ENGROSSED SENATE AMENDMENT
TO
ENGROSSED HOUSE BILL NO. 1596

BY: MADDOX (Jim), MONKS, WIDENER, HILLIARD and COX of the HOUSE

and

BROWN of the SENATE

AN ACT RELATING TO PROFESSIONS AND OCCUPATIONS; ESTABLISHING THE OKLAHOMA DENTAL MEDIATION ACT; SETTING POLICY; DEFINING TERMS; PROVIDING FOR MEDIATION COMMITTEES; STATING DUTIES OF MEDIATION COMMITTEES; MAKING CERTAIN ENTITIES AND PERSONS EXEMPT FROM CERTAIN LIABILITY AND INJUNCTIVE RELIEF; MAKING CERTAIN INFORMATION NOT SUBJECT TO LEGAL PROCESS; PROVIDING EXCEPTIONS; PROVIDING PROCEDURES FOR REQUESTING REVIEWS BY MEDIATION COMMITTEES; PROVIDING FOR RECOMMENDATIONS OF MEDIATION COMMITTEES; PROVIDING PROCEDURES FOR APPEAL OF MEDIATION COMMITTEE RECOMMENDATIONS; PROVIDING FOR CONSTRUCTION OF ACT; ELECTING OUT OF CERTAIN FEDERAL LEGISLATION; MAKING ACT NONEXCLUSIVE PROCEDURE FOR OBTAINING REMEDY; PROVIDING FOR CODIFICATION; AND DECLARING AN EMERGENCY.

AMENDMENT NO. 1. Strike the title, enacting clause and entire bill and insert

"[PROFESSIONS AND OCCUPATIONS - OKLAHOMA DENTAL MEDIATION ACT - MEDIATION COMMITTEES - CODIFICATION - EMERGENCY]

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 328.60 of Title 59, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Dental Mediation Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 328.61 of Title 59, unless there is created a duplication in numbering, reads as follows:

It is the declared public policy of the State of Oklahoma that the provision of quality dental health care is essential to the well-being of all citizens of this state, as is the expeditious resolution of disputes relating to dental treatment. The monitoring and assessment of dental services through a mediation system is an efficient and reasonable method of providing an alternative dispute resolution mechanism for patient-dentist disputes while also promoting quality health care that addresses patients' concerns about the quality of treatment. The Legislature, therefore, declares that for the public good, and the general welfare of the citizens of this state, the enactment of the Oklahoma Dental Mediation Act is required.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 328.62 of Title 59, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Dental Mediation Act:

1. "Dentist" means a professionally trained individual who has fulfilled the educational requirements, is a graduate of an

accredited dental school, and who has been licensed by the Board of Governors of Registered Dentists to administer to the general public through the practice of dentistry as defined in Section 328.19 of Title 59 of the Oklahoma Statutes; and

2. "Mediation committee" means a committee of persons duly constituted of or appointed by any voluntary dental association or society, or, the Board of Governors of Registered Dentists of the State of Oklahoma. The mediation committee is authorized, upon receiving a written request for a review, to conduct a review of the complaints or requests for review of persons, the treatment performed by a licensed dentist and, where appropriate, hold hearings and conduct personal examinations of dental treatment of patients. The mediation committee may, but shall not be obligated to:

a. evaluate the quality of health care services provided by the dentist being reviewed,

b. determine whether health care services rendered were professionally indicated or were performed in compliance with the applicable standards of care,

c. where appropriate, determine whether the cost of health care rendered was considered reasonable given the circumstances of the particular case,

d. evaluate the quality and timeliness of health care services rendered by a licensed dentist for a patient, and

e. recommend to the parties, a method of settlement, for their acceptance or rejection.

Any decision by the mediation committee not to review a matter shall be communicated by the committee to the affected persons within thirty (30) days after the committee has received the material submitted pursuant to Section 6 of this act.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 328.63 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. A mediation committee, entities creating such mediation committees, members and staff of such mediation committee, and other persons who assist such mediation committees shall not be liable in any way for damages or injunctive relief under any law of this state with respect to any action taken in good faith by such mediation committee.

B. Any person who supplies information to a mediation committee in good faith and with reasonable belief that such information is true shall not be liable in any way for damages or injunctive relief under any law of this state with respect to giving such information to the mediation committee.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 328.64 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. Except as provided by subsections B and C of this section, any reports, statements, memoranda, proceedings, findings, or other records of mediation committees shall be privileged and shall not be subject to discovery, subpoena or other means of legal compulsion for their release to any person or entity and shall not be admissible in evidence in any judicial or administrative proceeding. Nor shall any participants in the mediation process be compelled to disclose the proceedings of the mediation committee by deposition, interrogatories, requests for admission, or other means of legal compulsion for use as evidence in any judicial or administrative proceeding. This privilege may be claimed by the legal entity creating the mediation committee, the mediation committee, the individual members of the mediation committee, the dentist whose conduct is being examined, the patient requesting mediation and any witnesses testifying before or supplying information to the

mediation committee. Such privilege shall only protect information derived from the mediation proceedings and shall not restrict discovery directed to the dentist who treated the patient, even though the testimony or records of the dentist have become part of the mediation record.

B. Nothing in this section shall limit the authority, which may otherwise be provided by law, of the Board of Governors of Registered Dentists from obtaining records of proceedings of the mediation committee in conjunction with the determination of appeals of mediation committee recommendations, or on behalf of an investigation being conducted of the Board of Governors of Registered Dentists to restrict or revoke the license, registration, or other authorization to practice of any dentist licensed under state law.

C. Nothing in this section shall limit the authority, which otherwise may be provided by law, of the Attorney General of the State of Oklahoma, a District Attorney, or a United States Attorney from obtaining records of proceedings of the mediation committee for use in investigations or litigation, conducted by the State of Oklahoma or the federal government.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 328.65 of Title 59, unless there is created a duplication in numbering, reads as follows:

A patient may voluntarily seek review of a course of treatment rendered by a dentist. Such review is not mandatory or required prior to the initiation of litigation and this act shall in no way limit the patient's access to the courts nor in any way require the patient to participate in mediation proceedings as a prerequisite to initiating suit. If the patient elects to participate in the mediation procedure, the patient must file a written request for the review with a mediation committee in accordance with such rules that the organizations appointing the mediation committee may prescribe.

In the request for review, the patient must provide the mediation committee with a true and correct statement of all material facts relating to the course of treatment complained of, the nature of the complaint, and the requested relief sought, in addition to any other requirements that may be prescribed by rule.

The dentist shall thereafter submit a true and correct statement of all material facts relating to the course of treatment complained of, the nature of the complaint, and his recommendation of action, if any, in addition to any other requirements that may be prescribed by rule.

The material submitted by the patient and dentist shall be provided by the committee to the opposing party.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 328.66 of Title 59, unless there is created a duplication in numbering, reads as follows:

Written recommendations of a mediation committee rendered pursuant to a request for review shall be given to the patient and the dentist concerned, by delivery thereof or by mailing such recommendations to the last-known address of each. The recommendations of the mediation committee shall not be binding on the patient or the dentist, but shall provide an objective assessment of the facts and the course of treatment rendered, and shall include, when appropriate, a proposed remedy or solution to the complaint presented in the request for review.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 328.67 of Title 59, unless there is created a duplication in numbering, reads as follows:

The patient or dentist may appeal the recommendation of the mediation committee to an appellate body to be known as the state mediation appeals committee. A request for an appeal shall be timely filed and conducted in accordance with the prescribed rules. A party must first request an appeal with the state mediation

appeals committee before proceeding with a final appeal to the Board of Governors of Registered Dentists. If no intermediate appeal is provided by the applicable mediation program rules, a party may proceed directly to a final appeal before the Board of Governors of Registered Dentists, pursuant to Section 9 of this act. The state mediation appeals committee may either affirm, modify or reverse the recommendation of the mediation committee, and shall issue its written nonbinding recommendation to the parties.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 328.68 of Title 59, unless there is created a duplication in numbering, reads as follows:

The patient or dentist may file a request for a final appeal of a recommendation of the mediation committee or a recommendation of the state mediation appeals committee to the Board of Governors of Registered Dentists within thirty (30) days after the date of mailing of the mediation committee recommendation or the state mediation appeals committee recommendation. If such recommendation is not mailed, a patient or dentist may file a final request for an appeal within thirty (30) days after the date of delivery of such recommendation to the appealing party.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 328.69 of Title 59, unless there is created a duplication in numbering, reads as follows:

The Board of Governors of Registered Dentists, shall review the record of the mediation committee recommendation and the state mediation appeals committee in determining any final appeal. The Board of Governors of Registered Dentists may conduct a formal hearing upon the request of a party or upon its own initiative and may affirm, modify, or reverse the recommendation appealed. Any formal hearing shall be conducted by one or more members of the Board of Governors of Registered Dentists as it may determine, and a hearing shall be conducted in accordance with such rules as it may

prescribe. The action of the Board of Governors of Registered Dentists in ruling upon the appealed recommendation shall constitute a final nonappealable decision, however, the final recommendation of the Board of Governors of Registered Dentists shall not be binding on the parties involved in the dispute.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 328.70 of Title 59, unless there is created a duplication in numbering, reads as follows:

The mediation committee, the state mediation appeals committee, and the Board of Governors of Registered Dentists shall not be bound by common law or statutory rules of evidence or by technical rules of procedure, but any hearing shall be conducted in such manner as to ascertain the substantial rights of the parties. Mediation committees, state mediation appeals committees, and the Board of Governors of Registered Dentists shall apply reasonable procedural rules consistent with the provisions of the Dental Mediation Act. Each governing organization which is involved in the formation of mediation committees as described in paragraph 2 of Section 3 of this act shall adopt and, from time to time, may modify and amend rules of procedure.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 328.71 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. The protections of Section 5 of this act relating to the records created by mediation committee shall apply equally to any records, documents, or proceedings produced in any appeal of a mediation committee recommendation or the state mediation appeals committee's recommendation, and protections from liability contained in Section 4 of this act shall apply equally to persons conducting or participating in appeal proceedings.

B. Neither the whole nor any portion of the findings or recommendations of the Mediation Committee, State Mediation Appeals

Committee and the Board of Governors of Registered Dentists shall be introduced or admissible during any hearing or trial of litigation brought by the patient, unless both patient and dentist, after the court filing of a petition/complaint agree that the whole or a portion of the findings of the Mediation Committee, State Mediation Appeals Committee and the Board of Governors of Registered Dentists will be introduced or admitted during a hearing or trial.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 328.72 of Title 59, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Dental Mediation Act being a general act intended as a unified coverage of the subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided. This legislation affirmatively elects out, to the extent permitted by law, from the coverage and reporting requirements of the federal legislation, PL 99-660, with respect to all persons practicing dentistry in this state.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 328.73 of Title 59, unless there is created a duplication in numbering, reads as follows:

A person may pursue any remedy now available through the courts, without first utilizing the provisions of the Oklahoma Dental Mediation Act.

Nothing provided for in this act shall in any manner limit, alter, modify, delay, compromise or otherwise effect in any respect a patient's right to initiate litigation for relief.

SECTION 15. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval."

Passed the Senate the 11th day of April, 1991.

President of the Senate

Passed the House of Representatives the ____ day of _____, 1991.

Speaker of the House of Representatives