

1 ENGROSSED SENATE
2 BILL NO. 684

By: Jolley and Shortey of the
Senate

3 and

4 Derby of the House

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6
7 An Act relating to professions and occupations;
8 amending 59 O.S. 2011, Section 328.32, as amended by
9 Section 7, Chapter 270, O.S.L. 2012 (59 O.S. Supp.
10 2012, Section 328.32), which relates to penalties;
11 modifying qualifications for certain penalties;
12 amending 59 O.S. 2011, Section 328.41, as amended by
13 Section 9, Chapter 270, O.S.L. 2012 (59 O.S. Supp.
14 2012, Section 328.41), which relates to renewal
15 certificates; requiring dental assistants to submit
16 certain applications; permitting the Oklahoma State
17 Board of Dentistry to waive certain fees for dental
18 assistants; amending 59 O.S. 2011, Section 328.53, as
19 amended by Section 12, Chapter 270, O.S.L. 2012 (59
20 O.S. Supp. 2012, Section 328.53), which relates to
21 malpractice insurance; providing exemption from
22 insurance policy requirements to retired dentists
23 providing care under certain circumstances; providing
24 an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 59 O.S. 2011, Section 328.32, as
amended by Section 7, Chapter 270, O.S.L. 2012 (59 O.S. Supp. 2012,
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

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~~ three full-time
11 dental hygienists and more than four dental assistants for each
12 dentist actively practicing in the same dental office who will
13 supervise the dental hygienists and assistants;

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

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

21 26. Willfully disclosing confidential information;

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

- 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 31. Practicing dentistry without displaying, at the dentist's
9 primary place of practice, the license issued to the dentist by the
10 Board to practice dentistry and the current renewal certificate;
- 11 32. Being dishonest in a material way with a patient;
- 12 33. Failing to retain all patient records for at least three
13 (3) years, except that the failure to retain records shall not be a
14 violation of the State Dental Act if the dentist shows that the
15 records were lost, destroyed, or removed by another, without the
16 consent of the dentist;
- 17 34. Failing to retain the dentist's copy of any laboratory
18 prescription for at least three (3) years, except that the failure
19 to retain records shall not be a violation of the State Dental Act
20 if the dentist shows that the records were lost, destroyed, or
21 removed by another, without the consent of the dentist;
- 22 35. Allowing any corporation, organization, group, person, or
23 other legal entity, except another dentist or a professional entity
24 that is in compliance with the registration requirements of

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

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

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

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

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

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1 39. Failing to cooperate during an investigation or providing
2 false information, verbally or in writing, to the Board, the Board's
3 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 2. AMENDATORY 59 O.S. 2011, Section 328.41, as
13 amended by Section 9, Chapter 270, O.S.L. 2012 (59 O.S. Supp. 2012,
14 Section 328.41), is amended to read as follows:

15 Section 328.41. A. On or before the first day of January of
16 each year, every dentist, dental hygienist, dental assistant, and
17 other licensee or permit ~~holder~~ holders previously licensed or
18 permitted by the Board to practice in this state shall submit a
19 renewal application with information as may be required by the
20 Board, together with an annual renewal fee established by the rules
21 of the Board. Upon receipt of the annual renewal fee, the Board
22 shall issue a renewal certificate authorizing the dentist or dental
23 hygienist to continue the practice of dentistry or dental hygiene,
24 respectively, in this state for a period of one (1) year. Every

1 license or permit issued by the Board shall expire on December 31 of
2 each year.

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

8 C. Any dentist ~~or~~, dental hygienist, or dental assistant whose
9 license or permit is automatically canceled by reason of failure,
10 neglect or refusal to secure the renewal certificate may be
11 reinstated by the Board at any time within one (1) year from the
12 date of the expiration of the license, upon payment of the annual
13 renewal fee and a penalty fee established by the rules of the Board.
14 If the dentist ~~or~~, dental hygienist, or dental assistant does not
15 apply for renewal of the license or permit and pay the required fees
16 within one (1) year after the license has expired, then the dentist
17 or dental hygienist shall be required to file an application for and
18 take the examination provided for in the State Dental Act before
19 again commencing practice.

20 D. The Board may waive the annual renewal fee for any dentist
21 ~~or~~, dental hygienist, or dental assistant and issue a renewal
22 certificate without the payment of any renewal fee, if the dentist
23 or dental hygienist has held an Oklahoma license at least twenty-
24 five (25) years but because of age or physical disability has

1 retired from the practice of dentistry or dental hygiene. The
2 waiver of fees herein provided may be continued so long as the
3 retirement continues because of age or physical disability.

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

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

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

18 SECTION 3. AMENDATORY 59 O.S. 2011, Section 328.53, as
19 amended by Section 12, Chapter 270, O.S.L. 2012 (59 O.S. Supp. 2012,
20 Section 328.53), is amended to read as follows:

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

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

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

5 3. Practicing in a federal facility subject to the Federal Tort
6 Claims Act;

7 4. Providing care as a volunteer under a special volunteer
8 license pursuant to Section 328.23a of this title; ~~or~~

9 5. Retired in good standing, providing care as a non-paid
10 volunteer in any event approved by the State Board of Dentistry or
11 the Oklahoma Dental Association; or

12 ~~5~~6. Practicing in another state who will not practice within
13 the State of Oklahoma during the license renewal year.

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

18 SECTION 4. This act shall become effective July 1, 2013.

19 SECTION 5. It being immediately necessary for the preservation
20 of the public peace, health and safety, an emergency is hereby
21 declared to exist, by reason whereof this act shall take effect and
22 be in full force from and after its passage and approval.

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