

HOUSE BILL No. 2565

By Committee on Health and Human Services

Requested by Representative Buehler on behalf of Association of Dental Support Organizations

1-22

1 AN ACT concerning health professions and practices; relating to the
2 regulation of dentists; Kansas dental board; requiring that treating
3 dentist information be given to patients upon request; prohibiting
4 agreements that limit a patient's ability to file complaints; eliminating
5 the minimum personal presence requirements of licensee in dental
6 office using licensee's name; amending K.S.A. 65-1430, 65-1435, 65-
7 1436 and 65-1467 and repealing the existing sections.
8

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

10 Section 1. K.S.A. 65-1430 is hereby amended to read as follows: 65-
11 1430. (a) Every practitioner of dentistry within the meaning of this act
12 shall post and keep conspicuously displayed the dentist's name, license and
13 current license renewal certificate in each office in which the dentist
14 practices, in plain sight of patients, and if there is more than one dentist
15 practicing or employed in any office the manager or proprietor of such
16 office shall post or display, or cause to be posted and displayed, in like
17 manner the name and license of each dentist so practicing or employed in
18 such office.

19 (b) *Upon request of a patient, a treating dentist shall provide such*
20 *patient with basic information about the treating dentist and the dental*
21 *practice ownership. Such information shall include, but not be limited to,*
22 *the full name, after-hours emergency contact information and the Kansas*
23 *state license number for the dental practice owner and the treating dentist.*
24 *Failure to provide such information shall subject the dentist to*
25 *disciplinary action by the board.*

26 Sec. 2. K.S.A. 65-1435 is hereby amended to read as follows: 65-
27 1435. (a) Except as otherwise provided in this section, it shall be unlawful
28 for any person or persons to practice or offer to practice dentistry under
29 any name except such person's own name, which shall be the name used
30 on the license granted to such person as a dentist as provided in the dental
31 practices act.

32 (b) A licensed dentist may use the name of any association,
33 corporation, clinic, trade name or business name in connection with the
34 practice of dentistry, as defined in the dental practices act, except that such

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

3 ~~(c) Nothing herein contained. This section shall not be construed to~~
4 prevent two or more licensed dentists *from*:

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 not
13 misrepresent the dentist to the public and from employing nonowning
14 licensees; or

15 (3) ~~from~~ associating together with persons licensed *by the state board*
16 *of healing arts* to practice medicine and surgery in a clinic or professional
17 association under a name that may ~~or may not~~ contain the proper name of
18 any such person ~~or 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 at least 20% of the time patients are being treated in the office or~~
32 ~~each of the offices.~~

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

35 (f) ~~Notwithstanding the provisions of subsection (d), a licensee shall~~
36 ~~be permitted to own two dental offices in addition to the licensee's primary~~
37 ~~office location under the following conditions:~~

38 (1) ~~The licensee's secondary dental office is located within a 125-mile~~
39 ~~radius of the licensee's primary office; and~~

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

42 Sec. 3. K.S.A. 65-1436 is hereby amended to read as follows: 65-
43 1436. (a) The Kansas dental board may refuse to issue the license under

1 the dental practices act, or may take any of the actions with respect to any
2 dental or dental hygiene license as set forth in subsection (b), whenever it
3 is established, after notice and opportunity for hearing in accordance with
4 the provisions of the Kansas administrative procedure act, that any
5 applicant for a dental or dental hygiene license or any licensed dentist or
6 dental hygienist practicing in the state of Kansas has:

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

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

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

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

14 (5) employed, allowed or permitted any unlicensed person or persons
15 to perform any work in the licensee's office—~~which~~ *that* constitutes the
16 practice of dentistry or dental hygiene under the provisions of the dental
17 practices act;

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

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

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

27 (B) the division of fees between one licensed dentist employing
28 another; or

29 (C) the division of fees between a licensed dentist and a dental
30 franchisor;

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

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

37 (10) prescribed, dispensed, administered or distributed a prescription
38 drug or substance, including a controlled substance, in an excessive,
39 improper or inappropriate manner or quantity outside the scope of practice
40 of dentistry or in a manner that impairs the health and safety of an
41 individual;

42 (11) prescribed, purchased, administered, sold or given away
43 prescription drugs, including a controlled substance, for other than legal

1 and legitimate purposes;

2 (12) violated or been convicted of any federal or state law regulating
3 possession, distribution or use of any controlled substance;

4 (13) failed to pay license fees;

5 (14) used the name "clinic," "institute" or other title that may suggest
6 a public or semipublic activity except that the name "clinic" may be used
7 as authorized in K.S.A. 65-1435, and amendments thereto;

8 (15) committed, after becoming a licensee, any conduct which is
9 detrimental to the public health, safety or welfare as defined by rules and
10 regulations of the board;

11 (16) engaged in a misleading, deceptive, untrue or fraudulent
12 misrepresentation in the practice of dentistry or on any document
13 connected with the practice of dentistry by knowingly submitting any
14 misleading, deceptive, untrue or fraudulent misrepresentation on a claim
15 form, bill or statement, including the systematic waiver of patient co-
16 payment or co-insurance;

17 (17) failed to keep adequate records;

18 (18) the licensee has had a license to practice dentistry revoked,
19 suspended or limited, has been censured or has had other disciplinary
20 action taken, has had an application for license denied, or voluntarily
21 surrendered the license after formal proceedings have been commenced by
22 the proper licensing authority or another state, territory or the District of
23 Columbia or other country, a certified copy of the record of the action of
24 the other jurisdiction being conclusive evidence thereof;

25 (19) failed to furnish the board, or its investigators or representatives
26 any information legally requested by the board; ~~or~~

27 (20) assisted suicide in violation of K.S.A. 21-3406, prior to its
28 repeal, or K.S.A. 21-5407, and amendments thereto, as established by any
29 of the following:

30 (A) A copy of the record of criminal conviction or plea of guilty for a
31 felony in violation of K.S.A. 21-3406, prior to its repeal, or K.S.A. 21-
32 5407, and amendments thereto;

33 (B) a copy of the record of a judgment of contempt of court for
34 violating an injunction issued under K.S.A. 60-4404, and amendments
35 thereto; or

36 (C) a copy of the record of a judgment assessing damages under
37 K.S.A. 60-4405, and amendments thereto; or

38 (21) *directed or pressured another dentist who is an employee,*
39 *associate or subordinate to perform dentistry that fails to adhere to the*
40 *applicable standard of dental care or that violates the dental practices act.*

41 (b) Whenever it is established, after notice and opportunity for
42 hearing in accordance with the provisions of the Kansas administrative
43 procedure act, that a licensee is in any of the circumstances or has

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

4 (1) Revoke the license;

5 (2) suspend the license for such period of time as may be determined
6 by the board;

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

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

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

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

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

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

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

1 subsection, as certified by the president of the board to the state treasurer,
2 shall be credited to the dental board fee fund and the balance shall be
3 credited to the state general fund.

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

10 Sec. 4. K.S.A. 65-1467 is hereby amended to read as follows: 65-
11 1467. (a) Any complaint or report, record or other information relating to a
12 complaint ~~which~~ *that* is received, obtained or maintained by the Kansas
13 dental board shall be confidential and shall not be disclosed by the board
14 or its employees in a manner ~~which~~ *that* identifies or enables identification
15 of the person who is the subject or source of the information except the
16 information may be disclosed:

17 (1) In any proceeding conducted by the board under the law or in an
18 appeal of an order of the board entered in a proceeding, or to any party to a
19 proceeding or appeal or the party's attorney;

20 (2) to the person who is the subject of the information or to any
21 person or entity when requested by the person who is the subject of the
22 information, but the board may require disclosure in such a manner that
23 will prevent identification of any other person who is the subject or source
24 of the information; *or*

25 (3) to a state or federal licensing, regulatory or enforcement agency
26 with jurisdiction over the subject or the information or to an agency with
27 jurisdiction over acts or conduct similar to acts or conduct which would
28 constitute grounds for action under this act. Any confidential complaint or
29 report, record or other information disclosed by the board as authorized by
30 this section shall not be redisclosed by the receiving agency except as
31 otherwise authorized by law.

32 (b) *A dentist or contract for dental services shall not require a patient*
33 *to sign an agreement that attempts to limit the patient's ability to file a*
34 *complaint with the board.*

35 (c) This section shall be a part of and supplemental to the Kansas
36 dental practices act.

37 Sec. 5. K.S.A. 65-1430, 65-1435, 65-1436 and 65-1467 are hereby
38 repealed.

39 Sec. 6. This act shall take effect and be in force from and after its
40 publication in the statute book.