

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 civil action that is:

6 (1) related to an administrative matter within the
7 board's jurisdiction;

8 (2) brought [~~suit involving a health care liability~~
9 ~~claim~~] against or for a person licensed or registered under this
10 subtitle; and

11 (3) [~~dentist~~] for the injury to or death of a patient
12 or for a violation of the standard of care or the commission of
13 malpractice [~~unless the member receives approval from the board or~~
14 ~~an executive committee of the board to serve as an expert witness].~~

15 SECTION 4. Chapter 254, Occupations Code, is amended by
16 adding Section 254.019 to read as follows:

17 Sec. 254.019. DEFINITIONS. (a) In this section:

18 (1) "Dental service agreement" means an agreement
19 between a dental service organization and a dentist under which the
20 dental service organization will:

21 (A) provide services related to the nonclinical
22 business aspects of a dental practice, including arranging or
23 providing financing, performing billing or payroll tasks,
24 processing patient insurance claims, scheduling or otherwise
25 interacting with patients, and performing other administrative
26 tasks;

27 (B) supervise or manage the employees or

1 contractors of the dentist; or

2 (C) employ or otherwise contract with a dentist
3 in the dentist's capacity as a dentist.

4 (2) "Dental service organization" means an entity
5 that:

6 (A) is owned wholly or partly by a person who is
7 or is not a dentist; and

8 (B) under a dental service agreement, provides or
9 offers to provide services to a dentist or employs or otherwise
10 contracts with a dentist in the dentist's capacity as a dentist.

11 (b) The board shall collect the following information from
12 dentists licensed by the board in conjunction with the issuance and
13 renewal of each dental license:

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

16 (2) the name under which the license holder provides
17 dental services and each location at which those services are
18 provided by that license holder;

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

23 (4) whether the license holder is employed by or
24 contracts with a dental service organization and, if so, the name
25 and address of the dental service organization;

26 (5) whether the license holder owns all or part of a
27 dental service organization and, if so, the name and address of the

1 dental service organization and of each dental office at which the
2 dental service organization provides services to patients;

3 (6) whether the license holder is a party to a dental
4 service agreement and, if so, the name and address of the dental
5 service organization that provides services under the agreement;
6 and

7 (7) if the license holder owns all or part of a dental
8 service organization, whether that practice is a party to a dental
9 service agreement and, if so, the name and address of the dental
10 service organization that provides services under the agreement.

11 (c) If requested by the board, a dental service organization
12 shall provide to the board the address of the locations where the
13 organization provides dental services in this state and the name of
14 each dentist providing dental services at each location.

15 (d) The board shall provide an option for the electronic
16 submission of the information required under this section.

17 (e) Not later than November 1 of each even-numbered year,
18 the board shall provide a report to the legislature on the
19 information collected under this section and on the board's use of
20 the information in the exercise of the board's statutory authority
21 to regulate the practice of dentistry.

22 SECTION 5. Sections 255.006(a) and (d-1), Occupations Code,
23 are amended to read as follows:

24 (a) A complaint received under this chapter must be filed
25 with and reviewed by the board to determine jurisdiction. If the
26 board has jurisdiction, the board shall complete a preliminary
27 investigation of the complaint not later than the 60th day after the

1 date of receiving [~~investigate the complaint to determine the facts~~
2 ~~concerning~~] the complaint. The board shall first determine whether
3 the license holder constitutes a continuing threat to the public
4 welfare. On completion of the preliminary investigation, the board
5 shall determine whether to officially proceed on the complaint. If
6 the board fails to complete the preliminary investigation in the
7 time required by this subsection, the board's official
8 investigation of the complaint is considered to commence on that
9 date.

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

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

14 [~~2~~] ensure that the decision to dismiss a complaint
15 is made with the appropriate level of review and necessary
16 expertise and experience; and

17 (2) [~~3~~] require the dismissal of a complaint to be
18 reported to the board at a public meeting of the board.

19 SECTION 6. Chapter 255, Occupations Code, is amended by
20 adding Sections 255.0065, 255.0066, and 255.0067 to read as
21 follows:

22 Sec. 255.0065. COMPOSITION OF EXPERT PANELS. (a) The board
23 by rule shall provide for expert panels appointed by the board to
24 assist with complaints and investigations relating to professional
25 competency by acting as expert dentist and dental hygienist
26 reviewers.

27 (b) Each member of the expert dentist panel must be licensed

1 to practice dentistry in this state. Each member of the expert
2 dental hygienist panel must be licensed to practice dental hygiene
3 in this state.

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

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

16 Sec. 255.0066. DETERMINATION OF COMPETENCY. (a) If the
17 preliminary investigation under Section 255.006(a) indicates that
18 an act by a license holder falls below an acceptable standard of
19 care, the complaint shall be reviewed by an expert panel authorized
20 under Section 255.0065 consisting of license holders who practice
21 in the same specialty as the license holder who is the subject of
22 the complaint or in another specialty that is similar to the license
23 holder's specialty.

24 (b) The expert panel shall report in writing the panel's
25 determinations based on the review of the complaint under
26 Subsection (a). The report must specify the standard of care that
27 applies to the facts that are the basis of the complaint and the

1 clinical basis for the panel's determinations, including any
2 reliance on peer-reviewed journals, studies, or reports.

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

4 (a) A license holder on an expert panel authorized by Section
5 255.0065 who is initially selected to review a complaint shall:

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

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

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

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

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

26 SECTION 7. Subchapter C, Chapter 256, Occupations Code, is
27 amended by adding Section 256.106 to read as follows:

1 Sec. 256.106. DELEGATED AUTHORITY TO ISSUE LICENSES. The
2 board may delegate authority to board employees to issue licenses
3 under this subtitle to applicants who clearly meet all licensing
4 requirements. If the board employees determine that the applicant
5 does not clearly meet all licensing requirements, the application
6 shall be returned to the board. A license issued under this section
7 does not require formal board approval.

8 SECTION 8. Subchapter B, Chapter 258, Occupations Code, is
9 amended by adding Section 258.055 to read as follows:

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

11 (a) The parent or guardian of a child younger than 18 years of age
12 may be present in the treatment room during the child's dental
13 treatment or procedure, unless the dentist determines in the
14 dentist's professional judgment that the presence of the parent or
15 guardian in the treatment room is likely to have an adverse effect
16 on the treatment or the child.

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

20 SECTION 9. Chapter 263, Occupations Code, is amended by
21 adding Sections 263.0065, 263.0076, and 263.0077 to read as
22 follows:

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

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

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

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

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

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

11 Sec. 263.0076. INFORMAL SETTLEMENT CONFERENCE NOTICE. (a)
12 If an informal settlement conference will be held under Section
13 263.0075, notice of the time and place of the conference must be
14 given to the license holder not later than the 45th day before the
15 date the conference is held.

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

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

27 (d) On request by a license holder under review, the board

1 shall make a recording of the informal settlement conference. The
2 recording is a part of the investigative file and may not be
3 released to a third party unless authorized under this subtitle.
4 The board may charge the license holder a fee to cover the cost of
5 recording the conference. The board shall provide a copy of the
6 recording to the license holder on the license holder's request.

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

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

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

14 (2) assesses an administrative penalty against a
15 person.

16 (c) A remedial plan may not be imposed to resolve a
17 complaint:

18 (1) concerning:

19 (A) a patient death;

20 (B) the commission of a felony; or

21 (C) a matter in which the license holder engaged
22 in inappropriate sexual behavior or contact with a patient or
23 became financially or personally involved with a patient in an
24 inappropriate manner; or

25 (2) in which the appropriate resolution may involve a
26 restriction on the manner in which a license holder practices
27 dentistry or dental hygiene.

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

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

8 (f) A remedial plan is public information.

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

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

13 SECTION 10. Not later than December 1, 2013, the State Board
14 of Dental Examiners shall adopt rules necessary to implement the
15 changes in law made by this Act.

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

22 SECTION 12. Sections 254.006(b) and 255.006, Occupations
23 Code, as amended by this Act, and Sections 255.0065, 255.0066,
24 255.0067, 263.0076, and 263.0077, Occupations Code, as added by
25 this Act, apply only to the investigation and resolution of a
26 complaint filed with the State Board of Dental Examiners on or after
27 January 1, 2014. A complaint filed before that date is governed by

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

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

5 (b) Section 10 of this Act and Sections 254.004(c) and (d)
6 and 254.019, Occupations Code, as added by this Act, take effect
7 September 1, 2013.

President of the Senate

Speaker of the House

I certify that H.B. No. 3201 was passed by the House on May 3, 2013, by the following vote: Yeas 140, Nays 2, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 3201 on May 22, 2013, by the following vote: Yeas 141, Nays 3, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 3201 was passed by the Senate, with amendments, on May 20, 2013, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor