

## **BILL ANALYSIS**

C.S.H.B. 3201  
By: Kolkhorst  
Public Health  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties report that the State Board of Dental Examiners has had difficulty investigating complaints and resolving issues in a timely manner due to a lack of funds and qualified reviewers and to inefficient reviewing and enforcement processes, which limit the board's ability to handle complaints. The parties also assert that clear direction regarding dental complaint processing and investigation is needed. C.S.H.B. 3201 seeks to strengthen the board's authority and enforcement powers, improve complaint review and resolution processes, and increase the board's funds to provide for more employees to improve the response to complaints and potential fraud.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the State Board of Dental Examiners in SECTIONS 4, 6, and 7 of this bill.

### **ANALYSIS**

C.S.H.B. 3201 amends the Occupations Code to require the State Board of Dental Examiners to collect an \$80 surcharge for each fee collected for the issuance of a license and for a license renewal. The bill requires the board to deposit each surcharge collected to the credit of the dental public assurance account, which is an account in the general revenue fund dedicated to the board to pay for the board's enforcement program, including the expert panel.

C.S.H.B. 3201 removes a provision restricting disclosure of investigation files and other confidential records of the board to the persons investigated at the completion of the investigation, and instead, as an exception to the confidentiality of such files and records, requires the board to inform the license holder of the specific allegations against the license holder.

C.S.H.B. 3201 removes a provision requiring the board to investigate a complaint received under the Dental Practice Act over which the board has jurisdiction to determine the facts concerning the complaint, and instead requires the board to complete a preliminary investigation of such a complaint not later than the 45th day after the date of receiving the complaint. The bill requires the board to first determine whether the license holder constitutes a continuing threat to the public welfare and, on completion of such a determination, to determine whether to officially proceed on the complaint. The bill establishes that if the board fails to complete the preliminary investigation in the time required, the board's official investigation of the complaint is considered to start on that date. The bill removes a requirement that the procedures by which a board employee may dismiss a complaint if the investigation does not reveal a violation require a board employee to consult with a dentist member of the board before dismissing a complaint relating to patient morbidity, professional conduct, or quality of care.

C.S.H.B. 3201 authorizes the board by rule to provide for expert panels appointed by the board to assist with complaints and investigations relating to professional competency by acting as

expert dentist and dental hygienist reviewers and requires each member of the expert dentist panel and each member of the expert dentist hygienist panel to be licensed to practice dentistry or dental hygiene, as applicable, in Texas. The bill requires the rules adopted by the board to include provisions governing the panel's composition; qualifications for panel membership; length of time a member may serve on the panel; grounds for removal from the panel; the avoidance of conflicts of interest, including situations in which the affected license holder and the panel member live or work in the same geographical area or are competitors; and the panel's duties. The bill requires the board's rules governing grounds for removal from the panel to include providing for the removal of a panel member who is repeatedly delinquent in reviewing complaints and in submitting reports to the board. The bill requires a complaint, if the preliminary investigation of that complaint indicates that an act by a license holder falls below an acceptable standard of care, to be reviewed by an authorized expert panel consisting of license holders who practice in the same specialty as the license holder who is the subject of the complaint or in another specialty that is similar to the license holder's specialty.

C.S.H.B. 3201 requires the expert panel to report in writing the panel's determinations based on the review of the complaint and requires the report to specify the standard of care that applies to the facts that are the basis of the complaint and the clinical basis for the panel's determinations, including any reliance on peer-reviewed journals, studies, or reports. The bill establishes procedures by which a complaint may be reviewed by a series of expert license holder reviewers and requirements for issuing a final written report on the matter. The bill authorizes the expert reviewers assigned to examine a complaint to consult and communicate with each other about the complaint in formulating their opinions and reports.

C.S.H.B. 3201 authorizes the board to delegate authority to board employees to issue licenses under the Dental Practice Act to applicants who clearly meet all licensing requirements and requires an application to be returned to the board if the board employees determine that the applicant does not clearly meet all licensing requirements. The bill establishes that a license issued by board employees does not require formal board approval. The bill authorizes the board to delegate to a committee of board employees the authority to dismiss or enter into an agreed settlement of a complaint that does not relate directly to patient care or that involves only administrative violations. The bill requires the disposition determined by the committee to be approved by the board at a public meeting and requires such a complaint delegated to a committee to be referred for informal proceedings if the committee of employees determines that the complaint should not be dismissed or settled, the committee is unable to reach an agreed settlement, or the affected license holder requests that the complaint be referred for informal proceedings.

C.S.H.B. 3201 requires notice of the time and place of an informal settlement conference, if such a conference will be held to resolve a complaint, to be given to the license holder not later than the 45th day before the date the informal settlement conference is held, and to be accompanied by a written statement of the specific allegations against the license holder and the information the board intends to use at the informal settlement conference. The bill authorizes a license holder, if the board does not provide the statement or information when the notice is provided, to use that failure as grounds for rescheduling the informal settlement conference. The bill requires the license holder to provide to the board the license holder's rebuttal not later than the 15th day before the date of the settlement conference in order for that information to be considered at the conference. The bill requires the board to make a recording of the informal settlement conference on request by a license holder under review and establishes that the recording is a part of the investigative file and may not be released to a third party unless authorized by the Dental Practice Act. The bill authorizes the board to charge a license holder a fee to cover the cost of recording the settlement conference and requires the board to provide a copy of the recording to the license holder on the license holder's request.

C.S.H.B. 3201 authorizes the board to issue and establish the terms of a remedial plan to resolve the investigation of a complaint filed under the Dental Practice Act. The bill prohibits a remedial

plan from containing a provision that revokes, suspends, limits, or restricts a person's license or other authorization to practice dentistry or dental hygiene or that assesses an administrative penalty against a person. The bill prohibits a remedial plan from being imposed to resolve a complaint concerning a patient death, the commission of a felony, or a matter in which the license holder engaged in inappropriate sexual behavior or contact with a patient or became financially or personally involved with a patient in an inappropriate manner, or from being imposed to resolve a complaint in which the appropriate resolution may involve a restriction on the manner in which a license holder practices dentistry or dental hygiene. The bill prohibits the board from issuing a remedial plan to resolve a complaint against a license holder if the license holder has previously entered into a remedial plan with the board for the resolution of a different complaint filed under the Dental Practice Act, and authorizes the board to assess a fee against a license holder participating in a remedial plan in an amount necessary to recover the costs of administering the plan. The bill establishes that a remedial plan is public information and that, in civil litigation, a remedial plan is a settlement agreement under Texas Rules of Evidence. The bill requires the board to adopt rules necessary to implement the bill's provisions relating to remedial plans.

C.S.H.B. 3201, in a provision effective September 1, 2103, requires the board to adopt rules necessary to implement the bill's provisions not later than December 1, 2013. The bill applies its provisions relating to complaints and investigations only to the investigation and resolution of a complaint filed with the State Board of Dental Examiners on or after January 1, 2014.

### **EFFECTIVE DATE**

Except as otherwise provided, January 1, 2014.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 3201 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

#### INTRODUCED

SECTION 1. Section 254.004, Occupations Code, is amended to by adding subsections (c) and (d) read as follows:

(c) The board shall collect an additional \$80 surcharge for each of the following fees:

- (1) first registration permit; and
- (2) renewal of a registration permit.

(d) The board shall deposit each surcharge collected to the credit of the public assurance account. The public assurance account is an account in the general revenue fund that shall be appropriated only to the board to pay for the board's enforcement program, including the expert dentist panel.

SECTION 2. Section 254.006, Occupations Code, is amended to read as follows:

#### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 254.004, Occupations Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) The board shall collect an additional \$80 surcharge for each of the following fees:

- (1) the fee for the issuance of a license; and
- (2) the fee for the renewal of a license.

(d) The board shall deposit each surcharge collected to the credit of the dental public assurance account. The dental public assurance account is an account in the general revenue fund that shall be appropriated only to the board to pay for the board's enforcement program, including an expert panel.

SECTION 2. Section 254.006(b), Occupations Code, is amended to read as follows:

(b) Investigation files and other records are confidential. ~~and shall be divulged only to the persons investigated at the completion of the investigation. Notwithstanding this provision~~ tThe board;

(1) ~~must provide notice under section 263.0076; and~~

(2) may share investigation files and other records with another state regulatory agency or a local, state, or federal law enforcement agency.

SECTION 3. Subtitle D, Chapter 254, Occupations Code, is amended by adding Section 254.019 to read as follows:

Section 254.019 **DELEGATION OF CERTAIN ACTIONS**

(a) The board may delegate authority to board employees to issue licenses under this subtitle to applicants who clearly meet all licensing requirements. If the board employees determine that the applicant does not clearly meet all licensing requirements, the application shall be returned to the board. A license issued under this subsection does not require formal board approval.

(b) The board may delegate to a committee of board employees the authority to dismiss or enter into an agreed settlement of a complaint that does not relate directly to patient care or that involves only administrative violations.

The disposition determined by the committee must be approved by the board at a public meeting.

A complaint delegated under this section shall be referred for informal proceedings under Section 263.0075 if:

(1) the committee of employees determines that the complaint should not be dismissed or settled;

(2) the committee is unable to reach an agreed settlement; or

(3) the affected licensee requests that the complaint be referred for informal proceedings.

SECTION 4. Section 255.006, Occupations Code, is amended.

SECTION 5. Subtitle D, Chapter 255,

(b) Investigation files and other records are confidential, ~~except the board shall inform the license holder of the specific allegations against the license holder~~ [and shall be divulged only to the persons investigated at the completion of the investigation]. The board may share investigation files and other records with another state regulatory agency or a local, state, or federal law enforcement agency.

SECTION 5. Subchapter C, Chapter 256, Occupations Code, is amended by adding Section 256.106 to read as follows:

Sec. 256.106. **DELEGATED AUTHORITY TO ISSUE LICENSES.**

The board may delegate authority to board employees to issue licenses under this subtitle to applicants who clearly meet all licensing requirements. If the board employees determine that the applicant does not clearly meet all licensing requirements, the application shall be returned to the board. A license issued under this section does not require formal board approval.

*(Same as Section 263.0065, Occupations Code, added by SECTION 6 below.)*

SECTION 3. Substantially same as introduced version.

SECTION 4. Chapter 255, Occupations

Occupations Code, is amended by adding Section 255.0065 to read as follows:

Section 255.0065 EXPERTS.

The board by rule shall provide for an expert dentist panel appointed by the board to assist with complaints and investigations relating to medical competency by acting as expert dentist reviewers.

Each member of the expert dentist panel must be licensed to practice dentistry in this state.

The rules adopted under this subsection must include provisions governing the composition of the panel, qualifications for membership on the panel, length of time a member may serve on the panel, grounds for removal from the panel, the avoidance of conflicts of interest, including situations in which the affected dentist and the panel member live or work in the same geographical area or are competitors, and the duties to be performed by the panel.

The board's rules governing grounds for removal from the panel must include providing for the removal of a panel member who is repeatedly delinquent in reviewing complaints and in submitting reports to the board.

(b) If the initial review under 255.006(a) indicates that an act by a licensee falls below an acceptable standard of care, the complaint shall be reviewed by an expert panel authorized under (a) consisting of dentists who practice in the same specialty as the dentist who is the subject of the complaint or in another specialty that is similar to the dentist's specialty.

(c) The expert dentist panel shall report in writing the panel's determinations based on the review of the complaint under Subsection (b). The report must specify the standard of care that applies to the facts that are the basis of the complaint and the clinical basis for the panel's determinations, including any reliance on peer-reviewed journals, studies, or reports.

Code, is amended by adding Sections 255.0065, 255.0066, and 255.0067 to read as follows:

Sec. 255.0065. COMPOSITION OF EXPERT PANELS.

(a) The board by rule may provide for expert panels appointed by the board to assist with complaints and investigations relating to professional competency by acting as expert dentist and dental hygienist reviewers.

(b) Each member of the expert dentist panel must be licensed to practice dentistry in this state. Each member of the expert dentist hygienist panel must be licensed to practice dental hygiene in this state.

(c) The rules adopted under this section must include provisions governing the composition of the panel, qualifications for membership on the panel, length of time a member may serve on the panel, grounds for removal from the panel, the avoidance of conflicts of interest, including situations in which the affected license holder and the panel member live or work in the same geographical area or are competitors, and the duties to be performed by the panel.

(d) The board's rules governing grounds for removal from the panel must include providing for the removal of a panel member who is repeatedly delinquent in reviewing complaints and in submitting reports to the board.

Sec. 255.0066. DETERMINATION OF COMPETENCY.

(a) If the preliminary investigation under Section 255.006(a) indicates that an act by a license holder falls below an acceptable standard of care, the complaint shall be reviewed by an expert panel authorized under Section 255.0065 consisting of license holders who practice in the same specialty as the license holder who is the subject of the complaint or in another specialty that is similar to the license holder's specialty.

(b) The expert panel shall report in writing the panel's determinations based on the review of the complaint under Subsection (a). The report must specify the standard of care that applies to the facts that are the basis of the complaint and the clinical basis for the panel's determinations, including any reliance on peer-reviewed journals, studies, or reports.

(d) A dentist on the expert dentist panel authorized by Section 154.056(e) who is initially selected to review a complaint shall:

(1) determine whether the dentist who is the subject of the complaint has violated the standard of care applicable to the circumstances; and

(2) issue a preliminary written report of that determination.

(e) A second expert dentist reviewer shall review the first dentist's preliminary report and other information associated with the complaint. If the second expert dentist agrees with the first expert dentist, the first dentist shall issue a final written report on the matter.

(f) If the second expert dentist does not agree with the conclusions of the first expert dentist, a third expert dentist reviewer shall review the preliminary report and information and decide between the conclusions reached by the first two expert dentists. The final written report shall be issued by the third dentist or the dentist with whom the third dentist concurs.

(g) In reviewing a complaint, the expert dentist reviewers assigned to examine the complaint may consult and communicate with each other about the complaint in formulating their opinions and reports.

SECTION 6. Subtitle D, Chapter 263, Occupations Code, is amended by adding Section 263.0076 to read as follows:

*(Same as Section 254.019(b), added by SECTION 3 above.)*

Sec. 255.0067. REPORTS; PROCEDURES FOR EXPERT REVIEW.

(a) A license holder on an expert panel authorized by Section 255.0065 who is initially selected to review a complaint shall:

(1) determine whether the license holder who is the subject of the complaint has violated the standard of care applicable to the circumstances; and

(2) issue a preliminary written report of that determination.

(b) A second expert reviewer shall review the first expert reviewer's preliminary report and other information associated with the complaint. If the second reviewer agrees with the first reviewer, the first reviewer shall issue a final written report on the matter.

(c) If the second expert reviewer does not agree with the conclusions of the first expert reviewer, a third expert reviewer shall review the preliminary report and information and decide between the conclusions reached by the first two reviewers. The final written report shall be issued by the third reviewer or the reviewer with whom the third reviewer concurs.

(d) In reviewing a complaint, the expert reviewers assigned to examine the complaint may consult and communicate with each other about the complaint in formulating their opinions and reports.

SECTION 6. Chapter 263, Occupations Code, is amended by adding Sections 263.0065, 263.0076, and 263.0077 to read as follows:

Sec. 263.0065. DELEGATION OF CERTAIN COMPLAINT DISPOSITIONS.

(a) The board may delegate to a committee of board employees the authority to dismiss or enter into an agreed settlement of a complaint that does not relate directly to patient care or that involves only administrative violations.

(b) The disposition determined by the committee must be approved by the board at a public meeting.

(c) A complaint delegated under this section shall be referred for informal proceedings

Section 263.0076 INFORMAL SETTLEMENT CONFERENCE NOTICE.

(a) If an informal meeting will be held under 263.0075, notice of the time and place of the informal meeting must be given to the license holder not later than the 45th day before the date the informal meeting is held.

(b) The notice required by Subsection (a) must be accompanied by a written statement of the nature of the allegations against the license holder and the information the board intends to use at the informal meeting. If the board does not provide the statement or information when the notice is provided, the license holder may use that failure as grounds for rescheduling the informal meeting.

The license holder must provide to the board the license holder's rebuttal not later than the 15th day before the date of the meeting in order for that information to be considered at the meeting.

(c) On request by a license holder under review, the board shall make a recording of the informal meeting. The recording is a part of the investigative file and may not be released to a third party unless authorized under this subtitle. The board may charge the license holder a fee to cover the cost of recording the meeting.

The board shall provide a copy of the recording to the license holder on the license holder's request.

*(See SECTION 7 below.)*

SECTION 7. Subtitle D, Chapter 263, Occupations Code, is amended by adding Section 263.0077 to read as follows:

Sec. 263.0077 REMEDIAL PLAN. (a) The board may issue and establish the terms of a remedial plan to resolve the investigation of a complaint relating to this subtitle.

under Section 263.0075 if:

(1) the committee of employees determines that the complaint should not be dismissed or settled;

(2) the committee is unable to reach an agreed settlement; or

(3) the affected license holder requests that the complaint be referred for informal proceedings.

Sec. 263.0076. INFORMAL SETTLEMENT CONFERENCE NOTICE.

(a) If an informal settlement conference will be held under Section 263.0075, notice of the time and place of the conference must be given to the license holder not later than the 45th day before the date the conference is held.

(b) The notice required by Subsection (a) must be accompanied by a written statement of the specific allegations against the license holder and the information the board intends to use at the informal settlement conference. If the board does not provide the statement or information when the notice is provided, the license holder may use that failure as grounds for rescheduling the conference.

(c) The license holder must provide to the board the license holder's rebuttal not later than the 15th day before the date of the conference in order for that information to be considered at the conference.

(d) On request by a license holder under review, the board shall make a recording of the informal settlement conference. The recording is a part of the investigative file and may not be released to a third party unless authorized under this subtitle. The board may charge the license holder a fee to cover the cost of recording the conference. The board shall provide a copy of the recording to the license holder on the license holder's request.

Sec. 263.0077. REMEDIAL PLAN

*(From SECTION 6 above.)*

Sec. 263.0077. REMEDIAL PLAN. (a) The board may issue and establish the terms of a remedial plan to resolve the investigation of a complaint filed under this subtitle.

(b) A remedial plan may not contain a provision that:  
(1) revokes, suspends, limits, or restricts a person's license or other authorization to practice dentistry; or  
(2) assesses an administrative penalty against a person.  
(c) A remedial plan may not be imposed to resolve a complaint:  
(1) concerning:  
(A) a patient death;  
(B) the commission of a felony; or  
(C) a matter in which the dentist engaged in inappropriate sexual behavior or contact with a patient or became financially or personally involved with a patient in an inappropriate manner; or  
(2) in which the appropriate resolution may involve a restriction on the manner in which a license holder practices dentistry.

(d) The board may not issue a remedial plan to resolve a complaint against a license holder if the license holder has previously entered into a remedial plan with the board for the resolution of a different complaint relating to this subtitle.

(e) The board may assess a fee against a license holder participating in a remedial plan in an amount necessary to recover the costs of administering this plan.

(f) A remedial plan is public information.

(g) In civil litigation, a remedial plan is a settlement agreement under Rule 408, Texas Rules of Evidence.

(h) The board shall adopt rules necessary to implement this section.

No equivalent provision.

No equivalent provision.

(b) A remedial plan may not contain a provision that:  
(1) revokes, suspends, limits, or restricts a person's license or other authorization to practice dentistry or dental hygiene; or  
(2) assesses an administrative penalty against a person.  
(c) A remedial plan may not be imposed to resolve a complaint:  
(1) concerning:  
(A) a patient death;  
(B) the commission of a felony; or  
(C) a matter in which the license holder engaged in inappropriate sexual behavior or contact with a patient or became financially or personally involved with a patient in an inappropriate manner; or  
(2) in which the appropriate resolution may involve a restriction on the manner in which a license holder practices dentistry or dental hygiene.

(d) The board may not issue a remedial plan to resolve a complaint against a license holder if the license holder has previously entered into a remedial plan with the board for the resolution of a different complaint filed under this subtitle.

(e) The board may assess a fee against a license holder participating in a remedial plan in an amount necessary to recover the costs of administering the plan.

(f) A remedial plan is public information.

(g) In civil litigation, a remedial plan is a settlement agreement under Rule 408, Texas Rules of Evidence.

(h) The board shall adopt rules necessary to implement this section.

SECTION 7. Not later than December 1, 2013, the State Board of Dental Examiners shall adopt rules necessary to implement the changes in law made by this Act.

SECTION 8. Sections 254.006(b) and 255.006, Occupations Code, as amended by this Act, and Sections 255.0065, 255.0066, 255.0067, 263.0076, and 263.0077, Occupations Code, as added by this Act, apply only to the investigation and resolution of a complaint filed with the State Board of Dental Examiners on or after January 1, 2014. A complaint filed before that date is governed by the law in effect on



the date the complaint was filed, and the former law is continued in effect for that purpose.

No equivalent provision.

SECTION 9. (a) Except as provided by Subsection (b) of this section, this Act takes effect January 1, 2014.

(b) Section 7 of this Act takes effect September 1, 2013.