

By: Kolkhorst

H.B. No. 3201

A BILL TO BE ENTITLED

AN ACT

relating to the practice of dentistry; imposing surcharges and fees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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 \$55 surcharge for each of the following fees:

(1) the fee for the issuance of a dental license; and

(2) the fee for the renewal of a dental 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, 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.

1 SECTION 3. Section 254.018, Occupations Code, is amended to
2 read as follows:

3 Sec. 254.018. [~~EXPERT~~] TESTIMONY. A member of the board may
4 not express an oral or written opinion or serve as an expert witness
5 in a suit or administrative claim pending before the same board
6 ~~[involving a health care liability claim]~~ against or for a person
7 licensed or registered under this subtitle ~~[dentist]~~ for injury to
8 or death of a patient or for a violation of the standard of care or
9 the commission of malpractice ~~[unless the member receives approval~~
10 ~~from the board or an executive committee of the board to serve as an~~
11 ~~expert witness]~~.

12 SECTION 4. Sections 255.006(a) and (d-1), Occupations Code,
13 are amended to read as follows:

14 (a) A complaint received under this chapter must be filed
15 with and reviewed by the board to determine jurisdiction. If the
16 board has jurisdiction, the board shall complete a preliminary
17 investigation of the complaint not later than the 60th day after the
18 date of receiving ~~[investigate the complaint to determine the facts~~
19 ~~concerning]~~ the complaint. The board shall first determine whether
20 the license holder constitutes a continuing threat to the public
21 welfare. On completion of the preliminary investigation, the board
22 shall determine whether to officially proceed on the complaint. If
23 the board fails to complete the preliminary investigation in the
24 time required by this subsection, the board's official
25 investigation of the complaint is considered to commence on that
26 date.

27 (d-1) Procedures established under Subsection (d)(6) must:

1 (1) [~~require a board employee to consult with a~~
2 ~~dentist member of the board before dismissing a complaint relating~~
3 ~~to patient morbidity, professional conduct, or quality of care,~~

4 [~~(2)~~] ensure that the decision to dismiss a complaint
5 is made with the appropriate level of review and necessary
6 expertise and experience; and

7 (2) [~~(3)~~] require the dismissal of a complaint to be
8 reported to the board at a public meeting of the board.

9 SECTION 5. Chapter 255, Occupations Code, is amended by
10 adding Sections 255.0065, 255.0066, and 255.0067 to read as
11 follows:

12 Sec. 255.0065. COMPOSITION OF EXPERT PANELS. (a) The board
13 by rule shall provide for expert panels appointed by the board to
14 assist with complaints and investigations relating to professional
15 competency by acting as expert dentist and dental hygienist
16 reviewers.

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

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

1 performed by the panel.

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

6 Sec. 255.0066. DETERMINATION OF COMPETENCY. (a) If the
7 preliminary investigation under Section 255.006(a) indicates that
8 an act by a license holder falls below an acceptable standard of
9 care, the complaint shall be reviewed by an expert panel authorized
10 under Section 255.0065 consisting of license holders who practice
11 in the same specialty as the license holder who is the subject of
12 the complaint or in another specialty that is similar to the license
13 holder's specialty.

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

20 Sec. 255.0067. REPORTS; PROCEDURES FOR EXPERT REVIEW.

21 (a) A license holder on an expert panel authorized by Section
22 255.0065 who is initially selected to review a complaint shall:

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

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

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

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

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

16 SECTION 6. Subchapter C, Chapter 256, Occupations Code, is
17 amended by adding Section 256.106 to read as follows:

18 Sec. 256.106. DELEGATED AUTHORITY TO ISSUE LICENSES. The
19 board may delegate authority to board employees to issue licenses
20 under this subtitle to applicants who clearly meet all licensing
21 requirements. If the board employees determine that the applicant
22 does not clearly meet all licensing requirements, the application
23 shall be returned to the board. A license issued under this section
24 does not require formal board approval.

25 SECTION 7. Subchapter B, Chapter 258, Occupations Code, is
26 amended by adding Section 258.055 to read as follows:

27 Sec. 258.055. PRACTICE OF DENTISTRY ON CERTAIN CHILDREN.

1 (a) The parent or guardian of a child younger than 18 years of age
2 may be present in the treatment room during the child's dental
3 treatment or procedure, unless the dentist determines in the
4 dentist's professional judgment that the presence of the parent or
5 guardian in the treatment room is likely to have an adverse effect
6 on the treatment or the child.

7 (b) In this section, "parent or guardian" includes a person
8 authorized by law to consent for the medical or dental treatment of
9 a child younger than 18 years of age.

10 SECTION 8. Chapter 263, Occupations Code, is amended by
11 adding Sections 263.0065, 263.0076, and 263.0077 to read as
12 follows:

13 Sec. 263.0065. DELEGATION OF CERTAIN COMPLAINT
14 DISPOSITIONS. (a) The board may delegate to a committee of board
15 employees the authority to dismiss or enter into an agreed
16 settlement of a complaint that does not relate directly to patient
17 care or that involves only administrative violations.

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

20 (c) A complaint delegated under this section shall be
21 referred for informal proceedings under Section 263.0075 if:

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

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

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

1 Sec. 263.0076. INFORMAL SETTLEMENT CONFERENCE NOTICE. (a)

2 If an informal settlement conference will be held under Section
3 263.0075, notice of the time and place of the conference must be
4 given to the license holder not later than the 45th day before the
5 date the conference is held.

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

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

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

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

27 (b) A remedial plan may not contain a provision that:

1 (1) revokes, suspends, limits, or restricts a person's
2 license or other authorization to practice dentistry or dental
3 hygiene; or

4 (2) assesses an administrative penalty against a
5 person.

6 (c) A remedial plan may not be imposed to resolve a
7 complaint:

8 (1) concerning:

9 (A) a patient death;

10 (B) the commission of a felony; or

11 (C) a matter in which the license holder engaged
12 in inappropriate sexual behavior or contact with a patient or
13 became financially or personally involved with a patient in an
14 inappropriate manner; or

15 (2) in which the appropriate resolution may involve a
16 restriction on the manner in which a license holder practices
17 dentistry or dental hygiene.

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

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

25 (f) A remedial plan is public information.

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

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

3 SECTION 9. Not later than December 1, 2013, the State Board
4 of Dental Examiners shall adopt rules necessary to implement the
5 changes in law made by this Act.

6 SECTION 10. Section 254.004(c), Occupations Code, as added
7 by this Act, applies only to an application for an original dental
8 license or for renewal of a dental license filed on or after
9 September 1, 2013. An application filed before September 1, 2013,
10 is governed by the law in effect immediately before that date, and
11 that law is continued in effect for that purpose.

12 SECTION 11. Sections 254.006(b) and 255.006, Occupations
13 Code, as amended by this Act, and Sections 255.0065, 255.0066,
14 255.0067, 263.0076, and 263.0077, Occupations Code, as added by
15 this Act, apply only to the investigation and resolution of a
16 complaint filed with the State Board of Dental Examiners on or after
17 January 1, 2014. A complaint filed before that date is governed by
18 the law in effect on the date the complaint was filed, and the
19 former law is continued in effect for that purpose.

20 SECTION 12. (a) The Texas State Board of Dental Examiners
21 shall collect the following information from dentists licensed by
22 the board in conjunction with the first annual license renewal of
23 each dental license that occurs after September 1, 2013:

24 (1) the number and type of dentists employed by the
25 license holder, if any;

26 (2) the name under which the license holder provides
27 dental services and each location at which those services are

1 provided by that license holder;

2 (3) whether the license holder is a participating
3 provider under the Medicaid program operated under Chapter 32,
4 Human Resources Code, or the child health plan program operated
5 under Chapter 62, Health and Safety Code;

6 (4) whether the license holder is employed by or
7 contracts with a dental group practice and, if so, the name and
8 address of the dental group practice;

9 (5) whether the license holder owns a dental group
10 practice and, if so, the name and address of the dental group
11 practice and of each dental office at which the dental group
12 practice provides services to patients;

13 (6) whether the license holder is a party to a business
14 support services agreement and, if so, the name and address of the
15 management service organization that provides services under the
16 agreement; and

17 (7) if the license holder owns a dental group
18 practice, whether that practice is a party to a business support
19 services agreement and, if so, the name and address of the
20 management service organization that provides services under the
21 agreement.

22 (b) Not later than November 1, 2014, the board shall provide
23 a report to the legislature on the information collected under this
24 section and on the board's use of the information in the exercise of
25 the board's statutory authority to regulate the practice of
26 dentistry.

27 (c) This section expires December 1, 2014.

1 SECTION 13. (a) Except as provided by Subsection (b) of
2 this section, this Act takes effect January 1, 2014.

3 (b) Section 9 of this Act and Sections 254.004(c) and (d),
4 Occupations Code, as added by this Act, take effect September 1,
5 2013.