

## MINUTES OF THE HEALTH AND HUMAN SERVICES COMMITTEE

The meeting was called to order by Chairperson Landwehr at 1:30 pm. on February 15, 2011, in Room 784 of the Docking State Office Building.

All members were present.

Committee staff present:

Katherine McBride, Office of the Revisor of Statutes  
Martha Dorsey, Kansas Legislative Research Department  
Dorothy Noblit, Kansas Legislative Research Department  
Jay Hall, Kansas Legislative Research Department  
Debbie Bartuccio, Committee Assistant

Conferees appearing before the Committee:

John Federico, Federico Consulting (Attachments 1 and 2)  
Lawless Barrintos, Comfort Dental (Attachment 3)  
Kevin Robertson, Executive Director, Kansas Dental Association (Attachment 4)  
Randal Forbes, General Counsel, Kansas Dental Board (Attachment 5)

Others attending:

See attached list.

### **HB 2241 – Relating to proprietor arrangements with licensees of dentistry.**

Chairperson Landwehr opened the hearing on the bill.

John Federico, Federico Consulting presented testimony in support of the bill. (Attachment 1) He started working in the summer of 2010 with Comfort Dental to find a solution to the problem that the Kansas Dental Board presented them with, that of allowing the franchise practice of dentistry. He was disappointed to learn of the unwillingness of the Kansas Dental Board to work with his client, in the face of a severe access problem and the lack of dentists willing to accept Medicaid patients. It was learned that Kansas is the only State in the country that had specific statutory language prohibiting franchise dentistry. Over the course of several months, and right up until 5:00 pm. on February 14, work was completed with the Kansas Dental Board to find a compromise on language that would 1) permit the franchise arrangement for the practice of dentistry, 2) preserve the regulatory authority of the Kansas Dental Board and 3) to ensure adequate patient protection measures. He was pleased to announce the parties have reached an agreement on all issues and he appreciates the efforts and professionalism of the Kansas Dental Board's Executive Director Kevin Robertson.

Mr. Federico then submitted and reviewed a balloon amendment for consideration. (Attachment 2)

Lawless Barrintos, Comfort Dental, presented testimony in support of the bill. (Attachment 3) Comfort Dental is headquartered in Lakewood, Colorado and was founded by Dr. Rick Kushner in 1977. Dr. Kushner pioneered the concept of accessible, fair-priced dentistry. There are Comfort Dental practices in 7 states currently, including Colorado, Wyoming, Kentucky, New Mexico, Missouri, Ohio and Texas. It is critically important to note that Comfort Dental practices are privately owned and operated by dentists who are licensed in the states in which they practice. Comfort Dental practices epitomize the "family-friendly" concept.

- Collectively, Comfort Dental dentists see 1,500,000 patients per year. The Comfort Dental franchise has over 78 private practices and 286 partner dentists. Comfort Dental's mission is to provide quality, affordable dental care to all economic classes.
- Comfort Dental improves access by having extended office hours and 24-hour emergency access (Regular business hours generally are: Monday-Friday, 7:30 AM to 7:30 PM, Saturdays, 7:30 AM to 1:30 PM).
- Comfort Dental prices tend to be 40-60% lower than the average private practice dentist. Comfort Dental dentists make a point to go over dental prices and options with patients. Prices of dental procedures and care are posted to the consumer.

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- The average dental Medicaid provider is well below the national average in Kansas. Comfort Dental is one of the largest Medicaid providers in Colorado. On average, Comfort Dental Private Practice Dentists treat approximately 40% under-insured/Un-insured, 20% Medicaid and CHIP +.

It is the success, and high-quality of Comfort Dental's family-friendly dental practice concept that has piqued the interest of several Kansas communities and licensed Kansas dentists who are interested in opening a Comfort Dental office in Kansas.

As we attempted to work with the Kansas Dental Board to establish a Comfort Dental practice, we were disappointed that their interpretation of current law prohibited such a practice. We grew increasingly frustrated when there seemed to be at best, disinterest from the Dental Board in working with us to overcome the obstacles, and at worst, hostility. In short, we were told to "*go to the legislature and change the law.*" So with some help from John Federico and his staff, that is what we are attempting to do in the 2011 Legislative Session and stand in strong support of this bill.

Since my last appearance in the Capitol on December 9<sup>th</sup>, 2010 to testify to the Joint Committee on Health Policy Oversight, Comfort Dental has worked closely with the Kansas Dental Association and its Executive Director Kevin Robertson. For several months now, we have worked with the KDA to find a way to allow for the franchise practice of dentistry, while maintaining sufficient oversight and patient protections. I am pleased to report that tremendous progress has been made and the bill you are considering today represents an acceptable compromise on all issues.

There is a tremendous "access" issue in Kansas. We are hopeful that you find, as we do, that this bill helps solve the problem. There is an obvious need to attract more dentists to Kansas. There is an even greater need to attract dentists who are willing to take Medicaid patients. We feel strongly that local communities and most importantly the consumer would benefit greatly from a dental practice owned and operated by highly-trained licensed dentists which embrace transparency in their pricing and maintains extended weekday and weekend hours.

At a time when young dentists leave dental school with tremendous debt, limiting their options to own their own dental practice, a franchise ownership arrangement offers an attractive option for them that we feel is welcomed by the dental community and the regulating agency.

I greatly appreciate the opportunity to visit briefly with you today. Comfort Dental, in the worst way, wants to be part of the solution to the very-real dental shortage issue in Kansas. Comfort Dental feels that by working with the Kansas Dental Association we have come to common ground. I appreciate the professional manner in which the KDA has been willing to work with Comfort Dental to address the problem.

Kevin Robertson, Executive Director, Kansas Dental Association, presented testimony in support of the bill. (Attachment 4) The Kansas Dental Association (KDA) represents 1,250, or some 77% of the state's licensed dentists. I am pleased to report that the KDA has been working hard with Comfort Dental and Church Street Health Management to reach a compromise on this bill. We support the bill and amendments offered by John Federico in his testimony.

Dental franchisors like Comfort Dental and administrative services managers like Church Street can play a positive role in encouraging dentists to locate throughout Kansas to help ensure that all Kansans have access to a real dentist. As such, the KDA believes this bill is a piece of a larger puzzle to help reduce barriers to quality dental care and include some patient protections. The KDA firmly believes that the relationship of confidence between the dentist and the patient is essential to patient welfare and treatment success. As such, this bill maintains the dental practice model which allows the licensed dentist to make treatment and clinical staffing decisions in consultation with the patient, without outside interference from corporate, franchisor or other non dentist entities.

In addition to our concerns regarding treatment and clinical staffing decisions, dentist ownership of patient charts and records and dental equipment and materials is maintained so Kansans can be assured that their dentist can continue treatment of patients without permanent interruption should financial or other hardships occur with the franchisor or other entity. This will alleviate the possibility of a problem occurring in Kansas that occurred in 14 states on January 1, 2011 when Allcare Dental, with 42 offices throughout the county, including Omaha, Nebraska, closed operation overnight resulting in the

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abandonment of care for 10s of thousands of patients. The KDA does not want to imply that these things could happen with Comfort Dental or Church Street, but other franchisors will likely wish to do business in our state and the KDA believes it is important that Kansans are protected from this possibility.

Finally, the KDA and Comfort Dental were busy working in the evening last night reaching an agreement to hold a franchisor accountable if they have treatment or clinical staffing policies, guidelines, etc. (which are prohibited by the bill) that result in injury to the public. The amendment would also make it clear that the franchisor could not be held responsible for any actions by a dentist that violates the dental practices act. As such, the KDA, with support of Comfort Dental and Church, offers the following language to be inserted as new Section 5(e) on page 7, line 24:

“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 KSA 65-1422 et. seq.”

The KDA is pleased that the representatives from Comfort Dental and Church Street Health Management were willing to address our concerns. We support the bill and ask for favorable consideration of the proposed amendments offered above and by Comfort Dental.

Randall Forbes, General Counsel for the Kansas Dental Board, presented neutral testimony concerning the bill. (Attachment 5) The Board has reviewed the bill in light of its primary goal of protecting the public and wants to express its concern regarding a part of the changes to the Dental Practices Act.

K.S.A. 65-1436(a) lists the various reasons for which a dentist or dental hygienist can be disciplined. HB 2241 would amend K.S.A. 65-1436(a)(7) to provide:

“(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:

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

[found on page 3 of the bill]. It is unclear what the purpose of this addition is, but the Board is concerned about its consequences for two reasons.

First, this change would allow a dentist to split his or her fee with a proprietor for steering patients to the dentist without the patient knowing that the proprietor is being paid to recommend the dentist.

Second, the “proprietor” referred to in section (a)(7)(c) is defined at K.S.A. 65-1424(a) as “any person who employs dentists or dental hygienists in the operation of a dental office.” The combination of these two sections would seem to allow a proprietor (who is not a dentist or professional partnership)<sup>1</sup> to employ dentists and dental hygienists. Throughout the history of this state only another dentist, professional corporation, or professional partnership could employ a dentist. The Board is concerned that a change in this longstanding rule is an unintended consequence of those changes made by this bill.

It seems clear that the term proprietor used in K.S.A. 65-1436(a)(7)(c) cannot refer to another dentist or professional partnership because they are addressed in K.S.A. 65-1436(a)(7)(A) and (B).

In addition, such a change would conflict with K.S.A. 65-1425 which prohibits corporations (other than professional corporations) from practicing dentistry. In *Winslow v. Kansas State Board of Dental Examiners*, 115 Kan. 450, 223 P.2d 308 (1924) the Kansas Supreme Court upheld the Board’s discipline of a Kansas dentist who was employed by a corporation to provide dental services. The Court reasoned that “[c]orporations may not be graduated from dental colleges, they have neither learning nor skill, and they may not be examined, registered, nor licensed as dentists.” The Court also stated:

“Dentistry is a profession having to do with public health, and so is subject to regulation by the state. The purpose of regulation is to protect the public from ignorance, unskillfulness, unscrupulousness, deception, and fraud. To that end the state requires that the relation of the dental practitioner to his patients and patrons be personal.”

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The Supreme Court cited the *Winslow* decision in its 1991 decision of *Early Detection Center v. Wilson*, 248 Kan. 869, 811 P.2d 860 (1991) in which it held a general corporation could not employ a physician. In that case the Court stated that it was Kansas "public policy that general corporations who have unlicensed directors or shareholders are not authorized to practice the healing arts."

Removing subsection (a)(7)(c) from Section 3 of the bill would alleviate these problems.

The Board is also puzzled by the proposed elimination of the words "as determined by the Kansas dental board" in **K.S.A. 65-1424(b)** [top of page 2 of the bill]. Usually an amendment to a statute is assumed to make a substantive change. If the Board will not determine if a trade name misrepresents the dentist to the public, who will? Unless it is intended that some person or entity other than the Board would make this determination, the elimination of the above-quoted language has the potential to create great confusion.

Mr. Forbes stated the concern about proprietor and a proprietor being someone who employs dentists would be alleviated if the committee adopts the suggestion being made by Mr. Federico in his testimony. Mr. Federico has also addressed his concerns about trade names. From the Board's perspective, the Dental Board will have to apply this to any franchisor that comes to Kansas and it's important that the professional judgment of the dentist not be effected. Thank you for your consideration.

The Chair gave members the opportunity to ask questions.

There was a question as to where the clinics in Colorado have been located and did Comfort Dental plan to target more urban areas or to give more access to the rural areas in Kansas. Mr. Barrientos indicated the Comfort Dental franchises are spread all across Colorado and they generally do not locate in urban areas such as Johnson County. They target areas which are in need of additional dentists.

There was a question as to the adequacy of the Medicaid rates in Kansas. Mr. Barrientos responded the Kansas rates are adequate. Because of their extended hours of operation, they are able to make it work, servicing patients with both Medicaid and private insurance. He said the concept is that patients attending their locations find they can afford dentistry, especially since Comfort Dental offers payment plans as an option.

There was a question as to whether the Comfort Dental model looks like the Eyemaster or Lenscrafters model in which you own the bricks and mortar and equipment management. Mr. Barrientos responded that the Comfort Dental model does differ in that they help get the dentists started. Several dentists will partner together and they own the building, equipment, etc. The franchise model helps with the advertising and marketing but they do not tell the dentists what to do nor does Comfort Dental own the equipment or building. Because of the buying power of Comfort Dental, they are able to provide better pricing to the dentists for the purchase of their equipment.

There was a question as to whether or not there were any requirements by Comfort Dental as to how many patients need to be seen each day and Mr. Barrientos indicated there are no such requirements.

The Chair requested Revisor McBride meet with John Federico and Comfort Dental, Kevin Robertson (Kansas Dental Association) and Randall Forbes (Kansas Dental Board) to develop a definition of franchisor and provide this at the committee meeting on Thursday, February 17, 2011. The Chair also requested a definition on page 1, line 23, for unlicensed proprietor.

The Chair closed the hearing on the bill with the intention of working the bill on Thursday, February 17, 2011.

The next meeting is scheduled for February 17, 2011.

The meeting was adjourned at 2:45 pm.

# HOUSE HEALTH & HUMAN SERVICES COMMITTEE

DATE: 2-15-71

NAME	REPRESENTING
RANDY FORBES	KANSAS DENTAL BOARD
Beth Wyle	K.D. Dental Board
Melissa Graham	Dental Board
Berend Koops	Hein Law Firm
Bret Arnold	Pinegar, Smith & Assoc.
Cynthia Smith	SCLHS
Michelle Buller	Cap. Strategies
Todd Fleischer	K. Optometric Assoc.
John Breiten	HS DENTAL LOSS
John Peterson	Capital Strategies
Don Carles	GDA
Bruce Witt	Via Christi
Justin Loewen	Via Christi

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**Testimony In Support of HB2241**

**John J. Federico: Federico Consulting**

**On Behalf of Comfort Dental**

**House Health & Human Services Committee**

**February 15, 2011**

I appreciate the opportunity to stand before you today in support of HB2241.

In the summer of 2010 I started working with Comfort Dental to find a solution to the problem that the Kansas Dental Board presented them with, that of allowing the franchise practice of dentistry. I was disappointed to learn of the unwillingness of the Kansas Dental Board to work with my client to allow for such arrangements, in the face of a severe access problem and the lack of dentists willing to accept Medicaid patients. As disappointed as I was on how things transpired with the Dental Board, I was stunned to learn that Kansas is the only State in the country that had specific statutory language prohibiting franchise dentistry!

Over the course of several months, and right up until 5PM last night, we worked with the Kansas Dental Board to find a compromise on language that would; permit the franchise arrangement for the practice of dentistry, preserve the regulatory authority of the Kansas Dental Board and to ensure adequate patient protection measures. I am pleased to announce that we have reached agreement on all issues and I appreciate the efforts and professionalism of the KDA's Executive Director Kevin Robertson.

As mentioned, there were last minute compromises on the bill and I offer for your consideration, the following balloon amendment.

I would appreciate your favorable consideration of these amendments and of HB2241.

HEALTH AND HUMAN SERVICES  
DATE: 2-15-11  
ATTACHMENT: 1

# Amendments offered by: John Federico

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 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,

HEALTH AND HUMAN SERVICES

DATE: 2-15-11

ATTACHMENT: 2

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

2  
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* ~~as defined in K.S.A. 65-1424, and amendments thereto;~~ (strike)

34 ~~as defined in K.S.A. 65-1424, and amendments thereto;~~ (insert: dental  
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; Franchisor)

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.
- 28

**Testimony Presented by**  
**Lawless Barrientos: Comfort Dental**  
**In Support of HB2241**  
**House Health & Human Services Committee**  
**February, 15 2011**

My name is Lawless Barrientos and I appear before you today on behalf of Comfort Dental. Comfort Dental is headquartered in Lakewood, Colorado and was founded by Dr. Rick Kushner in 1977. Dr. Kushner pioneered the concept of accessible, fair-priced dentistry. There are Comfort Dental practices in 7 states currently, including Colorado, Wyoming, Kentucky, New Mexico, Missouri, Ohio and Texas. It is critically important to note that Comfort Dental practices are privately owned and operated by dentists who are licensed in the states in which they practice. Comfort Dental practices epitomize the "family-friendly" concept.

- Collectively, Comfort Dental dentists see 1,500,000 patients per year. The Comfort Dental franchise has over 78 private practices and 286 partner dentists. Comfort Dental's mission is to provide quality, affordable dental care to all economic classes.
- Comfort Dental improves access by having extended office hours and 24-hour emergency access (Regular business hours generally are: Monday-Friday, 7:30 AM to 7:30 PM, Saturdays, 7:30 AM to 1:30 PM).
- Comfort Dental prices tend to be 40-60% lower than the average private practice dentist. Comfort Dental dentists make a point to go over dental prices and options with patients. Prices of dental procedures and care are posted to the consumer.
- The average dental Medicaid provider is well below the national average in Kansas. Comfort Dental is one of the largest Medicaid providers in Colorado. On average, Comfort Dental Private Practice Dentists treat approximately 40% under-insured/Un-insured, 20% Medicaid and CHIP +.

It is the success, and high-quality of Comfort Dental's family-friendly dental practice concept that has piqued the interest of several Kansas communities and licensed Kansas dentists who are interested in opening a Comfort Dental office in Kansas.

As we attempted to work with the Kansas Dental Board to establish a Comfort Dental practice, we were disappointed that their interpretation of current law prohibited such a practice. We grew increasingly frustrated when there seemed to be at best, disinterest from the Dental Board in working with us to overcome the obstacles, and at worst, hostility. In short, we were told to "*go to the legislature and change the law.*" So with some help from John Federico and his staff, that is what we are attempting to do in the 2011 Legislative Session and stand in strong support of HB 2241.

HEALTH AND HUMAN SERVICES  
DATE: 2-15-11  
ATTACHMENT:

3

Since my last appearance in the Capitol on December 9<sup>th</sup>, 2010 to testify to the Joint Committee on Health Policy Oversight, Comfort Dental has worked closely with the Kansas Dental Association and its' Executive Director Kevin Robertson. For several months now, we have worked with the KDA to find a way to allow for the franchise practice of dentistry, while maintaining sufficient oversight and patient protections. I am pleased to report that tremendous progress has been made and the bill you are considering today represents an acceptable compromise on all issues.

There is a tremendous "access" issue in Kansas. We are hopeful that you find, as we do, that HB2241 helps solve the problem.

There is an obvious need to attract more dentists to Kansas. There is an even greater need to attract dentists who are willing to take Medicaid patients. We feel strongly that local communities and most importantly the consumer would benefit greatly from a dental practice owned and operated by highly-trained licensed dentists which embrace transparency in their pricing and maintains extended weekday and weekend hours.

At a time when young dentists leave dental school with tremendous debt, limiting their options to own their own dental practice, a franchise ownership arrangement offers an attractive option for them that we feel is welcomed by the dental community and the regulating agency.

I greatly appreciate the opportunity to visit briefly with you today. Comfort Dental, in the worst way, wants to be part of the solution to the very-real dental shortage issue in Kansas. Comfort Dental feels that by working with the Kansas Dental Association we have come to common ground. I appreciate the professional manner in which the KDA has been willing to work with Comfort Dental to address the problem. Thank you for your time I am happy to answer any questions you may have at this time.



Date: February 15, 2011

To: House Committee on Health and Human Services

From: Kevin J. Robertson, CAE  
Executive Director

RE: HB 2241 Franchising of Dental Practices

Chairman Landwehr and members of the committee I am Kevin Robertson, Executive Director of the Kansas Dental Association (KDA) representing 1,250, or some 77% of the state's licensed dentists. Thanks for the opportunity to discuss HB 2241 which would allow for the franchising of dental practices in Kansas. I'm pleased to report that the KDA has been working hard with Comfort Dental and Church Street Health Management to reach a compromise on HB 2241. We support the bill and the amendments offered by John Federico in his testimony.

Dental franchisors like Comfort Dental and administrative services managers like Church Street can play a positive role in encouraging dentists to locate throughout Kansas to help ensure that all Kansans have access to a real dentist. As such, the KDA believes that HB 2241 is a piece of a larger puzzle to help reduce barriers to quality dental care.

Let me take a minute to discuss some of the patient protections that are included in HB 2241. The KDA firmly believes that the relationship of confidence between the dentist and patient is essential to patient welfare and treatment success. As such, HB 2241 maintains the dental practice model which allows the licensed dentist to make treatment and clinical staffing decisions in consultation with the patient, without outside interference from corporate, franchisor or other non dentist entities.

In addition to our concerns regarding treatment and clinical staffing decisions, dentist ownership of patient charts and records and dental equipment and materials is maintained so Kansans can be assured that their dentist can continue treatment of patients without permanent interruption should financial or other hardships occur with the franchisor or other entity. This will alleviate the possibility of a problem occurring in Kansas that occurred in 14 states on January 1, 2011 when Allcare Dental, with 42 offices throughout the country, including Omaha, Nebraska, closed operation overnight resulting in the abandonment of care



for 10s of thousands of patients. The KDA does not want to imply that these things could happen with Comfort Dental or Church Street, but other franchisors will likely wish to do business in our state and the KDA believes it is important that Kansans are protected from this possibility.

Finally, the KDA and Comfort Dental were busy working into the evening last night reaching an agreement to hold a franchisor accountable if they have treatment or clinical staffing policies, guidelines, etc. (which are prohibited by the bill) that result in injury to the public. The amendment would also make it clear that the franchisor could not be held responsible for any actions by a dentist that violates the dental practice act. As such, the KDA, with support of Comfort Dental and Church, offers the following language to be inserted as new Section 5(e) on page 7, line 24:

***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 KSA 65-1422 et. seq.***

The KDA is pleased that the representatives from Comfort Dental and Church Street Health Management were willing to address our concerns and **we support HB 2241 and ask for favorable consideration of the proposed amendments offered above and by Comfort Dental.**

Thank you for the opportunity to appear before you today. I would be happy to answer any questions at this time.

BEFORE THE KANSAS HOUSE  
COMMITTEE ON HEALTH AND HUMAN SERVICE

TESTIMONY OF RANDALL J. FORBES, GENERAL  
COUNSEL FOR THE KANSAS DENTAL BOARD  
REGARDING HB 2241

FEBRUARY 15, 2011

Madame Chair and Committee Members:

My name is Randall Forbes. I am General Counsel for the Kansas Dental Board. The Board has reviewed HB 2241 in light of its primary goal of protecting the public. The Board has asked me to express its concern regarding a part of the changes made to the Dental Practices Act by HB 2241.

K.S.A. 65-1436(a) lists the various reasons for which a dentist or dental hygienist can be disciplined.

HB 2241 would amend K.S.A. 65-1436(a)(7) to provide:

“(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:

.....

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

[found on page 3 of the bill]. It is unclear what the purpose of this addition is, but the Board is concerned about its consequences for two reasons.

First, this change would allow a dentist to split his or her fee with a proprietor for steering patients to the dentist without the patient knowing that the proprietary is being paid to recommend the dentist.

Second, the "proprietor" referred to in section (a)(7)(c) is defined at K.S.A. 65-1424(a) as "any person who employs dentists or dental hygienists in the operation of a dental office." The combination of these two sections would seem to allow a proprietor (who is not a dentist or professional partnership)<sup>1</sup> to employ dentists and dental hygienists. Throughout the history of this state only another dentist, professional corporation, or professional partnership could employ a dentist. The Board is concerned that a change in this longstanding rule is an unintended consequence of those changes made by H.B. 2241.

In addition, such a change would conflict with K.S.A. 65-1425 which prohibits corporations (other than professional corporations) from practicing dentistry. In *Winslow v. Kansas State Board of Dental Examiners*, 115 Kan. 450, 223 P.2d 308 (1924) the Kansas Supreme Court upheld the Board's discipline of a Kansas dentist who was employed by a corporation to provide dental services. The Court reasoned that "[c]orporations may not be graduated from dental colleges, they have neither learning nor skill, and they may not be examined, registered, nor licensed as dentists." The Court also stated:

"Dentistry is a profession having to do with public health, and so is subject to regulation by the state. The purpose of regulation is to protect the public from ignorance, unskillfulness, unscrupulousness, deception, and fraud. To that end the state requires that the relation of the dental practitioner to his patients and patrons be personal."

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<sup>1</sup> It seems clear that the term proprietor used in K.S.A. 65-1436(a)(7)(c) cannot refer to another dentist or professional partnership because they are addressed in K.S.A. 65-1436(a)(7)(A) and (B).

The Supreme Court cited the *Winslow* decision in its 1991 decision of *Early Detection Center v. Wilson*, 248 Kan. 869, 811 P.2d 860 (1991) in which it held a general corporation could not employ a physician. In that case the Court stated that it was Kansas "public policy that general corporations who have unlicensed directors or shareholders are not authorized to practice the healing arts."

Removing subsection (a)(7)(c) from Section 3 of the bill would alleviate these problems.

The Board is also puzzled by the proposed elimination of the words "as determined by the Kansas dental board" in K.S.A. 65-1424(b) [top of page 2 of the bill]. Usually an amendment to a statute is assumed to make a substantive change. If the Board will not determine if a trade name misrepresents the dentist to the public, who will? Unless it is intended that some person or entity other than the Board would make this determination, the elimination of the above-quoted language has the potential to create great confusion.

Thank you for your consideration of these concerns.