

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

HOUSE BILL 1337

By: Covey

AS INTRODUCED

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

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

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

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

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

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

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

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

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

8. "Dental assistant and/or dental nurse" means an individual working for a dentist, under the dentist's direct supervision, and performing duties in the dental office or a treatment facility, including the limited treatment of patients in accordance with the provisions of the State Dental Act. A dental assistant or dental nurse may assist a dentist with the patient; provided, this shall be done only under the direct supervision and control of the dentist and only in accordance with the educational requirements and rules promulgated by the Board;

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

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

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

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

13. "Direct supervision" means the supervisory dentist is in the dental office or treatment facility and, during the appointment, personally examines the patient, diagnoses any conditions to be treated, authorizes the procedures to be performed by a dental hygienist or dental assistant, remains in the dental office or treatment facility while the procedures are being performed and, before dismissal of the patient, evaluates the results of the dental treatment;

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

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

16. "Investigations" means an investigation proceeding, authorized under Sections 328.15 and 328.43a of this title, to investigate alleged violations of the State Dental Act or the rules of the Board;

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

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

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

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

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

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

- a. a federal, state or local public health facility,
- b. a private health facility,
- c. a group home or residential care facility serving the elderly, handicapped or juveniles,
- d. a hospital,
- e. a nursing home,
- f. a penal institution operated by or under contract with the federal or state government,
- g. a public or private school,
- h. a patient of record's private residence,
- i. an accredited dental college,

- j. an accredited dental hygiene program, or
- k. such other places as are authorized by the rules of the Board.

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

Section 328.15 A. 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.

B. The Board is authorized and empowered to:

1. Examine and test the qualifications of applicants for a license 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 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 of dental assistants and, when appropriate, issue permits authorizing dental assistants 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. The investigator may be a certified peace officer who shall be commissioned with all the powers and authority of peace officers of this state for the purpose of enforcement of the State Dental Act and 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 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. Receive or accept the surrender of a license, permit, or certificate granted to any person by the Board as provided in Section 328.44a of this title; and

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

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

Section 328.27 A. 1. The Board of Dentistry may, without a clinical examination, upon presentation of satisfactory credentials, including completion of the dental hygiene National Boards and both Part I and Part II of the National Board examination for dentists, and under such rules as the Board may promulgate, issue a faculty permit to an applicant who:

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

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

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

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

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

B. The holder of a faculty permit shall be entitled to perform services and procedures in the same manner as a person holding a license to practice dentistry or dental hygiene in this state, but all services and procedures performed by the faculty permit holder shall only be without compensation other than that received in salary from a faculty position, ~~and~~ or through faculty practice as authorized by the Board. Such services and procedures shall be performed only within the facilities of an accredited dental college or accredited dental hygiene program or in a seminar or postgraduate course and as an adjunct to teaching functions. A holder of a faculty permit shall ~~not~~ only engage in faculty ~~or private~~ practice of dentistry or dental hygiene within the facilities designated by the accredited dental college and including teaching hospitals approved by the Board.

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

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

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

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



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

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

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

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

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

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

4. Functioning outside the supervision of a dentist;

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

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

SECTION 5. AMENDATORY 59 O.S. 2001, Section 328.43a, as amended by Section 7, Chapter 172, O.S.L. 2003 (59 O.S. Supp. 2004, 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~~ the respondent has sought to practice or has illegally practiced dentistry or dental hygiene, has violated the provisions relating to dental assistants, 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 members for investigation and review. The review panel, in its discretion, may notify the respondent of the complaint at any time prior to its dismissal of the complaint or making a recommendation to the Board. If the Board initiates an individual proceeding under paragraph 1 of subsection D of this section, the respondent of the individual proceeding shall be provided a copy of the recommendation and any exculpatory information as required by the Administrative Procedures Act.

B. The Board members who review a complaint shall constitute a review panel. A review panel ~~may~~ shall confer and shall 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~~ respondent 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~~ respondent.

2. The Board shall determine whether to accept or reject the recommendation that an individual proceeding be initiated.

3. If the Board determines that the recommendation should be accepted, a formal Statement of Complaint shall be filed within ten days of the action of the Board.

4. The individual proceeding shall be conducted according to the rules of the Board and the requirements of the Administrative Procedures Act. 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.~~ 5. 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~~ decide to enter into a public or private settlement agreement with such person the respondent. A public or private 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~~ A private settlement agreement is entered into, it shall remain part of the investigation file, and may be disclosed or used against the ~~person involved~~ respondent only if the ~~person involved~~ respondent violates the settlement agreement or if ordered by a court of competent jurisdiction. ~~Informal resolution of complaints is encouraged.~~ All settlement agreements shall be reported to the Board. The Board may require that a private settlement agreement be made a public settlement agreement. A respondent may withdraw from the settlement agreement if the Board determines a private settlement agreement shall be made public.

6. A public or private 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 or permit issued by the Board,
- b. revocation of a license 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, or
- f. an administrative penalty not to exceed One Thousand Five Hundred Dollars (\$1,500.00) per violation.

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~~ respondent. Although evidence against a respondent does not warrant formal proceedings, a review panel may issue a confidential letter of concern to a respondent when there are indications of possible misconduct by the respondent that could lead to serious consequences or formal action.

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

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

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

- a. any review or investigation made to determine whether to allow an applicant to take an examination, or
- b. whether the Board shall grant a license, certificate, or permit;

2. In the course of conducting an investigation;

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

4. Receiving and reviewing examination and test scores.

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

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

- 1. Matters directly related to actions of the Board; or
- 2. Matters resulting from the Board obtaining information.

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

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

Section 328.44a A. The Board of Dentistry is authorized, after notice and opportunity for a hearing pursuant to Article II of the Administrative Procedures Act, to issue an order imposing one or more of the following penalties whenever the Board finds, by clear and convincing evidence, that a dentist, dental hygienist, dental assistant, dental laboratory technician, or holder of a permit to operate a dental laboratory has committed any of the acts or occurrences set forth in Sections 328.29, 328.32, 328.33, 328.39 and 328.39a of this title:

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

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

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

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

5. Issuance of a censure;

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

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

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

B. A dentist, dental hygienist, dental assistant, dental laboratory technician, or holder of a permit to operate a dental laboratory, against whom a penalty is imposed by an order of the Board pursuant to the provisions of this section, shall have the

right to seek a judicial review of such order pursuant to Article II of the Administrative Procedures Act.

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

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

B. A holder of a license, permit, or certificate shall not be considered to be in good standing if an investigation of a complaint is pending against the holder. The Board shall not accept a surrender until a complaint is dismissed by the review panel, a settlement agreement is entered or the Board determines that an individual proceeding shall be initiated pursuant to Section 328.43a of Title 59 of the Oklahoma Statutes.

C. If a holder of a license, permit, or certificate wishes to surrender the license, permit, or certificate during the pendency of an initial proceeding, the Board may accept or reject the surrender, in its discretion. The acceptance must be in writing after approval by the Board at a regular or special Board meeting. Any acceptance shall contain the statement that the acceptance is pending disciplinary action. No person who surrenders a license, permit, or certificate to the Board during a pending disciplinary action shall

be eligible for reinstatement for a period of five (5) years from the date the surrender is accepted by the Board.

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

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

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 328.74 of Title 59, unless there is created a duplication in numbering, reads as follows:

Investigators employed by the Board of Dentistry shall be recognized under the Oklahoma Law Enforcement Retirement System pursuant to Section 2-305.2 of Title 47 of the Oklahoma Statutes. Upon the effective date of this act, the Oklahoma Public Employees Retirement System shall immediately transfer all service credit earned by investigators employed by the Board of Dentistry to the Oklahoma Law Enforcement Retirement System.

SECTION 9. This act shall become effective November 1, 2005.

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