

House Bill 3201
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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.

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

Sec. 254.018. ~~[EXPERT]~~ TESTIMONY. A member of the board may not express an oral or written opinion or serve as an expert witness in a suit or administrative claim pending before the same board

~~[involving a health care liability claim]~~ against or for a person

SENATE VERSION (CS)

SECTION 1. Same as House version.

SECTION 2. Same as House version.

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

Sec. 254.018. ~~[EXPERT]~~ TESTIMONY. A member of the board may not express an oral or written opinion or serve as an expert witness in a civil action that is:

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

(2) brought [suit involving a health care liability claim]

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licensed or registered under this subtitle

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

No equivalent provision. (see SECTION 12 below)

SENATE VERSION (CS)

against ~~or for~~ a person licensed or registered under this subtitle; and

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

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

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

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

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

(B) supervise or manage the employees or contractors of the dentist; or

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

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

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

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

(b) The board shall collect the following information from dentists licensed by the board in conjunction with the issuance

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and renewal of each dental license:

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

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

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

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

(5) whether the license holder owns all or part of a dental service organization and, if so, the name and address of the dental service organization and of each dental office at which the dental service organization provides services to patients;

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

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

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

(d) The board shall provide an option for the electronic

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

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

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

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

- (1) ~~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;~~
- ~~(2)~~ ensure that the decision to dismiss a complaint is made with the appropriate level of review and necessary expertise and experience; and
- (2) ~~(3)~~ require the dismissal of a complaint to be reported to the board at a public meeting of the board.

SECTION 5. Same as House version.

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SECTION 5. Chapter 255, Occupations 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 shall 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

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SECTION 6. Chapter 255, Occupations 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 shall 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 dental 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

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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.

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

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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.

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

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and reports.

SECTION 6. 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.

SECTION 7. Subchapter B, Chapter 258, Occupations Code, is amended by adding Section 258.055 to read as follows:
Sec. 258.055. PRACTICE OF DENTISTRY ON CERTAIN CHILDREN. (a) The parent or guardian of a child younger than 18 years of age may be present in the treatment room during the child's dental treatment or procedure, unless the dentist determines in the dentist's professional judgment that the presence of the parent or guardian in the treatment room is likely to have an adverse effect on the treatment or the child. (b) In this section, "parent or guardian" includes a person authorized by law to consent for the medical or dental treatment of a child younger than 18 years of age.

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

and reports.

SECTION 7. Same as House version.

SECTION 8. Same as House version.

SECTION 9. Same as House version.

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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 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

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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. (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 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

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

SECTION 11. 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.

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SECTION 10. Same as House version.

SECTION 11. Same as House version.

SECTION 12. Same as House version.

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

- (1) the number and type of dentists employed by the license holder, if any;
 - (2) the name under which the license holder provides dental services and each location at which those services are provided by that license holder;
 - (3) whether the license holder is a participating provider under the Medicaid program operated under Chapter 32, Human Resources Code, or the child health plan program operated under Chapter 62, Health and Safety Code;
 - (4) whether the license holder is employed by or contracts with a dental group practice and, if so, the name and address of the dental group practice;
 - (5) whether the license holder owns a dental group practice and, if so, the name and address of the dental group practice and of each dental office at which the dental group practice provides services to patients;
 - (6) whether the license holder is a party to a business support services agreement and, if so, the name and address of the management service organization that provides services under the agreement; and
 - (7) if the license holder owns a dental group practice, whether that practice is a party to a business support services agreement and, if so, the name and address of the management service organization that provides services under the agreement.
- (b) Not later than November 1, 2014, the board shall provide a report to the legislature on the information collected under

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No equivalent provision. *(see SECTION 4 above)*

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this section and on the board's use of the information in the exercise of the board's statutory authority to regulate the practice of dentistry.

(c) This section expires December 1, 2014.

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

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

SENATE VERSION (CS)

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

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

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