

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

HOUSE BILL HB1443

By: Stanley

AS INTRODUCED

An Act relating to public health and safety; amending 59 O.S. 2001, Sections 328.15 and 328.43a, which relate to the State Board of Dentistry; requiring the Board of Dentistry to promulgate certain rules adopted by the Dental Hygiene Committee; providing exception; creating the Dental Hygiene Committee; providing for appointment and qualifications; providing for terms; providing for vacancies; limiting terms; providing for reimbursement; providing for appointment of officers; providing for duties; providing for notice; requiring review of proposed rules by the Committee; providing for complaints; establishing review panels; providing for duties and qualifications; specifying liability; providing for codification; providing effective dates; and declaring an emergency.

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

SECTION 1. AMENDATORY 59 O.S. 2001, Section 328.15, is amended to read as follows:

Section 328.15. A. 1. Pursuant to and in compliance with Article I of the Administrative Procedures Act, the Board of Dentistry shall have the power to formulate, adopt, and promulgate rules as may be necessary to regulate the practice of dentistry in this state and to implement and enforce the provisions of the State Dental Act.

2. The Board, pursuant to this subsection, shall promulgate all rules adopted by the Dental Hygiene Committee to regulate the practice of dental hygiene unless the Board makes a specific finding that a recommendation is:

- a. beyond the jurisdiction of the Committee, or
- b. not supported by record.

B. The Board is authorized and empowered to:

1. Examine and test the qualifications of applicants for a license, certificate, or permit to be issued by the Board;

2. Affiliate by contract or cooperative agreement with another state or combination of states for the purpose of conducting simultaneous regional examinations of applicants for a license to practice dentistry, dental hygiene, or a dental specialty;

3. Maintain a list of the name, current mailing address and principal office address of all persons who hold a license, certificate, or permit issued by the Board;

4. Account for all receipts and expenditures of the monies of the Board, including annually preparing and publishing a statement of receipts and expenditures of the Board for each fiscal year. The Board's annual statement of receipts and expenditures shall be audited by the State Auditor and Inspector or an independent accounting firm, and the audit report shall be certified to the Governor of this state to be true and correct, under oath, by the president and secretary-treasurer of the Board;

5. Within limits prescribed in the State Dental Act, set all fees and administrative penalties to be imposed and collected by the Board;

6. Maintain an office staff and employ legal counsel and other advisors to the Board, including advisory committees;

7. Investigate and issue investigative and other subpoenas, pursuant to Article II of the Administrative Procedures Act;

8. Initiate individual proceedings and issue orders imposing administrative penalties, pursuant to Article II of the Administrative Procedures Act, against any dentist, dental hygienist, dental assistant, dental laboratory technician, or holder of a permit to operate a dental laboratory who has violated the State Dental Act or the rules of the Board;

9. Conduct, in a uniform and reasonable manner, inspections of dental offices and dental laboratories and their business records;

10. Establish guidelines for courses of study necessary for expanded duties and, when appropriate, issue permits authorizing individuals to perform expanded duties;

11. Establish continuing education requirements for dentists, dental hygienists, and dental assistants who hold expanded duty permits issued by the Board;

12. Recognize the parameters of care established and approved by the American Dental Association;

13. Formulate, adopt, and promulgate rules, pursuant to Article I of the Administrative Procedures Act, as may be necessary to implement and enforce the provisions of the Oklahoma Dental Mediation Act;

14. Hire one or more investigators to conduct investigations of alleged violations of the State Dental Act or the rules of the Board;

15. Seek and receive advice and assistance of the Office of the Attorney General of this state;

16. Promote the dental health of the people of this state;

17. Inform, educate, and advise all persons who hold a license, certificate, or permit issued by the Board, or who are otherwise regulated by the Board, regarding the State Dental Act and the rules of the Board;

18. Affiliate with the American Association of Dental Examiners as an active member, pay regular dues, and send members of the Board as delegates to its meetings;

19. Enter into contracts;

20. Acquire, rent, hold, encumber, and dispose of personal property as is needed; and

21. Take all other actions necessary to implement and enforce the State Dental Act.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 328.16A of Title 59, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created the "Dental Hygiene Committee" hereinafter referred to as the Committee. The Committee shall be comprised of the following six (6) members:

1. One member shall be the dental hygienist member of the Board of Dentistry;

2. One member shall be a public member of the Board elected to serve on the Committee by the Board of Dentistry;

3. One member shall be a dentist member of the Board elected to serve on the Committee by the Board of Dentistry; and

4. a. Three members shall be dental hygienists who are appointed by the Governor. Such dental hygienists shall be residents of the state for not less than five (5) years immediately preceding appointment to office. The dental hygienist appointees shall be licensed dental hygienists actively engaged in the practice of dental hygiene within the five (5) years immediately preceding appointment to office, and shall not have less than five (5) years' experience in the practice of dental hygiene. The Governor shall appoint these members from a list of not less than five (5) names submitted by the Oklahoma Dental Hygienists' Association.

b. The initial dental hygienist appointments to the Committee shall serve terms as follows: one member for four (4) years, one member for three (3) years, and one member for two (2) years. Following the initial appointments, the dental hygienist appointees shall serve for terms of three (3) years from the date

of their respective appointments, and until a successor is appointed and qualified.

c. Removal of an appointed dental hygienist member may be made by the Governor for neglect of duty or for just cause.

B. 1. The dental hygienist member of the Board shall serve on the Committee until the term of office on the Board is completed and a successor is elected and qualified.

2. The terms of membership of the dentist and public member elected by the Board to serve on the Committee shall be one (1) year each and may be re-elected.

3. The dentist and public member elected by the Board shall be eligible to serve on the Committee while members of the Board.

C. No dental hygienist member of the Committee shall serve more than three consecutive terms.

D. Any vacancy shall be filled in the same manner as the original appointments.

E. Each member of the Committee shall receive actual and necessary travel expenses as provided in the State Travel Reimbursement Act.

F. The Committee shall annually elect a chair and vice-chair from among its membership.

G. The Committee shall meet as required for rule development, review and recommendation and for such other purposes specified by law. Special meetings may be called by the chair or by the concurrence of any two members.

H. The Committee shall:

1. Have authority to recommend to the Board of Dentistry proposed rules for the examination, licensing of dental hygienists, scope of practice and practice of dental hygiene. The Board shall not act on any proposed rules unless such proposed rules have been

submitted to the Committee for action at least forty-five (45) days prior to the hearing for adoption of the rules by the Board;

2. Before recommending any permanent rules to the Board, give public notice, offer opportunity for public comment and conduct a public rulemaking hearing when required by the Administrative Procedures Act and rules of the Board;

3. Have authority to make written recommendations to the Board which have been concurred upon by at least a majority of the membership of the Committee; and

4. Have the authority to provide a public forum for the discussion of issues it considers relevant to its area of jurisdiction, and to:

a. pass nonbinding resolutions expressing the sense of the Committee, and

b. make recommendations to the Board concerning the need and the desirability of conducting public meetings, workshops and seminars.

I. The Committee shall not recommend rules for promulgation by the Board unless all applicable requirements of the Administrative Procedures Act and rules of the Board have been followed including, but not limited to, notice, rule impact statement and rulemaking hearings. All actions of the Committee with regard to rulemaking shall be deemed actions of the Board for the purposes of complying with the Administrative Procedures Act and rules of the Board. The Committee shall advise the Board on initiating and conducting rulemaking proceedings pursuant to the State Dental Act.

J. The Committee is authorized to utilize the conference rooms of the Board and obtain administrative assistance from the Board, as required.

K. In the case of a complaint regarding a dental hygienist or the practice, or illegal practice, of dental hygiene, the president of the Board shall direct the complaint for review, to two members

of the Committee who shall be the review panel. The two members of the review panel shall include at least one dental hygienist. The review panel shall act in accordance with the provisions of Section 328.43a of Title 59 of the Oklahoma Statutes.

L. No member of the Committee shall bear liability or be subject to civil damages or criminal prosecutions for any action undertaken or performed within the proper functions of the Committee.

M. 1. The staff of the Board of Dentistry shall perform the duties and transact the business required to give notice and keep records of all meetings of the Committee, and shall maintain records necessary for the operation and function of the Committee.

2. All meetings shall be held and records maintained in accordance with the provisions of the Administrative Procedures Act, the Oklahoma Open Meeting Act, and the Oklahoma Open Records Act.

3. The Board shall provide the necessary expenditures incurred by the Committee and the Board in implementing and executing the rules and recommendations of the Committee.

SECTION 3. AMENDATORY 59 O.S. 2001, Section 328.43a, is amended to read as follows:

Section 328.43a A. Any person may file a written and signed complaint with the Board of Dentistry, alleging that another person has sought to practice or has illegally practiced dentistry or dental hygiene, or has otherwise violated the provisions of the State Dental Act or the rules of the Board, and the facts upon which the allegations are based. The complaint shall be directed by the president of the Board to two specific Board of Dentistry members for review. In the case of a complaint regarding a dental hygienist or the practice, or illegal practice of dental hygiene, the president of the Board shall direct the complaint for review to two members of the Dental Hygiene Committee who shall be the Review

Panel. The two members of the Review Panel shall include at least one dental hygienist.

B. The Board or Committee members who review a complaint shall constitute a review panel. A review panel may conduct or cause to be conducted any investigation of the allegations in the complaint as it reasonably determines may be needed to establish, based on the evidence available to the panel, whether it is more likely than not that:

1. A violation of the provisions of the State Dental Act or the rules of the Board has occurred; and

2. The person named in the complaint has committed the violation.

C. In conducting its investigation, a review panel may seek evidence, take statements, take and hear evidence, and administer oaths and affirmations. A review panel may also use Board attorneys and investigators appointed by the Board to seek evidence.

D. 1. If a review panel determines, based on the evidence available to the panel, that it is more likely than not that a violation of the provisions of the State Dental Act or the rules of the Board has occurred and that the person named in the complaint has more likely than not committed the violation, the review panel may recommend in writing to the Board that the Board initiate an individual proceeding, pursuant to Article II of the Administrative Procedures Act, against the person named in the complaint. The members of the review panel shall be excluded from participating as Board members in an individual proceeding initiated by the Board based upon their recommendation.

2. The review panel may elect not to recommend that the Board initiate an individual proceeding against the person named in the complaint and may secure a written and signed settlement agreement with such person. A settlement agreement:

- a. shall specify the provisions of the State Dental Act or the rules of the Board which such person is alleged to have violated,
- b. shall provide that such person agrees not to violate the provisions of the State Dental Act or the rules of the Board in the future,
- c. may contain any of the penalties specified in Section 328.44a of this title, and
- d. may contain any other provisions agreeable to the review panel and the person involved.

3. When a settlement agreement is entered into, it shall remain part of the investigation file, and may be used against the person involved only if the person involved violates the settlement agreement. Informal resolution of complaints is encouraged. All settlement agreements shall be reported to the Board. A settlement agreement must receive final review and approval by the Board if it contains any of the following penalties specified in Section 328.44a of this title:

- a. suspension of a license, certificate or permit issued by the Board,
- b. revocation of a license, certificate or permit issued by the Board,
- c. issuance of a censure,
- d. placement on probation, or
- e. restriction of the services that can be provided by a dentist or a dental hygienist.

E. If a review panel does not make the determination specified in subsection D of this section, the panel shall dismiss the complaint and direct the principal administrative officer of the Board to give written notification of the dismissal to the person who filed the complaint and to the person named in the complaint.

F. A review panel may act without complying with the Oklahoma Open Meeting Act.

SECTION 4. Sections 1 and 3 of this act shall become effective November 1, 2003.

SECTION 5. Section 2 of this act shall become effective July 1, 2003.

SECTION 6. 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.

49-1-6008

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