

ENROLLED HOUSE
BILL NO. 1548

By: Settle of the House

and

Brown of the Senate

An Act relating to professions and occupations; amending 59 O.S. 1991, Section 328.62, 328.64, 328.65, 328.67, 328.68, 328.69, 328.70 and 328.71, which relates to the Oklahoma Dental Mediation Act; modifying and adding to definitions; clarifying and updating language; authorizing obtaining certain records for certain purposes; and providing an effective date.

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

SECTION 1. AMENDATORY 59 O.S. 1991, Section 328.62, is amended to read as follows:

Section 328.62 As used in the Oklahoma Dental Mediation Act:

1. "Board" means the Board of Dentistry;

~~2. "Dentist" means a professionally trained individual who has fulfilled the educational requirements, is a graduate of an accredited dental school, and college 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~~ this title; and

~~2. 3. "Mediation committee" means a committee of persons duly constituted of or appointed by any voluntary dental association or, voluntary dental 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~~ 328.65 of this ~~act~~ title.

SECTION 2. AMENDATORY 59 O.S. 1991, Section 328.64, is amended to read as follows:

Section 328.64 A. Except as provided ~~by~~ in 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~~ Dentistry to obtain records of proceedings of the mediation committee ~~in~~ for use:

1. In conjunction with the determination of appeals of mediation committee recommendations, ~~or on behalf of;~~

2. In 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 by a review panel of the Board, pursuant to Section 328.43a of this title; or~~

3. In an individual proceeding being conducted by the Board, pursuant to Section 328.44a of this title.

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

SECTION 3. AMENDATORY 59 O.S. 1991, Section 328.65, is amended to read as follows:

Section 328.65 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~~ the Oklahoma Dental Mediation 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 the dentist's recommended~~ 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 4. AMENDATORY 59 O.S. 1991, Section 328.67, is amended to read as follows:

Section 328.67 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~~ Dentistry. 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~~ Dentistry, pursuant to Section ~~9~~ 328.68 of this ~~act~~ title. 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 5. AMENDATORY 59 O.S. 1991, Section 328.68, is amended to read as follows:

Section 328.68 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~~ Dentistry 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~~ a final appeal within thirty (30) days after the date of delivery of such recommendation to the appealing party.

SECTION 6. AMENDATORY 59 O.S. 1991, Section 328.69, is amended to read as follows:

Section 328.69 The Board of ~~Governors of Registered Dentists~~ Dentistry 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 7. AMENDATORY 59 O.S. 1991, Section 328.70, is amended to read as follows:

Section 328.70 The mediation committee, the state mediation appeals committee, and the Board of ~~Governors of Registered Dentists~~ Dentistry 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 Oklahoma Dental Mediation Act. Each governing organization which is involved in the formation of mediation committees as described in paragraph ~~2~~ 3 of Section ~~3~~ 328.62 of this ~~act~~ title shall adopt and, from time to time, may modify and amend rules of procedure.

SECTION 8. AMENDATORY 59 O.S. 1991, Section 328.71, is amended to read as follows:

Section 328.71 A. The protections of Section ~~5~~ 328.64 of this ~~act~~ title relating to the records created by mediation ~~committee~~ committees shall apply equally to any records, documents, or proceedings produced in any appeal of a mediation committee recommendation or ~~the a~~ a state mediation appeals ~~committee's~~ committee recommendation, and protections from liability contained in Section ~~4~~ 328.63 of this ~~act~~ title 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 a~~ a mediation committee, state mediation appeals committee ~~and, or~~ and, or the Board of ~~Governors of Registered Dentists~~ Dentistry 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~~ mediation committee, state mediation appeals committee, or the Board ~~of Governors of Registered Dentists~~ will be introduced or admitted during a hearing or trial.

SECTION 9. AMENDATORY 59 O.S. 1991, Section 328.73, is amended to read as follows:

Section 328.73 A. 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~~ B. No provisions of the Oklahoma Dental Mediation Act shall in any manner limit, alter, modify, delay, compromise or otherwise effect ~~effect~~ affect in any respect a patient's right to initiate litigation for relief.

SECTION 10. This act shall become effective November 1, 1997.

Passed the House of Representatives the 12th day of May, 1997.

Speaker of the House of
Representatives

Passed the Senate the 13th day of May, 1997.

President of the Senate