ENGROSSED HOUSE AMENDMENT
TO
ENGROSSED SENATE BILL NO. 1690 By: Sykes of the Senate

and

Derby of the House

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

AUTHOR: Add the following House Coauthor: Cox

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

"An Act relating to the Board of Dentistry; amending 59 O.S. 2011, Sections 328.7, 328.15, 328.23, 328.26, 328.32, 328.39a, 328.41, 328.43a, 328.49 and 328.53, which relate to the State Dental Act; clarifying membership to the Board of Dentistry; modifying powers of the Board of Dentistry; directing the Board to employ an Executive Director; providing for powers of Executive Director; 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

Board to refer certain alleged violations to the district attorney; permitting certain attorneys to assist district attorney or Attorney General in prosecuting certain violations; requiring dentists to maintain malpractice liability insurance; providing for exception; requiring certain persons to hold dental license; requiring notification and report to Board upon certain discovery; requiring certain acts by dentists; 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. 2011, Section 328.7, is amended to read as follows:

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

B. 1. The Board shall consist of eight dentist members, one dental hygienist member and two members who shall represent the public. One dentist member shall be elected by the dentists residing in each of the eight geographical districts established by subsection D of this section. <u>The residence of the dentist members shall be determined by the primary location listed on the dentists' licenses.</u> The dental hygienist member shall be elected at-large by the dental hygienists residing in this state who are legally licensed to practice dental hygiene therein. The two public

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

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

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

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

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

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

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

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

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

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

District No. 2: Tulsa and Creek.

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

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

District No. 5: Oklahoma.

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

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

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

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

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

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

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

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

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

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

SECTION 2. AMENDATORY 59 O.S. 2011, 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;

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~~ Employ an Executive Director, 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;~~

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

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

~~17.~~ 16. 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.~~ 17. 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.~~ 18. Enter into contracts;

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

~~21.~~ 20. 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.~~ 21. Take all other actions necessary to implement and enforce the State Dental Act.

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

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

1. Employ and maintain an office staff;

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

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

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

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

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

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

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

3. The Board may require:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9. Failing to complete continuing education requirements;

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

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

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

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

14. Being shown to be mentally unsound;

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

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

17. Committing gross negligence in the practice of dentistry;

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

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

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

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

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

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

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

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

26. Willfully disclosing confidential information;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12. 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.

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

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

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

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

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

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

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

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

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

SECTION 10. AMENDATORY 59 O.S. 2011, 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 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 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 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 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 (10) 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.

5. The review panel may decide to enter into a public or private settlement agreement with 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.

A private settlement agreement shall remain part of the investigation file, and may be disclosed or used against the respondent only if the respondent violates the settlement agreement or if ordered by a court of competent jurisdiction. 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,

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 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 competent evidence, subject to the rules of evidence, in a court of competent jurisdiction ~~only in the following circumstances~~ for:

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

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

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

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

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

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

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

a. practice or attempt to practice dentistry,

b. hold oneself out to the public as a dentist or as a person who practices dentistry, or

c. employ or use the words "Doctor" or "Dentist", or the letters "D.D.S." or "D.M.D.", or any modification or

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

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

a. practice or attempt to practice dental hygiene,

b. hold oneself out to the public as a dental hygienist or as a person who practices dental hygiene, or

c. employ or use the words "Registered Dental Hygienist", or the letters "R.D.H.", or any modification or derivative thereof, when such use is intended to give the impression that the person is a dental hygienist.

3. It shall be unlawful for any person to:

a. give false or fraudulent evidence or information to the Board in an attempt to obtain any license or permit from the Board, or

b. aid or abet another person in violation of the State Dental Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Not issue a prescription on a prescribing form in a preprinted format that lists the name of another dentist not presently licensed by the Board.

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

Passed the House of Representatives the 25th day of April, 2012.

_____
Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2012.

_____
Presiding Officer of the Senate