(6) the dental hygienist provides a copy of the findings and the report of treatment to the sponsoring dentist and any other dental or medical supervisor at a participating organization found in this subsection; and

(7) any payment to the dental hygienist for dental hygiene services is received from the sponsoring dentist or the participating organization found in this subsection.

(g) The practice of dental hygiene may be performed ~~at~~ *on persons with developmental disabilities and on persons who are 65 years and older who live in a residential center, an adult care home, subsidized housing, hospital long-term care unit, state institution or are served in a community senior service center, elderly nutrition program or at the home of a home-bound person who qualifies for the federal home and community based service (HCBS) waiver on a resident of a facility, client or patient thereof* so long as:

(1) The dental hygienist has received an “extended care permit II” from the Kansas dental board specifying that the dental hygienist has: (A) performed 1,800 hours of dental hygiene care or has been an instructor at an accredited dental hygiene program for ~~four semesters during~~ *two academic years within the past three years prior*; and (B) completed six hours of training on the care of special needs patients or other training as may be accepted by the board;

(2) the dental hygienist shows proof of professional liability insurance;

(3) the dental hygienist is sponsored by a dentist licensed in the state of Kansas, including a signed agreement stating that the dentist shall monitor the dental hygienist’s activities, except such dentist shall not monitor more than five dental hygienists with an extended care permit II;

(4) the tasks and procedures are limited to: (A) removal of extraneous deposits, stains and debris from the teeth and the rendering of smooth surfaces of the teeth to the depths of the gingival sulci; (B) *the application of topical anesthetic if the dental hygienist has completed the required course of instruction approved by the dental board*; ~~(B)~~ (C) the application of fluoride; ~~(C)~~ (D) dental hygiene instruction; ~~(D)~~ (E) assessment of the

patient's apparent need for further evaluation by a dentist to diagnose the presence of dental caries and other abnormalities; and ~~(E)~~ (F) other duties as may be delegated verbally or in writing by the sponsoring dentist consistent with this act;

(5) the dental hygienist advises the patient and legal guardian that the services are preventive in nature and do not constitute comprehensive dental diagnosis and care;

(6) the dental hygienist provides a copy of the findings and the report of treatment to the sponsoring dentist and any other dental or medical supervisor at a participating organization found in this subsection;

(7) any payment to the dental hygienist for dental hygiene services is received from the sponsoring dentist or the participating organization found in this subsection; and

(8) the dental hygienist completes a minimum of six hours of education in the area of special needs care within the board's continuing dental education requirements for relicensure.

(h) In addition to the duties specifically mentioned in subsection (b) of K.S.A. 65-1456, and amendments thereto, any duly licensed dental hygienist may:

(1) Give fluoride treatments as a prophylactic measure, as defined by the United States public health service and as recommended for use in dentistry;

(2) remove overhanging restoration margins and periodontal surgery materials by hand scaling instruments; and

(3) administer local block and infiltration anaesthesia and nitrous oxide. (A) The administration of local anaesthesia shall be performed under the direct supervision of a licensed dentist *except that topically applied local anaesthesia, as defined by the board, may be administered under the general supervision of a licensed dentist.* (B) Each dental hygienist who administers local anaesthesia *regardless of the type* shall have completed courses of instruction in local anaesthesia and nitrous oxide which have been approved by the board.

(i) (1) The courses of instruction required in subsection (h)(3)(B) shall provide a minimum of 12 hours of instruction at a teaching institution accredited by the American dental association.

(2) The courses of instruction shall include courses which provide both didactic and clinical instruction in: (A) Theory of pain control; (B) anatomy; (C) medical history; (D) pharmacology; and (E) emergencies and complications.

(3) Certification in cardiac pulmonary resuscitation shall be required in all cases.

(j) The board is authorized to issue to a qualified dental hygienist an extended care permit or extended care permit II as provided in subsections (f) and (g) of this section.

(k) Nothing in this section shall be construed to prevent a dental hygienist from providing dental hygiene instruction or visual oral health care screenings *or fluoride applications* in a school or community based setting *regardless of the age of the patient.*

New Sec. 5. A dental hygienist who meets the requirements of subsections (f)(1) or (g)(1)(A) of K.S.A. 65-1456, and amendments thereto, prior to a period of retirement or disability, but not within the past three years, and is returning to active practice after such period of retirement or disability under K.S.A. 65-1431(i), and amendments thereto, or who has retained a license to practice but has not practiced in the past three or more years may qualify for an extended care permit by completing a refresher course approved by the board under K.A.R. 71-3-8 or performing 200 hours of dental hygiene care within the last 12 months under the supervision of dentists licensed in the state of Kansas and provides the board with a letter of endorsement from one of the supervising dentists.

Sec. 6. K.S.A. 65-1436 and K.S.A. 2006 Supp. 65-1444, 65-1447 and 65-1456 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.