

Independent, principled state policy fostering limited and responsible government, free enterprise, and a robust civil society.

March 2021

Dental Assistant Licensing in Oklahoma

Spencer Cadavero

Dental assistants set up equipment, prepare patients for treatment, and keep records. They do not diagnose patients or administer treatments, not even cleanings, though they might polish teeth or take an x-ray (see below). Dental assistants are only licensed in nine states, with Oklahoma instituting its license only in 2015.¹

Current Law

Dental assistants in Oklahoma are licensed by the State Dental Act. While the law refers to this as a permit, it is really a license, since it is government-granted permission to do the job. The act gives the Oklahoma Board of Dentistry (OBD) the power to set licensing requirements for dental assistants with advice from a standing committee of ten members.² This committee is co-chaired by a former Board member and a member of a statewide organization representing dentists. Half of the remaining eight members are appointed from Board recommendations by the president of the Board. The other half are appointed from recommendations by a statewide organization representing dentists, namely, the Oklahoma Dental Foundation.³

The State Dental Act also provides for an Allied Dental Education Committee, which makes recommendations for dental assistant and hygienist educational requirements. Of the ten members the committee is allowed to have, one must be the Board president, one must be the dental hygienist member of the Board, and one must be the Dean of the University of Oklahoma College of Dentistry. Of the remaining seven members, one must be an educator, and one must hold a current certified dental assistant permit from the Dental Assistant National Board.⁴

To be licensed as a basic dental assistant, one must submit a completed application form and pay the required fee of \$50 to the Oklahoma Board of Dentistry, with the fee recurring every year. Additionally, a dental assistant license applicant must complete an OBD-approved class on infection control within the first year of receiving their permit.⁵

A second type of dental assistant license is the dental assistant with expanded function license. These expanded functions include radiography, coronal polishing, sealants, assisting in

Prior to 2015, dental assistants were not licensed to perform basic functions. That was the right policy, and the Oklahoma legislature should return to it.

the administration of Nitrous Oxide, and assisting a dentist who holds a parenteral (non-oral – i.e. intravenous) or pediatric anesthesia permit. To obtain an expanded function permit, one must complete a training program certified by the Commission on Dental Accreditation.⁶ These training programs can cost from \$400 to \$3,700.⁷ Each expanded duty permit must be obtained separately.

Evaluating the Need for Licensing

The 1889 Institute has published *Policy Maker's Guide to Evaluating Proposed and Existing Professional Licensing Laws*, which sets forth two preconditions to licensing an occupation:⁸

an occupation's practices present a real and probable risk of harm to the general public or patrons if practitioners fail to act appropriately; AND

civil-law or market failure makes it difficult for patrons to obtain information, educate themselves, and judge whether an occupation's practitioners are competent.

If the answer to both of these questions is "No," the occupation should not be licensed. If the answer to both questions is "Yes," licensing may be a valid option if no less-restrictive means can achieve the same ends.

Spencer Cadavero is Research Associate at the 1889 Institute.

Does this occupation provide a serious risk to the public if practiced improperly?

No. The standard dental assistant permit only allows one to assist a dentist. They set up equipment, prepare patients for treatment, keep records, and schedule appointments. This makes them more akin to an administrative assistant than a medical one. The fact that forty-one states do not license this occupation and are not facing a crisis of dental accidents due to poor assistants is further proof the license is unnecessary.

Even in the case of dental assistants with expanded functions, states are inconsistent with which expanded functions do or do not warrant licensing. For example, Kansas does not require a special permit for dental assistants to operate x-ray equipment, while Oklahoma does. Alabama requires no license for any expanded duty functions, such as assisting in the administration of nitrous oxide. Oklahoma does.⁹ Oklahoma is the only state with a separate permit for assisting a dentist who holds a parenteral or pediatric anesthesia permit. Even one who possesses this permit cannot administer anesthesia or assess the patient's level of sedation; only the dentist can do perform these functions.

The existence of this license probably harms consumers more than it helps them. A skilled and experienced dental assistant from Alabama would be unable to practice in Oklahoma until he received his permit and would then still be restricted from performing many of the duties he is experienced in until he receives further permission from the state. This artificial limiting of supply pushes up costs for dentists and for patients.

Is there a failure of civil law or free markets that makes it difficult for patrons to obtain information, educate themselves, and judge whether an occupation's practitioners are competent?

Not at all. For one, nobody picks their dental assistant. Their dentist does. Their dentist has a powerful incentive to pick a competent assistant since he is liable for any mistake made by his assistant. When hiring a dental assistant, the dentist has the same resources available to him to evaluate potential hires as a dentist

in states that do not license dental assistants. In fact, prior to 2015, they did this just fine. Furthermore, if this difficulty existed, then more than nine states would license dental assistants, and there would be consistency in which expanded functions are licensed and which are not.

Policy Recommendations

Prior to 2015, dental assistants were not licensed to perform basic functions. That was the right policy, and the Oklahoma legislature should return to it. There is no evidence of an epidemic of dental accidents in Oklahoma prior to the legislature mandating licensing. At most, given current licensing law, Oklahoma should dictate a list of duties dental assistants are allowed to perform under the direct supervision of a licensed dentist, as well as those they are prohibited from performing, as other states do.

The 1889 Institute has outlined a solution to the problem of occupational licensing, including a model bill, in its paper *A Win-Win for Consumers and Professionals Alike: An Alternative to Occupational Licensing*.¹⁰ It would have the state register multiple private certification organizations, which compete for professionals and the attention of consumers. This preserves the one and only valuable aspect of licensing, the shorthand information of which practitioners are competent, while discarding the market distortions of monopolized industry. The law keeps certifiers honest by allowing competing certifiers to enter the market as they find opportunity. Private certifiers are conditionally given the protection of criminal fraud laws to lower the cost of defending their credentials. Licenses are not eliminated; instead, anyone certified by a qualified certifier is exempted from the relevant licensing laws.

Conclusion

Unlicensed dental assistants pose no real threat to the public, and the laws of 41 states agree. Provisions in the Oklahoma Dental Practices Act requiring dental assistants to be permitted (i.e. licensed) should be repealed.

End Notes

1 S.B. 781, 52nd Legislature, 2015 Reg. Sess. (Okla. 2015)

2 59 OK Stat § 59-328.15

3 59 OK Stat § 59-328.17

4 59 OK Stat § 59-328.17

5 59 OK Stat § 59-328.24

6 59 OK Stat § 59-328.24

7 "Course Info: Nitrous Oxide", Oklahoma Dental Foundation, accessed 11/4/2020, <https://okdf.org/course-info/nitrous-oxide/>

"Dental Assisting", Francis Tuttle Technology Center, accessed 11/4/2020, <https://www.francistuttle.edu/programs-courses/career-training-programs/dental-assisting/dental-assisting>

8 Byron Schlomach and Vance H. Fried, *Policy Maker's Guide to Evaluating Proposed and Existing Occupational Licensing Laws*, 1889 Institute, February 2017, https://qkm.4a8.myftpupload.com/wp-content/uploads/2020/01/1889_Policy-Makers-Guide.pdf

9 Dental Assisting National Board, *2019 Allowable and Prohibited Duties for Dental Assistants: Kansas*, <https://www.danb.org/~media/Files/State-CLT/Kansas.ashx>

Dental Assisting National Board, *2019 Allowable and Prohibited Duties for Dental Assistants: Alabama*, <https://www.danb.org/~media/Files/State-CLT/Alabama.ashx>

Dental Assisting National Board, *2019 Allowable and Prohibited Duties for Dental Assistants: Oklahoma*, <https://www.danb.org/~media/Files/State-CLT/Oklahoma.ashx>

10 Schlomach, Byron and Christina Sandefur, and Murray Feldstein. *A Win-Win for Consumers and Professionals Alike: An Alternative to Occupational Licensing*, Goldwater Institute, November 2018, <http://nebula.wsimg.com/aa6ba3f186088c8bbe2bd14698445aa4?AccessKeyId=CB55D82B5028ABD8BF94&disposition=0&alloworigin=1>.