

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

HOUSE BILL NO. 1596

BY: MADDOX (Jim)

AS INTRODUCED

AN ACT RELATING TO PROFESSIONS AND OCCUPATIONS;

ESTABLISHING THE OKLAHOMA DENTAL PEER REVIEW ACT;
SETTING POLICY; DEFINING TERMS; PROVIDING FOR PEER
REVIEW COMMITTEES; STATING DUTIES OF PEER REVIEW
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 PEER REVIEW
COMMITTEES; PROVIDING FOR RECOMMENDATIONS OF PEER
REVIEW COMMITTEES; PROVIDING PROCEDURES FOR APPEAL
OF PEER REVIEW COMMITTEE RECOMMENDATIONS; PROVIDING
FOR CONSTRUCTION OF ACT; ELECTING OUT OF CERTAIN
FEDERAL LEGISLATION; MAKING ACT NONEXCLUSIVE
PROCEDURE FOR OBTAINING REMEDY; AMENDING SECTION 8,
CHAPTER 78, O.S.L. 1987 (76 O.S. SUPP. 1990,
SECTION 27), WHICH RELATES TO LIMITATIONS ON
LIABILITY FOR CERTAIN PROFESSIONAL REVIEW BODIES;
EXEMPTING PEER REVIEW COMMITTEES FROM CERTAIN
LIABILITY; PROVIDING FOR CODIFICATION; AND
DECLARING AN 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 Peer Review 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 peer review 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 Peer Review 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 Peer Review 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. "Peer review 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 peer review 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 peer review committee may, but shall not be obligated to:

- a. evaluate the quality of health care services provided by the dentist being reviewed,
- b. determine that health care services rendered were professionally indicated or were performed in compliance with the applicable standards of care,
- c. where appropriate, determine that 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.

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 peer review committee, entities creating such peer review committees, members and staff of such peer review committee, and other persons who assist such peer review 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 peer review committee.

B. Any person who supplies information to a peer review 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 peer review 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 peer review 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 peer review process be compelled to disclose the proceedings of the peer review 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 peer review committee, the peer review committee, the individual members of the peer review committee, the dentist whose conduct is being examined, the patient requesting peer review and any witnesses testifying before or supplying information to the peer review committee. Such privilege shall only protect information derived from the peer review 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 peer review record, and would not otherwise be obtainable by discovery directed to the peer review committee.

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 peer review committee in conjunction with the determination of appeals of peer review 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 peer review 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 wishing to seek review of a course of treatment rendered by a dentist must file a written request for the review with a peer review committee in accordance with such rules that the organizations appointing the peer review committee may prescribe. In the request for review, the patient must provide the peer review 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.

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 peer review 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 peer review 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 peer review committee to an appellate body to be known as the state peer review 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 peer review 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 peer review 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 peer review appeals committee may either affirm, modify or reverse the recommendation of the peer review 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 peer review committee or a recommendation of the state peer review appeals committee to the Board of Governors of Registered Dentists within ten (10) days after the date of mailing of the peer review committee recommendation or the state peer review appeals committee recommendation. If such recommendation is not mailed, a patient or dentist may file a final request for an appeal within ten (10) 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 peer review committee recommendation and the state peer review 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 peer review committee, the state peer review 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. Peer review committees, state peer review appeals committees, and the Board of Governors of Registered Dentists shall apply reasonable procedural rules consistent with the provisions of the Dental Peer Review Act. Each governing organization which is involved in the formation of peer review 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:

The protections of Section 5 of this act relating to the records created by peer review committee shall apply equally to any records, documents, or proceedings produced in any appeal of a peer review committee recommendation or the state peer review 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.

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 Peer Review 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 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 Peer Review Act.

SECTION 15. AMENDATORY Section 8, Chapter 78, O.S.L. 1987 (76 O.S. Supp. 1990, Section 27), is amended to read as follows:

Section 27. ~~Protection~~ Except for peer review committees created pursuant to the Oklahoma Dental Peer Review Act, protection from liability in damages pursuant to Sections 6 25 and 7 26 of this

~~act~~ title shall not extend to actions for violation of civil rights or for antitrust.

SECTION 16. 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.

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