STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

3RD CONFERENCE COMMITTEE
SUBSTITUTE FOR ENGROSSED
HOUSE BILL NO. 1351 By: Stanley of the House

and

Morgan of the Senate

3RD CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to dentists; amending 36 O.S. 1991, Sections 2673 and 2682, which relate to insurance; clarifying language relating to certification of nonprofit dental service corporations; updating language; amending 59 O.S. 1991, Sections 328.7, as last amended by Section 2, Chapter 280, O.S.L. 1999, 328.24, 328.25, 328.32, as last amended by Section 5, Chapter 377, O.S.L. 1998 (59 O.S. Supp. 1999, Sections 328.7 and 328.32), which relate to the State Dental Act; removing outdated language; providing procedures for nomination for dentist members and dental hygienist members of the Board of Dentistry; requiring petitions, secret ballots and other procedures; specifying certain eligible voters; providing for recall and removal of certain board members; limiting who may vote; specifying and providing for certain procedures for recall elections; modifying procedures for modification of licenses to practice dental hygiene to certain out-of-state dental hygienists; clarifying, adding to and modifying procedures; prohibiting certain licensing; authorizing the Board of Dentistry to require certain standards, information and fees; providing for temporary licenses for certain dental hygienists; specifying certain standards and other requirements; specifying certain rights and privileges; providing for expiration; adding to grounds for which certain penalties may be imposed; repealing 59 O.S. 1991, Section 328.9, as amended by Section 3, Chapter 108, O.S.L. 1997 and 328.50 (59 O.S. Supp. 1999, Section 328.9), which relate to nomination and election of board members and to prohibition of advertising of products or services by certain persons; and providing an effective date.

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

SECTION 1. AMENDATORY 36 O.S. 1991, Section 2673, is amended to read as follows:

Section 2673. The Insurance Commissioner shall certify ~~such corporation~~ nonprofit dental service corporations by issuing a certificate of authority, authorizing the applicant to issue contracts to its subscribers, when it is shown to the satisfaction of the Commissioner that:

1. The applicant is established as a bona fide nonprofit dental service corporation;

2. The contracts between the applicant and the participating dentists or other providers of health services, if any, obligate each provider executing the same to render service to which each subscriber may be entitled under the terms of the contract to be issued to the subscribers;

3. The amount of required working capital of the corporation is paid into the corporation and, if subject to repayment, can be repaid, but without interest, and only out of operating income;

4. The amount of money actually available for working capital is sufficient to carry on the plan for a period of three (3) months from the date of issuance of the certificate of authority; and

5. The applicant has secured signed contracts of participation from not less than one-third (1/3) of the dentists within ~~the State of Oklahoma,~~ this state who ~~are licensed by the State of Oklahoma~~ hold a current license issued by the Board of Dentistry pursuant to the State Dental Act. The form of such contracts of participation shall be approved by the Board of ~~Governors of the Registered Dentists of Oklahoma~~ Dentistry prior to securing the required signatures.

SECTION 2. AMENDATORY 36 O.S. 1991, Section 2682, is amended to read as follows:

Section 2682. Nothing in this Article shall be deemed to alter the statutory relationship of dentist and patient which has heretofore been established. No dental service corporation shall in any way attempt to influence the subscriber in ~~his~~ the free choice

of a dentist other than to limit its benefit to properly licensed dentists of ~~the State of Oklahoma~~ this state who are in good standing with the Board of ~~Governors of the Registered Dentists of Oklahoma~~ Dentistry. Nothing in this Article shall be deemed to abridge the right of any dentist to decline patients in accordance with the standards of practices of such dentist; and no such corporation shall be deemed to be engaged in the corporate practice of dentistry.

SECTION 3. AMENDATORY 59 O.S. 1991, Section 328.7, as last amended by Section 2, Chapter 280, O.S.L. 1999 (59 O.S. Supp. 1999, Section 328.7), is amended to read as follows:

Section 328.7 A. ~~1.~~ Pursuant to Section 39 of Article V of the Oklahoma Constitution, there is hereby created the Board of Dentistry which shall be an agency of state government. The Board shall adopt a seal, sue and be sued in its own name, and implement and enforce the provisions of the State Dental Act.

~~2. Whenever the term "The Board of Governors of the Registered Dentists of Oklahoma" or a term of like import appears in the Oklahoma Statutes, it shall mean the Board of Dentistry.~~

B. 1. The Board shall consist of eight dentist members, one dental hygienist member and two members who shall represent the public. One dentist member shall be elected by the dentists residing in each of the eight geographical districts established by subsection ~~C~~ D of this section. The dental hygienist member shall be elected at-large by the dental hygienists residing in this state who are legally licensed to practice dental hygiene therein. The two public representative members shall be appointed by the Governor, subject to confirmation by the Senate. No public representative member may be a dentist, dental hygienist, dental assistant, dental laboratory technician, or holder of a permit to operate a dental laboratory, or be related within the third degree of consanguinity or affinity to any such person.

2. Before assuming duties on the Board, each member shall take and subscribe to the oath of office or affirmation provided in Article XV of the Oklahoma Constitution, which oath or affirmation shall be administered and filed as provided in the Article.

3. Each member of the Board shall hold office for a term of three (3) years and until a successor in office is elected and qualified. Board members shall not serve for more than three (3) consecutive terms. To be eligible to be elected to and serve on the Board, a dentist or dental hygienist must have been licensed to practice in this state for at least five (5) years, and for the five (5) years prior to the date of counting the ballots, not have been subject to a penalty imposed by the Board or its predecessor board.

C. 1. a. Nominations for dentist members of the Board shall be by petition signed by at least ten dentists residing in the district to be represented by the nominee.

b. Nominations for the dental hygienist member of the Board shall be by petition signed by at least ten dental hygienists residing in this state.

2. The elections shall be by secret ballot. The ballots shall be mailed by the Board to those entitled to vote at least thirty (30) days prior to the date of counting of the ballots and shall be returned by mail to the office of the Board, then opened and counted at a meeting of the Board. In other respects, elections shall be conducted as provided by the rules of the Board.

3. a. Only dentists residing in a district shall be entitled to vote to elect the Board member from that district.

b. Only dental hygienists residing and licensed in this state shall be entitled to vote to elect the dental hygienist Board member.

D. For the purpose of nominating and electing dentist members of the Board, this state shall be divided into eight geographical

districts, which shall consist of the following counties within the following districts:

District No. 1: Cimarron, Texas, Beaver, Harper, Woods, Alfalfa, Grant, Kay, Ellis, Woodward, Major, Garfield, Noble, Dewey, Blaine, Kingfisher and Logan.

District No. 2: Tulsa and Creek.

District No. 3: Roger Mills, Custer, Beckham, Washita, Harmon, Greer, Kiowa, Caddo, Jackson and Tillman.

District No. 4: Canadian, Grady, McClain, Comanche, Cotton, Stephens, Jefferson, Garvin, Murray, Carter and Love.

District No. 5: Oklahoma.

District No. 6: Lincoln, Cleveland, Pottawatomie, Seminole, Okfuskee, Hughes, Pontotoc, Coal, Johnston, Marshall and Bryan.

District No. 7: Mayes, Wagoner, Cherokee, Adair, Okmulgee, Muskogee, Sequoyah, McIntosh, Haskell, Pittsburg, Latimer, LeFlore, Atoka, Pushmataha, Choctaw and McCurtain.

District No. 8: Osage, Payne, Washington, Nowata, Craig, Ottawa, Rogers, Delaware and Pawnee.

E. 1. Dentist members of the Board may be recalled and removed from the Board in a special recall election to be conducted by the Board upon receipt of a written recall petition signed by at least twenty percent (20%) of the dentists residing in the district represented by the member who is the subject of the recall petition. Only dentists residing in the affected district may vote in the special recall election.

2. The dental hygienist member of the Board may be recalled and removed from the Board in a special recall election to be conducted by the Board upon receipt of a written recall petition signed by at least twenty percent (20%) of the licensed dental hygienists residing in this state. Only dental hygienists residing and licensed in this state shall be entitled to vote in the special recall election.

3. Special recall elections shall be by secret ballot. The ballots shall be mailed by the Board to those entitled to vote at least thirty (30) days prior to the date of counting the ballots and shall be returned by mail to the office of the Board, then opened and counted at a meeting of the Board. In other respects, special recall elections shall be conducted as provided by the rules of the Board. If a majority of the votes cast in the special recall election are in favor of recalling the Board member, the member shall be removed from the Board effective on the date the results of the special recall election are certified by the Board.

~~D.~~ F. 1. A vacancy among the dentist members of the Board shall be filled by a special election in the district of the vacancy for the unexpired term within sixty (60) days after the vacancy occurs~~, as provided in Section 328.9 of this title~~.

2. A vacancy of the dental hygienist member on the Board shall be filled by a special election in ~~the~~ this state for the unexpired term within sixty (60) days after the vacancy occurs~~, as provided in Section 328.9 of this title~~.

3. Nominations shall be made and special elections shall be conducted in the same manner as provided in ~~Section 328.9 of this title, or if~~ subsection C of this section. If no one is nominated within forty-five (45) days from date of vacancy, the vacancy shall be filled by appointment by the Board. A vacancy among the public representative members of the Board shall be filled by appointment by the Governor, subject to confirmation by the Senate.

SECTION 4. AMENDATORY 59 O.S. 1991, Section 328.24, is amended to read as follows:

Section 328.24 A. 1. The Board of Dentistry may~~, at its discretion,~~ issue a ~~certificate of ability~~ license to practice dental hygiene, ~~either with or~~ without examination, to ~~a~~ an out-of-state dental hygienist who ~~shall have~~ has been engaged in ~~actual legal~~ the active practice of dental hygiene in ~~some other~~ another

state or territory for at least two (2) years immediately preceding application, ~~and is a member in good standing of the American Dental Hygiene Association,~~ upon ~~the~~ presentation to the Board of ~~the~~ a certificate ~~of~~ from the Board of Dental Examiners or a like ~~organization~~ dental hygiene licensing agency of ~~the~~ that state or territory ~~in which said dental hygienist is a practitioner~~, certifying ~~to~~ the applicant's ~~competency and good character~~ length of practice and that the applicant is in good standing with the agency, and upon the payment of a fee ~~as required~~ established by the rules of the Board ~~of Governors not to exceed One Hundred Dollars ($100.00)~~; provided, however, ~~that~~ the state or territory from which ~~such application may come~~ the applicant presents a license to practice dental hygiene shall have ~~obtained equal standard of laws regarding the~~ required the applicant to meet professional education, competency, and other eligibility standards equivalent to the standards required by the Board for issuance of a license by examination to practice ~~of~~ dental hygiene ~~and will afford equal privileges to members hereof~~ in this state.

2. The Board shall not issue a license pursuant to this subsection to any person who would not otherwise be eligible to receive a license to practice dental hygiene.

3. The Board may require:

a. an applicant for a license to practice dental hygiene pursuant to this subsection to have completed the same continuing education requirements as required of dental hygienists in this state, and

b. that the state or territory from which the applicant presents credentials afford substantially equivalent licensure by credentialing to dental hygienists of this state.

B. Any ~~member hereof in good standing~~ dental hygienist who is ~~desirous of changing his residence to that of another state or~~

~~territory~~ in good standing with the Board shall, upon application to the Board ~~of Governors,~~ and ~~upon~~ payment of a fee ~~of Five Dollars ($5.00)~~ established by the rules of the Board, receive a certificate which shall attest that ~~he~~ the dental hygienist is ~~a member~~ in good standing ~~hereof~~ with the Board.

SECTION 5. AMENDATORY 59 O.S. 1991, Section 328.25, is amended to read as follows:

Section 328.25 The Board of Dentistry may~~, at its discretion,~~ issue a temporary ~~certificate of ability~~ license to practice dental hygiene, ~~which would not exceed twelve (12) months, and be valid only up to date of next examination for certificate of ability to practice dental hygiene~~ without examination, to ~~a~~ an out-of-state dental hygienist who ~~is a member in good standing of the American Dental Hygiene Association, and~~ has been engaged in the active practice of dental hygiene in another state or territory during the two (2) years immediately preceding application upon ~~the~~ presentation to the Board of ~~the~~ a certificate ~~of~~ from the Board of Dental Examiners or a like ~~organization~~ dental hygiene licensing agency of ~~the~~ that state or territory ~~in which said dental hygienist is a practitioner, or like certificate from an approved school of dental hygiene~~, certifying ~~to the applicant's competency and good character,~~ that the applicant is in good standing with the agency and upon the payment of a fee ~~to be fixed annually~~ established by the rules of the Board ~~of Governors, not to exceed One Hundred Dollars ($100.00). The issuance~~; provided, however, the state or territory from which the applicant presents a license to practice dental hygiene shall have required the applicant to meet professional education, competency, and other eligibility standards equivalent to the standards required by the Board for issuance of a license by examination to practice dental hygiene in this state.

B. A holder of a temporary ~~certificate gives said dental hygienist~~ license to practice dental hygiene shall have the same

rights and privileges ~~as a permanent certificate, therefore the annual fees and other registration responsibilities will be the same as one who holds a permanent certificate to practice dental hygiene; said dental hygienist will be liable~~ and be governed by ~~all~~ the State Dental Act and the rules ~~and regulations as one who holds~~ of the Board in the same manner as a holder of a permanent ~~certificate of ability~~ license to practice dental hygiene. A temporary license to practice dental hygiene shall expire as of the date of the next dental hygiene clinical examination required by the Board.

SECTION 6. AMENDATORY 59 O.S. 1991, Section 328.32, as last amended by Section 5, Chapter 377, O.S.L. 1998 (59 O.S. Supp. 1999, Section 328.32), is amended to read as follows:

Section 328.32 A. The following acts or occurrences by a dentist shall constitute grounds for which the penalties specified in Section 328.44a of this title may be imposed by order of the Board of Dentistry:

1. Pleading guilty or nolo contendere to, or being convicted of, a felony, a misdemeanor involving moral turpitude, or a violation of federal or state controlled dangerous substances laws;

2. Presenting to the Board a false diploma, license, or certificate, or one obtained by fraud or illegal means;

3. Being, by reason of persistent inebriety or addiction to drugs, incompetent to continue the practice of dentistry;

4. Publishing a false, fraudulent, or misleading advertisement or statement;

5. Authorizing or aiding an unlicensed person to practice dentistry, to practice dental hygiene, or to perform a function for which a permit from the Board is required;

6. Authorizing or aiding a dental hygienist to perform any procedure prohibited by the State Dental Act or the rules of the Board;

7. Authorizing or aiding a dental assistant to perform any procedure prohibited by the State Dental Act or the rules of the Board;

8. Failing to pay fees as required by the State Dental Act or the rules of the Board;

9. Failing to complete continuing education requirements;

10. Representing himself or herself to the public as a specialist in a dental specialty without holding a dental specialty license therefor;

11. Representing himself or herself to the public as a specialist whose practice is limited to a dental specialty, when such representation is false, fraudulent, or misleading;

12. Endangering the health of patients by reason of having a highly communicable disease and continuing to practice dentistry without taking appropriate safeguards;

13. Being a menace to the public health by reasons of practicing dentistry in an unsafe or unsanitary manner or place;

14. Being shown to be mentally unsound;

15. Being shown to be grossly immoral and that such condition represents a threat to patient care or treatment;

16. Being incompetent to practice dentistry while delivering care to a patient;

17. Committing gross negligence in the practice of dentistry;

18. Committing repeated acts of negligence in the practice of dentistry;

19. Offering to effect or effecting a division of fees, or agreeing to split or divide a fee for dental services with any person, in exchange for the person bringing or referring a patient;

20. Being involuntarily committed to an institution for treatment for substance abuse, until recovery or remission;

21. Using or attempting to use the services of a dental laboratory or dental laboratory technician without issuing a

laboratory prescription, except as provided in subsection C of Section 328.36 of this title;

22. Aiding, abetting, or encouraging a dental hygienist employed by the dentist to make use of an oral prophylaxis list, or the calling by telephone or by use of letters transmitted through the mails to solicit patronage from patients formerly served in the office of any dentist formerly employing such hygienist;

23. Having more than the equivalent of two full-time dental hygienists for each dentist actively practicing in the same dental office who will supervise the dental hygienists;

24. Knowingly patronizing or using the services of a dental laboratory or dental laboratory technician who has not complied with the provisions of the State Dental Act and the rules of the Board;

25. Authorizing or aiding a dental hygienist, dental assistant, dental laboratory technician, or holder of a permit to operate a dental laboratory to violate any provision of the State Dental Act or the rules of the Board;

26. Willfully disclosing confidential information;

27. Writing a false, unnecessary, or excessive prescription for any drug or narcotic which is a controlled dangerous substance under either federal or state law;

28. Prescribing or administering any drug or treatment without having established a valid dentist-patient relationship;

29. Engaging in nonconsensual physical contact with a patient which is sexual in nature, or engaging in a verbal communication which is intended to be sexually demeaning to a patient;

30. Practicing dentistry without displaying, at the dentist's primary place of practice, the license issued to the dentist by the Board to practice dentistry and the current renewal certificate;

31. Being dishonest in a material way with a patient;

32. Failing to retain all patient records for at least three (3) years, except that the failure to retain records shall not be a

violation of the State Dental Act if the dentist shows that the records were lost, destroyed, or removed by another, without the consent of the dentist;

33. Failing to retain the dentist's copy of any laboratory prescription for at least three (3) years, except that the failure to retain records shall not be a violation of the State Dental Act if the dentist shows that the records were lost, destroyed, or removed by another, without the consent of the dentist;

34. Allowing any corporation, organization, group, person, or other legal entity, except another dentist or a professional entity that is in compliance with the registration requirements of subsection B of Section 328.31 of this title, to direct, control, or interfere with the dentist's clinical judgment. Clinical judgment shall include, but not be limited to, such matters as selection of a course of treatment, control of patient records, policies and decisions relating to pricing, credit, refunds, warranties and advertising, and decisions relating to office personnel and hours of practice. Nothing in this paragraph shall be construed to:

a. limit a patient's right of informed consent, or

b. to prohibit insurers, preferred provider organizations and managed care plans from operating pursuant to the applicable provisions of the Oklahoma Insurance Code and the Public Health Code;

~~34.~~ 35. Violating the state dental act of another state resulting in a plea of guilty or nolo contendere, conviction or suspension or revocation of the license of the dentist under the laws of that state;

~~35.~~ 36. Violating or attempting to violate the provisions of the State Dental Act or the rules of the Board, as a principal, accessory or accomplice; or

~~36.~~ 37. Failing to comply with the terms and conditions of an order imposing suspension of a license or placement on probation issued pursuant to Section 328.44a of this title.

B. The provisions of the State Dental Act shall not be construed to prohibit any dentist from displaying or otherwise advertising that the dentist is also currently licensed, registered, certified, or otherwise credentialed pursuant to the laws of this state or a nationally recognized credentialing board, if authorized by the laws of the state or credentialing board to display or otherwise advertise as a licensed, registered, certified, or credentialed dentist.

SECTION 7. REPEALER 59 O.S. 1991, Sections 328.9, as amended by Section 3, Chapter 108, O.S.L. 1997 and 328.50 (59 O.S. Supp. 1999, Section 328.9), are hereby repealed.

SECTION 8. This act shall become effective November 1, 2000.

47-2-9641 KSM 6/11/15