

SUBJECT: Changing the dental board's complaint resolution process, charging a fee

COMMITTEE: Public Health — committee substitute recommended

VOTE: 10 ayes — Kolkhorst, Naishtat, Collier, Cortez, S. Davis, Guerra, S. King, Laubenberg, J.D. Sheffield, Zedler

0 nays

1 absent — Coleman

WITNESSES: For — David Mintz, Texas Academy of General Dentistry; (*Registered, but did not testify*: Jim Moriarty; Mark Peppard, Texas Academy of General Dentistry)

Against — None

On — Julie Hildebrand and Glenn Parker, Texas State Board of Dental Examiners; (*Registered, but did not testify*: Rick Black, Texas Dental Association; Kathleen Boyle and Ronda Lane, Texas Dental Assistants Association; Lisa Jones and Irma Rodriguez, Texas State Board of Dental Examiners)

BACKGROUND: Occupations Code, chs. 251 to 267, is the Dental Practice Act. It stipulates that the State Board of Dental Examiners' investigation files and other records are confidential and can only be divulged to the investigated person at the end of an investigation. It requires that an employee consult with a dentist member of the board before dismissing a complaint related to dental morbidity, professional consult, or quality of care.

DIGEST: CSHB 3201 would change the State Board of Dental Examiner's investigation and complaint resolution procedures and allow the board to charge an additional fee to fund the enforcement program.

Investigations. The board would be required to complete a preliminary investigation within 45 days of receiving a complaint. The board would have to first determine if the license holder was a continuing threat to public welfare and decide whether to officially proceed with the complaint. If the board did not complete the preliminary investigation

within 45 days, it would be considered the start of an official investigation. The board would be required to inform the license holder about the specific allegations against the license holder.

Expert panels. The board by rule could appoint expert panels of licensed dentists and licensed dental hygienists to assist with investigations of professional competency. The board would have to adopt specific rules related to expert panels, including procedures for removing a panel member who was repeatedly delinquent in reviewing complaints and submitting reports.

If a preliminary investigation indicated that a license holder fell below an acceptable standard of care on a specific act, the complaint would be reviewed by an expert panel of individuals who practice in the same (or similar) specialty. The expert panel would have to provide a written report specifying the applicable standard of care, the clinical basis of findings, and any other determinations.

The bill would specify procedures for a two-person review of complaints and allow experts to consult with each other. It would include a process for a “tie-breaking” review by a third expert if the other experts disagreed.

Complaint resolution. The board could delegate to a committee of board employees the authority to dismiss or proceed with complaints that did not relate directly to patient care or involved only administrative violations, but the board would have to approve the committee’s decision at a public meeting. The bill would specify the situations under which a complaint had to proceed to an informal settlement conference.

Procedures would be established for informal settlement conferences, including procedures for notice, written statements of allegations, rebuttal by the license holder, and recording the settlement conference.

The board would be authorized to use remedial plans to resolve complaints, assess fees to administer the plans, and adopt rules to implement the plans. A remedial plan could not contain certain provisions, be used to resolve certain serious allegations, or be used more than once for the same license holder. A remedial plan would be public information and considered a settlement agreement under the Texas Rules of Evidence.

The investigation and complaint resolution procedures would apply only

to complaints filed with the board on or after January 1, 2014.

Licensing. The board could allow employees to issue licenses to dentists and dental hygienists who clearly met all licensing requirements. Any applicant that did not clearly meet licensing requirements would be reviewed by the board.

Fee. The board would collect an additional \$80 for the issuance or renewal of a dental license. This portion of the license fee would be deposited in the dental public assistance assurance account, a dedicated general revenue fund to be used only for the board's enforcement program, including expert panels.

The bill would take effect January 1, 2014, except the board would have to adopt rules to implement the bill's changes by September 1, 2013.

**SUPPORTERS
SAY:**

CSHB 3201 would improve public safety and increase efficiency by strengthening and streamlining the board's investigation and complaint resolution procedures. Recently, many examples of dental and orthodontic fraud and abuse have been exposed and the board is not equipped with enough tools to effectively and efficiently handle these cases. The board takes, on average, more than 400 days to resolve a complaint. By creating deadlines, allowing delegation to board employees, and authorizing the use of new enforcement procedures, the board's ability to effectively oversee the dental profession would be enhanced.

The bill would also promote uniformity by aligning the enforcement procedures with those of the Texas Medical Board.

**OPPONENTS
SAY:**

The current charge to renew a dental license is \$350 per year, making \$80 a substantial increase in fees. It is unclear whether the board would actually need this much money to implement the new enforcement procedures.

NOTES:

The Legislative Budget Board estimates that the bill would be cost-neutral to general revenue funds because the cost of additional full-time employees would be offset by an increase in licensing fee revenue. The increase in fees would generate about \$5.3 million each fiscal year for the general revenue dedicated dental public assistance account.