

MINUTES OF THE HEALTH AND HUMAN SERVICES COMMITTEE

The meeting was called to order by Chairperson Landwehr at 1:30 pm. on February 15, 2011, in Room 784 of the Docking State Office Building.

All members were present.

Committee staff present:

Katherine McBride, Office of the Revisor of Statutes
Martha Dorsey, Kansas Legislative Research Department
Dorothy Noblit, Kansas Legislative Research Department
Jay Hall, Kansas Legislative Research Department
Debbie Bartuccio, Committee Assistant

Conferees appearing before the Committee:

John Federico, Federico Consulting ([Attachments 1 and 2](#))
Lawless Barrintos, Comfort Dental ([Attachment 3](#))
Kevin Robertson, Executive Director, Kansas Dental Association ([Attachment 4](#))
Randal Forbes, General Counsel, Kansas Dental Board ([Attachment 5](#))

Others attending:

See attached list.

HB 2241 – Relating to proprietor arrangements with licensees of dentistry.

Chairperson Landwehr opened the hearing on the bill.

John Federico, Federico Consulting presented testimony in support of the bill. ([Attachment 1](#)) He started working in the summer of 2010 with Comfort Dental to find a solution to the problem that the Kansas Dental Board presented them with, that of allowing the franchise practice of dentistry. He was disappointed to learn of the unwillingness of the Kansas Dental Board to work with his client, in the face of a severe access problem and the lack of dentists willing to accept Medicaid patients. It was learned that Kansas is the only State in the country that had specific statutory language prohibiting franchise dentistry. Over the course of several months, and right up until 5:00 pm. on February 14, work was completed with the Kansas Dental Board to find a compromise on language that would 1) permit the franchise arrangement for the practice of dentistry, 2) preserve the regulatory authority of the Kansas Dental Board and 3) to ensure adequate patient protection measures. He was pleased to announce the parties have reached an agreement on all issues and he appreciates the efforts and professionalism of the Kansas Dental Board's Executive Director Kevin Robertson.

Mr. Federico then submitted and reviewed a balloon amendment for consideration. ([Attachment 2](#))

Lawless Barrintos, Comfort Dental, presented testimony in support of the bill. ([Attachment 3](#)) Comfort Dental is headquartered in Lakewood, Colorado and was founded by Dr. Rick Kushner in 1977. Dr. Kushner pioneered the concept of accessible, fair-priced dentistry. There are Comfort Dental practices in 7 states currently, including Colorado, Wyoming, Kentucky, New Mexico, Missouri, Ohio and Texas. It is critically important to note that Comfort Dental practices are privately owned and operated by dentists who are licensed in the states in which they practice. Comfort Dental practices epitomize the “family-friendly” concept.

- Collectively, Comfort Dental dentists see 1,500,000 patients per year. The Comfort Dental franchise has over 78 private practices and 286 partner dentists. Comfort Dental’s mission is to provide quality, affordable dental care to all economic classes.
- Comfort Dental improves access by having extended office hours and 24-hour emergency access (Regular business hours generally are: Monday-Friday, 7:30 AM to 7:30 PM, Saturdays, 7:30 AM to 1:30 PM).
- Comfort Dental prices tend to be 40-60% lower than the average private practice dentist. Comfort Dental dentists make a point to go over dental prices and options with patients. Prices of dental procedures and care are posted to the consumer.

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- The average dental Medicaid provider is well below the national average in Kansas. Comfort Dental is one of the largest Medicaid providers in Colorado. On average, Comfort Dental Private Practice Dentists treat approximately 40% under-insured/Un-insured, 20% Medicaid and CHIP +.

It is the success, and high-quality of Comfort Dental's family-friendly dental practice concept that has piqued the interest of several Kansas communities and licensed Kansas dentists who are interested in opening a Comfort Dental office in Kansas.

As we attempted to work with the Kansas Dental Board to establish a Comfort Dental practice, we were disappointed that their interpretation of current law prohibited such a practice. We grew increasingly frustrated when there seemed to be at best, disinterest from the Dental Board in working with us to overcome the obstacles, and at worst, hostility. In short, we were told to "*go to the legislature and change the law.*" So with some help from John Federico and his staff, that is what we are attempting to do in the 2011 Legislative Session and stand in strong support of this bill.

Since my last appearance in the Capitol on December 9th, 2010 to testify to the Joint Committee on Health Policy Oversight, Comfort Dental has worked closely with the Kansas Dental Association and its Executive Director Kevin Robertson. For several months now, we have worked with the KDA to find a way to allow for the franchise practice of dentistry, while maintaining sufficient oversight and patient protections. I am pleased to report that tremendous progress has been made and the bill you are considering today represents an acceptable compromise on all issues.

There is a tremendous "access" issue in Kansas. We are hopeful that you find, as we do, that this bill helps solve the problem. There is an obvious need to attract more dentists to Kansas. There is an even greater need to attract dentists who are willing to take Medicaid patients. We feel strongly that local communities and most importantly the consumer would benefit greatly from a dental practice owned and operated by highly-trained licensed dentists which embrace transparency in their pricing and maintains extended weekday and weekend hours.

At a time when young dentists leave dental school with tremendous debt, limiting their options to own their own dental practice, a franchise ownership arrangement offers an attractive option for them that we feel is welcomed by the dental community and the regulating agency.

I greatly appreciate the opportunity to visit briefly with you today. Comfort Dental, in the worst way, wants to be part of the solution to the very-real dental shortage issue in Kansas. Comfort Dental feels that by working with the Kansas Dental Association we have come to common ground. I appreciate the professional manner in which the KDA has been willing to work with Comfort Dental to address the problem.

Kevin Robertson, Executive Director, Kansas Dental Association, presented testimony in support of the bill. (Attachment 4) The Kansas Dental Association (KDA) represents 1,250, or some 77% of the state's licensed dentists. I am pleased to report that the KDA has been working hard with Comfort Dental and Church Street Health Management to reach a compromise on this bill. We support the bill and amendments offered by John Federico in his testimony.

Dental franchisors like Comfort Dental and administrative services managers like Church Street can play a positive role in encouraging dentists to locate throughout Kansas to help ensure that all Kansans have access to a real dentist. As such, the KDA believes this bill is a piece of a larger puzzle to help reduce barriers to quality dental care and include some patient protections. The KDA firmly believes that the relationship of confidence between the dentist and the patient is essential to patient welfare and treatment success. As such, this bill maintains the dental practice model which allows the licensed dentist to make treatment and clinical staffing decisions in consultation with the patient, without outside interference from corporate, franchisor or other non dentist entities.

In addition to our concerns regarding treatment and clinical staffing decisions, dentist ownership of patient charts and records and dental equipment and materials is maintained so Kansans can be assured that their dentist can continue treatment of patients without permanent interruption should financial or other hardships occur with the franchisor or other entity. This will alleviate the possibility of a problem occurring in Kansas that occurred in 14 states on January 1, 2011 when Allcare Dental, with 42 offices throughout the county, including Omaha, Nebraska, closed operation overnight resulting in the

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abandonment of care for 10s of thousands of patients. The KDA does not want to imply that these things could happen with Comfort Dental or Church Street, but other franchisors will likely wish to do business in our state and the KDA believes it is important that Kansans are protected from this possibility.

Finally, the KDA and Comfort Dental were busy working in the evening last night reaching an agreement to hold a franchisor accountable if they have treatment or clinical staffing policies, guidelines, etc. (which are prohibited by the bill) that result in injury to the public. The amendment would also make it clear that the franchisor could not be held responsible for any actions by a dentist that violates the dental practices act. As such, the KDA, with support of Comfort Dental and Church, offers the following language to be inserted as new Section 5(e) on page 7, line 24:

“No contract or provision in any such agreement shall require either party to indemnify the other party for negligence, intentional acts or omissions that constitute a violation of **KSA 65-1422** et. seq.”

The KDA is pleased that the representatives from Comfort Dental and Church Street Health Management were willing to address our concerns. We support the bill and ask for favorable consideration of the proposed amendments offered above and by Comfort Dental.

Randall Forbes, General Counsel for the Kansas Dental Board, presented neutral testimony concerning the bill. (Attachment 5) The Board has reviewed the bill in light of its primary goal of protecting the public and wants to express its concern regarding a part of the changes to the Dental Practices Act.

K.S.A. 65-1436(a) lists the various reasons for which a dentist or dental hygienist can be disciplined. **HB 2241** would amend **K.S.A. 65-1436(a)(7)** to provide:

“(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:

*(C) the division of fees between a licensed dentist and a proprietor as defined in **K.S.A. 65-1424**, and amendments thereto;“*

[found on page 3 of the bill]. It is unclear what the purpose of this addition is, but the Board is concerned about its consequences for two reasons.

First, this change would allow a dentist to split his or her fee with a proprietor for steering patients to the dentist without the patient knowing that the proprietary is being paid to recommend the dentist.

Second, the “proprietor” referred to in section (a)(7)(c) is defined at **K.S.A. 65-1424(a)** as “any person who employs dentists or dental hygienists in the operation of a dental office.” The combination of these two sections would seem to allow a proprietor (who is not a dentist or professional partnership)¹ to employ dentists and dental hygienists. Throughout the history of this state only another dentist, professional corporation, or professional partnership could employ a dentist. The Board is concerned that a change in this longstanding rule is an unintended consequence of those changes made by this bill.

It seems clear that the term proprietor used in **K.S.A. 65-1436(a)(7)(c)** cannot refer to another dentist or professional partnership because they are addressed in **K.S.A. 65-1436(a)(7)(A) and (B)**.

In addition, such a change would conflict with **K.S.A. 65-1425** which prohibits corporations (other than professional corporations) from practicing dentistry. In *Winslow v. Kansas State Board of Dental Examiners*, 115 Kan. 450, 223 P.2d 308 (1924) the Kansas Supreme Court upheld the Board’s discipline of a Kansas dentist who was employed by a corporation to provide dental services. The Court reasoned that “[c]orporations may not be graduated from dental colleges, they have neither learning nor skill, and they may not be examined, registered, nor licensed as dentists.” The Court also stated:

“Dentistry is a profession having to do with public health, and so is subject to regulation by the state. The purpose of regulation is to protect the public from ignorance, unskillfulness, unscrupulousness, deception, and fraud. To that end the state requires that the relation of the dental practitioner to his patients and patrons be personal.”

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The Supreme Court cited the *Winslow* decision in its 1991 decision of *Early Detection Center v. Wilson*, 248 Kan. 869, 811 P.2d 860 (1991) in which it held a general corporation could not employ a physician. In that case the Court stated that it was Kansas “public policy that general corporations who have unlicensed directors or shareholders are not authorized to practice the healing arts.”

Removing subsection (a)(7)(c) from Section 3 of the bill would alleviate these problems.

The Board is also puzzled by the proposed elimination of the words “as determined by the Kansas dental board” in **K.S.A. 65-1424(b)** [top of page 2 of the bill]. Usually an amendment to a statute is assumed to make a substantive change. If the Board will not determine if a trade name misrepresents the dentist to the public, who will? Unless it is intended that some person or entity other than the Board would make this determination, the elimination of the above-quoted language has the potential to create great confusion.

Mr. Forbes stated the concern about proprietor and a proprietor being someone who employes dentists would be alleviated if the committee adopts the suggestion being made by Mr. Federico in his testimony. Mr. Federico has also addressed his concerns about trade names. From the Board's perspective, the Dental Board will have to apply this to any franchisor that comes to Kansas and it's important that the professional judgment of the dentist not be effected. Thank you for your consideration.

The Chair gave members the opportunity to ask questions.

There was a question as to where the clinics in Colorado have been located and did Comfort Dental plan to target more urban areas or to give more access to the rural areas in Kansas. Mr. Barrientos indicated the Comfort Dental franchises are spread all across Colorado and they generally do not locate in urban areas such as Johnson County. They target areas which are in need of additional dentists.

There was a question as to the adequacy of the Medicaid rates in Kansas. Mr. Barrientos responded the Kansas rates are adequate. Because of their extended hours of operation, they are able to make it work, servicing patients with both Medicaid and private insurance. He said the concept is that patients attending their locations find they can afford dentistry, especially since Comfort Dental offers payment plans as an option.

There was a question as to whether the Comfort Dental model looks like the Eyemaster or Lenscrafters model in which you own the bricks and mortar and equipment management. Mr. Barrientos responded that the Comfort Dental model does differ in that they help get the dentists started. Several dentists will partner together and they own the building, equipment, etc. The franchise model helps with the advertising and marketing but they do not tell the dentists what to do nor does Comfort Dental own the equipment or building. Because of the buying power of Comfort Dental, they are able to provide better pricing to the dentists for the purchase of their equipment.

There was a question as to whether or not there were any requirements by Comfort Dental as to how many patients need to be seen each day and Mr. Barrientos indicated there are no such requirements.

The Chair requested Revisor McBride meet with John Federico and Comfort Dental, Kevin Robertson (Kansas Dental Association) and Randall Forbes (Kansas Dental Board) to develop a definition of franchisor and provide this at the committee meeting on Thursday, February 17, 2011. The Chair also requested a definition on page 1, line 23, for unlicensed proprietor.

The Chair closed the hearing on the bill with the intention of working the bill on Thursday, February 17, 2011.

The next meeting is scheduled for February 17, 2011.

The meeting was adjourned at 2:45 pm.