



Kansas Senate Public Health and Welfare Committee Senate Bill 103

Written Testimony: Daniel J. Thomas, DDS, MS, FICD, FACD Diplomate, American Board of Periodontology and Implant Surgery

My name is Dr. Daniel J. Thomas, a practicing Periodontist and Kansas business owner. I was appointed by Governor Jeff Colyer to the Kansas Dental Board and served as Member and Vice-President from 2018 until 2022. I was also appointed to the Kansas Board of Regents by Governor Sam Brownback and served from 2015 until 2019.

The laws regulating the conduct of dental professionals that are necessary to protect patients are welcome by the scrupulous practitioner. However, if a law does nothing to protect patients and serves only to unnecessarily burden doctors, it must be repealed. This is the case with the current “20% Rule” of KSA 65-1435(d) and for the following reasons.

First, access to health services, especially in the rural areas of our state, suffers due to the requirement. The *status quo* disincentivizes dentists from investing in Kansas especially in small town offices. For example, an owner dentist could allow an associate/employee dentist or dental hygienist (under KSA 65-1456(d)) to provide services, with the owner dentist periodically visiting the office to undertake or supervise the services outside KSA 65-1456(d). However, under the current rule, the owner dentist subjects himself to sanctions if he falls below the 20% requirement, even if by honest mistake.

Second, there is no compelling public interest justification to continue the requirement. In April 2014, after unanimous support in both the House and Senate, Governor Sam Brownback signed into law an amendment that replaced the requirement that a dentist be present in an office a majority of the time (the so-called “50% rule”) with the current 20% rule. At the time, the move was lauded by the dental community as a step in the right direction. And now, almost nine years later, no substantial evidence has been presented supporting the notion that a 20% presence requirement has conferred any benefit to patients or increased access to care.

Third, in 2012 the only Periodontist in Manhattan, Kansas developed macular degeneration and requested we buy his practice. Even though we had associate/employee dental specialists and dental hygienists who could continue to see his patients, I decided not to because of the requirement that I, as the owner specialist, needed to be physically present in Manhattan for the required percentage of time the practice was open. The periodontist could not find another buyer, so finally, we did the best we could do and purchased his patient records. To this day, Manhattan, Kansas has no full time Periodontist and all its citizens with periodontal needs must drive to Salina or Topeka.

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In the end, the rule did not dissuade me from expanding my practice. In fact, over the years I have opened four additional locations; unfortunately for Kansas, all were opened in Missouri, a state with no such minimum presence requirement. The result being that the State of Kansas and its local communities suffer a loss of vital economic investment directly attributable to the rule.

In addition to doing little to protect patients and economic costs of non-investment, the rule has been weaponized by bad faith actors against owner dentists to settle personal scores. In April 2008, I was personally victimized by a colleague who filed a fraudulent claim against me with the Kansas Dental Board alleging I violated the (at that time) 50% rule. After several torturous months and tremendous expense, including hiring counsel, retrieving records and responding to the claim, I was fully cleared of any wrongdoing in February 2009.

In addition to the direct costs of defending against the baseless accusation, I felt compelled to close my second location upon my appointment to the Kansas Board of Regents. I did this to avoid giving some other bad actor the opportunity to make a similar frivolous claim. Closing that office cost my practice a valuable revenue stream. And I am not the only one.

I personally know of other dentists and dental specialists who have had false accusations made to the Kansas Dental Board that they violated the percent rule. Like me, they had to close and merge offices in order to ensure they would not have to waste precious time and resources responding to these underhanded tactics used by rivals. Consequently, their patients are now forced to travel, sometimes great distances and at steep costs, to be seen by the provider they have come to trust.

Finally, my research shows that no other state imposes this strict requirement on their dentists. This includes states with similar populations of rural and suburban residents. Kansas is the only state that mandates a minimum requirement for the presence of an owner dentist. There is no other profession in the entire United States that has this restriction on any of their graduates or professionals.

The time is now for Kansas to join the other forty-nine states and abolish this capricious, arbitrary and antiquated law. Along with the notoriety of being only state in the union to impose this requirement, the law restricts health care access for rural residents and has no compelling patient protection or public policy *raison d'être*.