

EHB 1337

1 THE STATE SENATE  
2 Thursday, April 7, 2005

3 ENGROSSED

4 House Bill No. 1337

5 ENGROSSED HOUSE BILL NO. 1337 - By: COVEY, NATIONS and NANCE of the  
6 House and LAMB of the Senate.

7 An Act relating to professions and occupations; amending 59  
8 O.S. 2001, Sections 328.3, as amended by Section 1, Chapter  
9 172, O.S.L. 2003, 328.15, as amended by Section 2, Chapter  
10 172, O.S.L. 2003, 328.27, 328.43a, as amended by Section 7,  
11 Chapter 172, O.S.L. 2003 and 328.44a, as amended by Section  
12 8, Chapter 172, O.S.L. 2003 (59 O.S. Supp. 2004, Sections  
13 328.3, 328.15, 328.43a and 328.44a), which relate to the  
14 State Dental Act; adding definitions; modifying faculty  
15 permits; providing for revocation or suspension of certain  
16 professions; modifying complaints process; modifying  
17 penalties; making certain information confidential;  
18 providing for surrender of license or permit; providing for  
19 codification; and providing an effective date.

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

21 SECTION 1. AMENDATORY 59 O.S. 2001, Section 328.3, as  
22 amended by Section 1, Chapter 172, O.S.L. 2003 (59 O.S. Supp. 2004,  
23 Section 328.3), is amended to read as follows:

24 Section 328.3 As used in the State Dental Act, the following  
25 words, phrases, or terms, unless the context otherwise indicates,  
26 shall have the following meanings:

27 1. "Accredited dental college" means an institution whose  
28 dental educational program is accredited by the Commission on Dental  
29 Accreditation of the American Dental Association;

1           2. "Accredited dental hygiene program" means a dental hygiene  
2 educational program which is accredited by the Commission on Dental  
3 Accreditation of the American Dental Association;

4           3. "Board" means the Board of Dentistry;

5           4. "Dentistry" means the practice of dentistry in all of its  
6 branches;

7           5. "Dentist" means a graduate of an accredited dental college  
8 who has been issued a license by the Board to practice dentistry as  
9 defined in Section 328.19 of this title;

10          6. "Dental office" means an establishment owned and operated by  
11 a dentist for the practice of dentistry, which may be composed of  
12 reception rooms, business offices, private offices, laboratories,  
13 and dental operating rooms where dental operations are performed;

14          7. "Dental hygienist" means an individual who has fulfilled the  
15 educational requirements and is a graduate of an accredited dental  
16 hygiene program and who has passed an examination and has been  
17 issued a license by the Board and who is authorized to practice  
18 dental hygiene as hereinafter defined;

19          8. "Dental assistant and/or dental nurse" means an individual  
20 working for a dentist, under the dentist's direct supervision, and  
21 performing duties in the dental office or a treatment facility,  
22 including the limited treatment of patients in accordance with the  
23 provisions of the State Dental Act. A dental assistant or dental

1 nurse may assist a dentist with the patient; provided, this shall be  
2 done only under the direct supervision and control of the dentist  
3 and only in accordance with the educational requirements and rules  
4 promulgated by the Board;

5 9. "Dental laboratory" means a location, whether in a dental  
6 office or not, where a dentist or a dental laboratory technician  
7 performs dental laboratory technology;

8 10. "Dental laboratory technician" means an individual whose  
9 name is duly filed in the official records of the Board, which  
10 authorizes the technician, upon the laboratory prescription of a  
11 dentist, to perform dental laboratory technology, which services  
12 must be rendered only to the prescribing dentist and not to the  
13 public;

14 11. "Dental laboratory technology" means using materials and  
15 mechanical devices for the construction, reproduction or repair of  
16 dental restorations, appliances or other devices to be worn in a  
17 human mouth;

18 12. "Dental specialty" means a specialized practice of a branch  
19 of dentistry, recognized and defined by the American Dental  
20 Association and the rules of the Board;

21 13. "Direct supervision" means the supervisory dentist is in  
22 the dental office or treatment facility and, during the appointment,  
23 personally examines the patient, diagnoses any conditions to be

1 treated, authorizes the procedures to be performed by a dental  
2 hygienist or dental assistant, remains in the dental office or  
3 treatment facility while the procedures are being performed and,  
4 before dismissal of the patient, evaluates the results of the dental  
5 treatment;

6 14. "General supervision" means the supervisory dentist has  
7 previously diagnosed any conditions to be treated, has personally  
8 authorized the procedures to be performed by a dental hygienist, and  
9 will evaluate the results of the dental treatment within a  
10 reasonable time as determined by the nature of the procedures  
11 performed, the needs of the patient, and the professional judgment  
12 of the supervisory dentist;

13 15. "Indirect supervision" means the supervisory dentist is in  
14 the dental office or treatment facility and has personally diagnosed  
15 any conditions to be treated, authorizes the procedures to be  
16 performed by a dental hygienist, remains in the dental office or  
17 treatment facility while the procedures are being performed, and  
18 will evaluate the results of the dental treatment within a  
19 reasonable time as determined by the nature of the procedures  
20 performed, the needs of the patient, and the professional judgment  
21 of the supervisory dentist;

22 16. "Investigations" means an investigation proceeding,  
23 authorized under Sections 328.15 and 328.43a of this title, to

1 investigate alleged violations of the State Dental Act or the rules  
2 of the Board;

3 17. "Laboratory prescription" means a written description,  
4 dated and signed by a dentist, of dental laboratory technology to be  
5 performed by a dental laboratory technician;

6 ~~17.~~ 18. "Out-of-state dental hygienist" means a graduate of an  
7 accredited dental hygienist program who holds a license to practice  
8 dental hygiene in another state but who is not licensed to practice  
9 dental hygiene in this state;

10 ~~18.~~ 19. "Out-of-state dentist" means a graduate of an  
11 accredited dental college who holds a license to practice dentistry  
12 in another state but who is not licensed to practice dentistry in  
13 this state;

14 ~~19.~~ 20. "Patient" or "patient of record" means an individual  
15 who has given a medical history and has been examined and accepted  
16 for dental care by a dentist;

17 ~~20.~~ 21. "Supervision" means direct supervision, indirect  
18 supervision, or general supervision; and

19 ~~21.~~ 22. "Treatment facility" means:

- 20 a. a federal, state or local public health facility,
- 21 b. a private health facility,
- 22 c. a group home or residential care facility serving the
- 23 elderly, handicapped or juveniles,

- 1 d. a hospital,
- 2 e. a nursing home,
- 3 f. a penal institution operated by or under contract with
- 4 the federal or state government,
- 5 g. a public or private school,
- 6 h. a patient of record's private residence,
- 7 i. an accredited dental college,
- 8 j. an accredited dental hygiene program, or
- 9 k. such other places as are authorized by the rules of
- 10 the Board.

11 SECTION 2. AMENDATORY 59 O.S. 2001, Section 328.15, as  
12 amended by Section 2, Chapter 172, O.S.L. 2003 (59 O.S. Supp. 2004,  
13 Section 328.15), is amended to read as follows:

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

19 B. The Board is authorized and empowered to:

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

22 2. Affiliate by contract or cooperative agreement with another  
23 state or combination of states for the purpose of conducting

1 simultaneous regional examinations of applicants for a license to  
2 practice dentistry, dental hygiene, or a dental specialty;

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

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

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

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

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

21 8. Initiate individual proceedings and issue orders imposing  
22 administrative penalties, pursuant to Article II of the  
23 Administrative Procedures Act, against any dentist, dental

1 hygienist, dental assistant, dental laboratory technician, or holder  
2 of a permit to operate a dental laboratory who has violated the  
3 State Dental Act or the rules of the Board;

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

6 10. Establish guidelines for courses of study necessary for  
7 expanded duties of dental assistants and, when appropriate, issue  
8 permits authorizing dental assistants to perform expanded duties;

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

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

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

18 14. Hire one or more investigators to conduct investigations of  
19 alleged violations of the State Dental Act or the rules of the  
20 Board. The investigator may be a certified peace officer who shall  
21 be commissioned with all the powers and authority of peace officers  
22 of this state for the purpose of enforcement of the State Dental Act  
23 and rules of the Board;

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

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

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

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

10       19. Enter into contracts;

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

13       21. Receive or accept the surrender of a license, permit, or  
14 certificate granted to any person by the Board as provided in  
15 Section 328.44a of this title; and

16       22. Take all other actions necessary to implement and enforce  
17 the State Dental Act.

18       SECTION 3.        AMENDATORY        59 O.S. 2001, Section 328.27, is  
19 amended to read as follows:

20       Section 328.27 A. 1. The Board of Dentistry may, without a  
21 clinical examination, upon presentation of satisfactory credentials,  
22 including completion of the dental hygiene National Boards and both  
23 Part I and Part II of the National Board examination for dentists,

1 and under such rules as the Board may promulgate, issue a faculty  
2 permit to an applicant who:

3 a. is a graduate of a school of dentistry approved by the  
4 Board and is licensed to practice dentistry in another  
5 state or country, ~~or~~

6 b. successfully completes advanced training in a  
7 specialty approved by the Commission on Dental  
8 Accreditation of the American Dental Association, or

9 c. is a graduate of an accredited dental hygiene program  
10 and is licensed to practice dental hygiene in another  
11 state.

12 2. A faculty permit shall be issued only upon the certification  
13 of the dean of an accredited dental college or the director of an  
14 accredited dental hygiene program located in this state that the  
15 applicant is a bona fide member of the teaching staff of that  
16 college or program.

17 3. A faculty permit shall be valid for one (1) year and may be  
18 renewed by the Board at the written request of the dean of an  
19 accredited dental program or the director of an accredited dental  
20 hygiene program.

21 B. The holder of a faculty permit shall be entitled to perform  
22 services and procedures in the same manner as a person holding a  
23 license to practice dentistry or dental hygiene in this state, but

1 all services and procedures performed by the faculty permit holder  
2 shall only be without compensation other than that received in  
3 salary from a faculty position, ~~and~~ or through faculty practice as  
4 authorized by the Board. Such services and procedures shall be  
5 performed only within the facilities of an accredited dental college  
6 or accredited dental hygiene program or in a seminar or postgraduate  
7 course and as an adjunct to teaching functions. A holder of a  
8 faculty permit shall ~~not~~ only engage in faculty ~~or private~~ practice  
9 of dentistry or dental hygiene within the facilities designated by  
10 the accredited dental college and including teaching hospitals  
11 approved by the Board.

12 SECTION 4. NEW LAW A new section of law to be codified  
13 in the Oklahoma Statutes as Section 328.29a of Title 59, unless  
14 there is created a duplication in numbering, reads as follows:

15 A. The Board of Dentistry shall have the power, after a  
16 hearing, to revoke or suspend a permit of a dental assistant or to  
17 discipline by a probation or censure, public or private, for:

18 1. Any of the causes now existing in the laws of the State of  
19 Oklahoma;

20 2. A violation of the provisions of the State Dental Act; or

21 3. A violation of the rules of the Board promulgated pursuant  
22 to the State Dental Act.

1           B. The Board shall also have the power to act upon a petition  
2 by a dental assistant for reinstatement to good standing. The Board  
3 shall keep a record of the evidence and proceedings in all matters  
4 involving the revocation or suspension of a permit, censure or  
5 probation of a dental assistant. The Board shall make findings of  
6 fact and a decision thereon. The Board shall immediately forward a  
7 certified copy of the decision to the dental assistant involved by  
8 registered mail to the last-known business address of the dental  
9 assistant and the employing dentist of the dental assistant.

10           C. The decision shall be final unless the dental assistant  
11 appeals the decision as provided by the State Dental Act.

12           D. The Board shall have power to revoke or suspend the permit,  
13 censure, or place on probation a dental assistant for a violation of  
14 one or more of the following:

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

18           2. The presentation to the Board of false application or  
19 documentation for expanded duty permits;

20           3. Being, by reason of persistent inebriety or addiction to  
21 drugs, incompetent to continue to function as a dental assistant;

22           4. Functioning outside the supervision of a dentist;

1           5. Performing any function prohibited by Chapter 15 of the  
2 Oklahoma Administrative Code; or

3           6. Failure to secure an annual registration as specified in  
4 Section 328.41 of Title 59 of the Oklahoma Statutes.

5           SECTION 5.           AMENDATORY           59 O.S. 2001, Section 328.43a, as  
6 amended by Section 7, Chapter 172, O.S.L. 2003 (59 O.S. Supp. 2004,  
7 Section 328.43a), is amended to read as follows:

8           Section 328.43a A. Any person may file a written and signed  
9 complaint with the Board of Dentistry, alleging that ~~another person~~  
10 the respondent has sought to practice or has illegally practiced  
11 dentistry or dental hygiene, has violated the provisions relating to  
12 dental assistants, or has otherwise violated the provisions of the  
13 State Dental Act or the rules of the Board, and the facts upon which  
14 the allegations are based. The complaint shall be directed by the  
15 president of the Board to two specific Board members for  
16 investigation and review. The review panel, in its discretion, may  
17 notify the respondent of the complaint at any time prior to its  
18 dismissal of the complaint or making a recommendation to the Board.  
19 If the Board initiates an individual proceeding under paragraph 1 of  
20 subsection D of this section, the respondent of the individual  
21 proceeding shall be provided a copy of the recommendation and any  
22 exculpatory information as required by the Administrative Procedures  
23 Act.

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

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

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

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

15 D. 1. If a review panel determines, based on the evidence  
16 available to the panel, that it is more likely than not that a  
17 violation of the provisions of the State Dental Act or the rules of  
18 the Board has occurred and that the ~~person named in the complaint~~  
19 respondent has more likely than not committed the violation, the  
20 review panel may recommend in writing to the Board that the Board  
21 initiate an individual proceeding, pursuant to Article II of the  
22 Administrative Procedures Act, against the ~~person named in the~~  
23 ~~complaint~~ respondent.



1           d.    may contain any other provisions agreeable to the  
2                    review panel and the person involved.

3           ~~3. When a A private settlement agreement is entered into, it~~  
4 shall remain part of the investigation file, and may be disclosed or  
5 used against the ~~person involved~~ respondent only if the ~~person~~  
6 ~~involved~~ respondent violates the settlement agreement or if ordered  
7 by a court of competent jurisdiction. ~~Informal resolution of~~  
8 ~~complaints is encouraged.~~ All settlement agreements shall be  
9 reported to the Board. The Board may require that a private  
10 settlement agreement be made a public settlement agreement. A  
11 respondent may withdraw from the settlement agreement if the Board  
12 determines a private settlement agreement shall be made public.

13           6. A public or private settlement agreement must receive final  
14 review and approval by the Board if it contains any of the following  
15 penalties specified in Section 328.44a of this title:

- 16           a.    suspension of a license or permit issued by the Board,
- 17           b.    revocation of a license or permit issued by the Board,
- 18           c.    issuance of a censure,
- 19           d.    placement on probation, ~~or~~
- 20           e.    restriction of the services that can be provided by a  
21                dentist or a dental hygienist, or
- 22           f.    an administrative penalty not to exceed One Thousand  
23                Five Hundred Dollars (\$1,500.00) per violation.

1 E. If a review panel does not make the determination specified  
2 in subsection D of this section, the panel shall dismiss the  
3 complaint and direct the principal administrative officer of the  
4 Board to give written notification of the dismissal to the person  
5 who filed the complaint and to the ~~person named in the complaint~~  
6 respondent. Although evidence against a respondent does not warrant  
7 formal proceedings, a review panel may issue a confidential letter  
8 of concern to a respondent when there are indications of possible  
9 misconduct by the respondent that could lead to serious consequences  
10 or formal action.

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

13 G. The Board of Dentistry, its employees, independent  
14 contractors, appointed committee members and other agents shall keep  
15 confidential all information obtained in the following  
16 circumstances:

17 1. During an investigation into allegations of violations of  
18 the Oklahoma Dental Act, including but not limited to:

19 a. any review or investigation made to determine whether  
20 to allow an applicant to take an examination, or

21 b. whether the Board shall grant a license, certificate,  
22 or permit;

23 2. In the course of conducting an investigation;

1       3. Reviewing investigative reports provided to the Board by a  
2 registrant; and

3       4. Receiving and reviewing examination and test scores.

4       H. Any information obtained and all contents of any  
5 investigation file shall be exempt from the provisions of the  
6 Oklahoma Open Records Act. Except for the approval of private  
7 settlement, a final order issued by the Board shall be subject to  
8 the Open Records Act.

9       I. Information obtained by the Board or any of its agents shall  
10 be considered sufficient evidence in a court of competent  
11 jurisdiction only in the following circumstances:

12       1. Matters directly related to actions of the Board; or

13       2. Matters resulting from the Board obtaining information.

14       Information obtained by the Board or its agents shall not be  
15 admissible as evidence in any other type of civil or criminal  
16 action.

17       SECTION 6.        AMENDATORY        59 O.S. 2001, Section 328.44a, as  
18 amended by Section 8, Chapter 172, O.S.L. 2003 (59 O.S. Supp. 2004,  
19 Section 328.44a), is amended to read as follows:

20       Section 328.44a A. The Board of Dentistry is authorized, after  
21 notice and opportunity for a hearing pursuant to Article II of the  
22 Administrative Procedures Act, to issue an order imposing one or  
23 more of the following penalties whenever the Board finds, by clear

1 and convincing evidence, that a dentist, dental hygienist, dental  
2 assistant, dental laboratory technician, or holder of a permit to  
3 operate a dental laboratory has committed any of the acts or  
4 occurrences set forth in Sections 328.29, 328.32, 328.33, 328.39 and  
5 328.39a of this title:

6 1. Refusal to issue a license or permit, or a renewal thereof,  
7 provided for in the State Dental Act;

8 2. Suspension of a license or permit issued by the Board for a  
9 ~~maximum~~ period of ~~one (1) year~~ time deemed appropriate by the Board;

10 3. Revocation of a license or permit issued by the Board;

11 4. Imposition of an administrative penalty not to exceed One  
12 Thousand Five Hundred Dollars (\$1,500.00) per violation;

13 5. Issuance of a censure;

14 6. Placement on probation for a period of time and under such  
15 terms and conditions as deemed appropriate by the Board, ~~provided~~  
16 ~~that the maximum period of probation shall be two (2) years, except~~  
17 ~~that, for an individual participating in a chemical dependency~~  
18 ~~program, the maximum period of probation shall be four (4) years; or~~

19 7. Restriction of the services that can be provided by a  
20 dentist or dental hygienist, under such terms and conditions as  
21 deemed appropriate by the Board; or

22 8. Assessment for the cost of the hearing process including  
23 attorneys fees.

1           B. A dentist, dental hygienist, dental assistant, dental  
2 laboratory technician, or holder of a permit to operate a dental  
3 laboratory, against whom a penalty is imposed by an order of the  
4 Board pursuant to the provisions of this section, shall have the  
5 right to seek a judicial review of such order pursuant to Article II  
6 of the Administrative Procedures Act.

7           SECTION 7.           NEW LAW           A new section of law to be codified  
8 in the Oklahoma Statutes as Section 328.44b of Title 59, unless  
9 there is created a duplication in numbering, reads as follows:

10          A. A holder of a license, a permit, or certificate granted by  
11 the Board shall have the right to surrender the license, permit, or  
12 certificate, in writing, notarized, to the Board if the holder is in  
13 good standing with the Board as determined, in its discretion, by  
14 the Board. The Board shall accept such surrender in writing after  
15 approval at a regular or special Board meeting with the statement  
16 that the holder is in good standing with the Board. Any holder who  
17 has surrendered a license, permit, or certificate issued by the  
18 Board and who shall apply for a license, permit, or certificate  
19 after surrender shall be subject to all statutes and rules of the  
20 Board applicable at the time of the new application.

21          B. A holder of a license, permit, or certificate shall not be  
22 considered to be in good standing if an investigation of a complaint  
23 is pending against the holder. The Board shall not accept a

1 surrender until a complaint is dismissed by the review panel, a  
2 settlement agreement is entered or the Board determines that an  
3 individual proceeding shall be initiated pursuant to Section 328.43a  
4 of Title 59 of the Oklahoma Statutes.

5 C. If a holder of a license, permit, or certificate wishes to  
6 surrender the license, permit, or certificate during the pendency of  
7 an initial proceeding, the Board may accept or reject the surrender,  
8 in its discretion. The acceptance must be in writing after approval  
9 by the Board at a regular or special Board meeting. Any acceptance  
10 shall contain the statement that the acceptance is pending  
11 disciplinary action. No person who surrenders a license, permit, or  
12 certificate to the Board during a pending disciplinary action shall  
13 be eligible for reinstatement for a period of five (5) years from  
14 the date the surrender is accepted by the Board.

15 D. The Board shall retain jurisdiction over the holder of any  
16 license, permit, or certificate for all disciplinary matters pending  
17 at the time surrender is sought by the holder.

18 E. All surrenders of licenses, permits, or certificates,  
19 whether the holder is or is not in good standing, shall be reported  
20 to the national practitioner data bank with the notation in good  
21 standing or pending disciplinary action.

22 SECTION 8. This act shall become effective November 1, 2005.

23 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND LABOR, dated 4-4-05 -  
24 DO PASS.