

SUBJECT: Continuing the State Board of Dental Examiners

COMMITTEE: Public Health — favorable, with amendments

VOTE: 9 ayes — Capelo, Laubenberg, Truitt, Coleman, Dawson, McReynolds, Naishtat, Taylor, Zedler

0 nays

SENATE VOTE: On final passage, March 6 — voice vote

WITNESSES: For — Roger Byrne, DAS, MD, Texas Dental Association; Harold Henson, Texas Dental Hygiene Educators' Association; Gary Morgan, CDT, Dental Laboratory Association of Texas; Deborah Simecek, RDH, Texas Dental Hygienists' Association; (*Registered, but did not testify:*) Patricia Blanton and John Findley, Texas Dental Association; Cliffa Thomasson and Joanne Wineinger, Texas Dental Assistants Association

Against — None

On — Bobby Schmidt, Texas State Board of Dental Examiners; (*Registered, but did not testify:*) Joe Walraven, Sunset Advisory Commission

BACKGROUND: The State Board of Dental Examiners, created in 1897, enforces and monitors compliance with the Dental Practice Act, licenses dentists and dental hygienists, registers dental labs, investigates complaints about dental practitioners, and provides peer assistance. The board's 18 members serve staggered six-year terms and are appointed by the governor. The board has a fiscal 2002-03 budget of \$2.8 million, with an approved staff of 28 in fiscal 2003. The board recovers all costs from fees to the dental industry.

Two advisory committees help the board regulate specific aspects of the dental profession. The Dental Hygienists Advisory Council (DHAC) has six members, five appointed by the governor plus one dentist appointed by the board, all of whom serve staggered six-year terms. The Dental Laboratory Certification Council has three members, appointed by the board, who serve two-year terms.

The board underwent sunset review in 1993 and was not continued by the 73rd Legislature. As a result, the board was abolished. However, the 74th Legislature recreated the board in 1995 and scheduled it for sunset review in 2005. The 77th Legislature in 2001 moved the board's review up to 2003. If not continued by the 78th Legislature, the board will be abolished September 1, 2003.

DIGEST:

SB 263, as amended, would continue the Board of Dental Examiners until 2015. It would reduce the board's size; alter enforcement and investigation procedures; require an interagency agreement between the board and the Health and Human Service Commission (HHSC) on Medicaid-related issues; expand regulation of some dental assistants; require regulation of dental educators; amend licensure requirements for entering dental practice in Texas; and create a process for considering DHAC recommendations.

The bill would add standard sunset provisions governing public membership on the board, conflicts of interest, designation of a presiding officer, grounds for removing a board member, training of board members, information on complaints, time frames for renewing delinquent licenses, provisional licenses for licensees from other states, penalties, and continuing education.

Board size. SB 263 would reduce the board's size from 18 to 15 members. The number of dentists would decrease from 10 to eight, and public members would decrease from six to five. The bill would not change the current requirement for two dental hygienist members.

Enforcement and investigation. The board would have to establish procedures allowing agency staff to dismiss a baseless complaint and to expunge such a complaint from board records. These procedures would have to include consultation with a dentist board member in a complaint involving morbidity, professional conduct, or quality of care. Complaints dismissed or expunged under the new procedure would have to be reported to the board at a public meeting.

The board would have to promulgate rules allowing staff to conduct an informal settlement conference to resolve a complaint, the recommendation of which would have to be approved by the board. Staff could refer a complaint to the State Office of Administrative Hearings (SOAH) for a formal hearing.

The board could order the payment of restitution as part of the settlement conference process.

The board could use a cease-and-desist order against a person who practiced dentistry without a license or registration certificate. The bill would specify the content of, procedure for delivering, parameters for a hearing on, and procedures for appeal of an order. The board could use an emergency cease-and-desist order in a case where the unauthorized practice of dentistry constituted a clear, imminent, or continuing threat to a person's health. The board could make a final cease-and-desist order public if necessary to enhance enforcement of the order or serve the public interest.

Coordination with HHSC. The board would have to enter into an agreement with HHSC by January 1, 2004, to improve coordination on state Medicaid issues. Under the agreement, each agency would have to refer a Medicaid case to the other agency if the case involved fraud, abuse, or quality-of-care problems. Each agency would have to maintain a log of cases referred to the other, share information including investigative reports on cases within both agencies' jurisdiction, and collaborate on investigation and disciplinary action. The board would have to include Medicaid fraud information in its annual financial report.

Dental assistants. A dental assistant who makes X-rays would have to be certified by the board. To qualify for certification, the assistant would have to pass a board exam covering dental X-ray procedures, jurisprudence, and infection control. A dental assistant certified by the Dental Assisting National Board would have to pass only the jurisprudence portion of the exam. Dental assistant certification would have to be renewed annually. The certification mandate would begin September 1, 2004, or September 1, 2006, depending on the hygienist's qualifications on the former date. The board also would have to develop mandatory continuing education requirements of no more than 12 hours per year for certified dental assistants.

Dental educators. Faculty members at dental schools and dental hygiene schools also would have to be licensed by the board. Licensed dentists, dental hygienists, and faculty with no direct patient contact would be exempt. Full-time and part-time faculty members would have to hold a degree from a school in their field, submit an endorsement from a specified school official,

and pass a jurisprudence exam administered by the board. This license would have to be renewed annually and would not authorize its holder to practice dentistry or dental hygiene. These provisions would take effect beginning March 1, 2004, or September 1, 2004, depending on the faculty member's date of employment.

Licensing requirements. SB 263 would reduce the years of practice required for licensure of an out-of-state applicant as a dentist or dental hygienist from five to three years of continuous practice. The board would have to develop rules under which it could waive the continuous practice requirement if the applicant had a cumulative total of three years in practice.

DHAC recommendations. DHAC could recommend changes in regulation of dental hygiene, including proposed rules. The board could adopt or reject such a recommendation. If the board failed to act within 90 days, it would have to adopt a rule in accordance with the recommendation.

Except as noted otherwise, the bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

**SUPPORTERS
SAY:**

Texas has a continuing need to safeguard the dental health of Texans by regulating dental practice and professionals. Since no other entity has the resources to perform this function, the Board of Dental Examiners needs to be continued for 12 years with the changes that SB 263 would require.

Board size. The board's workload has decreased over the past decade as licensing and testing have become more efficient. Fifteen members would be sufficient to handle the board's current workload, improving productivity at less cost to taxpayers. Board membership also needs to be updated to contain an odd number of members, because the Texas Constitution requires this change by September 1, 2003. Reducing the board's size also could encourage the board to delegate more work to its staff that other licensing boards' staffs traditionally have performed.

Enforcement and investigation. The board's sunset review was moved up because its enforcement of the Dental Practice Act is inefficient, its complaint procedures are ineffective, and its disciplinary action is weak. SB 263 would

remove board members from day-to-day handling of complaints, shifting this responsibility to the staff. However, it would maintain board members' role in cases involving morbidity, professional conduct, or quality of care. This change should reduce the unreasonably long periods now needed to resolve complaints. Moreover, the bill's provision allowing staff, instead of board members, to conduct settlement conferences and to refer cases to SOAH would expedite cases through the system.

The bill would give the board an additional tool, cease-and-desist orders, to stiffen enforcement of laws against practicing without a license. The board sometimes has classified these cases as nonjurisdictional or has referred them to law enforcement officials with no follow-up. The bill would clarify that practicing dentistry without a license is a jurisdictional complaint for the board and would equip it to deal with the violation. The board's authority to use restitution as part of the settlement conference process is a second tool that would enhance its enforcement efforts.

Coordination with HHSC. The board's ineffective coordination with HHSC on Medicaid fraud was the second main reason why the Legislature advanced the board's sunset review. Both entities have jurisdiction in cases of Medicaid fraud by dentists, and the agencies' poor coordination has diminished public protection in this area. When neither agency can obtain access to the other's information, neither can take steps to protect the public from unlawful activity. The requirement in SB 263 that the two enter into an agreement would help ensure that violators were disciplined, while maintaining the confidentiality protected under current law.

Dental assistants. Increased regulation of some dental assistants would promote professionalism and increase safety for dental assistants and the patients they serve. Since dental assistants may perform procedures that put patients at risk, their professional competency should be assessed by state regulators, not only by the dentists under whom they work. The bill's continuing education requirement would deepen dental assistants' understanding of their profession, improve their job performance, and increase patients' confidence in the quality of care they receive.

Dental educators. Dental and dental hygiene school faculty members not only educate future dentistry professionals but also provide dental care to

Texans who visit school-run clinics. However, because educators are exempt from the Dental Practice Act, the board has no jurisdiction over them if a patient is harmed. SB 263 would protect patients regardless of where they receive dental care by allowing them to file complaints about care given by educators. The bill properly would exclude educators with no patient contact.

Licensing requirements. Texas' shortage of dentists is predicted to worsen in coming years, and the board's restrictive licensing policies for out-of-state dental professionals contribute to a lack of access to dental care. The bill's reduction of continuous practice requirements for licensure to three years and the option of a waiver for noncontinuous practice could increase the number of dental professionals in Texas, improve access to dental care, and conform to the more relaxed credentialing requirements the Legislature recently has recognized in dental health and other health professions.

A floor amendment would require that a provisional license holder have graduated from a program accredited by the Commission on Dental Accreditation (CODA) of the American Dental Association.

DHAC recommendations. Currently, the board does not have to respond to or act upon recommendations from DHAC, so the advisory body's impact is limited. SB 263 would increase DHAC's role in the regulation of dental hygiene practice, thereby giving dental hygienists a stronger voice in their own profession.

**OPPONENTS
SAY:**

Board size. Dental boards in 39 other states have 11 members or fewer, and only New York has a larger dental board than Texas' board. An 11-member board would suffice to handle the current workload and would save additional money for taxpayers.

Enforcement and investigation. While SB 263 would require staff to consult a dentist board member before dismissing or expunging complaints about morbidity, professional conduct, or quality of care, staff would not have to consult a dental hygienist board member if such a complaint involved a dental hygienist. Professional seats on governing boards are based on the principle that peers have the appropriate expertise and knowledge to govern their own profession effectively. However, SB 263 would allow decisions to be made on dental hygiene cases without this profession's voice being heard.

Dental assistants. All dental assistants should have to meet certain educational and proficiency standards, though SB 263 would require certification only for dental assistants who give X-rays. Also, all dental assistants should be subject to annual continuing education requirements.

Dental educators. The bill's requirements for licensing of dental educators are unnecessary. About three out of four dental educators already hold a license from the board, and the board receives very few complaints against educators. Also, dental and dental hygiene schools have their own efficient processes for handling complaints. Additional licensure requirements could make it harder to recruit high-quality faculty members in a competitive marketplace.

Licensing requirements. Weakening licensure requirements for out-of-state applicants might attract more dentists to Texas, but it would do so at the expense of quality dental care and protection of the public health.

The bill's requirements for granting a provisional license should include graduation from a CODA accredited program. The bill would omit this language, opening the door for a practitioner from another state that does not require CODA accreditation to practice in Texas. The lower standard for these applicants could put the profession's integrity at risk and reduce protection of patients.

DHAC recommendations. The bill would allow but not require the board to consider a DHAC recommendation. This permissive language would weaken the DHAC's ability to influence policies that affect the practice of dental hygiene. The bill at least should require that if the board rejects a DHAC recommendation, it must explain in writing the reasons for rejection. A written record would help DHAC address the board's concerns and continue working constructively on the issue.

NOTES:

The committee amendments to the Senate engrossed version of SB 263 would:

- delete a proposed loan reimbursement program for rural dentists and dental hygienists;
- alter the documentation that a license applicant would have to supply

to the board as verification of having successfully completed a course in cardiopulmonary resuscitation (CPR) and add repeal of a section of the Occupation Code that specifies requirements for CPR documentation; and

- add a provision that would allow an educator holding a dental school faculty license to teach at a dental hygiene school without holding a dental hygiene school faculty license.