HOUSE BILL No. 2241

By Committee on Health and Human Services

AN ACT concerning the Kansas dental practices act; relating to proprietor arrangements with licensees of dentistry; amending K.S.A. 65-1424 and 65-1425 and K.S.A. 2010 Supp. 65-1435 and 65-1436 and repealing the existing sections.

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

Section 1. K.S.A. 65-1424 is hereby amended to read as follows: 65-1424. *(a) The term "proprietor" as used in this act includes As used in this act: (1) "Proprietor" means any person who: *(a) employs dentists or dental hygienists in the operation of a dental office; or *(2) dental franchisor" means any person or entity, pursuant to a written agreement, who provides a licensed dentist any dental practice management consulting services, which may include marketing or advertising services, signage or branding consulting, or places in possession of a licensed dentist such dental material or equipment as may be necessary for the management of a dental office on the basis of a lease or any other agreement for compensation. A person or entity is not a dental franchisor if the agreement with the dentist: *(A) permits the person or entity to interfere with the independent professional judgment of the dentist in the performance of such dentist's professional duties; or *(B) contains terms that would constitute a violation of the dental practices act, rules and regulations adopted by the board, any orders and directives issued by the board or any other applicable law. *(b) places in possession of a dentist or dental hygienists or other agent such dental material or equipment as may be necessary for the management of a dental office on the basis of a lease or any other agreement for compensation for the use of such material, equipment or office; or *(c) retains the ownership or control of dental equipment or material or office and makes the same available in any manner for the use by dentists.
or dental hygienists or other agents except that nothing in this subsection
(e) shall apply to bona fide sales of dental equipment or material secured
by a chattel mortgage or retain title agreement.
(3) "Unlicensed proprietor" means any person or entity not
authorized to own or operate a dental practice that enters into an
agreement with a dentist or dental hygienist related to the practice of
dentistry or dental hygiene which:
   (A) Permits the person or entity to interfere with the independent:
       professional judgment of the dentist in the performance of such dentist's:
       professional duties; or
   (B) contains terms that would constitute a violation of the dental
       practices act, rules and regulations adopted by the board, any orders and
directives issued by the board or any other applicable law.
A licensee of dentistry who enters into any of the above described
arrangements any arrangement with an unlicensed proprietor may have
such license limited, suspended or revoked by the board.
(b) The estate or agent for a deceased or substantially disabled dentist
may employ dentists, for a period of not more than one year, to provide
service to patients until the practice can be sold.
Sec. 2. K.S.A. 65-1425 is hereby amended to read as follows: 65-
1425. Except as provided in K.S.A. 17-2706 et seq., and amendments
thereto, no corporation shall practice, offer, or undertake to practice or
hold itself out as practicing dentistry. Every person practicing dentistry
as an employee of another shall cause his name to be conspicuously
displayed and kept in a conspicuous place at the entrance of the place
where such practice is conducted. Provided, however, That nothing herein
contained. Nothing in this section shall prohibit a licensed dentist from
practicing dentistry as the agent or employee of another licensed dentist
in this state, or from practicing dentistry as the agent or employee of any
state hospital or state institution where his such dentist's only
remuneration is from the state, or from any corporation which provides
dental service for its employees at no profit to the corporation. Nothing
in this section shall prohibit a licensed dentist from practicing dentistry as
an employee of a general hospital defined in K.S.A. 65-425, and
amendments thereto, in a county with population of less than 50,000.
Sec. 2. K.S.A. 2010 Supp. 65-1435 is hereby amended to read as
follows: 65-1435. (a) Except as otherwise provided in this section, it shall
be unlawful for any person or persons to practice or offer to practice
dentistry under any name except such person's own name, which shall be
the name used on the license granted to such person as a dentist as
provided in the Kansas dental practices act.
   (b) A licensed dentist may use the name of any association,
corporation, clinic, trade name or business name in connection with the
practice of dentistry, as defined in the Kansas dental practices this act, except that such name may not misrepresent the dentist to the public as determined by the Kansas dental board.

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

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

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

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

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

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

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

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

(1) The licensee's secondary dental office is located within a 125 mile radius of the licensee's primary office; and
(2) the licensee's secondary dental office is located in a county with a population of less than 10,000 according to the 2000 United States census.

Sec. 3. K.S.A. 2010 Supp. 65-1436 is hereby amended to read as follows: 65-1436. (a) The Kansas dental board may refuse to issue the license under the Kansas dental practices 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 the Kansas dental practices 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:
   A. The division of fees between dentists practicing in a partnership and sharing professional fees;
   B. The division of fees between one licensed dentist employing another; or
   C. The division of fees between a licensed dentist and a proprietor as defined in K.S.A. 65-1424, and amendments thereto,
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, has had 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, prior to its repeal, or section 42 of chapter 136 of the 2010 Session Laws of Kansas 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, prior to its repeal, or section 42 of chapter 136 of the 2010 Session Laws of Kansas 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. 60-4404, and amendments thereto; or

(C) a copy of the record of a judgment assessing damages under
K.S.A. 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; or

(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 remedial 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).

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

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

(2) Such registered person or entity shall provided Any person or
entity registered under this section shall provide updated information to
the Kansas dental board within 30 days of any changes to the information
provided in paragraph (1). Any person or entity required to register
pursuant to this section shall have 30 days from the execution of any
contract or agreement with a dentist or professional corporation or limited
liability company to complete the registration.

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

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

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

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

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

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

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

(e) 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 K.S.A. 65-1422 et seq.,
and amendments thereto.

New Sec. 7. (a) The Kansas dental board may seek declaratory
judgment pursuant to K.S.A. 60-1701 et seq., and amendments thereto,
against any dentist or franchisor or other entity that contracts with a
dentist, if any contract between the dentist and franchisor or any other
entity appears to the board to be in violation of the dental practices act.
Upon a finding that a dentist, franchisor or other entity is a party to an
agreement that is in violation of state law, or the dental practices act, or
both, the court may enjoin the enforcement of the contract provisions
determined to be in violation of state law, or the dental practices act, or
both. The court may award reasonable attorney fees to the prevailing
party in any action for declaratory judgment brought pursuant to this
section.
(b) This section shall be part of and supplemental to the dental practices act.
Sec. 7. 8. 9. This act shall take effect and be in force from and after its publication in the statute book Kansas register.