An Act

ENROLLED HOUSE
BILL NO. 2627

By: Osborn of the House

and

Crain of the Senate

An Act relating to professions and occupations; amending Section 11, Chapter 229, O.S.L. 2015, Section 6, Chapter 270, O.S.L. 2012, as last amended by Section 16, Chapter 229, O.S.L. 2015, 59 O.S. 2011, Sections 328.29a, as last amended by Section 17, Chapter 229, O.S.L. 2015, 328.32, as last amended by Section 20, Chapter 229, O.S.L. 2015, 328.33, as amended by Section 13, Chapter 405, O.S.L. 2013 and Section 328.39 (59 O.S. Supp. 2015, Sections 328.23b, 328.28a, 328.29a, 328.32 and 328.33), which relate to the State Dental Act; providing certain eligibility for retired volunteer license; permitting Board of Dentistry to deny license for certain reasons; removing certain requirements relating to applicants; providing for certain acts in which penalties may be imposed on certain licensees or in which applicant may be denied certain license; permitting review panel to suspend certain license if emergency action is required; providing that certain applicant may be denied for having certain actions reported to databank; adding certain act of certain licensee for which penalties may be imposed or for which license may be denied; and providing an effective date.

SUBJECT: State Dental Act

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

SECTION 1. AMENDATORY Section 11, Chapter 229, O.S.L. 2015 (59 O.S. Supp. 2015, Section 328.23b), is amended to read as follows:

Section 328.23b A dentist, dental hygienist or dental assistant ~~that~~ who has been licensed or permitted in good standing with the Board in excess of twenty (20) years ~~that~~ who has reached the age of sixty-five (65) years or who has practiced for thirty (30) years on a consecutive basis may apply for a retired volunteer dentist, dental hygienist or dental assistant license or permit on a yearly basis to provide volunteer services. There shall be no continuing education requirements. A retired dentist, dental hygienist or dental assistant with a retired volunteer license or permit shall not receive payment either directly or indirectly for work provided.

SECTION 2. AMENDATORY Section 6, Chapter 270, O.S.L. 2012, as last amended by Section 16, Chapter 229, O.S.L. 2015 (59 O.S. Supp. 2015, Section 328.28a), is amended to read as follows:

Section 328.28a ~~A.~~ Beginning January 2016, every applicant for any type of license or permit issued by the Board of Dentistry shall be subject to a national criminal background check. The ~~provisions of this subsection shall not apply to persons applying for faculty or faculty specialty licenses provided in Section 328.27 of this title~~ Board may deny a license or permit for any applicant who fails to disclose a criminal history or if any applicant has pled guilty or nolo contendere to or has been convicted of a felony or misdemeanor involving moral turpitude, Medicaid fraud or a violation of federal or state controlled dangerous substances laws.

~~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 or the Board 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 3. AMENDATORY 59 O.S. 2011, Section 328.29a, as last amended by Section 17, Chapter 229, O.S.L. 2015 (59 O.S. Supp. 2015, Section 328.29a), is amended to read as follows:

Section 328.29a A. ~~The Board of Dentistry shall have the power, after a hearing, to revoke or suspend a permit of~~ The following acts or occurrences by a dental assistant or oral maxillofacial surgery assistant ~~or to discipline by a probation or censure, public or private, for~~ shall constitute grounds for which the penalties specified in Section 328.44a of this title may be imposed by the Board of Dentistry or be the basis for denying a new applicant any license or permit issued by the Board:

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

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

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

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

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

D. The Board shall have power to revoke or suspend the permit, censure, or place on probation a dental assistant or oral

maxillofacial surgery assistant for a violation of one or more of the following:

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

2. ~~The presentation~~ Presenting to the Board ~~of~~ a false application or documentation for a permit;

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

4. Functioning outside the direct or direct visual supervision of a dentist;

5. Performing any function prohibited by Chapter 15 of the Oklahoma Administrative Code or any violation that would be a violation for a dentist or hygienist under Section 328.32 or 328.33 of this title, or any other duty not assignable to a dental assistant; or

6. Failure to secure an annual registration as specified in Section 328.41 of this title.

E. The Board's review panel, as set forth in Section 328.43a of this title, upon concurrence with the president of the Board, may determine that an emergency exists to temporarily suspend the permit of a dental assistant or oral maxillofacial surgery assistant if the panel finds that public health, safety or welfare imperatively requires emergency action. The panel may conduct a hearing pursuant to Section 314 of Title 75 of the Oklahoma Statutes for the temporary suspension.

SECTION 4. AMENDATORY 59 O.S. 2011, Section 328.32, as last amended by Section 20, Chapter 229, O.S.L. 2015 (59 O.S. Supp. 2015, 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 or be the basis for denying a new applicant any license or permit issued by the Board:

1. Pleading guilty or nolo contendere to, or being convicted of, a felony, a misdemeanor involving moral turpitude, Medicaid fraud 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, or providing other false information on an application or renewal;

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 or oral maxillofacial surgery 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. Practicing dentistry in an unsafe or unsanitary manner or place, including but not limited to repeated failures to follow Centers for Disease Control (CDC) or Occupational Health Safety Administration (OSHA) guidelines;

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 three full-time dental hygienists for each dentist actively practicing in the same dental office;

24. Allowing a person not holding a permit or license issued by the Board to assist in the treatment of a patient without having a license or permit issued by the Board;

25. 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;

26. Authorizing or aiding a dental hygienist, dental assistant, oral maxillofacial surgery 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;

27. Willfully disclosing information protected by the Health Information Portability and Accountability Act, P.L. 104-191;

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

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

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

31. 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;

32. 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;

33. Being dishonest in a material way with a patient;

34. Failing to retain all patient records for at least seven (7) years from the date of the last treatment, 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;

35. 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;

36. 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;

37. Violating the state dental act of another state resulting in a plea of guilty or nolo contendere, conviction or suspension or revocation or other sanction by another state board, of the license of the dentist under the laws of that state;

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

39. 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~~

40. 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; or

41. Having multiple administrative or civil actions reported to the National Practitioner Databank.

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 5. AMENDATORY 59 O.S. 2011, Section 328.33, as amended by Section 13, Chapter 405, O.S.L. 2013 (59 O.S. Supp. 2015, Section 328.33), is amended to read as follows:

Section 328.33 A. ~~The Board of Dentistry shall have the power, after a hearing, to revoke or suspend a license of a dental hygienist or to discipline by probation or reprimand, public or private, for~~ The following acts or occurrences by a dental hygienist 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 or be the basis for denying a new applicant any license or permit issued by the Board:

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

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

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

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

C. 1. The decision shall be final unless the dental hygienist appeals the decision as provided by the State Dental Act.

2. If an appeal is not timely taken, the decision shall be carried out by striking the name of the dental hygienist from the rolls, or suspending the dental hygienist for the period mentioned in issuing a reprimand, or otherwise acting as required by the decision.

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

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

2. ~~The presentation~~ Presenting to the Board ~~of~~ 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 dental hygiene;

4. Has been guilty of dishonorable or unprofessional conduct;

5. ~~Has failed~~ Failure to pay registration fees as provided by the State Dental Act;

6. Is a menace to the public health by reason of communicable disease;

7. ~~Has been proven~~ Being shown to be mentally incapacitated or has been admitted to a mental institution, either public or private, and until the dental hygienist has been proven to be mentally competent;

8. ~~Is~~ Being shown to be grossly immoral;

9. ~~Is~~ Being incompetent in the practice of dental hygiene;

10. ~~Is guilty of~~ Committing willful negligence in the practice of dental hygiene;

11. ~~Has been~~ Being involuntarily committed for treatment for drug addiction to a facility, either public or private, and until the dental hygienist has been proven cured;

12. ~~Is practicing~~ Practicing or attempting to practice dental hygiene in any place or in any manner other than as authorized by Section 328.34 of this title;

13. ~~Is using~~ Using or attempting to use in any manner whatsoever any oral prophylaxis list, call list, records, reprints or copies of same, or information gathered therefrom, of the names

of patients whom such dental hygienist might have served in the office of a prior employer, unless such names appear upon the bona fide call or oral prophylaxis list of the present employer of the dental hygienist and were caused to so appear through the legitimate practice of dentistry, as provided for in the State Dental Act;

14. 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 dental hygienist under the laws of that state;

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

16. 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

17. Any violation that would otherwise be a violation for a dentist under 328.32 of this title.

SECTION 6. AMENDATORY 59 O.S. 2011, Section 328.39, is amended to read as follows:

Section 328.39 The following acts or occurrences by a dental laboratory permit holder or technician 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 or be the basis for denying a new applicant any license or permit issued by the Board:

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

2. Performing 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. Performing 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 the prescribing dentist or the dental office of the dentist or failing

to return dental impressions, molds, models, radiographs or other digital imagery upon written request;

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

7. Being dishonest in a material way with a dentist; or

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

SECTION 7. This act shall become effective November 1, 2016.

Passed the House of Representatives the 17th day of February, 2016.

Presiding Officer of the House of Representatives

Passed the Senate the 13th day of April, 2016.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 14th day of April, 2016, at 1:59 o'clock P M.

By: Audrey Rockwell

Approved by the Governor of the State of Oklahoma this 20th day of April, 2016, at 4:08 o'clock P M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____ day of _____, 20_____, at _____ o'clock _____ M.

By: Chris Benge