

MINUTES OF THE PUBLIC HEALTH AND WELFARE COMMITTEE

The meeting was called to order by Chairman Vicki Schmidt at 1:30 p.m. on March 14, 2011, in Room 546-S of the Capitol.

All members were present except:

Senator David Haley, excused

Committee staff present:

Nobuko Folmsbee, Office of the Revisor of Statutes

Katherine McBride, Office of the Revisor of Statutes

Melissa Calderwood, Kansas Legislative Research Department

Iraida Orr, Kansas Legislative Research Department

Carolyn Long, Committee Assistant

Conferees appearing before the Committee:

John Federico

Lawless Barrintos, Comfort Dental

Kevin Robertson, Kansas Dental Association

Randy Forbes, Kansas Dental Board

Others attending:

See attached list.

The Chair opened the hearing on **HB 2241—Kansas dental practices act; franchising of dental practices**. John Federico, working with Comfort Dental, said this legislation would find a solution to the problem of allowing the franchise practice of dentistry. He stated that Kansas was the only state that had specific statutory language prohibiting franchise dentistry. The goal of this bill is to permit the franchise arrangement while being careful not to open the door to the corporate practice of dentistry; preserve the authority of the Kansas Dental Board to provide regulatory oversight; and to ensure adequate patient protection measures (Attachment #1).

Lawless Barrientos, representing Comfort Dental, stated that it was critically important to note that Comfort Dental practices are privately owned and operated by dentists who are licensed in the state in which they practice. They feel this legislation helps their mission of providing quality, affordable dental care to all economic classes. They 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 maintain extended weekday and weekend hours (Attachment #2).

Speaking on behalf of the Kansas Dental Association, Kevin Robertson stated that 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 dentist and as such is a piece of a larger puzzle to help reduce barriers to quality dental care (Attachment #3).

Randall Forbes, General Counsel for the Kansas Dental Board, stated that **HB 2241** makes two significant changes to the Kansas Dental Practices Act. First it removes the long-standing definition of proprietor and secondly it removes the long-standing prohibition against the franchise practice of dentistry. They believe that if the Dental Act is to be changed to allow unlicensed proprietors and unlicensed franchisors to enter into agreements with dentists related to the dentist's professional practice, that some minimal safe guards are appropriate. The amendments would make clear that the changes are not intended to allow dentists and non-licensed persons or entities to enter into agreements that have provisions that either allow the unlicensed person or entity to affect the professional judgment of the dentist or otherwise violate the Kansas Dental Law (Attachment #4).

There being no further conferees, the hearing on **HB 2241** was closed.

The Chair called for Final Action on **HB 2082—Inspections of medical gas piping systems in hospitals**. It was moved by Senator Kelsey, seconded by Senator Steineger that **HB 2082** be moved out favorable and placed on the consent calendar. Motion passed.

CONTINUATION SHEET

The minutes of the Public Health and Welfare Committee at 1:30 a.m. on March 14, 2011, in Room 546-S of the Capitol.

The Chair called for Final Action on **HB 2182—Concerning mail service pharmacies.** It was moved by Senator Steineger, seconded by Senator Kelly that HB 2182 be moved out favorably and placed on the consent calendar. Motion passed.

The next meeting is scheduled for March 15, 2011.

The meeting was adjourned at 2:30 p.m.

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE GUEST LIST

DATE: Monday, March 14, 2011

NAME	REPRESENTING
<i>Kevin Robertson</i>	<i>KS Dental Assn</i>
<i>Chris Austin</i>	<i>KHA</i>
<i>Sam Polak</i>	<i>KS Optometric Assn</i>
<i>Caleb Smith</i>	<i>Stam</i>
<i>Paula</i>	<i>United Health Group</i>
<i>John Carles</i>	<i>CBA</i>
RANDY FORBES	KS. DENTAL BRD.
Deb Billingsley	KBOP
Bella, Wright	KS Dental Board
Lawless Barrientos	Comfort Dental
Whitney James	Clear Choice
Leigh Keck	Capitol Strategies
Derek Hein	Hein Law Firm



Government Affairs

Public Relations

Issue Management

Testimony In Support of HB2241

John J. Federico: Federico Consulting

On Behalf of Comfort Dental

Senate Public Health & Welfare Committee

March 14, 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 dentist and dental-access problem. 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 to the start of this committee hearing, we worked with the Kansas Dental Board to fine-tune some of the compromise language. I appreciate the efforts and professionalism of the KDA's Executive Director Kevin Robertson and I am pleased to announce that we have reached agreement on all issues and were able to cobble together a good bill. .

Our goal was to:

1. permit the franchise arrangement for the practice of dentistry, while being extraordinarily careful to not open the door to the corporate practice of dentistry;
2. preserve the authority of the Kansas Dental Board to provide regulatory oversight; and
3. to ensure adequate patient protection measures were placed into the bill;

The current version passed the House of Representatives 120-1. Ultimately, we believe we have a bill that although it does not completely solve the access problem, it does provide an attractive option that will help attract new dentists to Kansas and bring more affordable dental services to more working and low-income families in Kansas.

I would appreciate your favorable consideration of HB2241.

Senate Public Health & Welfare

Date 3-14-2011

Testimony Presented by
Lawless Barrientos: Comfort Dental

In Support of HB2241

March 14th, 2011

My name is Lawless Barrientos and I appear before you today on behalf of Comfort Dental. Comfort Dental is based out of 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. Currently there are several dentists who live in northeast Kansas, but travel to Missouri to practice, that are interested in bringing the Comfort Dental model to 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 prohibits such a practice. We grew increasingly frustrated when there seemed to be at best, disinterest from the Dental Board in working with us to solve the problem, 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. 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 now welcomed by the dental community and the regulating agency. Kansas is the only state in the country that specifically prohibits the franchise practice of dentistry.

Over the past several months John Federico and I have worked with the Kansas Dental Association, the Kansas Dental Board and various legislators in an attempt to amend the Kansas dental practice act in order to allow for dentist-owned dental franchises to operate in the State of Kansas.

Interested parties concerning this legislation which has included the KDA, Church Street and Comfort Dental have been able to work on proposed language that protects and looks to address the best interest of all parties concerned in the state of Kansas. I feel that with the proposed language and clarification in our bill, the Kansas dental community is taking the appropriate action in order to better serve all Kansans with better dental care access.

The parties involved still feel confident that HB-2241 will allow for better options for dentists and better access for patients throughout the state. I ask the committee today for full support on HB-2241.

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 and patient access issue in Kansas. I appreciate the professional manner in which the KDA has been willing to work with Comfort Dental on this concern. I look forward to working with you during the remaining days 2011 Session to get this legislation passed. Thank you for your time. I look forward to answering any questions at the appropriate time.



Date: March 14, 2011

To: Senate Committee on Public Health and Welfare

From: Kevin J. Robertson, CAE
Executive Director

RE: HB 2241 Franchising of Dental Practices

Chairman Schmidt 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. The KDA, Comfort Dental and Church Street Management have worked hard the past several months to bring this compromise on HB 2241 to you. I'd like to thank Lawless Barrientos, John Federico and Brad Smoot for having a truly open and meaningful dialogue where all issues were discussed and addressed.

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.

Throughout our negotiations with on HB 2241, the KDA's concerns centered around protections that would ensure quality and continuity of care for patients. 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. HB 2241 requires 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

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Attachment 3

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, HB 2241 contains language that holds 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. This also makes it clear that the franchisor could not be held responsible for any actions by a dentist that violates the dental practice act. For example, if a franchisor had guidelines or policies that specified a certain treatment that encouraged or coerced the dentist to make perform treatment that was not consistent with the standard of care.

The KDA supports HB 2241 and asks for the committee's favorable consideration.

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

BEFORE THE KANSAS SENATE
COMMITTEE ON HEALTH AND WELFARE

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

MARCH 14, 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.

HB 2241 makes two significant changes to the Kansas Dental Practices Act. First, it removes the long-standing definition of proprietor. Second, it removes the long-standing prohibition against the franchise practice of dentistry.

The Dental Board believes that if the Dental Act is to be changed to allow unlicensed proprietors and unlicensed franchisors to enter into agreements with dentists related to the dentist's professional practice that some minimal safe guards are appropriate.

The Dental Board supports the balloon amendments drafted by the Revisor's Office. These amendments would make clear that the changes to the Dental Act made by HB 2241 are not intended to allow dentists and non-licensed persons or entities to enter into agreements that have provisions that either allow the unlicensed person or entity to affect the professional judgment of the dentist or otherwise violate the Kansas Dental Law.

In addition, 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. Before the House Committee that considered this bill the bill's proponents agreed that this language should not be stricken.

Thank you for your consideration of these concerns.