

As Amended by House Committee

Session of 2011

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
3 K.S.A. 65-1424 and K.S.A. 2010 Supp. 65-1435 and 65-1436 and
4 repealing 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:
8 65-1424. (a) ~~The term "proprietor" as used in this act includes As~~
9 **used in this act: (1) "Proprietor" means** any person who:

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

12 **(2) "Dental franchisor" means any person or entity, pursuant**
13 **to a written agreement, who provides a licensed dentist any dental**
14 **practice management consulting services, which may include**
15 **marketing or advertising services, signage or branding consulting,**
16 **or places in possession of a licensed dentist such dental material or**
17 **equipment as may be necessary for the management of a dental**
18 **office on the basis of a lease or any other agreement for**
19 **compensation.**

20 ~~(b) places in possession of a dentist or dental hygienists or other~~
21 ~~agent such dental material or equipment as may be necessary for the~~
22 ~~management of a dental office on the basis of a lease or any other~~
23 ~~agreement for compensation for the use of such material, equipment or~~
24 ~~offices; or~~

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

30 A licensee of dentistry who enters into ~~any of the above described~~
31 ~~arrangements~~ *any arrangement* with an unlicensed proprietor may
32 have such license **limited**, suspended or revoked by the board.

33 (b) The estate or agent for a deceased or substantially disabled

1 dentist may employ dentists, for a period of not more than one year, to
2 provide service to patients until the practice can be sold.

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

9 (b) A licensed dentist may use the name of any association,
10 corporation, clinic, trade name or business name in connection with the
11 practice of dentistry, as defined in *the Kansas dental practices* ~~this act~~,
12 except that such name may not misrepresent the dentist to the public. ~~as~~
13 ~~determined by the Kansas dental board.~~

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

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

18 (2) from associating together for the practice of dentistry, each as
19 owners, in a professional corporation, organized pursuant to the
20 professional corporation law of Kansas, or, each as owners, in a limited
21 liability company organized pursuant to the Kansas revised limited
22 liability company act, and using a name that may or may not contain
23 the proper name of any such person or persons *except that such name*
24 *may not misrepresent the dentist to the public* ~~if such name has been~~
25 ~~approved by the board~~ and from employing nonowning licensees; or

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

30 (d) It shall be unlawful, and a licensee may have a license
31 suspended or revoked, for any licensee to conduct a dental office in the
32 name of the licensee, or to advertise the licensee's name in connection
33 with any dental office or offices, or to associate together for the
34 practice of dentistry with other licensed dentists in a professional
35 corporation or limited liability company, under a name that may or may
36 not contain the proper name of any such person or persons or to
37 associate together with persons licensed to practice medicine and
38 surgery in a clinic or professional association under a name that may or
39 may not contain the proper name of any such person or persons and

1 may contain the word "clinic," unless such licensee is personally
2 present in the office operating as a dentist or personally overseeing
3 such operations as are performed in the office or each of the offices
4 during a majority of the time the office or each of the offices is being
5 operated.

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

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

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

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

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

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

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

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

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

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

37 (5) employed, allowed or permitted any unlicensed person or
38 persons to perform any work in the licensee's office which constitutes
39 the practice of dentistry or dental hygiene under the provisions of *the*

- 1 *Kansas dental practices* ~~this act;~~
2 (6) willfully violated the laws of this state relating to the practice
3 of dentistry or dental hygiene or the rules and regulations of the
4 secretary of health and environment or of the board regarding
5 sanitation;
6 (7) engaged in the division of fees, or agreed to split or divide the
7 fee received for dental service with any person for bringing or referring
8 a patient without the knowledge of the patient or the patient's legal
9 representative, except:
10 (A) The division of fees between dentists practicing in a
11 partnership and sharing professional fees;
12 (B) ~~the division of fees between, or in case of~~ one licensed dentist
13 employing another; ~~or~~
14 (C) ~~the division of fees between a licensed dentist and a proprietor~~
15 ~~as defined in K.S.A. 65-1424, and amendments thereto~~ **dental**
16 **franchisor**;
17 (8) committed complicity in association with or allowed the use of
18 the licensed dentist's name in conjunction with any person who is
19 engaged in the illegal practice of dentistry;
20 (9) been convicted of a felony or a misdemeanor involving moral
21 turpitude in any jurisdiction and the licensee fails to show that the
22 licensee has been sufficiently rehabilitated to warrant the public trust;
23 (10) prescribed, dispensed, administered or distributed a
24 prescription drug or substance, including a controlled substance, in an
25 excessive, improper or inappropriate manner or quantity outside the
26 scope of practice of dentistry or in a manner that impairs the health and
27 safety of an individual;
28 (11) prescribed, purchased, administered, sold or given away
29 prescription drugs, including a controlled substance, for other than legal
30 and legitimate purposes;
31 (12) violated or been convicted of any federal or state law
32 regulating possession, distribution or use of any controlled substance;
33 (13) failed to pay license fees;
34 (14) used the name "clinic," "institute" or other title that may
35 suggest a public or semipublic activity except that the name "clinic"
36 may be used as authorized in K.S.A. 65-1435, and amendments thereto;
37 (15) committed, after becoming a licensee, any conduct which is
38 detrimental to the public health, safety or welfare as defined by rules
39 and regulations of the board;

- 1 (16) engaged in a misleading, deceptive, untrue or fraudulent
2 misrepresentation in the practice of dentistry or on any document
3 connected with the practice of dentistry by knowingly submitting any
4 misleading, deceptive, untrue or fraudulent misrepresentation on a
5 claim form, bill or statement, including the systematic waiver of patient
6 co-payment or co-insurance;
- 7 (17) failed to keep adequate records;
- 8 (18) the licensee has had a license to practice dentistry revoked,
9 suspended or limited, has been censured or has had other disciplinary
10 action taken, *has had* an application for license denied, or voluntarily
11 surrendered the license after formal proceedings have been commenced
12 by the proper licensing authority or another state, territory or the
13 District of Columbia or other country, a certified copy of the record of
14 the action of the other jurisdiction being conclusive evidence thereof;
- 15 (19) failed to furnish the board, or its investigators or
16 representatives any information legally requested by the board; or
- 17 (20) assisted suicide in violation of **K.S.A. 21-3406, prior to its**
18 **repeal, or section 42 of chapter 136 of the 2010 Session Laws of**
19 **Kansas**~~K.S.A. 21-3406~~, and amendments thereto, as established by any
20 of the following:
- 21 (A) A copy of the record of criminal conviction or plea of guilty
22 for a felony in violation of **K.S.A. 21-3406, prior to its repeal, or**
23 **section 42 of chapter 136 of the 2010 Session Laws of Kansas** ~~K.S.A.~~
24 ~~21-3406~~, and amendments thereto;:-
- 25 (B) a copy of the record of a judgment of contempt of court for
26 violating an injunction issued under K.S.A. 60-4404, and amendments
27 thereto; *or*:
- 28 (C) a copy of the record of a judgment assessing damages under
29 K.S.A. 60-4405, and amendments thereto.
- 30 (b) Whenever it is established, after notice and opportunity for
31 hearing in accordance with the provisions of the Kansas administrative
32 procedure act, that a licensee is in any of the circumstances or has
33 committed any of the acts described in subsection (a), the Kansas
34 dental board may take one or any combination of the following actions
35 with respect to the license of the licensee:
- 36 (1) Revoke the license;:-
- 37 (2) suspend the license for such period of time as may be
38 determined by the board;:-
- 39 (3) restrict the right of the licensee to practice by imposing

1 limitations upon dental or dental hygiene procedures which may be
2 performed, categories of dental disease which may be treated or types
3 of patients which may be treated by the dentist or dental hygienist.
4 Such restrictions shall continue for such period of time as may be
5 determined by the board, and the board may require the licensee to
6 provide additional evidence at hearing before lifting such restrictions;

7 *or:*

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

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

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

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

26 (3) a pattern of dental or dental hygienist practice or other
27 behavior which demonstrates a manifest incapacity or incompetence to
28 practice dentistry.

29 (d) In addition to or in lieu of one or more of the actions described
30 in subsections (b)(1) through (b)(4) or in subsection (c) of K.S.A. 65-
31 1444, and amendments thereto, the board may assess a fine not in
32 excess of \$10,000 against a licensee. All fines collected pursuant to this
33 subsection shall be remitted to the state treasurer in accordance with the
34 provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt
35 of each such remittance, the state treasurer shall deposit the entire
36 amount in the state treasury and of the amount so remitted, an amount
37 equal to the board's actual costs related to fine assessment and
38 enforcement under this subsection, as certified by the president of the
39 board to the state treasurer, shall be credited to the dental board fee

1 fund and the balance shall be credited to the state general fund.

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

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

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

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

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

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

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

- 1 person or entity other than a licensed dentist pursuant to this section:
- 2 (1) Providing dental treatment to patients;
- 3 (2) the decision to accept individual patients for treatment;
- 4 (3) the direction or delegation of all professional dental services;
- 5 (4) the ownership of dental charts or patient records;
- 6 (5) except as provided in subsection (d), the ownership of dental
- 7 equipment or dental materials; and
- 8 (6) the supervision of clinical dental staff.
- 9 (c) It shall not be a violation of this section for a person or entity
- 10 to act on behalf of a licensed dentist to perform or arrange for others to
- 11 perform office administrative services including, but not limited to:
- 12 (1) Purchasing, billing or tax preparation;
- 13 (2) compliance or quality assurance programs;
- 14 (3) legal advice or representation;
- 15 (4) payroll, advertising, training, recruiting, recordkeeping,
- 16 programming or other similar functions under the direction or with the
- 17 consent or approval of a licensed dentist or professional corporation or
- 18 limited liability company owned by a licensed dentist.
- 19 (d) Nothing in this section shall prohibit a licensed dentist,
- 20 professional corporation or limited liability company owned by a
- 21 licensed dentist from entering into real estate lease, equipment lease or
- 22 lease purchase agreement or bona fide sale of dental equipment or
- 23 material secured by a chattel mortgage or retain title agreements with
- 24 equipment manufacturers, landlords, lending institutions, leasing
- 25 companies, dental franchisors or persons or entities providing dental
- 26 office administrative services or similar commercial financing
- 27 transactions.
- 28 **(e) No contract or provision in any such agreement shall**
- 29 **require either party to indemnify the other party for negligence,**
- 30 **intentional acts or omissions that constitute a violation of K.S.A.**
- 31 **65-1422 et seq., and amendments thereto.**
- 32 Sec. 6. K.S.A. 65-1424 and K.S.A. 2010 Supp. 65-1435 and 65-
- 33 1436 are hereby repealed.
- 34 Sec. 7. This act shall take effect and be in force from and after its
- 35 publication in the statute book.
- 36