

## **Senate Bill 1068**

### **Dentistry law update**

This bill is a product of 9 committees that have been working since May of last year. The Committees were co-chaired by a current or past Dental Board member and a member of the Oklahoma Dental Association that was recommended by the ODA President. Each committee had between 10 and 20 dental personnel. Of that group, one-half of the committee members were appointed by the Dentistry Board President and the other half were recommended by the Oklahoma Dental Association Board President.

For the past twenty years, the Dentistry laws have been updated piecemeal and for the past 15 years, only the rules have been updated with very little changes in the Statutes. As a result, the 9 committees reviewed the Statutes and the rules in certain areas to determine needed updates and clarifications. For the most part, this bill is a clean-up bill. During that process the committees found that there was contradictory language between the statutes and rules and many things that were outdated but had never been removed from the statutes. This is not unusual as many licensure Boards statutes are out of date because reviewing the statutes and the rules is a long and tedious process and requires a lot of input from several different groups.

1. The bill sets out the requirements to get a dental assistant permit and an Oral Maxillofacial Surgery Assistant Permit. These are already existing permits, however last year, all dental assistants were required to obtain dental assistant permits versus only ones with expanded duties. The expanded duties were already in the rules. This bill moves the requirements for the permits and the types of expanded duties from the rules to the statutes. This language ONLY SETS OUT THE REQUIREMENTS TO OBTAIN THE PERMIT, NOT what each of the individual types of assistants are allowed to do as those items are more properly addressed in the rules.
2. The requirements of the OMS Assistant training is intended to be a uniform and higher standard than other permits as requested by the Oklahoma Society of Oral and Maxillofacial Surgeons who participated in the committee process. The bill requires the completion of training programs and a six-month in residence training as part of the certification program. "Direct Visual Supervision" by the Oral and Maxillofacial Surgeon is also required at the time of any procedure. Further, the definition of "direct visual supervision" is required to further tighten and enforce that the oral surgeon must be within direct sight and give verbal instructions at the time of any procedure that an assistant is assisting with. This bill DOES NOT allow the assistant to administer anesthesia, they are only allowed to ASSIST a licensed dentist with a general anesthesia permit while the DENTIST is ADMINISTERING anesthesia.

#### **Section 1. Clean-up language.**

#### **Section 2. Adds definitions for accredited dental assisting program, dental ambulatory surgical center and direct visual supervision.**

The dental assisting program is a definition that is referenced throughout the rules but never in statute. "Accredited dental assisting program" means a dental assisting program which is accredited by the Commission on Dental Accreditation of the American Dental Association.

Oklahoma has at least 20 plus dental assisting schools, however approximately 5 are currently accredited which is a requirement to get a permit authorized by the Board.

The dental ambulatory surgical center is a new term based on some language that is being put into the Medicaid rules at the Oklahoma Health Care Authority. "Dental Ambulatory Surgical Center" (DASC) is a new definition due to new entity created by the Oklahoma health care authority and is a different type of dental treatment facility.

The term of "direct visual supervision" is a request from the Oral Maxillofacial surgeons as a part of the requirements of their OMS Assistant requirements.

Retired dentist is being removed as there are several different categories of what a retired dentist is later in the bill as requested by the retirement committee.

The remainder of this section is clean-up language.

**Section 3. This section is entirely clean up language and legally has little to no effect on current practices.** Section B adds additional regular meetings for clarification purposes for regularly scheduled meetings. This is clean up language - This could be construed as a maximum number of regular meetings that the Board can meet.

Section C. This language was terminology added in the 1970's when the Board first had a full time person as the director. This language has been changed throughout the statutes as executive director for all boards not just dentistry. This is a section that was missed in previous clean-ups of the statutes as the duties of the executive director are already covered in other sections of the statutes. The removal of this language has no effect.

Section D and E, Again this is clean up language that was added in the 1970's. It is redundant and unnecessary language to be specifically listed in the dental act as all state boards and other entities are required to follow the open meetings and open records act. Because it specifically lists sections of the law, it can be potentially problematic as both acts are frequently changed and this section can reference the wrong act. REMOVING THESE SECTIONS HAS NO LEGAL EFFECT. The Board will still fall under the open meetings and open records act. Section E has been amended several times and is no longer even considered "bonding" it is now our board liability insurance policy that we purchase through risk management. Removing it has no effect. Leaving it could cause a potential conflict when those statutes are changed, renumbered or removed.

New added - D. Committee members and anesthesia inspectors appointed by the Board shall be eligible for reimbursement for travel expenses in accordance with the State Travel Reimbursement Act. This is to correct a potential audit issue as we have been reimbursing committee members but did not have a specific statute to support doing that.

**Section 4. Allows the State Board of Dentistry to allow for donations and/or purchase historical items.** The State Board of Dentistry existed before the State of Oklahoma and was called the Territorial Board of Dentistry. Upon Statehood, the Board of Dentistry was one of the first four state agencies created in the Oklahoma Constitution. The Board of Dentistry is proud of this history and has taken an active approach to documenting the history of the Dental Board in Oklahoma. We have recently had dentists and families of retired dentists donate items to the Board that have historical significance. This language again, is for the purpose of auditing.

### **Section 5. Creation of new committees.**

Over the summer and fall, the 9 committees that created this bill worked very hard and everyone including the Board, staff and committee members learned a lot. We also discovered there are a lot of other issues having to do with new technology in dental offices, implementation of the Affordable Care Act and many other issues that needed to be discussed and worked on further. As a result, several of the committees will become formal Board committees. This gives the Board expertise from a wide variety of dentists and hygienists across the state to gather information, study issues and make recommendations to the Board for coordination and changes.

### **Section 6. Unauthorized Practice of Dentistry**

This section is clean-up language due to the differentiation of language in the Statutes versus the Rules.

### **Section 7, 8 and 9 Requirements for Dental and Hygiene Licensing.**

This section of law had not been reviewed for over 20 years and referred to programs and practices that either no longer exist, or have been changed. The sections were combined, redundant language was deleted and items already existing in the rules were moved to the statutes. Further, there was repeated language for the requirements of a dentist and a hygienist. Hygienists have advanced procedures that have been in the rules for twenty years for administration of nitrous oxide and providing local anesthesia that were moved to the statutes as these are part of the license already. Nothing new has been added to their existing duties or abilities. The recognized specialties are currently in the rules and those are being moved to the statutes. The only change that is in these portions of the bill, is that as of 2015, the requirements for a reciprocity license will require proof of passage of the Western Regional Examination. Additionally, a clarification of the status of a temporary license that is issued by the Board President having the same status as a permanent license during the time it is valid is due to insurance companies questioning the license status for purposes of claims. A temporary license for a dentist is only issued for a maximum of 90 days or until the next Board meeting and is usually only granted because of a request of a dentist that has a health or issue arise and they have someone coming to take over their practice temporarily.

### **Section 10. and 11. Special Volunteer License and Retired Licenses.**

The retirement committee had several issues reviewed and based on their recommendations these sections of the laws were amended. There is a special volunteer license that is intended for emergencies such as the Murrah Bombing and the mission of mercy. If someone has a valid license in another state they are eligible and they may not be paid for services. This language limits the time and place the volunteer may be working under the special volunteer license.

Section 11. This section makes a separation of retired volunteer dentists that have been in good standing for over 25 years that do volunteer work only and retired active dentists still practicing. Several portions of these sections were moved partly from the statutes and partly from the rules to the same place. The changes are, if a dentist has been in good standing for over 25 years and is over age 65 with the State Board of dentistry, and they are not practicing for pay but doing volunteer work only, they will be eligible for a Special Volunteer yearly license with no fee. If the dentist is practicing regularly for pay but has been in good standing for over 25 years and is over age 65, they must have a regular license but their continuing education requirement is cut in half. The goal of this language is to tighten some standards for some dentists coming across State lines and attempting to avoid regular licensing. Additionally, it is the goal of the Board to keep the retired dentists active and give them an ability to continue volunteer activities for the needy at free clinics. However, continuing education classes many times cost between \$1,500 and \$7,000, something a retired dentist working in a free clinic cannot afford to do.

**Section 12. and 13. The removed language was part of the licensing of the hygienists that was combined in section 7.8 and 9 above. The dental assistant permit language already exists in the rules.** Last year, the Board of Dentistry added the Oral Maxillofacial Surgical Assistants to the Statutes and required all dental assistants to be permitted whereas previously only dental assistants with expanded duty permits were required to register. This section is intended ONLY TO LIST THE GUIDELINES AND REQUIREMENTS TO APPLY FOR THE PERMIT. IT DOES NOT LIST OUT THE DUTIES THEY ARE ALLOWED TO PERFORM. However, because a non-dental group has completely misconstrued the language, there was a section added limiting what an oral maxillofacial surgical assistant can do. THIS IS NOT AN EXPANSION OF SCOPE OF PRACTICE FOR ANYONE. This section simply lists the requirements and training to get the permit. None of the language in this section allows the oral maxillofacial surgical assistants to practice as a dentist, make any independent medical decisions or ANYTHING except ASSIST the dentist. In fact this section was created by the oral surgeons that are trying to set a higher standard.

**Section 14.** This is clean up language and bringing information up to date due to questions from the insurance companies and clarifying that a student on externship who will be working in dental offices must have a permit.

**Section 15. The changes in this section have arisen due to changes in the practices of dentistry and the trend of "live training demonstrations".** Prominent dentists from across the United States will come to Oklahoma to teach a new technique such as dental implants for example. In previous years they would come and do a seminar showing slides. The new trend is to show a live demonstration on a live patient while the dentists watch the procedure. As a result, the Board did not really have a mechanism other than a special volunteer license for which the dentist could not be paid or reimbursed if the patient had insurance. The Board would receive phone calls asking to get approval for a facility permit to use anesthesia in a hotel conference room. This new section allows for this type of training in a dental facility at the OU College of Dentistry and one time a year during the annual dental meeting where Board Members are present. This is restricted on purpose due to safety concerns and for the fact that the Board is issuing a temporary license to practice on a patient. Both of these venues have active Board members in residence to oversee these activities.

**Section 16. Background Checks.** This is moving the active date of the fingerprint background check system to 2016 as the FBI and other entities have been working on a new system. Currently, it takes approximately 6 plus weeks to get back a fingerprint check. The Board investigators are currently doing background checks on the new licensees with other law enforcement systems.

**Section 17. Clean-up.** Clarifies the type of supervision needed as direct.

**Section 18. and 19. New language. Requires that all advertising state the name of the dentist or dentists that will be providing the service be on the advertisement.** This is language that came from the dental office and practice committee chaired by Dr. Berg and the Specialty Committee chaired by Dr. Winder and Dr. Herman. The Board frequently has questions about Groupons and groups that want to advertise a 1-800-find a dentist numbers then "sell" the patients to the dentists. Our current laws prohibit fee sharing by a dentist partly due to antitrust federal issues and a dental office under the statutes is required to be owned by a dentist. Finally, because the Board has been dealing with unlicensed unscrupulous individuals practicing dentistry, this will help identify them as well.

**Section 19. 20. And 26. Patient Records and Designated Supervising Dentist.** is a recommendation from the dental office and practice committee and is intended to clarify when and

under what conditions records on patients are intended to be maintained. There have been issues arise with new corporate dentist chains regarding whether the corporation or the dentist own the patient records. However, the dental laws, Medicaid and the drug laws for DEA and OBN require the dentist to maintain a patient record. This change makes all the time periods consistent and defines the requirements of the records. The dental supervising dentist is an idea recommended based on the Board of Pharmacy's managing pharmacist.

**Section 21.** Three full-time hygienists clarification. There has been a lot of confusion since the law changed last year from overseeing two to three hygienists. This language is intended to clarify that issue and was written by the Hygiene Association.

**Section 22.** This section has clean up language from several issues covered already in the bill. The continuing education requirement was already existing language being moved from the rules to the statutes as it is a requirement to maintain licensure. The removed portion was the retired dentist sections that were moved to sections 10 and 11. Section G. is part of the recommendations from the retirement committee chaired by Dr. Torchia and Dr. Gore. This section is the section dealing with cancellation of a license for non-renewal. Due to numerous issues that have arisen over the years such as a dentist that moves to another state and seventeen years later asks to be reinstated versus reapplying, these recommendations were made. Now after 5 years of not having an active license, all former licensees and permit holders will have to apply as a new applicant. A person requesting retirement shall have a right to reinstate automatically within 5 years.

**Section 23., 24, 26, 27, 28 and 29 are clean up due to conflicting language between the statutes and rules and clarifies the procedures.** These are recommendations from the anesthesia committee that has been working since May and the attorneys that work for the Board based on recent rules in District Court decisions in three counties. This language will also incorporate the mediation process into the Board process as it was intended when originally written several years ago. Most importantly, this new section will give the Board access to dental specialists during highly technical investigations and gives the licensees being investigated a group of "peers" with specialized expertise to evaluate whether or not a violation of the Dentistry laws may have occurred.