

## HOUSE BILL No. 2241

By Committee on Health and Human Services

2-9

1 AN ACT concerning the Kansas dental practices act; relating to  
2 proprietor arrangements with licensees of dentistry; amending K.S.A.  
3 65-1424 and K.S.A. 2010 Supp. 65-1435 and 65-1436 and repealing  
4 the existing sections.  
5

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

7 Section 1. K.S.A. 65-1424 is hereby amended to read as follows: 65-  
8 1424. (a) The term "proprietor" as used in this act includes any person  
9 who:

10 (a) employs dentists or dental hygienists in the operation of a dental  
11 office; ~~or~~

12 (b) ~~places in possession of a dentist or dental hygienists or other~~  
13 ~~agent such dental material or equipment as may be necessary for the~~  
14 ~~management of a dental office on the basis of a lease or any other~~  
15 ~~agreement for compensation for the use of such material, equipment or~~  
16 ~~offices; or~~

17 (c) ~~retains the ownership or control of dental equipment or material~~  
18 ~~or office and makes the same available in any manner for the use by~~  
19 ~~dentists or dental hygienists or other agents except that nothing in this~~  
20 ~~subsection (c) shall apply to bona fide sales of dental equipment or~~  
21 ~~material secured by a chattel mortgage or retain title agreement.~~

22 A licensee of dentistry who enters into ~~any of the above described~~  
23 ~~arrangements~~ *any arrangement* with an unlicensed proprietor may have  
24 such license suspended or revoked by the board.

25 (b) The estate or agent for a deceased or substantially disabled  
26 dentist may employ dentists, for a period of not more than one year, to  
27 provide service to patients until the practice can be sold.

28 Sec. 2. K.S.A. 2010 Supp. 65-1435 is hereby amended to read as  
29 follows: 65-1435. (a) Except as otherwise provided in this section, it shall  
30 be unlawful for any person or persons to practice or offer to practice  
31 dentistry under any name except such person's own name, which shall be  
32 the name used on the license granted to such person as a dentist as  
33 provided in *the Kansas dental practices* ~~this act~~.

34 (b) A licensed dentist may use the name of any association,  
35 corporation, clinic, trade name or business name in connection with the  
36 practice of dentistry, as defined in *the Kansas dental practices* ~~this act~~,

1 except that such name may not misrepresent the dentist to the public. as  
2 ~~determined by the Kansas dental board.~~

3 (c) Nothing herein contained shall be construed to prevent two or  
4 more licensed dentists:

5 (1) From associating together for the practice of dentistry, each in  
6 such person's own proper name; or

7 (2) from associating together for the practice of dentistry, each as  
8 owners, in a professional corporation, organized pursuant to the  
9 professional corporation law of Kansas, or, each as owners, in a limited  
10 liability company organized pursuant to the Kansas revised limited  
11 liability company act, and using a name that may or may not contain the  
12 proper name of any such person or persons *except that such name may*  
13 *not misrepresent the dentist to the public* ~~if such name has been approved~~  
14 ~~by the board~~ and from employing nonowning licensees; or

15 (3) from associating together with persons licensed to practice  
16 medicine and surgery in a clinic or professional association under a name  
17 that may or may not contain the proper name of any such person or  
18 persons and may contain the word "clinic."

19 (d) It shall be unlawful, and a licensee may have a license suspended  
20 or revoked, for any licensee to conduct a dental office in the name of the  
21 licensee, or to advertise the licensee's name in connection with any dental  
22 office or offices, or to associate together for the practice of dentistry with  
23 other licensed dentists in a professional corporation or limited liability  
24 company, under a name that may or may not contain the proper name of  
25 any such person or persons or to associate together with persons licensed  
26 to practice medicine and surgery in a clinic or professional association  
27 under a name that may or may not contain the proper name of any such  
28 person or persons and may contain the word "clinic," unless such licensee  
29 is personally present in the office operating as a dentist or personally  
30 overseeing such operations as are performed in the office or each of the  
31 offices during a majority of the time the office or each of the offices is  
32 being operated.

33 ~~(e) Nothing in this section shall be construed to permit the franchise~~  
34 ~~practice of dentistry.~~

35 ~~(f)~~(e) The violation of any of the provisions of this section by any  
36 dentist shall subject such dentist to suspension or revocation of a license.

37 ~~(g)~~(f) Notwithstanding the provisions of *subsection* ~~subsections~~ (d)  
38 ~~and (e)~~, a licensee shall be permitted to own two dental offices in addition  
39 to the licensee's primary office location under the following conditions:

40 (1) The licensee's secondary dental office is located within a 125  
41 mile radius of the licensee's primary office; and

42 (2) the licensee's secondary dental office is located in a county with  
43 a population of less than 10,000 according to the 2000 United States

1 census.

2 Sec. 3. K.S.A. 2010 Supp. 65-1436 is hereby amended to read as  
3 follows: 65-1436. (a) The Kansas dental board may refuse to issue the  
4 license *under the Kansas dental practices* ~~provided for in this act~~, or may  
5 take any of the actions with respect to any dental or dental hygiene  
6 license as set forth in subsection (b), whenever it is established, after  
7 notice and opportunity for hearing in accordance with the provisions of  
8 the Kansas administrative procedure act, that any applicant for a dental or  
9 dental hygiene license or any licensed dentist or dental hygienist  
10 practicing in the state of Kansas has:

11 (1) Committed fraud, deceit or misrepresentation in obtaining any  
12 license, money or other thing of value;

13 (2) habitually used intoxicants or drugs which have rendered such  
14 person unfit for the practice of dentistry or dental hygiene;

15 (3) been determined by the board to be professionally incompetent;

16 (4) committed gross, wanton or willful negligence in the practice of  
17 dentistry or dental hygiene;

18 (5) employed, allowed or permitted any unlicensed person or  
19 persons to perform any work in the licensee's office which constitutes the  
20 practice of dentistry or dental hygiene under the provisions of *the Kansas*  
21 *dental practices* ~~this act~~;

22 (6) willfully violated the laws of this state relating to the practice of  
23 dentistry or dental hygiene or the rules and regulations of the secretary of  
24 health and environment or of the board regarding sanitation;

25 (7) engaged in the division of fees, or agreed to split or divide the  
26 fee received for dental service with any person for bringing or referring a  
27 patient without the knowledge of the patient or the patient's legal  
28 representative, except:

29 (A) The division of fees between dentists practicing in a partnership  
30 and sharing professional fees;

31 (B) ~~the division of fees between, or in case of~~ one licensed dentist  
32 employing another; or

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

35 (8) committed complicity in association with or allowed the use of  
36 the licensed dentist's name in conjunction with any person who is  
37 engaged in the illegal practice of dentistry;

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

41 (10) prescribed, dispensed, administered or distributed a prescription  
42 drug or substance, including a controlled substance, in an excessive,  
43 improper or inappropriate manner or quantity outside the scope of

- 1 practice of dentistry or in a manner that impairs the health and safety of  
2 an individual;
- 3 (11) prescribed, purchased, administered, sold or given away  
4 prescription drugs, including a controlled substance, for other than legal  
5 and legitimate purposes;
- 6 (12) violated or been convicted of any federal or state law regulating  
7 possession, distribution or use of any controlled substance;
- 8 (13) failed to pay license fees;
- 9 (14) used the name "clinic," "institute" or other title that may  
10 suggest a public or semipublic activity except that the name "clinic" may  
11 be used as authorized in K.S.A. 65-1435, and amendments thereto;
- 12 (15) committed, after becoming a licensee, any conduct which is  
13 detrimental to the public health, safety or welfare as defined by rules and  
14 regulations of the board;
- 15 (16) engaged in a misleading, deceptive, untrue or fraudulent  
16 misrepresentation in the practice of dentistry or on any document  
17 connected with the practice of dentistry by knowingly submitting any  
18 misleading, deceptive, untrue or fraudulent misrepresentation on a claim  
19 form, bill or statement, including the systematic waiver of patient co-  
20 payment or co-insurance;
- 21 (17) failed to keep adequate records;
- 22 (18) the licensee has had a license to practice dentistry revoked,  
23 suspended or limited, has been censured or has had other disciplinary  
24 action taken, *has had* an application for license denied, or voluntarily  
25 surrendered the license after formal proceedings have been commenced  
26 by the proper licensing authority or another state, territory or the District  
27 of Columbia or other country, a certified copy of the record of the action  
28 of the other jurisdiction being conclusive evidence thereof;
- 29 (19) failed to furnish the board, or its investigators or representatives  
30 any information legally requested by the board; or
- 31 (20) assisted suicide in violation of *section 42 of chapter 136 of the*  
32 *2010 Session Laws of Kansas*~~K.S.A. 21-3406~~, and amendments thereto,  
33 as established by any of the following:
- 34 (A) A copy of the record of criminal conviction or plea of guilty for  
35 a felony in violation of *section 42 of chapter 136 of the 2010 Session*  
36 *Laws of Kansas*~~K.S.A. 21-3406~~, and amendments thereto;:-
- 37 (B) a copy of the record of a judgment of contempt of court for  
38 violating an injunction issued under K.S.A. 60-4404, and amendments  
39 thereto; or:
- 40 (C) a copy of the record of a judgment assessing damages under  
41 K.S.A. 60-4405, and amendments thereto.
- 42 (b) Whenever it is established, after notice and opportunity for  
43 hearing in accordance with the provisions of the Kansas administrative

1 procedure act, that a licensee is in any of the circumstances or has  
2 committed any of the acts described in subsection (a), the Kansas dental  
3 board may take one or any combination of the following actions with  
4 respect to the license of the licensee:

5 (1) Revoke the license,-

6 (2) suspend the license for such period of time as may be determined  
7 by the board,-

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

15 (4) grant a period of probation during which the imposition of one or  
16 more of the actions described in subsections (b)(1) through (b)(3) will be  
17 stayed subject to such conditions as may be imposed by the board  
18 including a requirement that the dentist or dental hygienist refrain from  
19 any course of conduct which may result in further violation of the dental  
20 practice act or the dentist or dental hygienist complete additional or  
21 remedial instruction. The violation of any provision of the dental practice  
22 act or failure to meet any condition imposed by the board as set forth in  
23 the order of the board will result in immediate termination of the period  
24 of probation and imposition of such other action as has been taken by the  
25 board.

26 (c) As used in this section, "professionally incompetent" means:

27 (1) One or more instances involving failure to adhere to the  
28 applicable standard of dental or dental hygienist care to a degree which  
29 constitutes gross negligence, as determined by the board;

30 (2) repeated instances involving failure to adhere to the applicable  
31 standard of dental or dental hygienist care to a degree which constitutes  
32 ordinary negligence, as determined by the board; or

33 (3) a pattern of dental or dental hygienist practice or other behavior  
34 which demonstrates a manifest incapacity or incompetence to practice  
35 dentistry.

36 (d) In addition to or in lieu of one or more of the actions described in  
37 subsections (b)(1) through (b)(4) or in subsection (c) of K.S.A. 65-1444,  
38 and amendments thereto, the board may assess a fine not in excess of  
39 \$10,000 against a licensee. All fines collected pursuant to this subsection  
40 shall be remitted to the state treasurer in accordance with the provisions  
41 of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such  
42 remittance, the state treasurer shall deposit the entire amount in the state  
43 treasury and of the amount so remitted, an amount equal to the board's

1 actual costs related to fine assessment and enforcement under this  
2 subsection, as certified by the president of the board to the state treasurer,  
3 shall be credited to the dental board fee fund and the balance shall be  
4 credited to the state general fund.

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

11 New Sec. 4. (a) Any person who is not licensed as a dentist under  
12 the Kansas dental practices act, nor any entity that is not a professional  
13 corporation or limited liability company composed of dentists which  
14 enter into an agreement with a dentist to provide dental office  
15 administrative services shall register with the Kansas dental board.

16 (b) (1) The registration shall include the company name, contact  
17 information and responsible person of such person or entity along with  
18 the address and licensed dentist practice owner names for which  
19 administrative services are being provided.

20 (2) Such registered person or entity shall provided updated  
21 information to the Kansas dental board within 30 days. Any person or  
22 entity required to register pursuant to this section shall have 30 days from  
23 the execution of any contract or agreement with a dentist or professional  
24 corporation or limited liability company to complete the registration.

25 (c) Any such person or entity required to register pursuant to this  
26 section operating under a contract or agreement executed prior to the  
27 effective date of this section shall be subject to the provisions of this  
28 section and shall have 30 days from the effective date of this section to  
29 complete the registration. A copy of all contracts or agreements  
30 providing for dental office administrative services shall be maintained by  
31 the registered dental office administrative services company and shall be  
32 subject to inspection during regular business hours at any time by the  
33 Kansas dental board.

34 New Sec. 5. (a) As used in this section, "licensed dentist" means a  
35 dentist licensed under the Kansas dental practices act.

36 (b) No person who is a licensed dentist or any entity that is not a  
37 professional corporation or limited liability company owned by a licensed  
38 dentist shall enter into or continue to maintain a contract or agreement  
39 with a licensed dentist in which such contract or agreement allows or  
40 provides for the following functions to be controlled by any person or  
41 entity other than a licensed dentist pursuant to this section:

- 42 (1) Providing dental treatment to patients;
- 43 (2) the decision to accept individual patients for treatment;

- 1 (3) the direction or delegation of all professional dental services;
- 2 (4) the ownership of dental charts or patient records;
- 3 (5) except as provided in subsection (d), the ownership of dental
- 4 equipment or dental materials; and
- 5 (6) the supervision of clinical dental staff.

6 (c) It shall not be a violation of this section for a person or entity to  
7 act on behalf of a licensed dentist to perform or arrange for others to  
8 perform office administrative services including, but not limited to:

- 9 (1) Purchasing, billing or tax preparation;
- 10 (2) compliance or quality assurance programs;
- 11 (3) legal advice or representation;
- 12 (4) payroll, advertising, training, recruiting, recordkeeping,
- 13 programming or other similar functions under the direction or with the
- 14 consent or approval of a licensed dentist or professional corporation or
- 15 limited liability company owned by a licensed dentist.

16 (d) Nothing in this section shall prohibit a licensed dentist,  
17 professional corporation or limited liability company owned by a licensed  
18 dentist from entering into real estate lease, equipment lease or lease  
19 purchase agreement or bona fide sale of dental equipment or material  
20 secured by a chattel mortgage or retain title agreements with equipment  
21 manufacturers, landlords, lending institutions, leasing companies, dental  
22 franchisors or persons or entities providing dental office administrative  
23 services or similar commercial financing transactions.

24 Sec. 6. K.S.A. 65-1424 and K.S.A. 2010 Supp. 65-1435 and 65-  
25 1436 are hereby repealed.

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

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