STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

KRIS W. KOBACH
ATTORNEY GENERAL

MEMORIAL HALL
120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
(785) 296-2215 • FAX (785) 296-6296
WWW.AG.KS.GOV

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ATTORNEY GENERAL OPINION NO. 2025-20

The Honorable Larry Alley
State Senator, 32nd District
State Capitol, Room 441-E
Topeka, Kansas 66612

Re: Corporations—Professional Corporations—Incorporators; Articles of Incorporation; Regulating Boards to Issue Certificates

Corporations—Professional Corporations—Valuation and Purchase of Shares Upon Death or Disqualification of Shareholder; Procedure; Conversion to a General Business Corporation

Corporations—Professional Corporations; Forfeiture of Corporate Right, When; Trustees, Powers

Livestock and Domestic Animals—Registration of Veterinarians—Practice Without License Prohibited

Livestock and Domestic Animals—Registration of Veterinarians—Registration of Veterinarian Premises

Public Health—Regulation of Dentists and Dental Hygienists—License Required to Practice Dentistry or Dental Hygiene

Public Health—Regulation of Dentists and Dental Hygienists—Selling or Closing Dental Practice of Deceased or Substantially Disable Dentist

Public Health—Healing Arts—Prerequisite to Practice a Profession Regulated by the Board

Public Health—Healing Arts—Certain Acts Prohibited

Synopsis: An unlicensed heir cannot own a doctor's, veterinarian's, or dentist's office and a hire a licensed practitioner to run the practice. K.S.A. 65-2803(a) prohibits anyone from practicing medicine without a license, and K.S.A. 65-2867(a) prohibits an unlicensed person from maintaining a doctor's office. Similarly, K.S.A. 47-817 prohibits a person from practicing veterinarian medicine without a valid license, and K.S.A. 47-840(e) prohibits a veterinary practice from being run by an unlicensed person. The licensing statutes do not provide what steps an unlicensed heir must take upon inheriting a practice. We believe the answer can be found in the Kansas professional corporation code. K.S.A. 17-2719 requires a professional corporation to forfeit its articles of incorporation if, at the end of the calendar year, an unlicensed individual has held ownership issues for the previous 12 months. Thus, an unlicensed heir must divest himself or herself any ownership interest in that time frame. K.S.A. 65-1421 requires anyone practicing dentistry to be licensed. K.S.A. 65-1424(b) allows an unlicensed heir to hire a dentist to run the practice for no more than 18 months, while the heir sells or closes the practice. If the heir can show a good faith effort to do so, the Kansas Dental Board can authorize up to two 6-month extensions. Though K.S.A. 65-1424(b) seems to conflict with K.S.A. 17-2719's timeframe, K.S.A. 65-1424(b) controls as it is the more specific statute. While an unlicensed heir cannot own or operate a licensed practice, nothing in the law prevents the heir from owning the land or building and leasing them to a licensed provided to run a practice. Cited herein: K.S.A. 17-2706; 17-2707; 17-2708; 17-2709; 17-2712; 17-2713; 17-2714; 17-2717; 17-2719; 17-6001; 17-7668; 47-817; 47-840; 47-834; 65-1421; 65-1424; 65-1425; 65-2803; 65-2867; 65-2869.

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Dear Senator Alley:

As the Senator for the 32nd District, you ask whether a spouse or other heir of a doctor, veterinarian, or dentist could inherit and own the deceased's practice and then hire a licensed practitioner to run and be responsible for the medical aspect of the business.[1] While a spouse or other heir may own the practice for the purpose of

[1] This opinion only addresses ownership of medical offices. It does not address ownership of shares in a hospital, which would be analyzed under different statutory requirements. See *St. Francis Reg'l Med. Ctr., Inc. v. Weiss*, 254 Kan. 728, 745-46, 869 P.2d 606 (1994).

winding up the business or for selling it, the statutes governing these practices, as well as the professional corporation code, prohibit an unlicensed individual or entity from owning or operating a licensed practice. We find nothing in our law, however, preventing an unlicensed heir from owning the land or building and leasing it to a licensed individual for that individual to operate a practice.

Medical Doctors

Under the Kansas Healing Arts Act, it is unlawful for any person to practice medicine if the person does not have a license, registration, permit, or certificate to do so.[2] Likewise, an unlicensed person may not open or maintain an office for the practice of the healing arts, as defined by the Act.[3]

Thus, a license is required to both practice medicine and to own and operate a medical practice. The Act, though, does not provide an answer for what an unlicensed individual must do if he or she inherits a practice. Given this lack of guidance in the Act, we find it best to turn to the professional corporation code for an answer.[4]

Professional corporations are corporations organized under K.S.A. 17-2706 *et seq.*[5] A professional service provided by a professional corporation is "the type of personal service rendered by a person duly licensed, registered or certified by this state as a member" of certain, enumerated professions, including dentists, doctors, and veterinarians.[6]

While the Kansas general corporation code, K.S.A. 17-6001 *et seq.*, applies to professional corporations, "[a]ny provisions of the professional corporation law of Kansas shall take precedence over any provision of the Kansas general corporation code which conflicts with it."[7] The professional corporation code also takes precedence over any law that prohibits a corporation from performing a professional service.[8]

"One or more natural persons, each of whom is licensed to render the same type of professional service within this state, may incorporate a professional corporation to practice that same type of professional service by filing articles of incorporation

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[2] K.S.A. 65-2803(a). What constitutes the practice of medicine is defined by K.S.A. 65-2869.
[3] K.S.A. 65-2867(a).
[4] This Opinion basis its analysis on the assumption that the practice is organized as a professional corporation under the Kansas professional corporation code. It appears the analysis would be the same for a professional limited liability company. *See* K.S.A. 17-7668(d). This Opinion does not address situations were the practice is a sole proprietorship or partnership.
[5] K.S.A. 17-2707(a).
[6] K.S.A. 17-2707(b)(5), (9), (10).
[7] K.S.A. 17-2708.
[8] *Id.*

with the secretary of state."[9] A certificate from the appropriate regulating board showing that each incorporator is duly licensed to practice in that profession must also be filed with the secretary of state prior to issuance of the certificate of incorporation.[10] Professional corporations may only issue shares of their stock to "qualified persons."[11] A shareholder may voluntarily transfer his or her shares to the professional corporation or to a qualified person with prior written consent of the corporation unless the articles of incorporation say otherwise.[12] No shares may be transferred or issued "until there is presented to and filed with the corporation a certificate by the regulating board stating that the person to whom the transfer is to be made or the shares issued is duly licensed to render the same type of professional services as that for which the corporation was organized."[13] Any issuance or transfer of shares made in violation of K.S.A. 17-2717(a) is considered "null and void."[14] Likewise, only a shareholder may be a director or officer, other than secretary, of a professional corporation.[15]

K.S.A. 17-2714 provides the mechanism for a professional corporation or its shareholders to repurchase shares "when they fall to an unqualified person by virtue of the death or disqualification of a shareholder."[16] K.S.A. 17-2714 provides a method to preserve the restrictions of ownership of a professional corporation to qualified owners "when an *involuntary transfer* prompted by the death or disqualification of the previous owner takes place."[17]

Further, upon the death or disqualification of the last qualified shareholder, "such corporation shall not be dissolved but shall become a general business corporation."[18] The successors in interest to the deceased or disqualified shareholder "shall have the authority to amend the articles of incorporation to provide that the corporation may function under and be governed by the Kansas general corporation code to collect its accounts receivable, pay its debts, otherwise wind up its affairs or conduct any business or activity which is permitted under the Kansas general corporation code."[19] Finally, K.S.A. 17-2719 states a certificate of incorporation "shall be automatically forfeited" at the end of the year if an

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[9] K.S.A. 17-2709(a).
[10] *Id.*
[11] K.S.A. 17-2712(a). K.S.A. 17-2707(d)(1) defines qualified persons as relevant to your question as "any natural person licensed, registered or certified to practice the same type of profession that any professional corporation is authorized to practice."
[12] K.S.A. 17-2712(a).
[13] *Id.*
[14] *Id.*
[15] K.S.A. 17-2713.
[16] *Cent. State Bank v. Albright*, 12 Kan. App. 2d 175, 180, 737 P.2d 65 (1987).
[17] *Id.*
[18] K.S.A. 17-2714.
[19] *Id.* But, importantly, there is no statutory authorization for a general corporation to provide medical services without a medical care facility license. See *Cent. Kan. Med. Ctr. v. Hatesohl*, 308 Kan. 992, 1007, 425 P.3d 1253 (2018).

unqualified person owns any share of the corporation "for more than one year preceding the date of the certificate and that no action as required herein has been timely instituted to fix the fair value of such shares."[20]

The Kansas professional corporation code, then, does not permit unlicensed individuals to be owners of a professional corporation. Doing so would violate the corporate practice of medicine doctrine, as seen in the Kansas Supreme Court's decision in *Early Detection Center, Inc. v. Wilson*. In *Early Detection Center*, the corporation argued that, once it incorporated as a professional corporation, it had the authority to amend its articles of incorporation and function as a general corporation, meaning that it as a general corporation was "not precluded from providing medical services to patients if it employs individuals who are licensed to provide medical services."[21] The Kansas Supreme Court disagreed, ultimately holding that "[a] general corporation is prohibited from providing medical services or acting through licensed practitioners."[22]

Our courts have consistently followed the general rule that the owners and operators of a professional corporation must be duly licensed to practice that profession.[23] Thus, to be able to own or operate a medical, dental, or veterinary practice, the appropriate authority must duly license a person.

While the Kansas Healing Arts Act does not create a timeframe for a heir to close or sell a medical practice organized as a professional corporation following the death of a doctor, it would be reasonable to conclude, from the Kansas professional corporation code, that the appropriate time would be one year, given K.S.A. 17-2719's requirement that any article of incorporation be forfeited at the end of a calendar year if an unqualified person has owned stock in that corporation for over a year. If, however, the deceased practitioner was the last qualified shareholder, then K.S.A. 17-2714 would require the practice to be converted to a general corporation for the purpose of winding down the practice. The practice could not continue to practice medicine as a general corporation.[24]

Veterinarians

K.S.A. 47-817 prohibits a person from practicing veterinary medicine without a current and valid license.[25] The veterinary board also may refuse to register a

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[20] *See Early Detection Ctr., Inc. v. Wilson*, 248 Kan. 869, 875, 811 P.2d 860 (1991) ("The issuance of voluntary transfer of shares of the corporation to an unqualified person results in forfeiture of the corporate charger.").

[21] *Early Detection Ctr.*, 248 Kan. at 873.

[22] *Id.* at 880.

[23] *See Cent. Kan. Med. Ctr.*, 308 Kan. at 1006. The corporate practice of medicine doctrine has been called into question recently. *See id.* at 1006-07 (Stegall, J., concurring).

[24] *See Early Detection Ctr.*, 248 Kan. at 880.

[25] *See also* K.S.A. 47-834(a) ("Unlawful practice of veterinary medicine is the practice of veterinary medicine by a person without a license.").

veterinary premise if "the premise is being operated or managed by any person other than a licensed veterinarian whose license is in good standing with the board."[26]

Thus, as with medical doctors, a license is required both to practice veterinary medicine and to operate a veterinarian practice, so an unlicensed individual is permitted to do neither. Also, as with medical doctors, the specific statutes governing the practice of veterinary medicine do not include a timeframe in which an unlicensed individual must sell or close the practice. Without a specific statute, we find it best to return to the professional corporation code, specifically, K.S.A. 17-2719, to find that a reasonable time would be one year, given the Kansas professional corporation code's requirement that any article of incorporation be forfeited at the end of a calendar year if an unlicensed person has owned stock in that professional corporation for more than one year. If the deceased veterinarian was the last qualified shareholder though, the practice would be converted into a general corporation and could not continue to practice veterinary medicine.[27]

Dentists

The most straightforward of the three practices you ask about is dentists. Only those who are "duly licensed" may practice dentistry in Kansas.[28] K.S.A. 65-1425 prohibits any corporation from practicing dentistry and requires every person practicing dentistry as an employee of another to display their name "in a conspicuous place at the entrance of the place where such practice is conducted." K.S.A. 65-1424(b) sets forth what happens with a dental practice after a dentists dies:

> The estate or agent for a deceased or substantially disabled dentist may employ dentists, for a period of not more than 18 months following the date of death or substantial disability of the dentists, to provide service to patients until the practice can be sold or closed. Upon application showing good cause, including, but not limited to evidence of good faith effort to sell or close the dental practice, the Kansas dental board may extend the time in six-month increments of not more than one additional year for which the practice can be sold or closed. The Kansas dental board may adopt rules and regulations as necessary to carry out the provisions of this section.[29]

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[26] K.S.A. 47-840(e).
[27] K.S.A. 17-2714; *Early Detection Ctr.*, 248 Kan. at 880.
[28] K.S.A. 65-1421.
[29] Though the Kansas dental board has been given authority to adopt rules and regulations under this subsection, it has not yet done so. As such, the statute is the only authority speaking on this matter.

To simplify, if a dentist dies or becomes substantially disabled, an heir could employ a licensed dentist for the span of 18 months to continue to provide dental services to patients while the heir attempts to sell or close the practice. If the heir can show a good faith effort of attempting to sell or close the practice, then the time can be extended for two more 6-month periods. An unlicensed heir would not be allowed to continue owning a dental practice and employing a dentist to provide services after the time period has run or without the intent of selling or closing the practice. Such conduct would constitute an illegal practice of dentistry.[30]

At first glance, K.S.A. 65-1424(b)'s 18-month time frame plus its allowance for two 6-month extensions might seem to conflict with K.S.A. 17-2719, which requires non-licensed ownership of longer than 12 months to be divested at the end of the calendar year at risk of losing the articles of corporation. However, K.S.A. 17-2719 applies generally to all professional corporations, while K.S.A. 65-1424(b) applies specifically to the practice of dentistry. Thus, the more specific statute, K.S.A. 65-1424(b) controls here.[31] As such, an heir of a deceased dentist would have 18-months, subject to two possible 6-month extensions to sell or close the practice.

Conclusion

In conclusion, our statutes do not permit an unlicensed person to own or operate a doctor's, veterinarian's, or dentist's office. If a spouse or other heir were to inherit a practice, the heir would be required to close or sell it. However, there is nothing that appears in any of the statutes that would limit an unlicensed person from owning the land or building on which a practice operates and leasing that land or building to a licensed individual to own and operate the practice, so long as the unlicensed person possessed no ownership interest in the practice itself.

Sincerely,

/s/ Kris W. Kobach

Kris W. Kobach
Attorney General

/s/ Ryan J. Ott

Ryan J. Ott
Assistant Solicitor General

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[30] *See* K.S.A. 65-1421; K.S.A. 65-1424(a).

[31] *See State ex rel. Schmidt v. Kelly*, 309 Kan. 887, 898, 441 P.3d 67 (2019) (specific statute controls over a general statute).