

## **BILL ANALYSIS**

Senate Research Center

H.B. 3201  
By: Kolkhorst (Nelson)  
Health & Human Services  
5/8/2013  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The State Board of Dental Examiners is responsible for regulating the practice of dentistry in Texas. In recent years, the board has struggled to investigate and resolve complaints in a timely manner due to inefficient processes and a lack of funding and staff.

H.B. 3201 makes reforms to improve the board's complaint review and resolution process, strengthen the board's authority and enforcement powers, and increase staffing to improve the board's ability to respond to complaints and potential fraud.

H.B. 3201 amends current law relating to the practice of dentistry, and imposes surcharges and fees.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas State Board of Dental Examiners in SECTION 5 (Section 255.0065, Occupations Code), SECTION 8 (Section 263.0077, Occupations Code), and SECTION 9 of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 254.004, Occupations Code, by adding Subsections (c) and (d), as follows:

(c) Requires the Texas State Board of Dental Examiners (TSBDE) to 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) Requires TSBDE to deposit each surcharge collected to the credit of the dental public assurance account. Provides that the dental public assurance account is an account in the general revenue fund that is required to be appropriated only to TSBDE to pay for TSBDE's enforcement program, including an expert panel.

SECTION 2. Amends Section 254.006(b), Occupations Code, to provide that investigation files and other records are confidential, except TSBDE is required to inform the license holder of the specific allegations against the license holder, rather than are confidential and are required to be divulged only to the persons investigated at the completion of the investigation.

SECTION 3. Amends Section 254.018, Occupations Code, as follows:

Sec. 254.018. New heading: TESTIMONY. Prohibits a member of TSBDE from expressing an oral or written opinion or serving as an expert witness in a suit or administrative claim pending before the same board against or for a person licensed or registered under this subtitle (Dentistry) for injury to or death of a patient or for a violation of the standard of care or the commission of malpractice, rather than from serving as an expert witness in a suit involving a health care liability claim against a

dentist for injury to or death of a patient unless the member receives approval from TSBDE or an executive committee of TSBDE to serve as an expert witness.

SECTION 4. Amends Sections 255.006(a) and (d-1), Occupations Code, as follows:

(a) Requires TSBDE, if TSBDE has jurisdiction, to complete a preliminary investigation of the complaint not later than the 60th day after the date of receiving the complaint, rather than to investigate the complaint to determine the facts concerning the complaint. Requires TSBDE to first determine whether the license holder constitutes a continuing threat to the public welfare. Requires TSBDE, on completion of the preliminary investigation, to determine whether to officially proceed on the complaint. Provides that, if TSBDE fails to complete the preliminary investigation in the time required by this subsection, TSBDE's official investigation of the complaint is considered to commence on that date.

(d-1) Requires that procedures established under Subsection (d)(6) (relating to requiring TSBDE to adopt rules concerning the investigation of a complaint filed with TSBDE and the requirements of those rules) ensure that the decision to dismiss a complaint is made with the appropriate level of review and necessary expertise and experience and require the dismissal of a complaint to be reported to TSBDE at a public meeting of TSBDE. Deletes existing text requiring that procedures established under Subsection (d)(6) require a TSBDE employee to consult with a dentist member of TSBDE before dismissing a complaint relating to patient morbidity, professional conduct, or quality of care. Makes nonsubstantive changes.

SECTION 5. Amends Chapter 255, Occupations Code, by adding Sections 255.0065, 255.0066, and 255.0067, as follows:

Sec. 255.0065. COMPOSITION OF EXPERT PANELS. (a) Requires TSBDE by rule to provide for expert panels appointed by TSBDE to assist with complaints and investigations relating to professional competency by acting as expert dentist and dental hygienist reviewers.

(b) Requires each member of the expert dentist panel to be licensed to practice dentistry in this state. Requires each member of the expert dentist hygienist panel to be licensed to practice dental hygiene in this state.

(c) Requires that the rules adopted under this section include provisions governing the composition of the panel, qualifications for membership on the panel, length of time a member is authorized to 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) Requires that TSBDE's rules governing grounds for removal from the panel include providing for the removal of a panel member who is repeatedly delinquent in reviewing complaints and in submitting reports to TSBDE.

Sec. 255.0066. DETERMINATION OF COMPETENCY. (a) Requires that the complaint, if the preliminary investigation under Section 255.006(a) indicates that an act by a license holder falls below an acceptable standard of care, be reviewed by an expert panel authorized under Section 255.0065 consisting of license holders who practice in the same 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) Requires the expert panel to report in writing the panel's determinations based on the review of the complaint under Subsection (a). Requires that the report 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) Requires a license holder on an expert panel authorized by Section 255.0065 who is initially selected to review a complaint to:

(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) Requires a second expert reviewer to review the first expert reviewer's preliminary report and other information associated with the complaint. Requires the first reviewer, if the second reviewer agrees with the first reviewer, to issue a final written report on the matter.

(c) Requires a third expert reviewer, if the second expert reviewer does not agree with the conclusions of the first expert reviewer, to review the preliminary report and information and decide between the conclusions reached by the first two reviewers. Requires that the final written report be issued by the third reviewer or the reviewer with whom the third reviewer concurs.

(d) Authorizes the expert reviewers assigned to examine the complaint, in reviewing a complaint, to consult and communicate with each other about the complaint in formulating their opinions and reports.

SECTION 6. Amends Subchapter C, Chapter 256, Occupations Code, by adding Section 256.106, as follows:

Sec. 256.106. DELEGATED AUTHORITY TO ISSUE LICENSES. Authorizes TSBDE to delegate authority to TSBDE employees to issue licenses under this subtitle to applicants who clearly meet all licensing requirements. Requires that the application, if TSBDE employees determine that the applicant does not clearly meet all licensing requirements, be returned to TSBDE. Provides that a license issued under this section does not require formal TSBDE approval.

SECTION 7. Amends Subchapter B, Chapter 258, Occupations Code, by adding Section 258.055, as follows:

Sec. 258.055. PRACTICE OF DENTISTRY ON CERTAIN CHILDREN. (a) Authorizes the parent or guardian of a child younger than 18 years of age to 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) Provides that, 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. Amends Chapter 263, Occupations Code, by adding Sections 263.0065, 263.0076, and 263.0077, as follows:

Sec. 263.0065. DELEGATION OF CERTAIN COMPLAINT DISPOSITIONS. (a) Authorizes TSBDE to delegate to a committee of TSBDE 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) Requires that the disposition determined by the committee be approved by TSBDE at a public meeting.

(c) Requires that a complaint delegated under this section be referred for informal proceedings under Section 263.0075 (Informal Settlement Conference; Restitution) 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) Requires that notice of the time and place of the conference, if an informal settlement conference will be held under Section 263.0075, be given to the license holder not later than the 45th day before the date the conference is held.

(b) Requires that the notice required by Subsection (a) be accompanied by a written statement of the specific allegations against the license holder and the information TSBDE intends to use at the informal settlement conference. Authorizes the license holder, if TSBDE does not provide the statement or information when the notice is provided, to use that failure as grounds for rescheduling the conference.

(c) Requires the license holder to provide to TSBDE 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) Requires TSBDE, on request by a license holder under review, to make a recording of the informal settlement conference. Provides that the recording is a part of the investigative file and is prohibited from being released to a third party unless authorized under this subtitle. Authorizes TSBDE to charge the license holder a fee to cover the cost of recording the conference. Requires TSBDE to provide a copy of the recording to the license holder on the license holder's request.

Sec. 263.0077. REMEDIAL PLAN. (a) Authorizes TSBDE to issue and establish the terms of a remedial plan to resolve the investigation of a complaint filed under this subtitle.

(b) Prohibits a remedial plan from containing 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) Prohibits a remedial plan from being imposed to resolve a complaint:

- (1) concerning a patient death, the commission of a felony, or 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 is authorized to involve a restriction on the manner in which a license holder practices dentistry or dental hygiene.

(d) Prohibits TSBDE from issuing a remedial plan to resolve a complaint against a license holder if the license holder has previously entered into a remedial plan with TSBDE for the resolution of a different complaint filed under this subtitle.

(e) Authorizes TSBDE to assess a fee against a license holder participating in a remedial plan in an amount necessary to recover the costs of administering the plan.

(f) Provides that a remedial plan is public information.

(g) Provides that, in civil litigation, a remedial plan is a settlement agreement under Rule 408, Texas Rules of Evidence.

(h) Requires TSBDE to adopt rules necessary to implement this section.

SECTION 9. Requires TSBDE, not later than December 1, 2013, to adopt rules necessary to implement the changes in law made by this Act.

SECTION 10. Provides that 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. Provides that 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. Provides that 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 TSBDE on or after January 1, 2014. Provides that 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.

SECTION 12. (a) Requires TSBDE to collect the following information from dentists licensed by TSBDE 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) Requires TSBDE, not later than November 1, 2014, to provide a report to the legislature on the information collected under this section and on TSBDE's use of the information in the exercise of TSBDE's statutory authority to regulate the practice of dentistry.

(c) Provides that this section expires December 1, 2014.

SECTION 13. (a) Effective date, except as provided by Subsection (b) of this section: January 1, 2014.

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