

Testimony before Senate Government Efficiency Committee
SB 372 – repealing unconstitutional limitation on dental office expansion
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In-person testimony in SUPPORT

Madam Chair and members of the Committee

There remains on the books an outdated and facially unconstitutional barrier to the ability of dentists to expand access to general and specialty dental care in Kansas. Known as the 20% rule, Kansas is the only state that limits the ability of dentists wishing to maintain one or more satellite offices to do so without the need for their personal presence in each of those satellite offices. Not only is Kansas the only state with such a rule, dentistry is the only health care profession in Kansas with such a limitation. For example, the Kansas Optometric Act has a proactive provision that allows optometrists to have as many satellite offices as they desire. (KSA 65-1522(d))

The statutory provision is convoluted, the Kansas Dental Board has not promulgated any rules or regs to assist with compliance or interpretation and it’s patently discriminatory.

The Kansas Dental Association even admits it’s intentionally discriminatory. KDA members are being coached to tell you **“The 20% rule creates an intentional barrier to promote a balance between the expansion of dental practices and maintaining excellent dental care for Kansas citizens.”**

Respectfully, **eliminating intentional discriminatory government barriers to a professional’s right to practice his or her profession was precisely a reason why this committee was formed!**

The only reported case involving discussion of the rule was *Lacy, DDS v. Kansas Dental Board*, 274 Kan. 1031 (2002), where the Court answered the question regarding the rule’s intent. The Court stated:

“The trial court correctly noted that the intent of KSA 65-1435 is to prevent absentee ownership which might create the franchising of the delivery dental services.”

That was 2002. In 2011, with the blessing and support of the Kansas Dental Association, the Legislature repealed the statutory prohibition against franchise dentistry. The KDA, in supporting the repeal of the franchise dentistry ban, stated in their testimony:

“Dental franchisors like Comfort Dental and administrative service 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”

The rule has NOTHING to do with quality of care. The requirement in the existing provision of “overseeing” the operations of a satellite office has nothing to do with overseeing care. There is no statutory requirement for a dentist to oversee the care provided by another dentist in the same office or a satellite office. Dentists, whether owners of the practice or not, have the same education, are governed by the same standards of care, are regulated by the same Board and have the same licenses.

The 20% rule effectively prevents a dentist owner from expanding dental care much beyond his or her home office. To drive to another community in an area of need would cost the dentist a day or more of his or her practice for no legitimate reason. Windshield time wouldn’t count toward the 20%. Every dental office must have a fully trained and licensed dentist on premises. Dentists are willing to expand access to care but fear running afoul of this arbitrary rule, or simply don’t see the value in having to spend 20% of their professional time in another office that is fully staffed with one or more licensed dentists. The only difference between an owner-dentist and an associate dentist is that the owner is taking on the financial burden and risk of office ownership. That has nothing to do with quality of care.

How do we know the rule has nothing to do with dental care? Take a look at the exception to the rule. KSA 65-1435(f) provides:

Notwithstanding the provisions of subsection (d), 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."*

Those taking advantage of the exception would have NO requirement to be personally present and NO requirement to "oversee".

In the 2000 Census there were 62 counties with less than 10,000 population. There is NO requirement for personal presence or oversight responsibility in over half the Kansas counties, proving that quality of care was never the intent of the practice restriction.

And regarding the exception, it is patently unconstitutional in that it has no rational basis and discriminates against dentists on the basis of geography. Population alone, of course, is not a proper measure of whether an area is dentally underserved. There are counties under 10,000 that are not considered by industry standards to be underserved, and there are counties above 10,000 that are considered to be dentally underserved. Also, some Kansas dentists would be able to use the exception to expand into an area of their choosing, but other dentists couldn't. According to Research Triangle Institute [RTI] data, for example, Topeka experienced a double digit [19%] decline in the number of dental offices from 2011-2021) Topeka, however, would be hampered by the 20% rule.

Tying the exception to population only and locking into the 2000 Census (now over 25 years in the past,) is indefensible. E.g., in the later 2010 Census, 3 more Kansas counties dropped below 10,000, but because the exception is tied to the 2000 Census, these 3 counties did not become eligible for the exception. One more county dropped below 10,000 in the 2020 Census.

KDHE tracks data for HPSA designation (Health Professional Shortage Areas). Kansas has 133 dental shortage designations covering 286,460 Kansans with less than 30% of needs met in those areas. It is estimated there is a need for 50 more dentists to address that need. Kansans can ill-afford to have a state government policy that impedes professionals from expanding to meet that need.

What is franchise dentistry? It's not what you think of when you think McDonald's. KSA 65-1424 (2) defines "dental franchisor" as:

“Any person or entity, pursuant to 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 the dental office on the basis of a lease or other agreement for compensation.”

KSA 65-1424 prohibits these administrative services companies from “interfering with the professional judgment of the dentist” or doing anything that would violate provisions of the Dental Practices Act. These companies register with the Kansas Dental Board.

KSA 65-1436 prohibits dentists from sharing fees with a dental franchisor.

KSA 65-1471 prohibits dental service agreements from allowing dental care functions to be controlled by any person or entity other than a licensed dentist, including these functions:

- (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) The supervision of clinical dental staff.”

KSA 65-1471 specifically provides that an administrative services provider may “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;
- (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 the dentist.

And, finally, “no corporation shall practice, offer, or undertake to practice or hold itself out as practicing dentistry”. KSA 65-1425. There are NO practices in violation of this prohibition in Kansas. If you hear a dentist claim that there are practices out there violating the corporate ban, they are apparently ignorant of the fact that only licensed dentists may own dental

practices and non-dentists may not control any aspect of clinical care in dentistry or any other of the health professions. Administrative services companies have been fully authorized in Kansas for the past 15 years.

No dentist should fear competition. We have a shortage of dentists. On a personal note, I had a dentist appointment on Martin Luther King holiday last month. Unfortunately, I had a bad cold and called to reschedule. I suggested April, after the session, thinking that would be no problem. I was shocked to hear that the office was scheduling patients into August! They put me on a waiting list. Dentists are busy. They'd rather spend their office time treating patients rather than handling all the non-clinical things the practice requires.

For any member wishing to come visit a local dentist-owned practice benefiting from working with a dental service organization for their non-clinical administrative tasks, we offer an open invitation.

Thank you and I'd be happy to stand for questions.