

By: Burkett

H.B. No. 2990

A BILL TO BE ENTITLED

AN ACT

relating to the continuation and functions of the State Board of Dental Examiners; imposing fees.

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

SECTION 1. Section 251.005, Occupations Code, is amended to read as follows:

Sec. 251.005. APPLICATION OF SUNSET ACT. The State Board of Dental Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished September 1, 2029 [~~2017~~].

SECTION 2. Section 252.001(a), Occupations Code, is amended to read as follows:

(a) The State Board of Dental Examiners consists of 11 [~~15~~] members appointed by the governor with the advice and consent of the senate as follows:

(1) six [~~eight~~] reputable dentist members who reside in this state and have been actively engaged in the practice of dentistry for at least the five years preceding appointment;

(2) three [~~two~~] reputable dental hygienist members who reside in this state and have been actively engaged in the practice of dental hygiene for at least the five years preceding appointment; and

(3) two [~~five~~] members who represent the public.

SECTION 3. Section 252.003, Occupations Code, is amended to

1 read as follows:

2           Sec. 252.003. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a)  
3 In this section, "Texas trade association" means a ~~[nonprofit]~~  
4 cooperative~~[r]~~ and voluntarily joined statewide association of  
5 business or professional competitors in this state designed to  
6 assist its members and its industry or profession in dealing with  
7 mutual business or professional problems and in promoting their  
8 common interest.

9           (b) A person may not be a member of the board and may not be a  
10 board employee employed in a "bona fide executive, administrative,  
11 or professional capacity," as that phrase is used for purposes of  
12 establishing an exemption to the overtime provisions of the federal  
13 Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

14                   (1) the person is an ~~[An]~~ officer, employee, or paid  
15 consultant of a Texas trade association in the field of health care;  
16 or

17                   (2) the person's ~~[may not be a member or employee of~~  
18 ~~the board who is exempt from the state's position classification~~  
19 ~~plan or is compensated at or above the amount prescribed by the~~  
20 ~~General Appropriations Act for B9 of the position classification~~  
21 ~~salary schedule.~~

22           ~~[(c) A person who is the]~~ spouse is ~~[of]~~ an officer,  
23 manager, or paid consultant of a Texas trade association in the  
24 field of health care ~~[may not be a board member and may not be a~~  
25 ~~board employee who is exempt from the state's position~~  
26 ~~classification plan or is compensated at or above the amount~~  
27 ~~prescribed by the General Appropriations Act for B9 of the position~~

1 ~~classification salary schedule~~].

2       (c) [~~(d)~~] A person may not serve as a member of the board or  
3 act as the general counsel to the board if the person is required to  
4 register as a lobbyist under Chapter 305, Government Code, because  
5 of the person's activities for compensation on behalf of a  
6 profession related to the operation of the board.

7       SECTION 4. Section 252.010, Occupations Code, is amended by  
8 amending Subsection (b) and adding Subsection (d) to read as  
9 follows:

10       (b) The training program must provide the person with  
11 information regarding:

12           (1) the law governing board operations [~~this~~  
13 ~~subtitle~~];

14           (2) the programs, [operated by the board,  
15 ~~(3) the role and]~~ functions, [of the board,  
16 ~~(4) the]~~ rules, and [of the board, with an emphasis on  
17 ~~the rules that relate to disciplinary and investigatory authority,  
18 ~~(5) the current]~~ budget of [for] the board;~~

19           (3) the scope of and limitations on the rulemaking  
20 authority of the board;

21           (4) [~~(6)~~] the results of the most recent formal audit  
22 of the board;

23           (5) [~~(7)~~] the requirements of:

24                   (A) laws relating to [the] open meetings [law],  
25 ~~[Chapter 551, Government Code,~~

26                   [~~(B) the]~~ public information ~~[law], [Chapter~~  
27 ~~552, Government Code,~~

1           ~~[(C) the]~~ administrative procedure ~~[law]~~,  
2 ~~[Chapter 2001, Government Code,]~~ and disclosing conflicts

3           ~~[(D) other laws relating to public officials,~~  
4 ~~including conflict]~~ of interest ~~[laws]~~; and

5           (B) other laws applicable to members of the board  
6 in performing their duties; and

7           (6) [(8)] any applicable ethics policies adopted by  
8 the board or the Texas Ethics Commission.

9           (d) The executive director shall create a training manual  
10 that includes the information required by Subsection (b). The  
11 executive director shall distribute a copy of the training manual  
12 annually to each board member. On receipt of the training manual,  
13 each board member shall sign and submit to the executive director a  
14 statement acknowledging receipt of the training manual.

15           SECTION 5. Chapter 254, Occupations Code, is amended by  
16 adding Section 254.0065 to read as follows:

17           Sec. 254.0065. CONFIDENTIALITY OF CERTAIN INFORMATION  
18 REGARDING LICENSE HOLDER. (a) Except as provided by Subsection  
19 (b), all information, records, and proceedings of the board or an  
20 authorized agent of the board relating to the participation of a  
21 license holder in a peer assistance program or the evaluation of a  
22 license holder under Section 263.0025 are confidential and not  
23 subject to disclosure under Chapter 552, Government Code.

24           (b) The board may disclose a disciplinary action taken  
25 against a license holder in the enforcement of Section  
26 263.002(a)(1), (7), or (11). The board may not disclose the nature  
27 of the impairment or condition that resulted in the board's action.

1 SECTION 6. Section 254.010(b), Occupations Code, is amended  
2 to read as follows:

3 (b) Rules adopted under this section must include  
4 procedures to:

5 (1) monitor for compliance a license holder who is  
6 ordered by the board to perform a certain act; ~~and~~

7 (2) identify and monitor each license holder who  
8 represents a risk to the public; and

9 (3) periodically review reports filed with the  
10 National Practitioner Data Bank for any report of disciplinary  
11 action taken against a license holder by another state that would  
12 constitute grounds for disciplinary action under Section 263.002.

13 SECTION 7. Chapter 254, Occupations Code, is amended by  
14 adding Section 254.0105 to read as follows:

15 Sec. 254.0105. MONITORING HARMFUL PRESCRIBING PATTERNS.

16 (a) The board shall periodically check the prescribing information  
17 submitted to the Texas State Board of Pharmacy as authorized by  
18 Section 481.076(a)(1), Health and Safety Code, to determine whether  
19 a dentist licensed under this subtitle is engaging in potentially  
20 harmful prescribing patterns or practices.

21 (b) The board, in coordination with the Texas State Board of  
22 Pharmacy, shall determine the conduct that constitutes a  
23 potentially harmful prescribing pattern or practice for purposes of  
24 Subsection (a). In determining the conduct that constitutes a  
25 potentially harmful prescribing pattern or practice, the board  
26 shall consider:

27 (1) the number of times a dentist licensed under this

1 subtitle prescribes a drug listed in Section 258.0535(b); and  
2 (2) for prescriptions described by Subdivision (1),  
3 patterns of prescribing combinations of those drugs and other  
4 dangerous combinations of drugs identified by the board.

5 (c) If the board suspects that a dentist licensed under this  
6 subtitle may be engaging in potentially harmful prescribing  
7 patterns or practices, the board may notify the dentist of the  
8 potentially harmful prescribing pattern or practice.

9 (d) The board may initiate a complaint against a dentist  
10 based on information obtained under this section.

11 SECTION 8. Section 256.002(a), Occupations Code, is amended  
12 to read as follows:

13 (a) An applicant for a license to practice dentistry must:

14 (1) be at least 21 years of age; and

15 (2) ~~[be of good moral character; and~~

16 ~~(3)]~~ present proof of:

17 (A) graduation from a dental school accredited by  
18 the Commission on Dental Accreditation of the American Dental  
19 Association; or

20 (B) graduation from a dental school that is not  
21 accredited by the commission and successful completion of training  
22 in an American Dental Association approved specialty in an  
23 education program accredited by the commission that consists of at  
24 least two years of training as specified by the Council on Dental  
25 Education.

26 SECTION 9. Section 256.053, Occupations Code, is amended to  
27 read as follows:

1           Sec. 256.053. ELIGIBILITY FOR LICENSE. (a) An applicant  
2 for a license to practice dental hygiene in this state must be:

3           (1) at least 18 years of age;

4           (2) ~~[of good moral character,~~

5           ~~(3)]~~ a graduate of an accredited high school or hold a  
6 certificate of high school equivalency; and

7           (3) ~~(4)]~~ a graduate of a recognized school of  
8 dentistry or dental hygiene accredited by the Commission on Dental  
9 Accreditation of the American Dental Association and approved by  
10 the board or an alternative dental hygiene training program.

11           (b) A school of dentistry or dental hygiene described by  
12 Subsection (a)(3) ~~[(a)(4)]~~ must include at least two full academic  
13 years of instruction or its equivalent at the postsecondary level.

14           SECTION 10. Chapter 257, Occupations Code, is amended by  
15 adding Section 257.003 to read as follows:

16           Sec. 257.003. REFUSAL FOR VIOLATION OF BOARD ORDER. The  
17 board may refuse to renew a license issued under this subtitle if  
18 the license holder is in violation of a board order.

19           SECTION 11. Section 258.002(a), Occupations Code, is  
20 amended to read as follows:

21           (a) A licensed dentist may delegate to a qualified and  
22 trained dental assistant acting under the dentist's general or  
23 direct supervision any dental act that a reasonable and prudent  
24 dentist would find is within the scope of sound dental judgment to  
25 delegate if:

26           (1) in the opinion of the delegating dentist, the act:

27           (A) can be properly and safely performed by the

1 person to whom the dental act is delegated; and

2 (B) is performed in a customary manner and is not  
3 in violation of this subtitle or any other statute;

4 (2) the person to whom the dental act is delegated does  
5 not represent to the public that the person is authorized to  
6 practice dentistry; and

7 (3) the person to whom the dental act is delegated is  
8 registered under Chapter 265 [~~holds the appropriate certificate~~],  
9 if registration [~~a certificate~~] is required to perform the act.

10 SECTION 12. Subchapter B, Chapter 258, Occupations Code, is  
11 amended by adding Section 258.0535 to read as follows:

12 Sec. 258.0535. DUTIES RELATED TO CERTAIN PRESCRIPTIONS.

13 (a) A dentist may not prescribe a drug listed in Subsection (b) to a  
14 patient unless the dentist has reviewed the patient's prescription  
15 history by accessing the prescription information submitted to the  
16 Texas State Board of Pharmacy as authorized by Section  
17 481.076(a)(5), Health and Safety Code.

18 (b) Subsection (a) applies only to the prescribing of:

- 19 (1) opioids;  
20 (2) benzodiazepines;  
21 (3) barbiturates; or  
22 (4) carisoprodol.

23 (c) Failure by a dentist to comply with the requirements of  
24 this section is grounds for disciplinary action under Section  
25 263.002.

26 SECTION 13. Section 258.054(c), Occupations Code, is  
27 amended to read as follows:



1 (c) A dentist may not authorize a dental assistant to make a  
2 dental x-ray unless the dental assistant is registered [~~holds an~~  
3 ~~x-ray certificate issued~~] under Chapter 265 [~~Section 265.005~~].

4 SECTION 14. The heading to Subchapter D, Chapter 258,  
5 Occupations Code, is amended to read as follows:

6 SUBCHAPTER D. [~~ENTERAL~~] ADMINISTRATION OF ANESTHESIA

7 SECTION 15. Section 258.151, Occupations Code, is amended  
8 to read as follows:

9 Sec. 258.151. DEFINITIONS [~~DEFINITION~~]. In this  
10 subchapter:

11 (1) "High-risk patient" means a patient who:

12 (A) is older than 75 years of age; or

13 (B) has a level 3 or 4 classification according  
14 to the American Society of Anesthesiologists Physical Status  
15 Classification System.

16 (2) "Pediatric patient" means a patient 12 years of  
17 age or younger [~~,"enteral" means any technique of administering~~  
18 ~~anesthesia in which the anesthetic is absorbed through the~~  
19 ~~gastrointestinal tract or oral mucosa. Examples of enterally~~  
20 ~~administering anesthesia include administering an anesthetic~~  
21 ~~orally, rectally, sublingually, or intranasally].~~

22 SECTION 16. Subchapter D, Chapter 258, Occupations Code, is  
23 amended by adding Section 258.1521 to read as follows:

24 Sec. 258.1521. ADVISORY COMMITTEE ON DENTAL ANESTHESIA.

25 (a) The board shall establish an advisory committee to advise the  
26 board regarding the adoption and amendment of rules related to  
27 dental anesthesia. The advisory committee consists of nine members

1 appointed by the presiding officer of the board and must include:

2 (1) a dentist;

3 (2) a dentist anesthesiologist;

4 (3) an oral and maxillofacial surgeon;

5 (4) a pediatric dentist; and

6 (5) a physician anesthesiologist.

7 (b) The board shall designate an attorney employed by the  
8 board to:

9 (1) act as counsel and provide legal advice to the  
10 advisory committee; and

11 (2) be present during the committee's meetings and  
12 deliberations.

13 (c) The advisory committee shall report to the board at  
14 least annually regarding the committee's recommendations or other  
15 findings related to dental anesthesia. The board shall post on the  
16 board's Internet website any recommendations or findings reported  
17 by the committee.

18 (d) A board member may not serve as a member of the advisory  
19 committee.

20 (e) Chapter 2110, Government Code, does not apply to the  
21 size, composition, or duration of the advisory committee.

22 SECTION 17. Sections 258.153, 258.154, and 258.155,  
23 Occupations Code, are amended to read as follows:

24 Sec. 258.153. RULES. (a) The board shall adopt rules to  
25 administer this subchapter, including rules to establish ~~[by rule]~~  
26 the minimum standards for the ~~[enteral]~~ administration of  
27 anesthesia by a dentist.

1 (b) The rules must be designed to protect the health,  
2 safety, and welfare of the public and must include requirements  
3 relating to:

4 (1) for each level of permit held, the methods that may  
5 be used to [~~enterally~~] administer an anesthetic and the anesthetic  
6 agents that may be used;

7 (2) dental patient evaluation, diagnosis, counseling,  
8 and preparation;

9 (3) dental patient monitoring to be performed and  
10 equipment to be used during a procedure and during postprocedure  
11 monitoring;

12 (4) emergency procedures, drugs, and equipment,  
13 including education, training, and certification of personnel, as  
14 appropriate, and including protocols for transfers to a hospital;

15 (5) the documentation necessary to demonstrate  
16 compliance with this subchapter; and

17 (6) the period in which protocols or procedures  
18 covered by rules of the board shall be reviewed, updated, or  
19 amended.

20 Sec. 258.154. COMPLIANCE WITH ANESTHESIA RULES. (a) A [~~On~~  
21 ~~and after August 31, 2002, a~~] dentist who practices dentistry in  
22 this state and who [~~enterally~~] administers anesthesia or performs a  
23 procedure for which anesthesia is [~~enterally~~] administered shall  
24 comply with the rules adopted under this subchapter.

25 (b) The board may require a dentist to submit and comply  
26 with a corrective action plan to remedy or address any current or  
27 potential deficiencies with the dentist's [~~enteral~~] administration

1 of anesthesia in accordance with this subtitle or rules of the  
2 board.

3           Sec. 258.155. ANNUAL PERMIT REQUIRED. (a) The board shall  
4 issue permits to administer anesthesia in the following four  
5 categories based on the extent to which the intended procedure will  
6 alter the patient's mental status and the method of anesthetic  
7 delivery:

8                   (1) level 1: minimal sedation;

9                   (2) level 2: moderate sedation (enteral  
10 administration);

11                   (3) level 3: moderate sedation (parenteral  
12 administration); and

13                   (4) level 4: deep sedation or general anesthesia.

14           (b) A ~~[Not later than September 1, 2002, the board shall~~  
15 ~~require each]~~ dentist may not administer ~~[who enterally~~  
16 ~~administers]~~ anesthesia or perform ~~[performs]~~ a procedure for which  
17 anesthesia is ~~[enterally]~~ administered unless the dentist ~~[to]~~  
18 annually obtains the appropriate ~~[obtain a]~~ permit issued under  
19 this section ~~[from the board by completing a form prescribed by the~~  
20 ~~board]~~.

21           (c) The board shall set and impose a fee for issuance of a  
22 ~~[the]~~ permit in an amount designed to recover the costs of  
23 regulating a permit holder under this subchapter.

24           (d) ~~[to]~~ The board shall coordinate the times at which a  
25 permit must be renewed with the times at which a dentist's license  
26 must be renewed under Chapter 257 so that the times of registration,  
27 payment, notice, and imposition of penalties for late payment are

1 similar and provide a minimum of administrative burden to the board  
2 and to dentists.

3 SECTION 18. Subchapter D, Chapter 258, Occupations Code, is  
4 amended by adding Sections 258.1551, 258.1552, 258.1553, and  
5 258.1554 to read as follows:

6 Sec. 258.1551. PERMIT QUALIFICATIONS. (a) The board by  
7 rule shall establish the qualifications to obtain each level of  
8 permit described by Section 258.155, including the education and  
9 training required to obtain the permit.

10 (b) The rules adopted under Subsection (a) must require an  
11 applicant for a level 2, level 3, or level 4 permit to complete  
12 training on:

13 (1) pre-procedural patient evaluation, including the  
14 evaluation of a patient's airway and physical status as classified  
15 by the American Society of Anesthesiologists;

16 (2) the continuous monitoring of a patient's level of  
17 sedation during the administration of anesthesia; and

18 (3) the management of emergency situations.

19 Sec. 258.1552. PORTABILITY OF ANESTHESIA SERVICES. (a) A  
20 dentist who holds a permit issued under this subchapter may not  
21 provide a permitted anesthesia service in a location other than a  
22 facility or satellite facility unless the dentist obtains  
23 authorization from the board under this section.

24 (b) The board shall adopt rules establishing procedures and  
25 other requirements for a permit holder to apply for and obtain an  
26 authorization described by Subsection (a).

27 (c) Rules adopted under Subsection (b) must require an

1 applicant to complete advanced didactic and clinical training and  
2 may require additional training of, or establish additional  
3 qualifications for, an applicant who will administer anesthesia to  
4 pediatric or high-risk patients.

5 Sec. 258.1553. ADMINISTRATION OF ANESTHESIA TO CERTAIN  
6 PATIENTS. (a) A permit holder under this subchapter may not  
7 administer anesthesia under a level 2, level 3, or level 4 permit to  
8 a pediatric or high-risk patient unless the permit holder has:

9 (1) demonstrated to the satisfaction of the board that  
10 the permit holder has advanced didactic and clinical training; and

11 (2) obtained authorization from the board under this  
12 section.

13 (b) The board by rule may establish limitations on the  
14 administration of anesthesia by a permit holder to a pediatric or  
15 high-risk patient.

16 Sec. 258.1554. MINIMUM EMERGENCY PREPAREDNESS STANDARDS.

17 (a) The board shall adopt rules to establish minimum emergency  
18 preparedness standards and requirements for the administration of  
19 anesthesia under a permit issued under this subchapter. The rules  
20 must require a permit holder to:

21 (1) have available at any location at which the permit  
22 holder administers anesthesia:

23 (A) an adequate and unexpired supply of drugs and  
24 anesthetic agents necessary for the safe administration of  
25 anesthesia; and

26 (B) an automated external defibrillator, as  
27 defined by Section 779.001, Health and Safety Code;

1           (2) conduct periodic inspections of the permit  
2 holder's equipment in the manner and on the schedule determined by  
3 the board;

4           (3) maintain and make available to the board on  
5 request an equipment readiness log; and

6           (4) develop and annually update written policies,  
7 procedures, and training requirements, specific to the permit  
8 holder's equipment and drugs, for responding to emergency  
9 situations involving anesthesia.

10          (b) Rules adopted under Subsection (a)(4) must require a  
11 holder of a level 2, level 3, or level 4 permit to develop policies  
12 and procedures that include:

13           (1) advanced cardiac life support rescue protocols;

14           (2) advanced airway management techniques; and

15           (3) if the permit holder is authorized to administer  
16 anesthesia to pediatric patients, pediatric advanced life support  
17 rescue protocols.

18          SECTION 19. Section 258.156, Occupations Code, is amended  
19 to read as follows:

20          Sec. 258.156. INSPECTIONS. (a) Except as provided by  
21 Subsection (g), the [The] board may conduct inspections of a  
22 dentist who applies for or holds a permit issued under this  
23 subchapter as necessary to enforce this subchapter, including  
24 inspections of an office site, equipment, a facility, and any  
25 document of the [documents of a] dentist [~~dentist's practice that~~  
26 ~~relate to the enteral administration of anesthesia]~~.

27          (b) The board shall conduct an inspection with respect to a

1 dentist who holds a level 2, level 3, or level 4 permit not less than  
2 once every five years. The board shall adopt a risk-based  
3 inspection schedule for inspections required by this subsection.

4 (c) The board may contract with another state agency or  
5 qualified person to conduct these inspections.

6 (d) The [~~(b) Unless it would jeopardize an ongoing~~  
7 ~~investigation, the~~] board is not required to give [~~shall provide at~~  
8 ~~least five business days~~] notice before conducting an [~~on-site~~]  
9 inspection under this section.

10 (e) The board shall maintain records of inspections  
11 conducted under this section.

12 (f) The board by rule may establish education and training  
13 requirements for inspectors who conduct inspections under this  
14 section.

15 (g) The board may not conduct an inspection under this  
16 section with respect to a dentist who administers anesthesia  
17 exclusively in a state-licensed hospital or state-licensed  
18 ambulatory surgical center. The board may by rule except from  
19 inspection under this section a dentist who administers anesthesia  
20 exclusively in any other facility that is subject to inspection by  
21 the Department of State Health Services or an accrediting body  
22 under state law. The board retains all other authority provided by  
23 this subtitle over a dentist described by this subsection  
24 [~~(c) This section does not require the board to make an on-site~~  
25 ~~inspection of a dentist's office].~~

26 SECTION 20. Chapter 263, Occupations Code, is amended by  
27 adding Section 263.0025 to read as follows:



1       Sec. 263.0025. SUBMISSION TO MENTAL OR PHYSICAL EVALUATION.

2       (a) In enforcing Section 263.002(a)(1), (7), or (11), the board or  
3       an authorized agent of the board, on probable cause, as determined  
4       by the board or agent, may request a license holder to submit to a  
5       mental or physical evaluation by a physician or other health care  
6       professional designated by the board.

7       (b) If the license holder refuses to submit to the  
8       evaluation under Subsection (a), the board shall issue an order  
9       requiring the license holder to show cause why the license holder  
10       will not submit to the evaluation. The board shall schedule a  
11       hearing on the order not later than the 30th day after the date  
12       notice is served on the license holder. The board shall notify the  
13       license holder of the order and hearing by personal service or  
14       certified mail, return receipt requested.

15       (c) At the hearing, the license holder and the license  
16       holder's attorney are entitled to present testimony or other  
17       evidence to show why the license holder should not be required to  
18       submit to the evaluation. The license holder has the burden of  
19       proof to show why the license holder should not be required to  
20       submit to the evaluation.

21       (d) After the hearing, the board by order shall require the  
22       license holder to submit to the evaluation not later than the 60th  
23       day after the date of the order or withdraw the request for an  
24       evaluation, as applicable.

25       SECTION 21. Section 263.0065(c), Occupations Code, is  
26 amended to read as follows:

27       (c) A complaint delegated under this section shall be

1 referred for informal proceedings under Section 263.007 [~~263.0075~~]  
2 if:

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

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

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

9 SECTION 22. Section 263.007, Occupations Code, is amended  
10 by amending Subsection (b) and adding Subsections (c) through (k)  
11 to read as follows:

12 (b) Rules adopted under this section must require that:

13 (1) not later than the 180th day after the date the  
14 board's official investigation of a complaint is commenced, the  
15 board schedule an informal settlement conference unless good cause  
16 is shown by the board for not scheduling the conference by that  
17 date;

18 (2) the board give notice to the license holder of the  
19 time and place of the conference not later than the 45th day before  
20 the date the conference is held;

21 (3) the complainant and the license holder be provided  
22 an opportunity to be heard;

23 (4) the board's legal counsel or a representative of  
24 the attorney general be present to advise the board or the board's  
25 staff; and

26 (5) a member of the board's staff be at the conference  
27 to present the facts the staff reasonably believes the board could

1 prove at a hearing by competent evidence or qualified witnesses  
2 ~~[provide the complainant, if applicable and permitted by law, an~~  
3 ~~opportunity to be heard,~~

4 ~~[(2) provide the license holder an opportunity to be~~  
5 ~~heard, and~~

6 ~~[(3) require the presence of a member of the board's~~  
7 ~~legal staff, if the board has a legal staff, or, if the board does~~  
8 ~~not have a legal staff, an attorney from the attorney general's~~  
9 ~~office to advise the board or the board's employees].~~

10 (c) The license holder is entitled at the conference to:

11 (1) reply to the staff's presentation; and

12 (2) present the facts the license holder reasonably  
13 believes the license holder could prove at a hearing by competent  
14 evidence or qualified witnesses.

15 (d) After ample time is given for the presentations, the  
16 informal settlement conference panel shall recommend that the  
17 investigation be closed or make a recommendation regarding the  
18 disposition of the case in the absence of a hearing under applicable  
19 law concerning contested cases.

20 (e) If the license holder has previously been the subject of  
21 disciplinary action by the board, the board shall schedule the  
22 informal settlement conference as soon as practicable but not later  
23 than the 180th day after the date the board's official  
24 investigation of the complaint is commenced.

25 (f) A notice under Subsection (b)(2) must be accompanied by  
26 a written statement of the nature of the allegations and the  
27 information the board intends to use at the informal settlement

1 conference. If the board does not provide the statement or  
2 information at that time, the license holder may use that failure as  
3 grounds for rescheduling the conference. If the complaint includes  
4 an allegation that the license holder has violated the standard of  
5 care in the practice of dentistry or dental hygiene, the notice must  
6 include a copy of the report by the expert reviewer. The license  
7 holder must provide to the board the license holder's rebuttal not  
8 later than the 15th day before the date of the conference in order  
9 for that information to be considered at the conference.

10 (g) The board by rule shall define circumstances  
11 constituting good cause for purposes of Subsection (b)(1),  
12 including an expert reviewer's delinquency in reviewing and  
13 submitting a report to the board under Section [255.0067](#).

14 (h) The board by rule shall define circumstances  
15 constituting good cause to grant a request by a license holder for a  
16 continuance of the informal settlement conference.

17 (i) Information presented by the board or board staff in an  
18 informal settlement conference is confidential and not subject to  
19 disclosure under Chapter [552](#), Government Code.

20 (j) On request by the license holder under review, the board  
21 shall make a recording of the informal settlement conference  
22 proceeding. The recording is a part of the investigative file and  
23 may not be released to a third party unless authorized under this  
24 subtitle. The board may charge the license holder a fee to cover  
25 the cost of recording the proceeding.

26 (k) The board shall provide a copy of the recording to the  
27 license holder on the license holder's request.

1 SECTION 23. Chapter 263, Occupations Code, is amended by  
2 adding Sections 263.0071, 263.0072, and 263.0073 to read as  
3 follows:

4 Sec. 263.0071. DENTAL REVIEW COMMITTEE. (a) The dental  
5 review committee consists of nine members appointed by the governor  
6 as follows:

7 (1) six dentist members; and

8 (2) three dental hygienist members.

9 (b) A member of the committee serves a six-year term.

10 (c) If a vacancy occurs during a member's term, the governor  
11 shall appoint a replacement to fill the unexpired term.

12 (d) A member of the committee is entitled to receive a per  
13 diem for actual duty in the same manner provided for board members.

14 (e) A member of the committee is subject to law and the rules  
15 of the board, including Sections 252.003, 252.007, and 252.010, as  
16 if the committee member were a member of the board, except that a  
17 committee member is not subject to Chapter 572, Government  
18 Code. The training program a committee member must complete under  
19 Section 252.010 must be an abbreviated version of the program under  
20 that section that is limited to training relevant to serving on a  
21 committee.

22 Sec. 263.0072. INFORMAL SETTLEMENT CONFERENCE PANEL. (a)  
23 The board shall appoint members of the board and the dental review  
24 committee to serve, on a rotating basis, as panelists on an informal  
25 settlement conference panel for purposes of this section.

26 (b) In an informal settlement conference under Section  
27 263.007, the board shall appoint at least two panelists to

1 determine whether an informal disposition is appropriate. At least  
2 one of the panelists must be a dentist.

3 (c) The board by rule shall require that at least one  
4 panelist be physically present at the informal settlement  
5 conference and may authorize another panelist to appear by video  
6 conference.

7 (d) Notwithstanding Subsection (b), an informal settlement  
8 conference may be conducted by one panelist if the license holder  
9 who is the subject of the complaint waives the requirement that at  
10 least two panelists conduct the conference. If the license holder  
11 waives that requirement, the panelist may be a dentist, a dental  
12 hygienist, or a member who represents the public.

13 (e) Notwithstanding Subsections (b) and (d), an informal  
14 settlement conference conducted under Section 263.007 to show  
15 compliance with an order or remedial plan of the board may be  
16 conducted by one panelist.

17 Sec. 263.0073. ROLES AND RESPONSIBILITIES OF PARTICIPANTS  
18 IN INFORMAL SETTLEMENT CONFERENCE. (a) At an informal settlement  
19 conference under Section 263.007, the panel shall make  
20 recommendations for the disposition of the complaint or allegation.  
21 The panel may request the assistance of a board employee at any  
22 time.

23 (b) Board employees shall present a summary of the  
24 allegations against the license holder and of the facts pertaining  
25 to the allegation that the employees reasonably believe may be  
26 proven by competent evidence at a formal hearing.

27 (c) An attorney for the board shall act as counsel to the

1 panel and shall be present during the informal settlement  
2 conference and the panel's deliberations to advise the panel on  
3 legal issues that arise during the proceeding. The attorney may ask  
4 questions of participants in the conference to clarify any  
5 statement made by the participant. The attorney shall provide to  
6 the panel a historical perspective on comparable cases that have  
7 appeared before the board, keep the proceedings focused on the case  
8 being discussed, and ensure that the board's employees and the  
9 license holder have an opportunity to present information related  
10 to the case. During the panel's deliberations, the attorney may be  
11 present only to advise the panel on legal issues and to provide  
12 information on comparable cases that have appeared before the  
13 board.

14 (d) The panel and board employees shall provide an  
15 opportunity for the license holder and the license holder's  
16 authorized representative to reply to the board employees'  
17 presentation and to present oral and written statements and facts  
18 that the license holder and representative reasonably believe could  
19 be proven by competent evidence at a formal hearing.

20 (e) An employee of the board who participated in the  
21 presentation of the allegation or information gathered in the  
22 investigation of the complaint, the license holder, the license  
23 holder's authorized representative, the complainant, the  
24 witnesses, and members of the public may not be present during the  
25 deliberations of the panel. Only the members of the panel and the  
26 attorney serving as counsel to the panel may be present during the  
27 deliberations.

1       (f) During the deliberations, the panel may not reconsider  
2 an expert panel's determinations that are included in a final  
3 written report issued under Section 255.0067.

4       (g) The panel shall recommend the dismissal of the complaint  
5 or allegations or, if the panel determines that the license holder  
6 has violated a statute or board rule, may recommend board action and  
7 terms for an informal settlement of the case.

8       (h) The panel's recommendations under Subsection (g) must  
9 be made in writing and presented to the license holder and the  
10 license holder's authorized representative. The license holder may  
11 accept the proposed settlement within the time established by the  
12 panel at the informal settlement conference. If the license holder  
13 rejects the proposed settlement or does not act within the required  
14 time, the board may proceed with the filing of a formal complaint  
15 with the State Office of Administrative Hearings.

16       SECTION 24. Section 264.011, Occupations Code, is amended  
17 to read as follows:

18       Sec. 264.011. INFORMAL ASSESSMENT OF ADMINISTRATIVE  
19 PENALTY. This subchapter does not prevent the board from assessing  
20 an administrative penalty using an informal proceeding under  
21 Section 263.007 [~~263.003~~].

22       SECTION 25. Section 265.001, Occupations Code, is amended  
23 to read as follows:

24       Sec. 265.001. REGISTRATION. (a) The board may adopt and  
25 enforce rules requiring the registration of dental assistants as  
26 necessary to protect the public health and safety.

27       (b) This section expires September 1, 2018.



1 SECTION 26. Chapter 265, Occupations Code, is amended by  
2 adding Sections 265.0015, 265.0016, 265.0017, and 265.0018 to read  
3 as follows:

4 Sec. 265.0015. REGISTRATION REQUIRED FOR CERTAIN DENTAL  
5 ACTS. Unless a dental assistant is registered under this chapter, a  
6 dental assistant may not:

- 7 (1) apply a pit and fissure sealant;
- 8 (2) make a dental x-ray;
- 9 (3) perform coronal polishing; or
- 10 (4) monitor the administration of nitrous oxide.

11 Sec. 265.0016. ELIGIBILITY REQUIREMENTS FOR REGISTRATION.

12 (a) The board by rule shall establish the requirements for  
13 registration under this chapter, including requiring a dental  
14 assistant to:

- 15 (1) hold a high school diploma or its equivalent;
- 16 (2) complete an educational program approved by the  
17 board that includes courses of instruction on:

18 (A) the dental acts described by Section  
19 265.0015;

20 (B) basic life support;

21 (C) infection control; and

22 (D) jurisprudence;

23 (3) pass an examination approved or administered by  
24 the board; and

25 (4) meet any additional qualifications established by  
26 the board.

27 (b) The board may approve courses of instruction and

1 examinations that are provided by private entities for the purposes  
2 of this section.

3 Sec. 265.0017. FEES. The board shall set and collect fees  
4 in amounts that are reasonable and necessary to cover the costs of  
5 administering this chapter, including registration and renewal  
6 fees.

7 Sec. 265.0018. REGISTRATION EXPIRATION AND RENEWAL. (a) A  
8 registration under this chapter is valid for two years.

9 (b) A dental assistant may renew a registration by paying  
10 the required renewal fee and complying with any other renewal  
11 requirements established by the board.

12 (c) A dental assistant whose registration has expired may  
13 not engage in an activity that requires registration until the  
14 registration has been renewed.

15 (d) The board by rule may adopt a system under which  
16 registrations expire on various dates during the year. For the year  
17 in which the expiration date is changed, the board shall prorate  
18 registration fees on a monthly basis so that each registration  
19 holder pays only that portion of the registration fee that is  
20 allocable to the number of months during which the registration is  
21 valid. On renewal of the registration on the new expiration date,  
22 the total renewal fee is payable.

23 SECTION 27. Section 265.003, Occupations Code, is amended  
24 by amending Subsections (a) and (a-1) and adding Subsections (c)  
25 and (d) to read as follows:

26 (a) A dental assistant who is not registered under this  
27 chapter [~~professionally licensed~~] may be employed by and work in

1 the office of a licensed and practicing dentist and perform one or  
2 more delegated dental acts under:

3 (1) the direct supervision, direction, and  
4 responsibility of the dentist, including[+]

5 [~~(A) the application of a pit and fissure~~  
6 ~~sealant;~~

7 [~~(B) coronal polishing, if the dental assistant~~  
8 ~~holds a certificate under Section 265.006;~~ and

9 [~~(C)~~] the application of fluoride varnish; or

10 (2) the general supervision, direction, and  
11 responsibility of the dentist, limited to[+]

12 [~~(A) the making of dental x-rays in compliance~~  
13 ~~with Section 265.005;~~ and

14 [~~(B)~~] the provision of interim treatment of a  
15 minor emergency dental condition to an existing patient of the  
16 treating dentist.

17 (a-1) A treating dentist who delegates the provision of  
18 interim treatment of a minor emergency dental condition to a dental  
19 assistant under Subsection (a)(2) [~~(a)(2)(B)~~] shall:

20 (1) delegate the procedure orally or in writing before  
21 the dental assistant performs the procedure;

22 (2) retain responsibility for the procedure; and

23 (3) schedule a follow-up appointment with the patient  
24 within a reasonable time.

25 (c) A delegating dentist remains responsible for the dental  
26 acts of a registered or nonregistered dental assistant performing  
27 the delegated dental acts.

1       (d) A dental assistant to whom a delegation is made may not  
2 represent to the public that the dental assistant is authorized to  
3 practice dentistry or dental hygiene.

4       SECTION 28. Section 265.004, Occupations Code, is amended  
5 by adding Subsection (f) to read as follows:

6       (f) This section expires September 1, 2018.

7       SECTION 29. Section 265.005, Occupations Code, is amended  
8 by adding Subsection (p) to read as follows:

9       (p) This section expires September 1, 2018.

10       SECTION 30. Section 265.006, Occupations Code, is amended  
11 by adding Subsection (c) to read as follows:

12       (c) This section expires September 1, 2018.

13       SECTION 31. Section 265.007, Occupations Code, is amended  
14 by adding Subsection (d) to read as follows:

15       (d) This section expires September 1, 2018.

16       SECTION 32. Chapter 265, Occupations Code, is amended by  
17 adding Sections 265.008 and 265.009 to read as follows:

18       Sec. 265.008. CONTINUING EDUCATION REQUIRED FOR  
19 REGISTRATION RENEWAL. The board by rule shall establish continuing  
20 education requirements for dental assistants registered under this  
21 chapter, including a minimum number of hours of continuing  
22 education required to renew a registration.

23       Sec. 265.009. GROUNDS FOR DISCIPLINARY ACTION. (a) The  
24 board, after notice and hearing, may reprimand a person registered  
25 under this chapter, issue a warning letter to a person registered  
26 under this chapter, impose a fine on a person registered under this  
27 chapter, impose an administrative penalty under Subchapter A,

1 Chapter 264, on a person registered under this chapter, place on  
2 probation with conditions a person whose registration has been  
3 suspended, or revoke or suspend a person's registration issued  
4 under this chapter.

5 (b) The board by rule shall establish the grounds and  
6 procedures for disciplinary action under this chapter.

7 (c) A proceeding under this section is subject to Chapter  
8 2001, Government Code.

9 SECTION 33. The heading to Subchapter C, Chapter 266,  
10 Occupations Code, is amended to read as follows:

11 SUBCHAPTER C. BOARD POWERS AND DUTIES [~~OF COUNCIL AND BOARD~~]

12 SECTION 34. The following provisions of the Occupations  
13 Code are repealed:

- 14 (1) Sections 256.0531(h), (i), and (j);
- 15 (2) Section 262.001(1);
- 16 (3) Subchapter B, Chapter 262;
- 17 (4) Section 262.102(c);
- 18 (5) Section 262.1025;
- 19 (6) Section 262.103;
- 20 (7) Section 263.0075;
- 21 (8) Section 263.0076;
- 22 (9) Section 266.001(1);
- 23 (10) Subchapter B, Chapter 266;
- 24 (11) Section 266.101; and
- 25 (12) Sections 266.102(a) and (d).

26 SECTION 35. Not later than March 1, 2018, the State Board of  
27 Dental Examiners shall:

1           (1) adopt rules and fees necessary to implement  
2 Chapters 258 and 265, Occupations Code, as amended by this Act; and

3           (2) adopt rules necessary to implement Chapter 263,  
4 Occupations Code, as amended by this Act.

5           SECTION 36. (a) The term of a member of the State Board of  
6 Dental Examiners serving on September 1, 2017, expires on that  
7 date.

8           (b) Not later than December 1, 2017, the governor shall  
9 appoint 11 members to the State Board of Dental Examiners in  
10 accordance with Section 252.001(a), Occupations Code, as amended by  
11 this Act. The governor shall appoint:

12           (1) two dentist members and one dental hygienist  
13 member to terms expiring February 1, 2019;

14           (2) two dentist members, one dental hygienist member,  
15 and one public member to terms expiring February 1, 2021; and

16           (3) two dentist members, one dental hygienist member,  
17 and one public member to terms expiring February 1, 2023.

18           (c) Notwithstanding Section 252.001, Occupations Code, as  
19 amended by this Act, the members whose terms expire under  
20 Subsection (a) of this section shall continue to perform the duties  
21 of office as a 15-member board until six members are appointed under  
22 Subsection (b) of this section and qualified.

23           (d) The governor may appoint to the board under Subsection  
24 (b) of this section a member whose term expires under Subsection (a)  
25 of this section. The expired term of a member described by this  
26 subsection does not constitute a full term for purposes of Section  
27 252.004(b), Occupations Code.

1 SECTION 37. Not later than December 1, 2017, the presiding  
2 officer of the State Board of Dental Examiners shall appoint the  
3 members of the advisory committee established under Section  
4 258.1521, Occupations Code, as added by this Act.

5 SECTION 38. Not later than December 1, 2017, the governor  
6 shall appoint the members of the dental review committee in  
7 accordance with Section 263.0071, Occupations Code, as added by  
8 this Act. In making the appointments, the governor shall appoint:

9 (1) three members to terms expiring February 1, 2019;

10 (2) three members to terms expiring February 1, 2021;

11 and

12 (3) three members to terms expiring February 1, 2023.

13 SECTION 39. (a) Except as provided by Subsection (b) of this  
14 section, Section 252.010, Occupations Code, as amended by this Act,  
15 applies to a member of the State Board of Dental Examiners appointed  
16 before, on, or after the effective date of this Act.

17 (b) A member of the board appointed after the effective date  
18 of this Act who, before the effective date of this Act, completed  
19 the training program required by Section 252.010, Occupations Code,  
20 as that law existed before the effective date of this Act, is  
21 required to complete additional training only on the subjects added  
22 by this Act to the training program as required by Section 252.010,  
23 Occupations Code. A board member described by this subsection may  
24 not vote, deliberate, or be counted as a member in attendance at a  
25 meeting of the board held on or after December 1, 2017, until the  
26 member completes the additional training.

27 SECTION 40. Section 258.0535, Occupations Code, as added by

1 this Act, applies only to a prescription issued on or after  
2 September 1, 2018. A prescription issued before September 1, 2018,  
3 is governed by the law in effect on the date the prescription was  
4 issued, and the former law is continued in effect for that purpose.

5 SECTION 41. Section 265.008, Occupations Code, as added by  
6 this Act, applies only to the renewal of a registration on or after  
7 September 1, 2018.

8 SECTION 42. (a) On September 1, 2018, a registration or  
9 certificate issued under former Section 265.001, 265.004, 265.005,  
10 or 265.006, Occupations Code, expires.

11 (b) As soon as practicable after September 1, 2018, the  
12 State Board of Dental Examiners shall issue a prorated refund of any  
13 fees paid by a holder of a registration or certificate that expires  
14 under Subsection (a) of this section.

15 SECTION 43. (a) Chapter 263, Occupations Code, as amended  
16 by this Act, applies only to the investigation or disposition of a  
17 complaint filed with the State Board of Dental Examiners on or after  
18 March 1, 2018. A complaint filed before that date is governed by  
19 the law in effect on the date the complaint was filed, and the  
20 former law is continued in effect for that purpose.

21 (b) The changes in law made by this Act do not affect the  
22 validity of a disciplinary action or other proceeding that was  
23 initiated before the effective date of this Act and that is pending  
24 before a court or other governmental entity on that date.

25 SECTION 44. (a) A violation of a law that is repealed by  
26 this Act is governed by the law in effect on the date the violation  
27 was committed, and the former law is continued in effect for that



1 purpose.

2 (b) For purposes of this section, a violation was committed  
3 before the effective date of this Act if any element of the  
4 violation occurred before that date.

5 SECTION 45. (a) Except as provided by Subsections (b) and  
6 (c) of this section, this Act takes effect September 1, 2017.

7 (b) Section 258.155, Occupations Code, as amended by this  
8 Act, and Sections 258.1552 and 258.1553, Occupations Code, as added  
9 by this Act, take effect March 1, 2018.

10 (c) Sections 258.002 and 258.054, Occupations Code, as  
11 amended by this Act, and Section 265.0015, Occupations Code, as  
12 added by this Act, take effect September 1, 2018.