

1 ENGROSSED SENATE  
2 BILL NO. 574

By: Jolley of the Senate

3 and

4 Trebilcock of the House  
5  
6

7 An Act relating to the practice of dentistry;  
8 amending 59 O.S. 2001, Sections 328.27, as amended by  
9 Section 3, Chapter 377, O.S.L. 2005, 328.32, 328.36a,  
10 and 328.44a, as last amended by Section 6, Chapter  
11 377, O.S.L. 2005 (59 O.S. Supp. 2010, Sections 328.27  
12 and 328.44a), which relate to the State Dental Act;  
13 requiring faculty permit holders to show certain  
14 proof; modifying list of acts by a dentist which  
15 constitute grounds for penalties by Board of  
16 Dentistry; modifying requirements of laboratory  
17 prescriptions issued by a dentist; requiring Board to  
18 make certain forms readily available; permitting  
19 dentists to produce, transfer and retain certain  
20 copies electronically; permitting Board to collect  
21 certain fees; requiring professional liability  
22 insurance for dentists; permitting the Board to  
23 promulgate certain rules; providing for codification;  
24 and providing an effective date.

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

SECTION 1. AMENDATORY 59 O.S. 2001, Section 328.27, as  
amended by Section 3, Chapter 377, O.S.L. 2005 (59 O.S. Supp. 2010,  
Section 328.27), is amended to read as follows:

Section 328.27. A. 1. The Board of Dentistry may, without a  
clinical examination, upon presentation of satisfactory credentials,  
including completion of the dental hygiene National Boards and both

1 Part I and Part II of the National Board examination for dentists,  
2 and under such rules as the Board may promulgate, issue a faculty  
3 permit to an applicant who:

- 4 a. is a graduate of a school of dentistry approved by the  
5 Board and is licensed to practice dentistry in another  
6 state or country,
- 7 b. successfully completes advanced training in a  
8 specialty approved by the Commission on Dental  
9 Accreditation of the American Dental Association, or
- 10 c. is a graduate of an accredited dental hygiene program  
11 and is licensed to practice dental hygiene in another  
12 state.

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

18 3. Following the first year of employment, the faculty permit  
19 holder shall show proof of passing an appropriate clinical board  
20 examination recognized by the Board of Dentistry.

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

1 B. The holder of a faculty permit shall be entitled to perform  
2 services and procedures in the same manner as a person holding a  
3 license to practice dentistry or dental hygiene in this state, but  
4 all services and procedures performed by the faculty permit holder  
5 shall only be without compensation other than that received in  
6 salary from a faculty position or through faculty practice as  
7 authorized by the Board. Such services and procedures shall be  
8 performed only within the facilities of an accredited dental college  
9 or accredited dental hygiene program or in a seminar or postgraduate  
10 course and as an adjunct to teaching functions. A holder of a  
11 faculty permit shall only engage in faculty practice of dentistry or  
12 dental hygiene within the facilities designated by the accredited  
13 dental college and including teaching hospitals approved by the  
14 Board.

15 SECTION 2. AMENDATORY 59 O.S. 2001, Section 328.32, is  
16 amended to read as follows:

17 Section 328.32. A. The following acts or occurrences by a  
18 dentist shall constitute grounds for which the penalties specified  
19 in Section 328.44a of this title may be imposed by order of the  
20 Board of Dentistry:

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

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- 1        2. Presenting to the Board a false diploma, license, or  
2 certificate, or one obtained by fraud or illegal means;
- 3        3. Being, by reason of persistent inebriety or addiction to  
4 drugs, incompetent to continue the practice of dentistry;
- 5        4. Publishing a false, fraudulent, or misleading advertisement  
6 or statement;
- 7        5. Authorizing or aiding an unlicensed person to practice  
8 dentistry, to practice dental hygiene, or to perform a function for  
9 which a permit from the Board is required;
- 10       6. Authorizing or aiding a dental hygienist to perform any  
11 procedure prohibited by the State Dental Act or the rules of the  
12 Board;
- 13       7. Authorizing or aiding a dental assistant to perform any  
14 procedure prohibited by the State Dental Act or the rules of the  
15 Board;
- 16       8. Failing to pay fees as required by the State Dental Act or  
17 the rules of the Board;
- 18       9. Failing to complete continuing education requirements;
- 19       10. Representing himself or herself to the public as a  
20 specialist in a dental specialty without holding a dental specialty  
21 license therefor;
- 22       11. Representing himself or herself to the public as a  
23 specialist whose practice is limited to a dental specialty, when  
24 such representation is false, fraudulent, or misleading;

- 1        12. Endangering the health of patients by reason of having a  
2 highly communicable disease and continuing to practice dentistry  
3 without taking appropriate safeguards;
- 4        13. Being a menace to the public health by reasons of  
5 practicing dentistry in an unsafe or unsanitary manner or place;
- 6        14. Being shown to be mentally unsound;
- 7        15. Being shown to be grossly immoral and that such condition  
8 represents a threat to patient care or treatment;
- 9        16. Being incompetent to practice dentistry while delivering  
10 care to a patient;
- 11       17. Committing gross negligence in the practice of dentistry;
- 12       18. Committing repeated acts of negligence in the practice of  
13 dentistry;
- 14       19. Offering to effect or effecting a division of fees, or  
15 agreeing to split or divide a fee for dental services with any  
16 person, in exchange for the person bringing or referring a patient;
- 17       20. Being involuntarily committed to an institution for  
18 treatment for substance abuse, until recovery or remission;
- 19       21. Using or attempting to use the services of a dental  
20 laboratory or dental laboratory technician without issuing a  
21 laboratory prescription, except as provided in subsection C of  
22 Section 328.36 of this title;
- 23       22. Aiding, abetting, or encouraging a dental hygienist  
24 employed by the dentist to make use of an oral prophylaxis list, or

1 the calling by telephone or by use of letters transmitted through  
2 the mails to solicit patronage from patients formerly served in the  
3 office of any dentist formerly employing such hygienist;

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

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

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

14 26. Willfully disclosing confidential information;

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

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

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

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

4 31. Being dishonest in a material way with a patient;

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

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

15 34. Allowing any corporation, organization, group, person, or  
16 other legal entity, except another dentist or a professional entity  
17 that is in compliance with the registration requirements of  
18 subsection B of Section 328.31 of this title, to direct, control, or  
19 interfere with the dentist's clinical judgment. Clinical judgment  
20 shall include, but not be limited to, such matters as selection of a  
21 course of treatment, control of patient records, policies and  
22 decisions relating to pricing, credit, refunds, warranties and  
23 advertising, and decisions relating to office personnel and hours of  
24 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. 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. 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~~

37. 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. Failing to cooperate during an investigation or providing false information, verbally or in writing, to 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

1 otherwise advertise as a licensed, registered, certified, or  
2 credentialed dentist.

3 SECTION 3. AMENDATORY 59 O.S. 2001, Section 328.36a, is  
4 amended to read as follows:

5 Section 328.36a. A. A dentist may utilize a dental laboratory  
6 technician and a dental laboratory to perform or provide dental  
7 laboratory technology. Except as provided in subsection C of  
8 Section 328.36 of this title, a dentist who utilizes the services of  
9 a dental laboratory technician or dental laboratory shall furnish a  
10 laboratory prescription for each patient for whom a work product is  
11 prescribed.

12 B. Laboratory prescriptions issued by a dentist shall be ~~in~~  
13 ~~duplicate on consecutively numbered forms approved by the Board of~~  
14 ~~Dentistry and~~ containing the minimum information required by  
15 subsection D of this section and shall be produced or printed by  
16 each dentist. Such forms shall be provided by the Board of  
17 Dentistry or downloaded from the Board's website. All forms shall  
18 be completed in full and signed by the prescribing dentist. The  
19 owner of a dental laboratory shall retain each original laboratory  
20 prescription received from a prescribing dentist and produce the  
21 document for inspection and copying by a member of the Board or by  
22 an agent or employee of the Board, for a period of three (3) years  
23 from the date of the laboratory prescription. The prescribing  
24 dentist shall retain the duplicate copy of each laboratory

1 prescription and produce the document for inspection and copying by  
2 a member of the Board or by an agent or employee of the Board, for a  
3 period of three (3) years from the date of the laboratory  
4 prescription.

5 C. The patient's name or the identification number of the  
6 laboratory prescription shall appear on all dental models and  
7 correspond to all dental restorations, appliances or other devices  
8 being constructed, reproduced or repaired. Any dental model,  
9 restoration, appliance or other device in the possession of a dental  
10 laboratory technician or dental laboratory without a laboratory  
11 prescription and corresponding number on the model, restoration,  
12 appliance or device shall be prima facie evidence of a violation of  
13 the State Dental Act. After completion, the prescribed work product  
14 shall be returned by the dental laboratory technician or dental  
15 laboratory to the prescribing dentist or the dental office of the  
16 dentist with the name or number of the laboratory prescription  
17 accompanying the invoice.

18 D. At a minimum, prescriptions shall contain the following  
19 information:

20 1. The name and address of the dental laboratory;

21 2. The patient's name and/or identifying number. In the event  
22 such identifying number is used, the name of the patient shall be  
23 written on a copy of the prescription retained by the dentist;  
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1       3. A description of the work to be completed with diagrams, if  
2 applicable;

3       4. A description of the type of materials to be used;

4       5. The actual date on which the authorization or prescription  
5 was written or completed;

6       6. The signature in ink or by electronic method of the dentist  
7 issuing the prescription and the state license number and address of  
8 such dentist; and

9       7. A section to be completed by the dental laboratory and  
10 returned to the issuing dentist that shall disclose all information  
11 and certify that the information is accurate by including the  
12 signature of a reasonable part of the primary contractor.

13       E. The Board shall make readily available a sample form on the  
14 Board's website for use by any licensee at no cost.

15       F. A dentist may produce, transfer and retain copies of the  
16 form electronically.

17       SECTION 4.       AMENDATORY       59 O.S. 2001, Section 328.44a, as  
18 last amended by Section 6, Chapter 377, O.S.L. 2005 (59 O.S. Supp.  
19 2010, Section 328.44a), is amended to read as follows:

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

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

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

7 2. Suspension of a license or permit issued by the Board for a  
8 period of time deemed appropriate by the Board;

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

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

12 5. Issuance of a censure;

13 6. Placement on probation for a period of time and under such  
14 terms and conditions as deemed appropriate by the Board;

15 7. Probation monitoring fees, which shall be the responsibility  
16 of the licensee on all probations;

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

20 ~~8-~~ 9. Assessment for the cost of the hearing process including  
21 attorney fees.

22 B. A dentist, dental hygienist, dental assistant, dental  
23 laboratory technician, or holder of a permit to operate a dental  
24 laboratory, against whom a penalty is imposed by an order of the

1 Board pursuant to the provisions of this section, shall have the  
2 right to seek a judicial review of such order pursuant to Article II  
3 of the Administrative Procedures Act.

4 SECTION 5. NEW LAW A new section of law to be codified  
5 in the Oklahoma Statutes as Section 328.53 of Title 59, unless there  
6 is created a duplication in numbering, reads as follows:

7 A. All dentists in active practice licensed by the Board of  
8 Dentistry shall maintain a policy for professional liability  
9 insurance; provided, however, that such requirement shall not apply  
10 to dentists who are limited to providing care as a volunteer under a  
11 special volunteer license pursuant to Section 328.23a of Title 59 of  
12 the Oklahoma Statutes.

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

17 SECTION 6. This act shall become effective November 1, 2011.  
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