

By: Schwertner, et al.

S.B. No. 313

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~~]~~ 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~~

~~classification salary schedule~~].

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

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

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

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

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

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

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

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

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

~~[(B) the]~~ public information ~~[law], [Chapter~~
~~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.

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

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

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

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

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

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

Sec. 254.0105. MONITORING HARMFUL PRESCRIBING PATTERNS.

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

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

(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:

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

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

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

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

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

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

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

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

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

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

Sec. 258.1521. ADVISORY COMMITTEE ON DENTAL ANESTHESIA.

(a) The board shall establish an advisory committee to advise the board regarding the adoption and amendment of rules related to 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.

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

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

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

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

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

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

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

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

(b) The board may require a dentist to submit and comply with a corrective action plan to remedy or address any current or 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) ~~[(b)]~~ 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

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

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

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

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

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

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

SECTION 20. Chapter [263](#), Occupations Code, is amended by adding Section 263.0025 to read as follows:

Sec. 263.0025. SUBMISSION TO MENTAL OR PHYSICAL EVALUATION.

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

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

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

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

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

(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.

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

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

(1) six dentist members; and

(2) three dental hygienist members.

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

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

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

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

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

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

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

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

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

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

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

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

(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.

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

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

(1) apply a pit and fissure sealant;

(2) make a dental x-ray;

(3) perform coronal polishing; or

(4) monitor the administration of nitrous oxide.

Sec. 265.0016. ELIGIBILITY REQUIREMENTS FOR REGISTRATION.

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

(1) hold a high school diploma or its equivalent;

(2) complete an educational program approved by the board that includes courses of instruction on:

(A) the dental acts described by Section 265.0015;

(B) basic life support;

(C) infection control; and

(D) jurisprudence;

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

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

(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

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

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

~~[(A) the application of a pit and fissure sealant,~~

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

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

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

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

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

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

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

(2) retain responsibility for the procedure; and

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

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