

1 ENGROSSED HOUSE AMENDMENT

TO

2 ENGROSSED SENATE BILL NO. 1690

By: Sykes of the Senate

3 and

4 Derby of the House

5

6 An Act related to the Board of Dentistry; amending 56
7 O.S. 2011, Sections 328.7, 328.15, 328.23 and
8 328.43a, which relate to the State Dental Act;
9 clarifying membership to the Board of Dentistry;
10 modifying powers of the Board of Dentistry; directing
11 the Board to employ an Executive Director; providing
12 for powers of Executive Director; providing for
13 certain temporary licenses; providing for certain
14 criminal background checks; modifying requirements
15 for certain information; providing for codification;
16 and providing an effective date.

12

13 AUTHOR: Add the following House Coauthor: Cox

14 AMENDMENT NO. 1. Strike the title, enacting clause and entire bill
15 and insert

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16 "An Act relating to the Board of Dentistry; amending
17 59 O.S. 2011, Sections 328.7, 328.15, 328.23,
18 328.26, 328.32, 328.39a, 328.41, 328.43a, 328.49 and
19 328.53, which relate to the State Dental Act;
20 clarifying membership to the Board of Dentistry;
21 modifying powers of the Board of Dentistry;
22 directing the Board to employ an Executive Director;
23 providing for powers of Executive Director;
24 providing for certain temporary licenses;
authorizing Board to issue resident permits;
providing for certain criminal background checks;
adding certain act by dentists for which penalty may
be imposed; adding certain occurrence by dental
laboratory permit holders for which penalty may be
imposed; modifying provisions regarding renewal
certificates issued by the Board; modifying
requirements for certain information; requiring

1 Board to refer certain alleged violations to the
2 district attorney; permitting certain attorneys to
3 assist district attorney or Attorney General in
4 prosecuting certain violations; requiring dentists
5 to maintain malpractice liability insurance;
6 providing for exception; requiring certain persons
7 to hold dental license; requiring notification and
8 report to Board upon certain discovery; requiring
9 certain acts by dentists; providing for
10 codification; and providing an effective date.

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

12 SECTION 1. AMENDATORY 59 O.S. 2011, Section 328.7, is
13 amended to read as follows:

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

19 B. 1. The Board shall consist of eight dentist members, one
20 dental hygienist member and two members who shall represent the
21 public. One dentist member shall be elected by the dentists
22 residing in each of the eight geographical districts established by
23 subsection D of this section. The residence of the dentist members
24 shall be determined by the primary location listed on the dentists'
licenses. 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

1 representative members shall be appointed by the Governor, subject
2 to confirmation by the Senate. No public representative member may
3 be a dentist, dental hygienist, dental assistant, dental laboratory
4 technician, or holder of a permit to operate a dental laboratory, or
5 be related within the third degree of consanguinity or affinity to
6 any such person.

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

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

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

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

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

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

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

12 D. For the purpose of nominating and electing dentist members
13 of the Board, this state shall be divided into eight geographical
14 districts, which shall consist of the following counties within the
15 following districts:

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

19 District No. 2: Tulsa and Creek.

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

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

24 District No. 5: Oklahoma.

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

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

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

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

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

22 3. Special recall elections shall be by secret ballot. The
23 ballots shall be mailed by the Board to those entitled to vote at
24 least thirty (30) days prior to the date of counting the ballots and

1 shall be returned by mail to the office of the Board, then opened
2 and counted at a meeting of the Board. In other respects, special
3 recall elections shall be conducted as provided by the rules of the
4 Board. If a majority of the votes cast in the special recall
5 election are in favor of recalling the Board member, the member
6 shall be removed from the Board effective on the date the results of
7 the special recall election are certified by the Board.

8 F. 1. A vacancy among the dentist members of the Board shall
9 be filled by a special election in the district of the vacancy for
10 the unexpired term within sixty (60) days after the vacancy occurs.

11 2. A vacancy of the dental hygienist member on the Board shall
12 be filled by a special election in this state for the unexpired term
13 within sixty (60) days after the vacancy occurs.

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

21 SECTION 2. AMENDATORY 59 O.S. 2011, Section 328.15, is
22 amended to read as follows:

23 Section 328.15 A. Pursuant to and in compliance with Article I
24 of the Administrative Procedures Act, the Board of Dentistry shall

1 have the power to formulate, adopt, and promulgate rules as may be
2 necessary to regulate the practice of dentistry in this state and to
3 implement and enforce the provisions of the State Dental Act.

4 B. The Board is authorized and empowered to:

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

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

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

14 4. Account for all receipts and expenditures of the monies of
15 the Board, including annually preparing and publishing a statement
16 of receipts and expenditures of the Board for each fiscal year;

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

20 6. ~~Maintain an office staff and employ~~ Employ an Executive
21 Director, legal counsel and other advisors to the Board, including
22 advisory committees;

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

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

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

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

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

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

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

21 ~~14. Hire one or more investigators to conduct investigations of~~
22 ~~alleged violations of the State Dental Act or the rules of the~~
23 ~~Board. The investigator may be a certified peace officer who shall~~

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1 ~~be commissioned with all the powers and authority of peace officers~~
2 ~~of this state;~~

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

5 ~~16.~~ 15. Promote the dental health of the people of this state;

6 ~~17.~~ 16. Inform, educate, and advise all persons who hold a
7 license or permit issued by the Board, or who are otherwise
8 regulated by the Board, regarding the State Dental Act and the rules
9 of the Board;

10 ~~18.~~ 17. Affiliate with the American Association of Dental
11 Examiners as an active member, pay regular dues, and send members of
12 the Board as delegates to its meetings;

13 ~~19.~~ 18. Enter into contracts;

14 ~~20.~~ 19. Acquire by purchase, lease, gift, solicitation of gift
15 or by any other manner, hold, encumber, and dispose of personal
16 property as is needed, maintain, use and operate or contract for the
17 maintenance, use and operation of or lease of any and all property
18 of any kind, real, personal or mixed or any interest therein unless
19 otherwise provided by the State Dental Act; provided, all contracts
20 for real property shall be subject to the provisions of Section 63
21 of Title 74 of the Oklahoma Statutes-;

22 ~~21.~~ 20. Receive or accept the surrender of a license, permit,
23 or certificate granted to any person by the Board as provided in
24 Section 328.44a of this title; and

1 ~~22.~~ 21. Take all other actions necessary to implement and
2 enforce the State Dental Act.

3 SECTION 3. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 328.15B of Title 59, unless
5 there is created a duplication in numbering, reads as follows:

6 The Board of Dentistry shall employ an Executive Director. The
7 Executive Director shall be authorized to:

8 1. Employ and maintain an office staff;

9 2. Employ one or more investigators who may be certified peace
10 officers who shall be commissioned with all the powers and authority
11 of peace officers of this state;

12 3. Enter into contracts on behalf of the Board; and

13 4. Perform other duties on behalf of the Board as needed or
14 directed.

15 SECTION 4. AMENDATORY 59 O.S. 2011, Section 328.23, is
16 amended to read as follows:

17 Section 328.23 A. 1. The Board of Dentistry may issue a
18 license to practice dentistry, without examination, to an out-of-
19 state dentist who has been engaged in the practice of dentistry in
20 another state for at least five (5) years, upon presentation to the
21 Board of a certificate from the dental licensing agency of that
22 state, certifying the applicant's length of practice and that the
23 applicant is in good standing with the agency, and upon the payment
24 of a fee established by the rules of the Board; provided, however,

1 the state from which the applicant presents a license to practice
2 dentistry shall have required the applicant to meet professional
3 education, competency, and moral character standards substantially
4 equivalent to the standards required by the Board for issuance of a
5 license by examination to practice dentistry in this state.

6 2. The Board shall not issue a license pursuant to this
7 subsection to any person who would not otherwise be eligible to
8 receive a license to practice dentistry.

9 3. The Board may require:

10 a. an applicant for a license to practice dentistry
11 pursuant to this subsection to have completed the same
12 continuing education requirements as required of
13 dentists in this state, and

14 b. that the state from which the applicant presents
15 credentials afford substantially equivalent licensure
16 by credentialing to dentists of this state.

17 B. Any dentist who is in good standing with the Board shall,
18 upon application to the Board and payment of a fee established by
19 the rules of the Board, receive a certificate which shall attest
20 that the dentist is in good standing with the Board.

21 C. The President of the Board, upon verification that a person
22 meets the requirements provided for in this section and any other
23 requirements provided for in the State Dental Act, may issue a
24 temporary license to practice dentistry for thirty (30) days. A

1 temporary license may be extended but shall not exceed ninety (90)
2 days.

3 SECTION 5. AMENDATORY 59 O.S. 2011, Section 328.26, is
4 amended to read as follows:

5 Section 328.26 A. The Board of Dentistry may, without
6 examination, issue a dental intern or resident permit to a graduate
7 of an approved dental school or college, who is otherwise qualified,
8 upon request of the governing body of any public or private
9 institution for the graduate to serve as a dental intern or resident
10 in the institution, with limited duties as defined in the permit.

11 B. A dental intern or resident permit shall not be issued to
12 any person whose license to practice dentistry in this state or in
13 another state has been suspended or revoked, or to whom a license to
14 practice dentistry has been refused.

15 C. A dental intern or resident permit shall not authorize the
16 holder to open an office for the private practice of dentistry, or
17 to receive compensation for the practice of dentistry, except a
18 salary paid by the federal government or this state, or their
19 subdivisions, or the public or private institution where the holder
20 of the dental intern or resident permit will be employed.

21 D. Dental intern or resident permits may be renewed annually at
22 the discretion of the Board.

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1 SECTION 6. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 328.28a of Title 59, unless
3 there is created a duplication in numbering, reads as follows:

4 A. Every applicant for any type of license or permit issued by
5 the Board of Dentistry shall be subject to a criminal background
6 check.

7 B. Each applicant shall submit two completed fingerprint cards
8 as required by the Board. The fingerprint cards shall be required
9 to be in a clear, readable format acceptable to the Oklahoma State
10 Bureau of Investigation.

11 C. Each applicant shall include a money order or cashier's
12 check made payable to the Oklahoma State Bureau of Investigation for
13 the purposes of a local and national criminal background check.

14 D. The Board shall forward the fingerprint cards, along with
15 the applicable fee for a national fingerprint criminal history
16 records search, to the Bureau.

17 E. The Bureau shall retain one set of fingerprints in the
18 Automated Fingerprint Identification System and submit the other set
19 to the Federal Bureau of Investigation for a national criminal
20 history records search.

21 SECTION 7. AMENDATORY 59 O.S. 2011, Section 328.32, is
22 amended to read as follows:

23 Section 328.32 A. The following acts or occurrences by a
24 dentist shall constitute grounds for which the penalties specified

1 in Section 328.44a of this title may be imposed by order of the
2 Board of Dentistry:

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

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

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

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

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

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

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

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

23 9. Failing to complete continuing education requirements;

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

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

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

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

12 14. Being shown to be mentally unsound;

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

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

17 17. Committing gross negligence in the practice of dentistry;

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

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

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

1 21. Using or attempting to use the services of a dental
2 laboratory or dental laboratory technician without issuing a
3 laboratory prescription, except as provided in subsection C of
4 Section 328.36 of this title;

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

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

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

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

20 26. Willfully disclosing confidential information;

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

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

3 29. Using or administering nitrous oxide gas in a dental office
4 in an inappropriate or unauthorized manner;

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

8 ~~30.~~ 31. Practicing dentistry without displaying, at the
9 dentist's primary place of practice, the license issued to the
10 dentist by the Board to practice dentistry and the current renewal
11 certificate;

12 ~~31.~~ 32. Being dishonest in a material way with a patient;

13 ~~32.~~ 33. Failing to retain all patient records for at least
14 three (3) years, except that the failure to retain records shall not
15 be a violation of the State Dental Act if the dentist shows that the
16 records were lost, destroyed, or removed by another, without the
17 consent of the dentist;

18 ~~33.~~ 34. Failing to retain the dentist's copy of any laboratory
19 prescription for at least three (3) years, except that the failure
20 to retain records shall not be a violation of the State Dental Act
21 if the dentist shows that the records were lost, destroyed, or
22 removed by another, without the consent of the dentist;

23 ~~34.~~ 35. Allowing any corporation, organization, group, person,
24 or other legal entity, except another dentist or a professional

1 entity that is in compliance with the registration requirements of
2 subsection B of Section 328.31 of this title, to direct, control, or
3 interfere with the dentist's clinical judgment. Clinical judgment
4 shall include, but not be limited to, such matters as selection of a
5 course of treatment, control of patient records, policies and
6 decisions relating to pricing, credit, refunds, warranties and
7 advertising, and decisions relating to office personnel and hours of
8 practice. Nothing in this paragraph shall be construed to:

- 9 a. limit a patient's right of informed consent, or
- 10 b. to prohibit insurers, preferred provider organizations
11 and managed care plans from operating pursuant to the
12 applicable provisions of the Oklahoma Insurance Code
13 and the Public Health Code;

14 ~~35.~~ 36. Violating the state dental act of another state
15 resulting in a plea of guilty or nolo contendere, conviction or
16 suspension or revocation of the license of the dentist under the
17 laws of that state;

18 ~~36.~~ 37. Violating or attempting to violate the provisions of
19 the State Dental Act or the rules of the Board, as a principal,
20 accessory or accomplice;

21 ~~37.~~ 38. Failing to comply with the terms and conditions of an
22 order imposing suspension of a license or placement on probation
23 issued pursuant to Section 328.44a of this title; or

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1 ~~38.~~ 39. Failing to cooperate during an investigation or
2 providing false information, verbally or in writing, to the Board,
3 the Board's investigator or an agent of the Board.

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

12 SECTION 8. AMENDATORY 59 O.S. 2011, Section 328.39a, is
13 amended to read as follows:

14 Section 328.39a The following acts or occurrences by a holder
15 of a permit to operate a dental laboratory shall constitute grounds
16 for which the penalties specified in Section 328.44a of this title
17 may be imposed by order of the Board of Dentistry:

18 1. Publishing a false, fraudulent or misleading advertisement
19 or statement;

20 2. Providing dental laboratory technology at a location for
21 which no permit to operate a dental laboratory has been issued by
22 the Board, except as provided in subsection C of Section 328.36 of
23 this title;

1 3. Providing dental laboratory technology without a laboratory
2 prescription of a dentist, except as provided in subsection C of
3 Section 328.36 of this title;

4 4. Failing to return a prescribed work product to a prescribing
5 dentist or the dental office of the dentist;

6 5. Refusing to allow a member of the Board or an agent or
7 employee of the Board to inspect laboratory prescriptions or dental
8 restorations, appliances or other devices that are being
9 constructed, reproduced or repaired;

10 6. Failing to retain an original laboratory prescription
11 received from a prescribing dentist for a period of three (3) years
12 from the date of the laboratory prescription, except that the
13 failure to retain a document shall not be a violation of the State
14 Dental Act if the owner of the dental laboratory shows that the
15 document was lost, destroyed, or removed by another, without the
16 consent of the owner;

17 7. Possessing dental equipment not necessary for performing
18 dental laboratory technology;

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

21 9. Operating a dental laboratory without displaying, at the
22 primary place of operation, a permit issued by the Board for the
23 operation of the dental laboratory and the current renewal
24 certificate;

1 10. Being dishonest in a material way with a dentist; ~~or~~

2 11. Violating or attempting to violate the provisions of the
3 State Dental Act or the rules of the Board, as a principal,
4 accessory or accomplice; or

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

8 SECTION 9. AMENDATORY 59 O.S. 2011, Section 328.41, is
9 amended to read as follows:

10 Section 328.41 A. On or before the first day of January of
11 each year, every dentist ~~and,~~ dental hygienist and other licensee or
12 permit holder previously licensed or permitted by the Board to
13 ~~practice in this state shall transmit to the secretary-treasurer of~~
14 ~~the Board of Dentistry, upon a form prescribed by the Board, the~~
15 ~~signature of the dentist or dental hygienist, current mailing~~
16 ~~address, principal office address, the number of the license of the~~
17 ~~dentist or dental hygienist, a statement whether he or she has been~~
18 ~~engaged during the preceding year in the active and continuous~~
19 ~~practice of dentistry or dental hygiene whether within or without~~
20 ~~this state, and such other~~ submit a renewal application with
21 information as may be required by the Board, together with an annual
22 renewal fee established by the rules of the Board. Upon receipt of
23 the annual renewal fee, the Board shall issue a renewal certificate
24 authorizing the dentist or dental hygienist to continue the practice

1 of dentistry or dental hygiene, respectively, in this state for a
2 period of one (1) year. Every license or permit issued by the Board
3 shall expire on December 31 of each year.

4 B. Upon failure of a dentist or dental hygienist to pay the
5 annual renewal fee within two (2) months after January 1, the Board
6 shall notify the dentist or dental hygienist in writing by certified
7 mail to the last-known mailing address of the dentist or dental
8 hygienist, as reflected in the records of the Board.

9 C. ~~A license granted under authority of this or any prior~~
10 ~~dental act shall automatically be canceled if the holder thereof~~
11 ~~fails to secure a renewal certificate within three (3) months from~~
12 ~~the 31st day of December of each year.~~ Any dentist or dental
13 hygienist whose license is automatically canceled by reason of
14 failure, neglect or refusal to secure the renewal certificate may be
15 reinstated by the Board at any time within ~~six (6) months~~ one (1)
16 year from the date of the ~~automatic cancellation~~ expiration of the
17 license, upon payment of the annual renewal fee and a penalty fee
18 established by the rules of the Board. If the dentist or dental
19 hygienist does not apply for renewal of the license and pay the
20 required fees within ~~six (6) months~~ one (1) year after the license
21 has ~~been automatically cancelled~~ expired, then the dentist or dental
22 hygienist shall be required to file an application for and take the
23 examination provided for in the State Dental Act before again
24 commencing practice.

1 D. The Board may waive the annual renewal fee for any dentist
2 or dental hygienist and issue a renewal certificate without the
3 payment of any renewal fee, if the dentist or dental hygienist has
4 held an Oklahoma license at least twenty-five (25) years but because
5 of age or physical disability has retired from the practice of
6 dentistry or dental hygiene. The waiver of fees herein provided may
7 be continued so long as the retirement continues because of age or
8 physical disability.

9 E. Any dentist or dental hygienist who has had a license to
10 practice dentistry or dental hygiene in good standing for thirty-
11 five (35) years and has reached the age of ~~sixty-five (65)~~ seventy
12 (70) years shall upon application to the Board be issued renewal
13 certificates without the payment of annual renewal fees for the
14 remaining years of their active practice.

15 F. The Board, by rule, shall provide for the remittance of fees
16 otherwise required by the State Dental Act while a dentist or dental
17 hygienist is on active duty with any of the Armed Forces of the
18 United States.

19 G. In case of a lost or destroyed license or renewal
20 certificate and upon satisfactory proof of the loss or destruction
21 thereof, the Board may issue a duplicate, charging therefor a fee
22 established by the rules of the Board.

23 SECTION 10. AMENDATORY 59 O.S. 2011, Section 328.43a, is
24 amended to read as follows:

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

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

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

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

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

7 D. 1. If a review panel determines, based on the evidence
8 available to the panel, that it is more likely than not that a
9 violation of the provisions of the State Dental Act or the rules of
10 the Board has occurred and that the respondent has more likely than
11 not committed the violation, the review panel may recommend in
12 writing to the Board that the Board initiate an individual
13 proceeding, pursuant to Article II of the Administrative Procedures
14 Act, against the respondent.

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

17 3. If the Board determines that the recommendation should be
18 accepted, a formal Statement of Complaint shall be filed within ten
19 (10) days of the action of the Board.

20 4. The individual proceeding shall be conducted according to
21 the rules of the Board and the requirements of the Administrative
22 Procedures Act. The members of the review panel shall be excluded
23 from participating as Board members in an individual proceeding
24 initiated by the Board based upon their recommendation.

1 5. The review panel may decide to enter into a public or
2 private settlement agreement with the respondent. A public or
3 private settlement agreement:

- 4 a. shall specify the provisions of the State Dental Act
5 or the rules of the Board which such person is alleged
6 to have violated,
- 7 b. shall provide that such person agrees not to violate
8 the provisions of the State Dental Act or the rules of
9 the Board in the future,
- 10 c. may contain any of the penalties specified in Section
11 328.44a of this title, and
- 12 d. may contain any other provisions agreeable to the
13 review panel and the person involved.

14 A private settlement agreement shall remain part of the
15 investigation file, and may be disclosed or used against the
16 respondent only if the respondent violates the settlement agreement
17 or if ordered by a court of competent jurisdiction. All settlement
18 agreements shall be reported to the Board. The Board may require
19 that a private settlement agreement be made a public settlement
20 agreement. A respondent may withdraw from the settlement agreement
21 if the Board determines a private settlement agreement shall be made
22 public.

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

- 4 a. suspension of a license or permit issued by the Board,
- 5 b. revocation of a license or permit issued by the Board,
- 6 c. issuance of a censure,
- 7 d. placement on probation,
- 8 e. restriction of the services that can be provided by a
9 dentist or a dental hygienist, or
- 10 f. an administrative penalty not to exceed One Thousand
11 Five Hundred Dollars (\$1,500.00) per violation.

12 E. If a review panel does not make the determination specified
13 in subsection D of this section, the panel shall dismiss the
14 complaint and direct the principal administrative officer of the
15 Board to give written notification of the dismissal to the person
16 who filed the complaint and to the respondent. Although evidence
17 against a respondent does not warrant formal proceedings, a review
18 panel may issue a confidential letter of concern to a respondent
19 when there are indications of possible misconduct by the respondent
20 that could lead to serious consequences or formal action.

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

23 G. The Board of Dentistry, its employees, independent
24 contractors, appointed committee members and other agents shall keep

1 confidential all information obtained in the following
2 circumstances:

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

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

7 b. whether the Board shall grant a license, certificate,
8 or permit;

9 2. In the course of conducting an investigation;

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

12 4. Receiving and reviewing examination and test scores.

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

18 I. Information obtained by the Board or any of its agents shall
19 be considered competent evidence, subject to the rules of evidence,
20 in a court of competent jurisdiction ~~only in the following~~
21 ~~circumstances~~ for:

22 1. Matters directly related to actions of the Board; or
23
24

1 2. ~~Matters resulting from the Board obtaining information where~~
2 criminal charges are filed in a municipal, district or federal court
3 action.

4 All other information and investigation records where complaints
5 have not been found to be actionable in either an administrative,
6 civil or criminal matter shall not be open to the public.

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

10 SECTION 11. AMENDATORY 59 O.S. 2011, Section 328.49, is
11 amended to read as follows:

12 Section 328.49 A. The Board of Dentistry shall be responsible
13 for the enforcement of the provisions of the State Dental Act
14 against all persons who are in violation thereof, including, but not
15 limited to, individuals who practice or attempt to practice
16 dentistry or dental hygiene without proper authorization from the
17 Board.

18 B. 1. It shall be unlawful for any person, except a licensed
19 dentist, to:

- 20 a. practice or attempt to practice dentistry,
21 b. hold oneself out to the public as a dentist or as a
22 person who practices dentistry, or
23 c. employ or use the words "Doctor" or "Dentist", or the
24 letters "D.D.S." or "D.M.D.", or any modification or

1 derivative thereof, when such use is intended to give
2 the impression that the person is a dentist.

3 2. It shall be unlawful for any person, except a registered
4 dental hygienist, to:

- 5 a. practice or attempt to practice dental hygiene,
- 6 b. hold oneself out to the public as a dental hygienist
7 or as a person who practices dental hygiene, or
- 8 c. employ or use the words "Registered Dental Hygienist",
9 or the letters "R.D.H.", or any modification or
10 derivative thereof, when such use is intended to give
11 the impression that the person is a dental hygienist.

12 3. It shall be unlawful for any person to:

- 13 a. give false or fraudulent evidence or information to
14 the Board in an attempt to obtain any license or
15 permit from the Board, or
- 16 b. aid or abet another person in violation of the State
17 Dental Act.

18 4. Each day a person is in violation of any provision of this
19 subsection shall constitute a separate criminal offense and, in
20 addition, the district attorney may file a separate charge of
21 medical battery for each person who is injured as a result of
22 treatment performed in violation of this subsection.

23 C. 1. If a person violates any of the provisions of subsection
24 B of this section, the Board shall ~~request~~ refer the alleged

1 violation to the district attorney of the county in which the
2 violation is alleged to have occurred to bring a criminal action in
3 that county against the person. ~~A duplicate copy of At the Board's~~
4 request shall be sent to the of the Board, district attorney or
5 Attorney General of this state, attorneys employed or contracted by
6 the Board may assist the district attorney or Attorney General in
7 prosecuting charges under the State Dental Act or any violation of
8 law relating to or arising from an investigation conducted by the
9 Board of Dentistry upon approval of the Board or the Executive
10 Director.

11 2. Any person who violates any of the provisions of paragraph 1
12 or 3 of subsection B of this section, upon conviction, shall be
13 guilty of a felony punishable by a fine in an amount not less than
14 One Thousand Dollars (\$1,000.00) nor more than Ten Thousand Dollars
15 (\$10,000.00), or by imprisonment in the county jail for a term of
16 not more than one (1) year or imprisonment in the custody of the
17 Department of Corrections for a term of not more than four (4)
18 years, or by both such fine and imprisonment.

19 Any person who violates any of the provisions of paragraph 2 of
20 subsection B of this section, upon conviction, shall be guilty of a
21 misdemeanor punishable by a fine in an amount not less than Five
22 Hundred Dollars (\$500.00) nor more than Two Thousand Five Hundred
23 Dollars (\$2,500.00), or by imprisonment in the county jail for a
24 term of not more than ninety (90) days, or by both such fine and

1 imprisonment. Any second or subsequent violation of paragraph 2 of
2 subsection B of this section, upon conviction, shall be a felony
3 punishable by a fine in an amount not less than One Thousand Five
4 Hundred Dollars (\$1,500.00) nor more than Five Thousand Dollars
5 (\$5,000.00), or by imprisonment in the county jail for a term of not
6 more than one (1) year or imprisonment in the custody of the
7 Department of Corrections for a term of not more than two (2) years,
8 or by both such fine and imprisonment.

9 D. The Board may initiate a civil action, pursuant to Chapter
10 24 of Title 12 of the Oklahoma Statutes, seeking a temporary
11 restraining order or injunction, without bond, commanding a person
12 to refrain from engaging in conduct which constitutes a violation of
13 any of the provisions of subsection B of this section. In a civil
14 action filed pursuant to this subsection, the prevailing party shall
15 be entitled to recover costs and reasonable attorney fees.

16 E. In addition to any other penalties provided herein, any
17 person found guilty of contempt of court by reason of the violation
18 of any injunction prohibiting the unlicensed practice of dentistry
19 now in effect or hereafter entered pursuant to any provision of the
20 State Dental Act or any preceding state dental act, shall be
21 punished by imprisonment in the county jail for a term of not less
22 than thirty (30) days nor more than one (1) year, and by a fine of
23 not less than Five Hundred Dollars (\$500.00) nor more than One
24 Thousand Dollars (\$1,000.00). The court may also require the

1 defendant to furnish a good and sufficient bond in a penal sum to be
2 set by the court, not less than One Thousand Dollars (\$1,000.00),
3 which shall be conditioned upon future compliance in all particulars
4 with the injunction entered, and in the event of failure of the
5 defendant to furnish such bond when so ordered, the defendant shall
6 be confined in the county jail pending compliance therewith. Such
7 bond shall be mandatory as to any person hereafter found guilty of a
8 second contempt of court for violation of any injunction entered
9 pursuant to the State Dental Act, or any preceding state dental act.

10 SECTION 12. AMENDATORY 59 O.S. 2011, Section 328.53, is
11 amended to read as follows:

12 Section 328.53 A. All dentists in active practice licensed by
13 the Board of Dentistry shall maintain a policy for professional
14 malpractice liability insurance; provided, however, that such
15 requirement shall not apply to dentists:

16 1. Covered by a group or hospital malpractice insurance policy;

17 2. Practicing in a state facility subject to The Governmental
18 Tort Claims Act, Section 151 et seq. of Title 51 of the Oklahoma
19 Statutes;

20 3. Practicing in a federal facility subject to the Federal Tort
21 Claims Act; ~~or~~

22 4. Providing care as a volunteer under a special volunteer
23 license pursuant to Section 328.23a of ~~Title 59 of the Oklahoma~~
24 ~~Statutes~~ this title; or

1 5. Practicing in another state who will not practice within the
2 State of Oklahoma during the license renewal year.

3 B. The Board of Dentistry may promulgate rules as necessary to
4 carry out the provisions of this section, including, but not limited
5 to, minimum requirements for professional malpractice liability
6 insurance policies and penalties for noncompliance.

7 SECTION 13. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 328.54 of Title 59, unless there
9 is created a duplication in numbering, reads as follows:

10 Any person conducting a diagnosis for the purpose of prescribing
11 medication or treatment or any other action determined to be a
12 dental practice as defined by the State Dental Act, via the Internet
13 or other telecommunications device on any patient that is physically
14 located in this state shall hold a valid Oklahoma state dental
15 license.

16 SECTION 14. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 328.55 of Title 59, unless there
18 is created a duplication in numbering, reads as follows:

19 All licensees engaged in the practice of dentistry in this state
20 shall notify the Board within twenty-four (24) hours of the
21 discovery of a death of a patient or an emergency hospital visit
22 causally related to the practice of dentistry by the licensee. A
23 licensee shall submit a complete report to the Board of any fatality
24 or serious injury occurring during the practice of dentistry or the

1 discovery of the death of a patient whose death is causally related
2 to the practice of dentistry by the licensee within thirty (30) days
3 of such occurrence.

4 SECTION 15. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 328.56 of Title 59, unless there
6 is created a duplication in numbering, reads as follows:

7 Every dentist shall have a duty to guard against the illegal
8 diversion and unauthorized or forged prescribing of controlled
9 dangerous substances while practicing dentistry and shall:

10 1. Notify the Board within twenty-four (24) hours of discovery
11 that an employee or other person, known or unknown, has forged or
12 authorized without the dentist's permission, a prescription via a
13 telecommunications device, electronic prescribing device, written
14 prescription, or otherwise communicated or transferred information
15 with the intent of allowing a person to obtain a controlled
16 dangerous substance in the dentist's name or by any identifiable
17 license number of the dentist;

18 2. Maintain all written prescription pads in a safe place while
19 practicing dentistry and shall ensure such prescription pads are not
20 directly accessible to patients;

21 3. Ensure that all prescriptions issued shall clearly identify
22 the name and current address of the issuing dentist; and
23
24

1 ENGROSSED SENATE
2 BILL NO. 1690

By: Sykes of the Senate

3 and

4 Derby of the House
5

6 An Act related to the Board of Dentistry; amending 56
7 O.S. 2011, Sections 328.7, 328.15, 328.23 and
8 328.43a, which relate to the State Dental Act;
9 clarifying membership to the Board of Dentistry;
10 modifying powers of the Board of Dentistry; directing
11 the Board to employ an Executive Director; providing
12 for powers of Executive Director; providing for
13 certain temporary licenses; providing for certain
14 criminal background checks; modifying requirements
15 for certain information; providing for codification;
16 and providing an effective date.

12

13

14

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

15

SECTION 17. AMENDATORY 59 O.S. 2011, Section 328.7, is

16

amended to read as follows:

17

Section 328.7. A. Pursuant to Section 39 of Article V of the

18

Oklahoma Constitution, there is hereby created the Board of

19

Dentistry which shall be an agency of state government. The Board

20

shall adopt a seal, sue and be sued in its own name, and implement

21

and enforce the provisions of the State Dental Act.

22

B. 1. The Board shall consist of eight dentist members, one

23

dental hygienist member and two members who shall represent the

24

public. One dentist member shall be elected by the dentists

1 residing in each of the eight geographical districts established by
2 subsection D of this section. The residence of the dentist members
3 shall be determined by the primary location listed on the dentists'
4 licenses. The dental hygienist member shall be elected at-large by
5 the dental hygienists residing in this state who are legally
6 licensed to practice dental hygiene therein. The two public
7 representative members shall be appointed by the Governor, subject
8 to confirmation by the Senate. No public representative member may
9 be a dentist, dental hygienist, dental assistant, dental laboratory
10 technician, or holder of a permit to operate a dental laboratory, or
11 be related within the third degree of consanguinity or affinity to
12 any such person.

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

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

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

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

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

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

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

18 D. For the purpose of nominating and electing dentist members
19 of the Board, this state shall be divided into eight geographical
20 districts, which shall consist of the following counties within the
21 following districts:

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

1 District No. 2: Tulsa and Creek.

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

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

6 District No. 5: Oklahoma.

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

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

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

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

21 2. The dental hygienist member of the Board may be recalled and
22 removed from the Board in a special recall election to be conducted
23 by the Board upon receipt of a written recall petition signed by at
24 least twenty percent (20%) of the licensed dental hygienists

1 residing in this state. Only dental hygienists residing and
2 licensed in this state shall be entitled to vote in the special
3 recall election.

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

14 F. 1. A vacancy among the dentist members of the Board shall
15 be filled by a special election in the district of the vacancy for
16 the unexpired term within sixty (60) days after the vacancy occurs.

17 2. A vacancy of the dental hygienist member on the Board shall
18 be filled by a special election in this state for the unexpired term
19 within sixty (60) days after the vacancy occurs.

20 3. Nominations shall be made and special elections shall be
21 conducted in the same manner as provided in subsection C of this
22 section. If no one is nominated within forty-five (45) days from
23 date of vacancy, the vacancy shall be filled by appointment by the
24 Board. A vacancy among the public representative members of the

1 Board shall be filled by appointment by the Governor, subject to
2 confirmation by the Senate.

3 SECTION 18. AMENDATORY 59 O.S. 2011, Section 328.15, is
4 amended to read as follows:

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

10 B. The Board is authorized and empowered to:

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

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

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

20 4. Account for all receipts and expenditures of the monies of
21 the Board, including annually preparing and publishing a statement
22 of receipts and expenditures of the Board for each fiscal year;

23

24

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

4 6. ~~Maintain an office staff and employ~~ Employ an Executive
5 Director, legal counsel and other advisors to the Board, including
6 advisory committees;

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

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

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

17 10. Establish guidelines for courses of study necessary for
18 expanded duties of dental assistants and, when appropriate, issue
19 permits authorizing dental assistants to perform expanded duties;

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

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

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

5 ~~14. Hire one or more investigators to conduct investigations of~~
6 ~~alleged violations of the State Dental Act or the rules of the~~
7 ~~Board. The investigator may be a certified peace officer who shall~~
8 ~~be commissioned with all the powers and authority of peace officers~~
9 ~~of this state;~~

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

12 ~~16.~~ 15. Promote the dental health of the people of this state;

13 ~~17.~~ 16. Inform, educate, and advise all persons who hold a
14 license or permit issued by the Board, or who are otherwise
15 regulated by the Board, regarding the State Dental Act and the rules
16 of the Board;

17 ~~18.~~ 17. Affiliate with the American Association of Dental
18 Examiners as an active member, pay regular dues, and send members of
19 the Board as delegates to its meetings;

20 ~~19.~~ 18. Enter into contracts;

21 ~~20.~~ 19. Acquire by purchase, lease, gift, solicitation of gift
22 or by any other manner, hold, encumber, and dispose of personal
23 property as is needed, maintain, use and operate or contract for the
24 maintenance, use and operation of or lease of any and all property

1 of any kind, real, personal or mixed or any interest therein unless
2 otherwise provided by the State Dental Act; provided, all contracts
3 for real property shall be subject to the provisions of Section 63
4 of Title 74 of the Oklahoma Statutes.

5 ~~21.~~ 20. Receive or accept the surrender of a license, permit,
6 or certificate granted to any person by the Board as provided in
7 Section 328.44a of this title; and

8 ~~22.~~ 21 Take all other actions necessary to implement and
9 enforce the State Dental Act.

10 SECTION 19. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 328.15B of Title 59, unless
12 there is created a duplication in numbering, reads as follows:

13 The Board of Dentistry shall employ an Executive Director. The
14 Executive Director shall be authorized to:

15 1. Employ and maintain an office staff;

16 2. Employ one or more investigators who may be certified peace
17 officers who shall be commissioned with all the powers and authority
18 of peace officers of this state;

19 3. Enter into contracts on behalf of the Board; and

20 4. Perform other duties on behalf of the Board as needed or
21 directed.

22 SECTION 20. AMENDATORY 59 O.S. 2011, Section 328.23, is
23 amended to read as follows:

24

1 Section 328.23. A. 1. The Board of Dentistry may issue a
2 license to practice dentistry, without examination, to an out-of-
3 state dentist who has been engaged in the practice of dentistry in
4 another state for at least five (5) years, upon presentation to the
5 Board of a certificate from the dental licensing agency of that
6 state, certifying the applicant's length of practice and that the
7 applicant is in good standing with the agency, and upon the payment
8 of a fee established by the rules of the Board; provided, however,
9 the state from which the applicant presents a license to practice
10 dentistry shall have required the applicant to meet professional
11 education, competency, and moral character standards substantially
12 equivalent to the standards required by the Board for issuance of a
13 license by examination to practice dentistry in this state.

14 2. The Board shall not issue a license pursuant to this
15 subsection to any person who would not otherwise be eligible to
16 receive a license to practice dentistry.

17 3. The Board may require:

18 a. an applicant for a license to practice dentistry
19 pursuant to this subsection to have completed the same
20 continuing education requirements as required of
21 dentists in this state, and

22 b. that the state from which the applicant presents
23 credentials afford substantially equivalent licensure
24 by credentialing to dentists of this state.

1 B. Any dentist who is in good standing with the Board shall,
2 upon application to the Board and payment of a fee established by
3 the rules of the Board, receive a certificate which shall attest
4 that the dentist is in good standing with the Board.

5 C. The President of the Board, upon verification that a person
6 meets the requirements provided for in this section and any other
7 requirements provided for in the State Dental Act, may issue a
8 temporary license to practice dentistry for thirty (30) days. A
9 temporary license may be extended but shall not exceed ninety (90)
10 days.

11 SECTION 21. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 328.28a of Title 59, unless
13 there is created a duplication in numbering, reads as follows:

14 A. Every applicant for any type of license or permit issued by
15 the Board of Dentistry shall be subject to a criminal background
16 check.

17 B. Each applicant shall submit two (2) completed fingerprint
18 cards as required by the Board. The fingerprint cards shall be
19 required to be in a clear, readable format acceptable to the
20 Oklahoma State Bureau of Investigation.

21 C. Each applicant shall include a money order or cashier's
22 check made payable to the Oklahoma State Bureau of Investigation for
23 the purposes of a local and national criminal background check.

24

1 D. The Board shall forward the fingerprint cards, along with
2 the applicable fee for a national fingerprint criminal history
3 records search, to the Bureau.

4 E. The Bureau shall retain one set of fingerprints in the
5 Automated Fingerprint Identification System and submit the other set
6 to the Federal Bureau of Investigation for a national criminal
7 history records search.

8 SECTION 22. AMENDATORY 59 O.S. 2011, Section 328.43a, is
9 amended to read as follows:

10 Section 328.43a. A. Any person may file a written and signed
11 complaint with the Board of Dentistry, alleging that the respondent
12 has sought to practice or has illegally practiced dentistry or
13 dental hygiene, has violated the provisions relating to dental
14 assistants, or has otherwise violated the provisions of the State
15 Dental Act or the rules of the Board, and the facts upon which the
16 allegations are based. The complaint shall be directed by the
17 president of the Board to two specific Board members for
18 investigation and review. The review panel, in its discretion, may
19 notify the respondent of the complaint at any time prior to its
20 dismissal of the complaint or making a recommendation to the Board.
21 If the Board initiates an individual proceeding under paragraph 1 of
22 subsection D of this section, the respondent of the individual
23 proceeding shall be provided a copy of the recommendation and any
24

1 exculpatory information as required by the Administrative Procedures
2 Act.

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

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

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

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

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

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

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

6 4. The individual proceeding shall be conducted according to
7 the rules of the Board and the requirements of the Administrative
8 Procedures Act. The members of the review panel shall be excluded
9 from participating as Board members in an individual proceeding
10 initiated by the Board based upon their recommendation.

11 5. The review panel may decide to enter into a public or
12 private settlement agreement with the respondent. A public or
13 private settlement agreement:

- 14 a. shall specify the provisions of the State Dental Act
15 or the rules of the Board which such person is alleged
16 to have violated,
- 17 b. shall provide that such person agrees not to violate
18 the provisions of the State Dental Act or the rules of
19 the Board in the future,
- 20 c. may contain any of the penalties specified in Section
21 328.44a of this title, and
- 22 d. may contain any other provisions agreeable to the
23 review panel and the person involved.

1 A private settlement agreement shall remain part of the
2 investigation file, and may be disclosed or used against the
3 respondent only if the respondent violates the settlement agreement
4 or if ordered by a court of competent jurisdiction. All settlement
5 agreements shall be reported to the Board. The Board may require
6 that a private settlement agreement be made a public settlement
7 agreement. A respondent may withdraw from the settlement agreement
8 if the Board determines a private settlement agreement shall be made
9 public.

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

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

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

1 who filed the complaint and to the respondent. Although evidence
2 against a respondent does not warrant formal proceedings, a review
3 panel may issue a confidential letter of concern to a respondent
4 when there are indications of possible misconduct by the respondent
5 that could lead to serious consequences or formal action.

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

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

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

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

18 2. In the course of conducting an investigation;

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

21 4. Receiving and reviewing examination and test scores.

22 H. Any information obtained and all contents of any
23 investigation file shall be exempt from the provisions of the
24 Oklahoma Open Records Act. Except for the approval of private

1 settlement, a final order issued by the Board shall be subject to
2 the Open Records Act.

3 I. Information obtained by the Board or any of its agents shall
4 be considered competent evidence, subject to the rules of evidence,
5 in a court of competent jurisdiction ~~only in the following~~
6 circumstances for:

7 1. Matters ~~directly related to actions of the Board where~~
8 criminal charges are filed in a municipal or district court action;
9 or

10 2. Matters ~~resulting from the Board obtaining information where~~
11 complaints have not been found to be actionable in either a civil or
12 criminal matter which shall not be open to the public.

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

16 SECTION 23. This act shall become effective November 1, 2012.

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1 Passed the Senate the 14th day of March, 2012.

2
3 _____
4 Presiding Officer of the Senate

5 Passed the House of Representatives the ____ day of _____,
6 2012.

7
8 _____
9 Presiding Officer of the House
10 of Representatives