



SUNSET ADVISORY COMMISSION

State Board of
Dental Examiners



Staff Report
February 2002

STATE BOARD OF DENTAL EXAMINERS

SUNSET STAFF REPORT

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SUMMARY



Summary

Sunset Staff Report

State Board of Dental Examiners

The State Board of Dental Examiners is fairly unique in that it was brought up for Sunset review ahead of schedule. The Legislature reserves this strategy for agencies that it has determined need special attention. The Board was perceived as providing inadequate enforcement against violators of the Dental Practice Act.

The Sunset review assessed the Board to see if its oversight structure and enforcement activities sufficiently protect the public. Specifically, the review studied the Board itself to see if it is best constituted to meet the challenges of enforcing the Act and overseeing the agency. The review also assessed the adequacy of the Board's enforcement function to determine if it has the proper tools and uses them to bring violators in line with the Dental Practice Act. Finally, the review examined the Board's licensing function to ensure that it adequately protects the public through the least restrictive means necessary, to avoid adversely affecting access to care.

Sunset staff concluded that although the Board has tried to improve its enforcement process and case processing time, enforcement procedures still need to be strengthened. The best way to achieve this is by directing staff to have a greater role, and reducing Board members' roles in day-to-day functions. Finally, reducing the Board size and ensuring that appropriate regulatory authority is asserted over certain groups should further public protection.

Staff should have a greater role in enforcement.

Specific recommendations resulting from this analysis are summarized in the following material.

Issues / Recommendations

Issue 1 Texas Has a Continuing Need for the State Board of Dental Examiners.

Key Recommendations

- Continue the State Board of Dental Examiners for 12 years.
- Eliminate the separate Sunset date for the Dental Hygiene Advisory Committee.

For more information, contact Andrea Varnell, (512) 463-1300. Sunset staff reports are available online at www.sunset.state.tx.us.

Issue 2 The Board's Size and Involvement in Agency Activities Limit Its Effectiveness.**Key Recommendations**

- Reduce the size of the Board from 18 to 11 members, consisting of six dentists, two hygienists, and three public members.
- Clearly define roles of Board members versus staff members.

Issue 3 The Board's Enforcement Efforts Have Not Met Expectations, and Complaint and Investigation Procedures Have Caused Delays in Case Resolution.**Key Recommendations**

- Expand the role of staff to dismiss baseless cases and to refer complaints to informal settlement conferences, or the State Office of Administrative Hearings for formal hearings.
- Expand Board remedies for dealing with the practice of dentistry without a license, and for providing restitution through informal settlements.
- Direct the Board to hire, and consult with, dentists to review standard-of-care complaints.

Issue 4 The Board Does Not Coordinate Effectively With the Health and Human Services Commission to Address Medicaid-Related Issues.**Key Recommendation**

- Create an interagency agreement between the Board and the Health and Human Services Commission to improve coordination on Medicaid-related issues.

Issue 5 Regulatory Controls Over Dental Assistants Are Not Adequate Given Their Patient Care Responsibilities.**Key Recommendation**

- Expand the Board's existing regulation of dental assistants to require dental assistants who take X-rays to also demonstrate knowledge of state dental laws and infection control issues.

Issue 6 Educators Who Provide Dental Services Are Not Subject to Adequate Board Oversight.**Key Recommendation**

- Provide for licensing dental educators who provide dental services at accredited dental or dental hygiene schools in Texas.

Issue 7 Some of the Board's Licensing Requirements Restrict Dentists From Entering Into Practice in Texas.

Key Recommendations

- Reduce the years of practice required for dental licensure by credentials from five to three years.
- Authorize the Board to grant waivers, for certain circumstances, to the continuous practice requirements for licensure by credentials.
- Require the Board to consider accepting the results of other regional examining boards, and provide justification for not accepting results from any of the boards.

Fiscal Implication Summary _____

This report contains several recommendations that will have a fiscal impact to the State. The fiscal impact of each of these recommendations is summarized below.

- *Issue 2* – Recommendations will result in an estimated savings to the State of about \$13,462 per year. Savings result from the smaller travel budget needed to accommodate fewer Board members.
- *Issue 3* – Recommendation 3.5 directs the State Board of Dental Examiners to hire or contract with a dentist as a consultant. The Board may need to request additional funds of \$75,000 to hire a dentist for 20-30 hours per week.
- *Issue 5* – Expanding the Board's existing regulation of dental assistants will require a one-time cost of \$15,000, in FY 2004, for the Board to upgrade its computer system and develop a dental assistants exam. Beginning in FY 2005, the Board will need one additional full-time equivalent to handle the annual registration system. However, these costs will be recovered by fees paid by dental assistants.

Fiscal Year	Savings to the General Revenue Fund	Costs to the General Revenue Fund	Gains to the General Revenue Fund	Change in FTEs from 2003
2004	\$13,462	\$15,000	\$0	0
2005	\$13,462	\$275,000	\$275,000	+1
2006	\$13,462	\$312,500	\$387,500	+1
2007	\$13,462	\$312,500	\$312,500	+1
2008	\$13,462	\$312,500	\$312,500	+1

ISSUES / RECOMMENDATIONS

Issue 1

Texas Has a Continuing Need for the State Board of Dental Examiners.

Summary

Key Recommendations

- Continue the State Board of Dental Examiners for 12 years.
- Eliminate the separate Sunset date for the Dental Hygiene Advisory Committee.

Key Findings

- The State Board of Dental Examiners' mission is to safeguard the dental health of Texans.
- Texas has a continuing interest in regulating the dental profession to safeguard the dental health of Texans.
- No benefit would result from changing the agency structure or having any other federal or state agency perform the Board's functions.
- While organizational structures vary, all 50 states use a state agency to regulate the dental industry.

Conclusion

The State Board of Dental Examiners performs an important mission, to regulate the dental industry and ensure that safe practices exist. While changes in the Board could improve the agency's operations, the State has benefitted from its regulatory programs, and no other federal or state agency has the means to provide these functions.

The Sunset review evaluated the continuing need for an independent agency to enforce Texas dental laws, and for the Dental Hygiene Advisory Committee (DHAC). The review assessed whether the Board's functions could be successfully transferred to another agency and looked at how other states perform this function. The review concluded that the Board should be continued as an independent agency for 12 years, and that DHAC should also be continued, without a separate Sunset date.

Support

The State Board of Dental Examiners' mission is to safeguard the dental health of Texans.

The Board performs three core functions – licensing and registration, enforcement, and peer assistance.

- Texas has been regulating dentistry since 1889, and the State Board of Dental Examiners (the Board) was created in 1897 with a six-member board. Since that time, many changes have been made to the Board's size and composition, and several duties have been added to broaden the Board's role.
- The Board plays a vital role in protecting the public by ensuring that only qualified dental professionals practice in Texas, and by sanctioning those practitioners who violate the law. To achieve this goal, the Board performs three core functions – licensing and registration, enforcement, and peer assistance. State law requires dentists and dental hygienists to be licensed and dental laboratories to register with the Board. To ensure that licensees comply with the Texas Dental Practice Act, which regulates dentistry in the state, the Board investigates and resolves complaints that arise about dental professionals. The Board also contracts with a nonprofit corporation to provide a peer assistance program to chemically dependent and mentally impaired dentists and dental hygienists.
- The Board underwent Sunset review in 1992, and the Sunset Commission voted to continue the agency. However, the Legislature did not continue the agency, in part because of disagreements between the dental and dental hygiene associations over the proposed reauthorization bill. As a result, the Board was abolished in 1993, subject to a one-year wind-down period. Because the Dental Practice Act remained in effect, the Board developed a plan to continue the Act's provisions, including assigning functions to other agencies. In February 1995, the 74th Legislature, acting under a district judge's order, passed Senate Bill 18, which rebuilt the Board with 18 members and re-established existing rules.
- In 2001, the Legislature moved the Board's Sunset date from 2005 to 2003, primarily because of problems with the agency's enforcement function.¹ The Legislature did not, however, change the Sunset date for the Dental Hygiene Advisory Committee (DHAC), which was created in statute in 1977 to advise the Board on matters relating to dental hygiene. While DHAC's Sunset date is 2005, it is subject to review with the Board.
- The Board is a member of the Health Professions Council, which coordinates functions among 14 healthcare licensing agencies in Texas.²

Texas has a continuing interest in regulating the dental profession to safeguard the dental health of Texans.

- Dental care is needed by Texans, but the practice of dentistry can put patients at risk. For example, the administration of anesthesia is an inherently risky procedure that has been linked to several patient deaths. In addition, certain procedures can cause a great deal of pain and irreversible damage to teeth and gums if not implemented properly.
- The Board licenses individuals to ensure their competence to practice dentistry and to provide dental hygiene services. The Board also develops and implements rules and regulations to ensure that licensees engage in safe practices. The Dental Practice Act is designed to protect patients and give them rights and recourse if laws are violated. Further, the public needs an agency that can receive and investigate complaints about dental professionals to bring them into compliance, if necessary, and to discipline those who violate the law.
- DHAC provides advice to the Board on dental hygiene regulation. Because only two dental hygienists serve on the Board, the additional input from DHAC provides expertise on a profession that plays a major role in dental healthcare. DHAC must be given 30 days to review all rules before they are adopted by the Board. DHAC members can also propose new rules and language.

The administration of anesthesia is an inherently risky procedure that has been linked to several patient deaths.

No benefit would result from changing the agency structure or having any other federal or state agency perform the Board's functions.

- The Texas Department of Health's (TDH) Oral Health Division also plays a role in dental healthcare, but not in a regulatory capacity. TDH staff actually provides dental services throughout the state, subject to the Board's regulation under the Dental Practice Act. For the same agency that provides dental services also to regulate those services would be a conflict of interest. In addition, because TDH does not regulate dentistry, the agency would need to develop expertise, most likely using the same or similar board and agency structure as already exists at the Board of Dental Examiners. Dental Board members provide critical knowledge of the dental industry that helps guide the agency's policies and procedures.
- The Health Professions Council's role is to coordinate health regulatory agencies' functions, and it does not perform any regulatory duties. The Council is not an umbrella organization, but is instead a coordinating body with no oversight or regulatory authority. Therefore, the Council would not be capable or appropriate to assume the responsibilities of the Board.

DHAC is valuable to the Board; however, no need exists for it to have a separate Sunset date.

- National organizations that certify dental assistants and dental technicians exist, they do not license the scope of dental practitioners and could not perform the same functions as the Board. No federal agency regulates dentistry.
- Although TDH also deals with dental hygiene issues, DHAC appropriately advises the Board on dental hygiene regulation to assist in the licensing of dental hygienists and establishing rules for practice. DHAC is valuable to the Board; however, no need exists for it to have a separate Sunset date. A standard Sunset review includes the analysis of the need for and effectiveness of advisory committees, and this will occur during all future Sunset reviews of the Board.
- The Board recovers all costs through fees collected by licensees; therefore, no cost-savings would result if the Board was abolished. Because the cost of operating the agency is paid by regulated entities, the Board does not present a burden to the General Revenue Fund. In fact, the Board has contributed about \$50,000 or more to General Revenue than it is appropriated during the budgeting process.

While organizational structures vary, all 50 states use a state agency to regulate the dental industry.

- The chart, *State Dental Regulatory Agencies*, describes how dental regulatory agencies in the United States are structured. The most common way to regulate the dental industry is to use an independent agency, as Texas does. The second most common method of dental regulation is through a semi-independent agency linked to a state health agency for support.

State Dental Regulatory Agencies		
Status	Number of States	Examples
Independent	25	Texas, North Carolina, Louisiana
Semiautonomous	19	Colorado, Michigan, Arkansas
Advisory only	3	New York, Virginia
Subordinate to another agency	3	Nebraska, Delaware

Recommendation

Change in Statute

- 1.1 Continue the State Board of Dental Examiners for 12 years.**
- 1.2 Eliminate the separate Sunset date for the Dental Hygiene Advisory Committee.**

This recommendation would maintain the Dental Hygiene Advisory Committee, but eliminate its Sunset date. It would have no impact on the operation or structure of the Committee, but would simplify future Sunset reviews by ensuring that the Committee is reviewed each time the Board of Dental Examiners is reviewed by the Sunset Commission.

Impact

These recommendations would continue the State Board of Dental Examiners as an independent agency responsible for regulating the dental industry, while providing consistency in the Sunset review process by ensuring that the Dental Hygiene Advisory Committee and the Board are reviewed at the same time.

Fiscal Implication

The Board's current annual appropriation of \$1.6 million would continue to be required to maintain the operation of the agency.

¹ Telephone interview with Representative Patricia Gray's staff (Austin, Texas, September 18, 2001).

² The agencies that make up the Health Professions Council include: The Board of Chiropractic Examiners, Funeral Service Commission, Board of Dental Examiners, Board of Medical Examiners, Board of Nurse Examiners, Board of Occupational Therapy Examiners, Texas Optometry Board, Board of Pharmacy, Board of Physical Therapy Examiners, Board of Podiatric Medical Examiners, Board of Examiners of Psychologists, Board of Veterinary Medical Examiners, Board of Vocational Nurse Examiners, and the Department of Health, Professional Licensing and Certification Division.

Issue 2

The Board's Size and Involvement in Agency Activities Limit Its Effectiveness.

Summary

Key Recommendations

- Reduce the size of the Board from 18 to 11 members, consisting of six dentists, two hygienists, and three public members.
- Clearly define roles of Board members versus staff members.

Key Findings

- The State Board of Dental Examiners is guided by an 18-member body that regulates dental healthcare professionals in Texas.
- The size of the Board does not comply with the Texas Constitution.
- While the Board's responsibilities have decreased, its size and activities have not.
- The Board is too involved in activities traditionally delegated to staff.
- Other Texas licensing agencies, including health profession agencies, as well as dental boards in other states, operate successfully with smaller boards.

Conclusion

As the entity that licenses dental healthcare providers in Texas and enforces the state's dental laws, the State Board of Dental Examiners has considerable responsibility for safeguarding the dental health of Texans.

Over the past decade, dental licensing and testing processes have become more streamlined in Texas and across the country. Because of such changes, the Board's workload has decreased, particularly regarding examination of dental and dental hygiene students. As a result, the Board's duties no longer warrant 18 members. The Board's size also has not been updated to reflect the desire of Texas voters that agency boards consist of an odd number of members. Finally, in addition to its decreasing duties, the Board has not delegated many day-to-day operational functions to staff.

The Sunset review evaluated the role and requirements of the Board in regulating dental professionals in Texas. This review found that reducing the size of the Board and clearly defining the roles of the Board and the staff will allow Board members to provide policy direction concerning dental healthcare issues in the state and leave agency staff to perform the everyday functions of licensing and enforcing Texas' dental laws.

Support

The State Board of Dental Examiners is guided by an 18-member body that regulates dental healthcare professionals in Texas.

- The Board consists of 10 dentists, two hygienists, and six public members, appointed by the Governor. Board members elect the president and other officers from among its membership.
- Board members serve on six standing committees: Enforcement, Executive, Legal, Legislative, Licensing/Examination, and Professional Evaluation. Committees meet on an as-needed basis the day before full Board meetings, which occurred five times in fiscal year 2001. The chart, *State Board of Dental Examiners Standing Committees*, explains the purpose of and number of members on each committee.

State Board of Dental Examiners Standing Committees		
Committee	Purpose	Members
Enforcement	Reviews completed case investigations and recommends further action. Reviews reports from the Enforcement Division and considers and recommends policy changes to the Board concerning enforcement matters.	6
Licensing/ Examination	Develops content and criteria for nitrous oxide monitoring, radiology, and jurisprudence exams. Develops criteria for dental licensure by exam and credentials and proposes rules to the Board. Works with the Dental Hygiene Advisory Committee to develop rules for dental hygiene licensure by exam and credentials. Develops continuing education rules for dentists and hygienists. Reviews requests for alternative methods for licensees to obtain required CE. Monitors CE providers for compliance.	6
Legal	Oversees Legal Division operations and recommends new and amended policies and procedures.	6
Legislative	Reviews and monitors legislative issues, works with staff on legislative issues, and drafts proposed legislative changes.	6
Executive	Hears recommendations for temporary emergency suspensions of licensees.	5
Professional Evaluation	Reviews enforcement cases to offer a second opinion on cases with an unclear disposition, and reviews dismissals on request of the complainant.	3

- The Board licenses dentists and dental hygienists, registers dental labs, issues special permits, investigates complaints, administers hearings and disciplinary action, provides peer assistance for impaired licensees, and monitors compliance with Board orders.

- In fiscal year 2001, the Board licensed 11,123 dentists and 7,872 dental hygienists and registered 1,064 laboratories.
- The Board received 758 complaints, 659 of which were jurisdictional, in fiscal year 2001. That same year, the Board closed 533 cases.

The size of the Board does not comply with the Texas Constitution.

- In 1999, Texas voters approved a constitutional amendment that requires state boards and commissions created by the Legislature to consist of an odd number of members. With 18 members, the State Board of Dental Examiners does not meet that requirement.
- The constitutional amendment does not allow commissions created before the amendment to continue under their current composition. Rather, a temporary provision of the amendment requires the Legislature to recreate nonconforming commissions to meet the new requirements by September 1, 2003.

While the Board's responsibilities have decreased, its size and activities have not.

- In the past, the Board's largest activity was developing and administering the state's dental and dental hygiene exams. However, in 1994, the Board contracted with the Western Regional Examining Board (WREB), a regional testing service that administers the clinical exam for applicants seeking a dental or dental hygiene license in Texas and 10 other states.¹ Delegating clinical exam responsibilities greatly reduced the Board's responsibilities. Earlier in the 1995 session, however, the Legislature had reestablished the Board after its 1993 abolishment, by adding three public members to give the Board one-third public membership, increasing its size from 15 to 18 members.
- While the Board no longer administers the dental and dental hygiene clinical exams, it designates licensed dentists and hygienists to serve as examiners on both the dental and hygiene WREB exams. The Board can select any licensed dentist to assist in the WREB exams, but it has chosen only current or former Board members.² For example, of the eight dentists currently designated by the Board as WREB examiners, seven are current Board members and one is a former Board member.

WREB requires each designated examiner to assist with at least two exams per year. Each exam takes three days, plus one day of training. Because exams occur throughout the Western United States, examiners usually spend a day traveling to the exam site as well. This activity can be time-consuming and is something that the Board does not need to be so heavily involved in.

Delegating clinical exam responsibilities greatly reduced the Board's responsibilities.

Some activities of the Board's busiest committees do not need to be conducted by Board members.

- While the Board's committees provide useful information and policy guidance to the full Board, many of these committees' activities do not require a large investment of Board members' time. Further, as discussed below, some activities of the Board's busiest committees, such as Enforcement and Licensing/Examination, do not need to be conducted by Board members, but can be delegated to staff.
- The Board's role in licensing also has decreased since 2000, as staff now handles the task of determining whether an applicant meets all criteria for licensure by credentials. In the past, Board members serving on the Credentials Review Committee – now the Licensing/Examination Committee – reviewed all application materials and interviewed each applicant.

The Board is too involved in activities traditionally delegated to staff.

- Board members' involvement in the enforcement process is unnecessary and causes delays in the processing of complaints, as discussed in Issue 3 of this report. A member of the Board's Enforcement Committee reviews investigation reports for every jurisdictional complaint, of which the Board received 659 in fiscal year 2001. Board members also lead settlement conferences and make determinations on disciplinary action.
- Although staff determines whether an applicant meets all criteria for licensure, the Board approves all licenses and anesthesia permits. This is a task that the Board can delegate more to staff.
- The standard Sunset across-the-board recommendation regarding division of responsibility between a policymaking body and agency staff is in the Board's statute. However, the Board has not adopted rules that clearly outline the responsibilities of the staff versus the Board, as the statute requires.

Other Texas licensing agencies, including health profession agencies, as well as dental boards in other states, operate successfully with smaller boards.

- All Texas health licensing agencies have nine-member boards except for the Dental (18 members), Medical Examiners (18 members), and Vocational Nurse Examiners (15 members) boards. However, the Medical Examiners Board licenses almost three times as many professionals as the Dental Board; the Vocational Nurse Examiners Board licenses more than twice as many professionals as the Dental Board. Both boards also receive a significantly higher number of complaints than the Dental Board. The chart, *Texas Health Profession Licensing Agencies*, on the next page, details the board size and licensee and enforcement workload for the state's 12 health licensing agencies.

- Other boards, such as the Nurse Examiners, Pharmacy, Podiatry, Chiropractor, and Veterinary boards, allow their staff to close cases, make recommendations, or conduct informal settlement conferences.
- Of the 50 state dental boards, 39 consist of 11 members or less. Only New York, with 23 members, has a larger dental board than Texas.

Texas Health Profession Licensing Agencies, FY 2001				
Agency	Board size	# of FTEs	# of licensees	# of complaints filed
Dental Examiners	18	26	19,102	758
Medical Examiners	18	104	52,625	1,245
Pharmacists	9	47	25,581	1,513
Vocational Nurse Examiners	15	21	42,907	3,480
Nurse Examiners	9	50	168,660	2,083
Optometrists	9	6	3,184	106
Physical Therapists	9	18	17,103	238
Chiropractic Examiners	9	7	6,431	683
Veterinary Medical Examiners	9	10.25	6,178	183
Funeral Service	9	10	5,563	248
Psychologists	9	14	5,669	165
Podiatric Medical Examiners	9	4	1,050	139

Recommendation

Change in Statute

2.1 Reduce the size of the Board from 18 to 11 members, consisting of six dentists, two hygienists, and three public members.

This recommendation will bring the State Board of Dental Examiners into compliance with constitutional requirements for odd-numbered boards. Specifically, it will reduce the number of dentists from 10 to six and the number of public members from six to three, while maintaining the same number of hygienists as under the current Board structure. Dentists will maintain approximately the same level of representation as they currently have, while public representation drops slightly. With six dentists and two hygienists on the Board, the industry maintains a majority and can provide necessary expertise. An 11-member Board is large enough to provide policy direction and handle the responsibilities required of the Board and will allow Board members to maintain an appropriate workload. The reduction in the Board's size would be effective September 1, 2003, and would be accomplished by abolishing existing positions and providing a balanced representation of the remaining members for six-year, staggered terms. The Board would not be swept under this change.

Management Action

2.2 Clearly define roles of Board members versus staff members.

The Board should explicitly outline in rule the purpose and functions of the Board and the authority and responsibilities of the Executive Director and staff. The Board should use the Board of Nurse Examiners' rules as a guide in developing its own rules.³

Impact

Reducing the number of members on the State Board of Dental Examiners and delineating the roles of Board members versus agency staff will make the Board's workload and size more effective. Also, Issue 3 of this report addresses reducing the Board's workload regarding enforcement activities, which if enacted would further support the need for a smaller Board. An 11-member Board will bring the Dental Board in line with other Texas healthcare licensing agencies and other dental boards throughout the United States.

Fiscal Implication

This recommendation will result in an estimated savings to the State of about \$13,462 per year. Savings result from the smaller travel budget needed to accommodate fewer Board members. Savings are based on the Board's actual expenditures of \$34,971 in fiscal year 2000 and \$34,264 in fiscal year 2001. These expenditures average \$1,923 per Board member.

Fiscal Year	Savings to the General Revenue Fund	Change in FTEs from FY 2003
2004	\$13,462	0
2005	\$13,462	0
2006	\$13,462	0
2007	\$13,462	0
2008	\$13,462	0

¹ The 11 states in WREB include Alaska, Arizona, Idaho, Montana, New Mexico, Oklahoma, Oregon, Texas, Utah, Washington, and Wyoming.

² Texas Occupations Code, secs. 256.003 and 256.055 state that the Board may contract for or otherwise use licensed dentists and dental hygienists to provide assistance to the regional testing services; and Western Regional Examining Board Bylaws, as amended by the Membership, Oct. 11, 1997, p. 15.

³ The Board of Nurse Examiners has clearly outlined the duties of the Board versus the staff in Texas Administrative Code, Title 22, Part 11, chapter 211, rules 211.2 and 211.7.

Issue 3

The Board's Enforcement Efforts Have Not Met Expectations, and Complaint and Investigation Procedures Have Caused Delays In Case Resolution.

Summary

Key Recommendations

- Expand the role of staff to dismiss baseless cases and to refer complaints to informal settlement conferences, or the State Office of Administrative Hearings for formal hearings.
- Expand Board remedies for dealing with the practice of dentistry without a license, and for providing restitution through informal settlements.
- Direct the Board to hire, and consult with dentists to review standard-of-care complaints.

Key Findings

- The Board is responsible for processing, investigating, and prosecuting complaints filed against regulated dental professionals and entities.
- The Board takes too long to resolve complaints.
- The Board does not appear to address violations of the Dental Practice Act adequately.
- Some of the Board's enforcement procedures, and available remedies, may affect its ability to resolve complaints.
- Other state agencies use staff or experts to perform enforcement functions, and some have stronger enforcement authority.

Conclusion

The Sunset review evaluated the effectiveness of the Board's enforcement activities. Sunset staff concluded that the Board's enforcement of dental laws is inefficient, and the agency provides poor accountability of complaints. These factors as well as ineffective complaint procedures may lead to infrequent and weak disciplinary action. Sunset staff found that a reason for the delay in case processing is the Board's involvement in the complaint process.

These recommendations are intended to take Board members out of the day-to-day responsibilities of the complaint process, and vest these duties in staff. With the management recommendations to hire a dentist and tighten enforcement procedures, staff should be competent to handle complaints and streamline the complaint flow. Finally, the recommendations would give the Board additional authority to better enforce the Dental Practice Act, resulting in improved accountability and better protection of the public.

Support

The Board is responsible for processing, investigating, and prosecuting complaints filed against regulated dental professionals and entities.

- In fiscal year 2001, the Board received 758 complaints, of which 659 were jurisdictional. The majority of complaints were about dentists, but a small number were related to dental hygienists and dental labs. The chart on page 62 in the Agency Information section illustrates the categories of complaints in FY 2001.
- The Enforcement Division investigates complaints about regulated entities. Complaints are assigned a priority number based on risk. Staff investigates priority one complaints, where significant threat of injury exists, within 60 days, and investigates all others as priority two complaints, within 120 days.
- Jurisdictional complaints are assigned to one of six staff investigators, who completes the investigation and writes a report on the findings. Staff forwards the complaint to a member of the Enforcement Committee, who reviews completed case investigations and recommends further action, such as dismissal, settlement conference, or referral to the State Office of Administrative Hearings. The Board relies on dentist members of the Enforcement Committee to provide expertise in evaluating standard-of-care issues in complaints. The chart, *Complaint Flow Chart*, on the next page, shows the Board's process for resolving complaints.

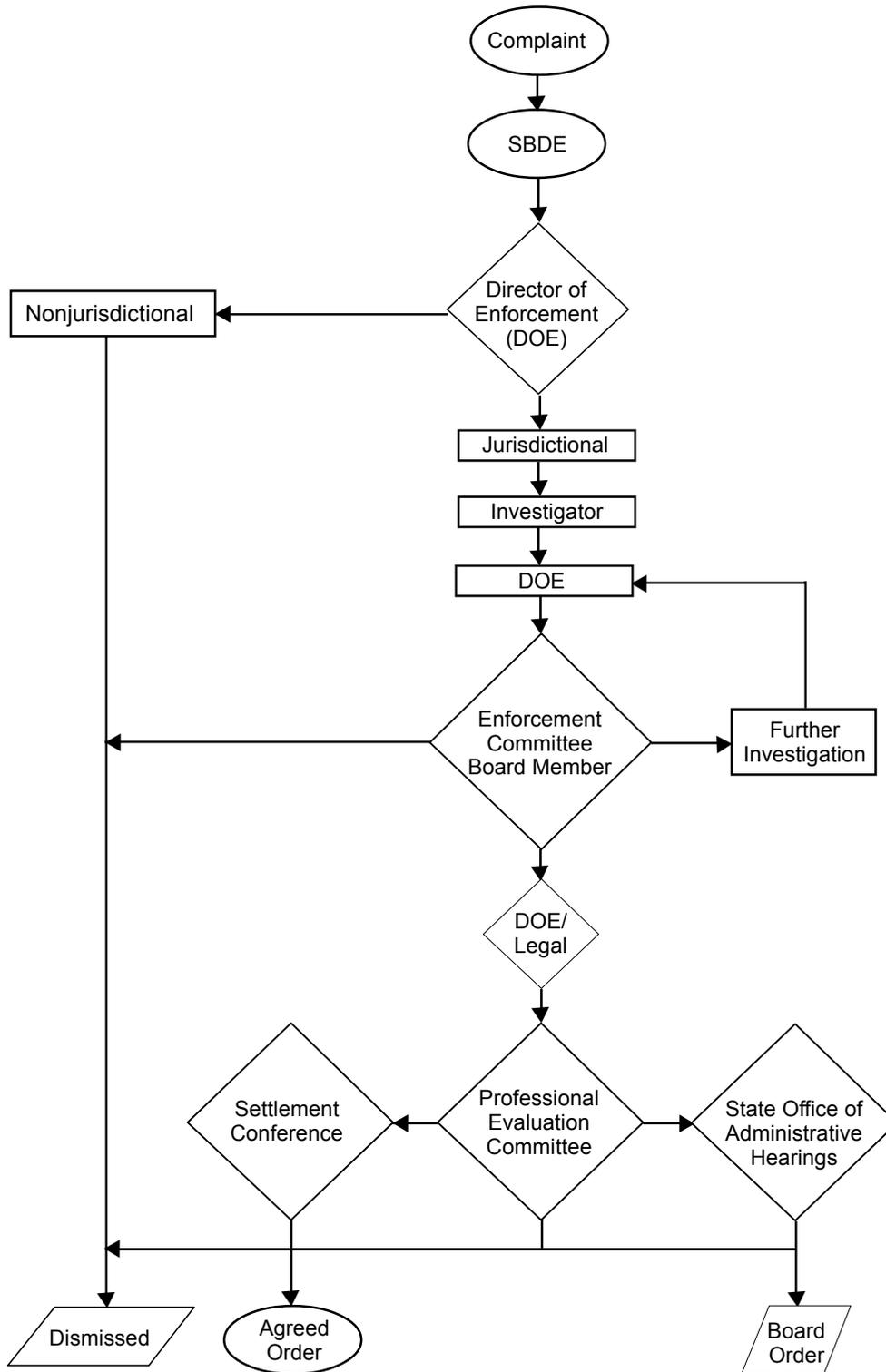
The Board takes too long to resolve complaints.

- The average time to resolve a complaint fluctuates as the Board tries to resolve its oldest pending cases. The result is that the Board routinely takes longer than a year, on average, to resolve a complaint. For the first quarter of fiscal year 2002, the Board took 533 days to resolve a complaint, up from 310 days in 2001 and 490 days in 2000. As of January 2002, the Board had 10 cases more than three years old, 29 more than two years old, and 105 more than one year old.

For example, in November 2001, the Board heard two death cases dating back to 1996. In one case, too much time had passed to conduct a thorough investigation, and the Board had difficulty questioning witnesses. Although the cases were resolved, the delays caused patients and dentists to wait too long for resolution, during which time patients were potentially at risk. These types of delays allow dentists who may have violated the Dental Practice Act to continue practicing for an extended period of time without being disciplined.

For the first quarter of FY 2002, the Board took 533 days to resolve a complaint.

COMPLAINT FLOW CHART



- As the chart, *Health Licensing Agencies Enforcement Statistics*, indicates, the Board takes much longer to resolve complaints than the average of 11 other state health licensing agencies.¹

Health Licensing Agencies Enforcement Statistics				
	Dental Examiners		11 Agencies	
	FY 00	FY 01	FY 00	FY 01
Average number of days to resolve a case	490	310	255	190
Average percentage of complaints resolved resulting in disciplinary action	7%	5%	17%	22%

- Dentist members of the Board are involved in the complaint process because the Board has no dentist on staff to review standard-of-care complaints. However, Board members' direct involvement in enforcement causes delays in the processing of complaints. A member of the Board's Enforcement Committee reviews every jurisdictional complaint, and either dismisses it or refers it for further action. This process requires staff to send information about cases by overnight delivery to Board members, who review and return the cases through overnight mail as well, creating a costly and cumbersome process. Although information gathering is complete at this point, Board members require an average of two weeks to review a case file.
- Board members lead settlement conferences and determine disciplinary action. Because settlement conferences typically occur only in conjunction with a Board meeting, the processing of complaints is delayed. In general, Board member involvement in health licensing agencies' complaint process correlates to a slower case resolution time.² As of February 2002, 56 cases were awaiting settlement conference. Also, the Dental Board is the only one of 12 health licensing agencies where a single Board member can dismiss a case.
- One procedure that the Board has in rule, but has never used, is the Professional Evaluation Committee (PEC), formed in 2000 to give a second opinion on cases with an unclear disposition, and to review dismissals on request of the complainant. Cases were first referred to the PEC in April 2001, and as of January 2002, 33 cases were still awaiting a conference, delaying these cases significantly.

The Board is the only one of 12 health licensing agencies where a single Board member can dismiss a case.

The Board does not appear to address violations of the Dental Practice Act adequately.

- During the last two fiscal years, the Board did not meet its performance measure "percent of complaints resolved resulting in

disciplinary action.” The target was for 13 percent of complaints to result in disciplinary action. The chart, *Health Licensing Agencies Enforcement Statistics*, on the previous page, illustrates that while other agencies increased the number of disciplinary actions taken during the last two fiscal years, the Dental Board’s number decreased, and has consistently been much lower than the other agencies. Further, an analysis of 37 other states dental regulatory agencies revealed that an average of 23 percent of investigations resulted in disciplinary actions. Only three states had a lower percentage of disciplinary actions than Texas, which was 7 percent.³ The Board’s enforcement record is the primary reason why, last session, the Legislature changed its Sunset date from 2005 to 2003.⁴

The Board has not met its performance target for complaints resulting in disciplinary action.

- The Board adopted a penalty schedule in June 2001, but has been slow to fully implement it. For example, in its September 2001 settlement conferences, the Board ordered reprimands in two standard-of-care cases that the penalty schedule dictates should have resulted in a suspension or a fine. The schedule also says that failure to make, maintain, and keep adequate records should result in a fine or a suspension, but the Board only ordered a reprimand and continuing education.
- The chart, *Five-Year Trend of Sanctions*, identifies the Board’s disciplinary actions from fiscal years 1997 to 2001. Most Board actions are suspensions, which typically are fully probated, diminishing the impact, as the dentist can continue practicing.
- The Board has not actively dealt with people who practice dentistry without a license. When the Board receives a complaint about this activity, it refers it to state or local law enforcement, and then closes the case.⁵ Although staff offers to assist in the investigation, this rarely occurs. The Board reports that it received six complaints about practicing dentistry without a license in FY 2001. However, the Board sometimes classifies these cases as nonjurisdictional, making an accurate number difficult to pinpoint.

Five-Year Trend of Sanctions					
	1997	1998	1999	2000	2001
Number of jurisdictional complaints resolved	609	498	474	504	533
Board orders ⁶	21	29	25	29	31
Suspensions	16	21	16	14	20
Suspensions fully probated	15	16	15	12	20
Revocations	0	2	1	2	3
Reprimands	4	6	3	5	3
Surrenders	0	0	1	2	3
Fines	5	9	8	13	18
Continuing education	13	20	13	12	21
Peer Assistance Program	3	3	5	2	4
Retake the Jurisprudence Exam	3	11	4	3	11

Except when the Board is involved in an investigation with local law enforcement, it does not know the disposition of practicing dentistry without a license cases because Board staff do not follow up on

The Board's decisions appear to be lenient on the dentists involved.

referrals. In the meantime, unlicensed individuals may still be harming patients or committing fraud.

- While Sunset staff does not intend to question the Board's decisions in individual cases, the trends indicate that decisions are slow, do not match standards set by the Board's penalty schedule, and appear to be lenient on the dentists involved.

Some of the Board's enforcement procedures, and available remedies, may affect its ability to resolve complaints.

- A State Auditor's Office report from November 1999 recommended that the agency ensure that all investigations and disciplinary actions are consistent by developing policies and procedures for Board review of investigations.⁷ The Board has not developed guidelines for members to evaluate investigations and make decisions, and the penalty schedule was not adopted for almost two years.
- The Board has no reliable tracking system that follows cases from investigators to the Director of Enforcement to the Legal Division. During the Sunset review, Board staff had difficulty providing accurate statistics on where cases were in the process. Without a tracking system to ensure that all complaints are addressed, cases may fall through the cracks. The 1999 SAO report found that case files do not contain documentation outlining how the Board determines whether to close a case or impose disciplinary action. State law requires the Board to record legal reasons for complaint dismissals, but staff admits that this has not been practiced consistently.⁸

The Board's ability to make decisions is highly dependent on the information gathered and recorded by investigators. However, the Board has no formal training for staff investigators, which may result in lower quality investigations. This may also have an impact on the high turnover rate in the Enforcement Division, which was 50 percent in FY 2001.

- The Board has not moved swiftly to deal with a backlog of cases awaiting records requested by the Board as part of a complaint investigation. As of December 2001, the Board had 27 cases from FY 2000 or earlier in which the dentist had not sent records even after a Board request. Although the Board could initiate a disciplinary proceeding for failure to submit records, it has not done so.
- Some complainants and licensees indicated that they were unclear on the Board's policy regarding anonymous complaints. Although the Board recently concluded that anonymous complaints should be accepted, it has not publicized this policy. To the extent that this confusion about anonymous complaints deters dental office staff from reporting violations of law, the Board loses an important avenue for ensuring compliance with the Dental Practice Act.

- The Board has no authority to see that complainants receive restitution to help return them to the condition that existed before the complaint. The Board's enforcement tools are designed to bring the licensee into compliance but not to compensate the aggrieved party in any way – even when a monetary value is known. According to the Board, eight of 31 Board orders in FY 2001 could have been supplemented by restitution to the patient. Twenty-nine of those Board orders came from settlement conferences.

Other state agencies use staff or experts to perform enforcement functions, and some have stronger enforcement authority.

- Agencies in which staff has a larger role are able to conduct more settlement conferences and process complaints more quickly. Staff at the licensing boards for nurses, licensed vocational nurses, pharmacists, podiatrists, psychologists, and veterinarians can close cases. At the Pharmacy Board, review of investigations and decisions about complaints are made by a staff committee composed of the Executive Director, legal staff, Director of Enforcement, Chief Investigator, and other enforcement staff.

Staff at the licensing boards for chiropractors, nurses, pharmacists, and veterinarians can conduct settlement conferences. Some conduct settlement conferences weekly.

- Several health regulatory agencies that primarily receive standard-of-care complaints have a healthcare professional on staff or use a professional medical consultant to review these cases. The Board of Nurse Examiners has a nurse on staff to review complaints to determine if a violation of law has occurred. The Board of Medical Examiners hires a doctor as a consultant to review standard-of-care issues for the same purpose. When the Health and Human Services Commission questions the standard of care a dentist has given, staff hires a dental consultant.
- With regard to unlicensed individuals who practice unlawfully, the Office of Consumer Credit Commissioner (OCCC) is an example of an agency that takes a more active stance. Agency staff first send letters of inquiry about the activity in question, then send a cease-and-desist order. In FY 2001, OCCC sent 18 cease-and-desist letters, all of which were effective in stopping the unlawful activity.
- Other state agencies also have the authority to order restitution. OCCC is statutorily authorized to order restitution, and returned \$707,000 to consumers who had been wronged in FY 2001.⁹ The Texas Department of Insurance also has authority to order restitution to policyholders in certain circumstances where insurance companies have not made good on legitimate claims.

Several health regulatory agencies have a healthcare professional on staff.

The Structural Pest Control Board encourages restitution to consumers through informal settlement conference, when appropriate. Although its authority is not in statute, an Attorney General opinion states that the board may oversee settlement that requires the licensee to fulfill contractual duties, but may not require the licensee to refund money to the consumer in an amount greater than the original contract specifies.¹⁰ The Board of Podiatric Medical Examiners also facilitates the process of returning restitution to patients.¹¹

Several agencies facilitate the process of restitution for patients or clients.

- Through its history of reviewing occupational licensing agencies dating back to 1977, the Sunset Commission has observed standard practices that guide such things as agency structure, the oversight they receive, and their approach to licensing and enforcement. The compilation of these standard practices provides a model for evaluating an occupational licensing agency to see if its enforcement program is structured to adequately protect the public. This model indicates the following standard practices.
 - The investigation of complaints should be a staff function, which should include the authority to discuss complaints and to conduct settlement conferences.
 - An agency should ensure that existing compliance issues be in the process of resolution before a license is renewed.
 - An agency should have authority not only over its licensees, but also over those who engage in the unlicensed practice of the profession.

Recommendation

Change in Statute

3.1 Authorize staff to dismiss baseless cases, relieving Board members of this function.

Under this recommendation, a staff committee, instead of a member of the Board, would have the ability to dismiss cases if the investigation shows no violation occurred. This committee could be comprised of the Executive Director, Director of Enforcement, General Counsel, and investigator, as needed. Board members should rely on staff expertise and experience to determine when cases should be dismissed. Checks and balances in the staff committee would ensure that the agency does not dismiss cases deserving further action. Also, dismissals would be reported to the Board at each of its public meetings.

3.2 Clarify that staff should refer complaints for formal hearing, and conduct settlement conferences.

Having staff, instead of Board members, conduct settlement conferences would enable more conferences to be held, and would expedite cases through the system. Like the Board of Nurse Examiners, the Dental Board's informal settlement conferences would include the Executive Director, the Director of Enforcement, an investigator who worked on the case, and an attorney. Staff would use the Board's penalty schedule to determine the appropriate disciplinary action to recommend to the full Board. If the licensee agrees with the informal conference panel's recommendation, the Board would vote to ratify, modify, or reject the recommendation. Staff would also have the authority to refer cases for formal hearing before the State Office of Administrative Hearings, and would report this information to the Board.

3.3 Authorize the Board to use cease-and-desist orders with regard to practicing dentistry without a license.

The Board could issue cease-and-desist letters when it receives a complaint or otherwise hears of an individual or entity practicing dentistry without a license. This would apply to unregistered dental labs as well. The Board would still be authorized to refer these cases to local law enforcement agencies for prosecution. However, the Board should count unauthorized practice cases as jurisdictional, and direct investigators to pursue and follow up with the unlicensed individual to ensure compliance.

3.4 Give the Board authority to provide for restitution as a part of the settlement conference process.

This recommendation would allow the Board to include restitution as part of an informal settlement conference. Authority should be limited to ordering a refund not to exceed the amount the patient paid to the dentist. Any restitution ordered would not include an estimation of other damages or harm. This restitution may be in lieu of or in addition to a separate Board order for administrative penalties.

Management Action

3.5 Direct the Board to hire, and consult with, dentists to review standard-of-care complaints.

The Board should have a dentist on staff to review complaints. The Board could also consult with dentists in specialty areas as needed, and attempt to hire other dental professionals for added expertise. This recommendation would allow for the removal of Board members from the process of reviewing complaints and making determinations that may bias them when voting on the case at a subsequent Board meeting.

3.6 Develop a tracking system, including proper documentation, for complaints, and a plan to resolve older cases.

The agency's Internal Auditor should work with Board staff on developing a system that allows accurate tracking of all complaints' status. The Board should devise a plan to resolve all cases two years and older by January 1, 2004. Further, staff should ensure appropriate documentation on all complaint files, from the investigative process to the Board order. All allegations should be accounted for in an

investigation, so the Board has a record of information from which to base decisions. Proper documentation would provide a permanent record and compliance history that would be helpful if future complaints arise.

3.7 Provide formal training for staff complaint investigators.

Investigators should be initially trained to better understand investigative techniques, the Dental Practice Act, and other dental issues, such as standard of care. While investigators should not be expected to have the knowledge of a dentist, they should know more about dentistry issues to help in investigations before a dentist is able to review the file. Formal training should lead to higher quality investigations, and may reduce the turnover rate in this area.

3.8 Require the Board to adopt rules that allow for the acceptance of anonymous complaints, and communicate this policy to the affected public.

This would ensure clarity on the Board's current practice of allowing anonymous complaints. Board staff should accept and investigate anonymous complaints when it feels it has ample information to process the complaint. The Board should notify licensees and the affected public regarding anonymous complaints through telephone inquiries and through the Board's newsletter.

3.9 Direct the Professional Evaluation Committee to review only dismissed complaints on the request of the complainant.

This recommendation would eliminate the Committee's review of cases with an unclear disposition, which is the majority of those pending before the Committee. Eliminating the Committee's review of pending enforcement matters would result under recommendations 3.1 and 3.2 that remove Board members from the complaint process, delegating authority to staff to dismiss cases, conduct informal settlement conferences, and refer contested cases to SOAH. The Committee would, however, continue to review dismissed complaints on the request of the complainant.

Under current Board rules, if a complainant objects to dismissal and provides new information to support the allegations, or shows that reasons given for the dismissal do not adequately address the allegations, the Committee reviews the case. The Board should develop additional rules that specify a reasonable time frame for the Committee to review these complaints, and should direct Committee members to recuse themselves from a full Board vote should it occur on a complaint that they reviewed.

Impact

These recommendations are intended to strengthen and speed up the Board's enforcement process. It would take Board members out of the day-to-day responsibilities of the complaint process, and vest these duties in staff. With the management recommendations to hire a dentist and tighten enforcement procedures, staff should be competent to handle complaints and streamline the complaint flow. Finally, the recommendations would give the Board additional authority to better enforce the Dental Practice Act, to improve accountability, and to better protect the public.

Fiscal Implication

With one exception, these recommendations would not have a fiscal impact to the State. Recommendation 3.5 directs the State Board of Dental Examiners to hire, and consult with, dentists.

The Board may need to request additional funds of \$75,000 to hire a dentist for 20-30 hours per week. Board staff determined that a dentist hired at this level would be able to review all standard-of-care complaints and attend all settlement conferences. If the Board must consult with other dental specialists, additional costs would be required.

¹ The agencies included in the average calculations are the independent health licensing agencies: The Board of Chiropractic Examiners, Board of Medical Examiners, Board of Nurse Examiners, Board of Occupational Therapy Examiners, Texas Optometry Board, Board of Pharmacy, Board of Physical Therapy Examiners, Board of Podiatric Medical Examiners, Board of Examiners of Psychologists, Board of Veterinary Medical Examiners, and Board of Vocational Nurse Examiners; and Health Professions Council (HPC) Annual Reports, fiscal years 1999 and 2000, and FY 2001 compilation data from the HPC.

² Meeting with Health Professions Council members and staff (Austin, Texas, January 7, 2002).

³ American Association of Dental Examiners Composite, January 2001, Chicago, Ill. Thirteen states did not report number of investigations and disciplinary actions; 37 states were included in the comparison for the Sunset report.

⁴ Telephone interview with Representative Patricia Gray's staff (Austin, Texas, September 18, 2001).

⁵ State Board of Dental Examiners, Divisional Directive no. 7, December 17, 2001.

⁶ Many single Board orders are counted in several categories because the Board imposed more than one sanction for the licensee.

⁷ State Auditor's Office, *Fiscal Year 2000 Small Agency Management Control Follow-up Audit - Board of Dental Examiners*, report no. 00-309 (Austin, Texas, November 2001), p. 3.

⁸ Texas Occupations Code, ch. 255, sec. 255.004.

⁹ Texas Finance Code, ch. 14, sec. 14.251.

¹⁰ Office of the Attorney General, State of Texas, Opinion No. JC-0324, January 5, 2001.

¹¹ Telephone interview with State Board of Podiatric Medical Examiners staff (Austin, Texas, January 23, 2002).

Issue 4

The Board Does Not Coordinate Effectively With the Health and Human Services Commission to Address Medicaid-Related Issues.

Summary

Key Recommendation

- Create an interagency agreement between the Board and the Health and Human Services Commission (HHSC) to improve coordination on Medicaid-related issues.

Key Findings

- The Board and HHSC have concurrent jurisdiction in cases of Medicaid fraud by dentists.
- Some fraud cases are not adequately enforced because of the lack of coordination between the two agencies.
- Poor communication on policy and complaints may result in a lower level of public protection.

Conclusion

Medicaid fraud has become the subject of increasing scrutiny by the Legislature. The Sunset review evaluated how the Board coordinates with other agencies on this issue. To ensure proper enforcement of the Dental Practice Act and the state's Medicaid laws, the Board and HHSC must coordinate on cases involving fraud.

Certain procedures would ensure that the two agencies have better collaboration to address these issues. While HHSC and the Board do not always need to investigate cases together, both agencies should share information that would ultimately lead to more complete findings, appropriate sanctions, and better public protection.

Support

The Board and the Health and Human Services Commission (HHSC) have concurrent jurisdiction in cases of Medicaid fraud by dentists.

- The Dental Practice Act states that a person may not directly or indirectly engage in unprofessional conduct relating to dentistry, including obtaining a fee by fraud or misrepresentation.¹ The Board investigates Medicaid fraud cases that involve standard-of-care issues, and can sanction for Medicaid fraud as well. However, the Board cannot produce a finding of Medicaid fraud until HHSC determines such fraud occurred. Examples of Medicaid fraud include billing for services not rendered or performing services that were not needed. In fiscal year 2001, the Board had 70 total fraud cases, of which seven involved Medicaid, and 18 were Medicaid-related, nonfraud cases.
- Both the Board and HHSC are concerned with fraud and standard of care, but HHSC can only address a dentist's Medicaid eligibility, while the Board is responsible for enforcing the Dental Practice Act. Only HHSC can remove a dentist from the Medicaid program, and only the Board can revoke a dentist's license. The Board notifies HHSC of every enforcement action resulting in a Board order.
- HHSC estimates that 4,000 dentists in Texas accept Medicaid. Recent legislation passed in 2001 established zero tolerance for Medicaid fraud in the dental program. It prohibited stainless steel crowns from being used as prevention, and required dentists to maintain thorough documentation and X-rays for all Medicaid-related dental procedures, according to minimum standards developed by HHSC in cooperation with the Board.² Additionally, HHSC is to take all necessary action to eliminate unlawful acts in the provision of dental services by aggressively investigating and prosecuting any dentist who abuses the system.

Some fraud cases are not adequately enforced because of the lack of coordination between the two agencies.

- HHSC's ability to remove a dentist's Medicaid eligibility in cases of fraud is linked to the Board's adequate enforcement actions against licensees for fraud, or any other standard-of-care violations. When this does not occur or the Board has lesser findings or disciplinary action, it weakens HHSC's ability to sanction the individual, and vice versa.
- The Board and HHSC rarely investigate cases together, and sometimes are unaware of the outcome of the respective cases. Although the agencies have many common cases, only one HHSC staff member has ever testified at a Board hearing. Because agency

Examples of Medicaid fraud include billing for services not rendered or performing services not needed.

staff do not always share information or follow up on mutual cases, a delay or inability to act on violators of the law may result.

Poor communication on policy and complaints may result in a lower level of public protection.

- The Board and HHSC signed a memorandum of understanding in 1987, but the agreement is not recognized by either agency today. Because no formal procedure exists, the Board does not always refer cases to HHSC, and vice versa. Referrals are done verbally, and neither the Board nor HHSC completes logs to track cases.
- Neither agency could provide matching information on referrals to and from each agency in FY 2001. HHSC stated that it referred seven cases to the Board in FY 2001, but the Board said it had 17 total referrals from HHSC. The Board also stated that it referred no cases to HHSC in FY 2001, but HHSC said the Board had referred six cases to the agency. When this information exchange is lacking, neither agency gets the complete picture on cases. As a result, violators may receive inadequate discipline, or none at all.
- The Board stated that HHSC typically refers only the most egregious cases, and then only after the investigation is complete. This practice affects the Board's ability to take swift, effective action in many cases for which it has jurisdiction. For example, as of November 2001, HHSC was investigating three mobile dental facilities that involved seven of the Board's licensees. However, HHSC did not refer the cases to the Board because the investigations were not yet complete. When neither agency receives information in a timely manner, neither can take timely steps to protect the public from unlawful activity.
- HHSC indicated it should be getting more referrals from the Board.³ Board staff indicated that HHSC is only responsible for Medicaid fraud cases, but HHSC is also interested in information on Medicaid providers who committed egregious offenses, not necessarily fraud, that may harm Medicaid patients.⁴ HHSC is ultimately responsible for the integrity of the Medicaid program.

When the Board and HHSC do not adequately exchange information, violators may receive inadequate discipline, or none at all.

Recommendation

Change in Statute

4.1 Create an interagency agreement between the Board and HHSC to improve coordination on Medicaid-related issues.

This recommendation would require the two agencies to enter into the agreement by January 1, 2004. The agreement should require the Board and HHSC to refer cases to each other involving Medicaid fraud and standard-of-care issues involving Medicaid, when appropriate. The agreement also should require each agency to keep a log of referrals. The Board and HHSC should share information, but

maintain confidentiality, on items such as investigative reports on common cases, and investigate cases together and collaborate on appropriate disciplinary action whenever possible. The Board should also include information on its Medicaid-related cases in its annual report.

Impact

Proper enforcement of the Dental Practice Act and the state's Medicaid laws depends on coordination between the Board and HHSC on Medicaid cases. While the agencies will not always need to investigate cases together, both agencies should share information that will ultimately lead to more complete findings, appropriate sanctions, and better public protection.

Fiscal Implication

This recommendation would not have a fiscal impact. Both agencies can accomplish this task with existing resources, as part of regular enforcement activities.

¹ Texas Occupations Code, ch. 259, sec. 259.008.

² Texas Occupations Code, ch. 32, sec. 32.053 (e).

³ Meeting with HHSC staff (Austin, Texas, November 7, 2001).

⁴ Overview meeting with Board staff (Austin, Texas, October 5, 2001).

Issue 5

Regulatory Controls Over Dental Assistants Are Not Adequate Given Their Patient Care Responsibilities.

Summary

Key Recommendation

- Expand the Board's existing regulation of dental assistants to require dental assistants who take X-rays to also demonstrate knowledge of state dental laws and infection control issues.

Key Findings

- Dental assistants play a significant role in providing dental healthcare to Texans.
- The State has recognized the need to regulate certain activities of dental assistants.
- Dental assistants may perform procedures that put patients at risk.
- Some dentists and dental assistants are unclear on what duties an assistant is allowed to perform.
- Leaving responsibility for the knowledge, training, and actions of dental assistants to dentists is not adequate.

Conclusion

Dental assistants work in dental offices in a variety of capacities, from serving as business manager to working chairside with a dentist. Assistants' education and training varies, too, from those who have graduated from a dental assisting school to those who have never worked in the dental profession. Dentists hire, train, and supervise assistants on the job, and under Board policies, the dentist is responsible for assistants' actions. Because the Board has no enforcement authority over assistants, sanctions can only apply to the dentist for improper delegation.

Currently, the Board requires assistants to pass an X-ray exam and register one time before receiving a permit to take X-rays. Because these assistants play an important part in providing dental care, the State should ensure that they also are aware of state dental laws and proper infection control techniques.

The Sunset review evaluated dental assistants' role in providing dental care to Texans, seeking to identify the least restrictive level of regulation needed to protect the public. Enhancing registration requirements for dental assistants will require assistants who take X-rays to demonstrate a standard level of knowledge about taking X-rays, infection control, and state dental laws. Ensuring that assistants have met these requirements will establish that assistants are aware of the legal limitations of their job, give the Board enforcement authority over assistants, and, ultimately, better protect patients.

Support

Dental assistants play a significant role in providing dental healthcare to Texans.

- Dental assistants work chairside with a dentist or hygienist, providing direct patient care. Duties include, but are not limited to:
 - assisting the dentist during dental procedures;
 - providing instrument and operatory infection control;
 - setting up dental trays with needed materials;
 - instructing patients on proper oral hygiene and post-treatment care;
 - helping make impressions and molds for dental restorations; and
 - removing sutures.

With additional training and testing, a dental assistant may:

- take and process X-rays;
 - monitor administration of nitrous oxide; and
 - apply pit-and-fissure sealants.
- Dental assistants work under the direct supervision, direction, and responsibility of a dentist. The dentist must be present in the dental office when the dental assistant performs a delegated dental act. The dentist remains responsible for any delegated act and is subject to enforcement action for any violations resulting from actions of a dental assistant.
 - Most dental assistants learn on the job, although some receive training in dental assistant programs offered by community or technical colleges. Most dental assisting programs are two years or less and lead to a certification or associate's degree. Thirteen Commission on Dental Accreditation-approved dental assistant schools exist in Texas.
 - Dental assistants can earn the Certified Dental Assistant credential from the Dental Assisting National Board, a nonprofit recognized by the American Dental Association as the national certification and credentialing agency for dental assistants. To earn the certification, an assistant must pass an exam containing three components – radiation health and safety, infection control, and general chairside assisting.

Most dental assistants learn on the job.

The State has recognized the need to regulate certain activities of dental assistants.

- The Board requires dental assistants to be certified – which includes passing an exam, paying a fee, and registering with the Board – to take X-rays; to monitor nitrous oxide administered by the dentist;

or, to apply pit-and-fissure sealants, which are preventative materials that fit in the crevices of a tooth. The chart, *Duties Requiring Dental Assistant Certification*, outlines each of these certification procedures.

- Radiography, or X-ray, and nitrous oxide monitoring certifications are issued once – no annual renewal or continuing education is required. The Legislature expanded the duties of dental assistants in 2001, allowing assistants who work for a Medicaid provider to apply pit-and-fissure sealants. Pit-and-fissure sealant certifications must be renewed annually and require the certificate holder to complete six

hours of continuing education (CE) each year as well as an infection control course.

Duties Requiring Dental Assistant Certification		
Certification Activity	Requirements	Fee
Take X-rays	<ul style="list-style-type: none"> • Successful completion of the Board's radiology certification exam; • Completion of the Dental Assisting National Board's Radiation Health & Safety component exam; or • Possess a current certified dental assistant credential. 	\$37
Monitor nitrous oxide	<ul style="list-style-type: none"> • Pass the Board's nitrous oxide monitoring exam 	\$15
Apply pit-and-fissure sealants	<ul style="list-style-type: none"> • Work under the supervision of a dentist who is a Medicaid provider; • Have at least two years experience working as a dental assistant; • Complete 16 hours of clinical/didactic training; and • Maintain certification by taking six hours of CE annually. 	\$50 application/ \$50 annual renewal

Dental assistants may perform procedures that put patients at risk.

- Dental assistants who perform procedures that they are not allowed to do can cause harm to patients. Procedures that dental assistants have performed, and for which the Board has sanctioned the dentist, include:
 - administering nitrous oxide/oxygen inhalation sedation;
 - slenderizing teeth (a cutting procedure on hard tissue);
 - emplacing, removing, and adjusting braces;
 - removing stains, polishing enamel, laser whitenings, bleachings, taking impressions of nightguards (all irreversible procedures); and
 - relining a patient's lower dentures.
- Anecdotal information from interviews with professional groups revealed other situations where dental assistants could have caused

Dental assistants who have not been trained adequately in infection control techniques put patients at risk.

harm to patients. For example, these groups have claimed that assistants have cemented permanent restoration pieces, drilled teeth, carved silver amalgams, and practiced dental hygiene without a license. One assistant took X-rays of a pregnant patient without putting a lead apron on the patient. A dental hygienist discovered dental assistants used an autoclave, the machine used to sterilize dental instruments, to heat a baked potato.¹

- Dental assistants play a significant role in infection control activities in the dental office, yet the Board has no way to ensure they have been adequately trained in or evaluate their knowledge of infection control techniques. Research has documented that disease transmission can occur from inadequate infection control procedures, improper selection of chemicals, improper disposal of waste, and improper techniques with medically compromised patients or during intraoral services. Because dentistry involves daily exposure to body fluids, such as blood and saliva, dental assistants who have not been trained adequately in infection control techniques put the patient at risk.
- While the Dental Practice Act prohibits anyone other than a licensed dentist, including a dental assistant, from representing himself or herself to the public as authorized to practice dentistry, patients are not likely to know the difference between a hygienist and an assistant, and the legal limitations of their jobs.

Some dentists and dental assistants are unclear on what duties an assistant is allowed to perform.

- State law and Board rules are vague on what duties a dentist may delegate to an assistant. While the Dental Practice Act lists several specific acts which a dentist may not delegate, including taking impressions or cutting hard or soft tissue, the statute allows a dentist to delegate any other act that the dentist believes the assistant can properly and safely perform.² Acts a dentist may not delegate are listed in the textbox on the next page.³
- State law further requires the Board to establish guidelines regarding the types of dental acts a dentist may delegate. Board rules allow a dentist to delegate to a dental assistant acts or procedures that are reversible. The Board in rule defines irreversible as an act that is “not capable of being reversed or corrected.”⁴ What is “reversible” is broadly interpreted and assistants’ responsibilities vary greatly from dentist to dentist.
- By statute, a dental assistant must work under the direct supervision of a dentist. This requirement is interpreted broadly, as some dental professionals believe this means in the same room, while others think it means in the same building.

Leaving responsibility for the knowledge, training, and actions of dental assistants to dentists is not adequate.

- Texas requires no formal education, training, or license to work as a dental assistant, except to take X-rays, monitor nitrous oxide administration, and apply pit-and-fissure sealants. And, unlike dentists and hygienists, dental assistants do not have to show that they are familiar with Texas dental laws. Instead, dental assistants receive on-the-job training, which limits assistants' knowledge about their legally allowable duties and responsibilities to what their employing dentist tells them.
- Although the Board registers certain dental assistants, it maintains little information about them. Other than the original X-ray certificates issued, the Board does not maintain information about the names and locations of dental assistants working in Texas. The Board has 33,346 dental assistants in its database certified to take X-rays, but this number is a cumulation since 1989.

Because X-ray permits are issued once and do not need to be renewed, the Board does not know how many certificates are active or how to contact dental assistants who have changed jobs. This lack of information about dental assistants can hinder the Board's enforcement efforts. For example, Board staff have difficulty locating dental assistants to gather information as part of a complaint investigation.

- The Board does not take enforcement action against dental assistants. Complaints involving dental assistants are filed as improper delegation against the dentist, and the Board has received 18 such complaints in fiscal year 2001, up from 16 in 2000 and 12 in 1999. Assistants most likely perform the duties because they do not know the legal limitations of their profession or they do not question the authority of the delegating dentist. Even if they are aware that a dentist has improperly delegated an act, dental assistants and other professionals in the office may be reluctant to file a complaint against the dentist for fear of losing their job.

A dentist may not delegate any of the following acts to a dental assistant.

- Removal of calculus, deposits, or accretions from the natural and restored surfaces of exposed human teeth and restorations in the human mouth.
- Root planing or the smoothing and polishing of roughened root surfaces or exposed human teeth.
- Comprehensive examination or diagnosis and treatment planning.
- A surgical or cutting procedure on hard or soft tissue.
- Prescription of a drug, medication, or work authorization.
- Taking of an impression for a final restoration, appliance, or prosthesis.
- Making of an intraoral occlusal adjustment.
- Direct pulp capping, pulpotomy, or any other endodontic procedure.
- Final placement and intraoral adjustment of a fixed or removable appliance.
- Placement of any final restoration.
- Administration of a local anesthetic agent, inhalation sedative agent, parenteral sedative agent, or general anesthetic agent.

Despite its registration of dental assistants, the Board lacks information about them, hindering its enforcement effort.

Recommendation

Change in Statute

5.1 Expand the Board's existing regulation of dental assistants to require dental assistants who take X-rays to also demonstrate knowledge of state dental laws and infection control issues.

This recommendation builds upon the existing registration requirements for dental assistants who take X-rays by requiring these assistants to pass an exam administered by the Board instead of the employing dentist. In addition to X-ray techniques, which assistants already are tested on, the exam would test assistants' knowledge of the Texas Dental Practice Act and infection control. The component of the exam dealing with state dental laws should be tailored to a dental assistant's responsibilities and role in a dental office. Dental assistants also would be required to renew the registration certificate annually.

The Board should develop the exam and begin registering assistants by September 1, 2004. Dental assistants hired on or after that date should be required to pass the Texas Dental Assistants Exam and register with the Board within six months of employment. In addition, dental assistants who hold current certification by the Dental Assistant National Board should register with the Board by supplying proof of certified dental assistant status and passing the component of the dental assistants exam dealing with state dental laws. Dental assistants who received their X-ray certificate before September 1, 2004, would have two years, until September 1, 2006, to pass the components of the exam covering infection control and state dental laws. These dental assistants would not have to be retested on the X-ray portion of the exam, and would thus pay a lesser fee for certification as determined by the Board. The Board should seek the assistance of an advisory panel consisting of dental industry professionals and educators when developing the exam. Also, the Board should enter into a contract or agreement with community colleges or other testing sites to administer the exam.

This recommendation would not affect the certification process for dental assistants to monitor nitrous oxide or to apply pit-and-fissure sealants. Dental assistants would have to separately satisfy the existing education and testing requirements to perform these duties.

Impact

Patients have the right to be assured that dental healthcare workers are properly educated and trained before they assist a dentist in performing procedures in and around a patient's mouth. By requiring assistants who take X-rays to register with the Board and to pass an exam covering not only X-rays, but also infection control and state dental laws, dental assistants most likely to have direct patient contact will fall under the Board's jurisdiction. Dentists can still hire anyone they want and train their employees on the job. These recommendations, however, ensure that the assistant's training is sufficient to demonstrate minimal competency in infection control, X-ray techniques, and knowledge of Texas dental laws, which ultimately will better protect dental patients in Texas.

Fiscal Implication

This recommendation would not have a significant fiscal impact to the State because any additional costs associated with expanding the regulation of dental assistants would be covered by fees paid by

dental assistants to be certified to take X-rays. Under the recommendation, the Board would have one year to develop an exam for dental assistants and work out details regarding how the exam would be administered.

As a result, the Board would not begin to generate revenue until FY 2005, at which time it would begin registering 2,500 new dental assistants and approximately 5,000 existing dental assistants who have already passed the X-ray portion of the exam. Assuming an application fee of \$50 and a lesser fee of \$30 for existing dental assistants, this registration would generate approximately \$275,000 in the first year. In FY 2006, the Board would begin to renew these registrations, which, with a \$15 renewal fee would generate an additional \$112,500 in revenue, totaling \$387,500. In 2007, after the registration of existing dental assistants is complete, this registration program would generate \$312,500 annually, from the renewal of 12,500 certificates and processing of 2,500 new applications.

The Board would incur a one-time cost of \$15,000 in FY 2004 to upgrade its computer system to handle an annual registration and renewal system and to assist in developing the Texas Dental Assistants Exam. The Board's expenditures would increase to \$275,000 in FY 2005 to cover program costs such as hiring an additional employee and developing and distributing study guides and administering the tests. These expenditures would increase to \$312,500 annually to cover additional costs associated with renewing these certificates and paying for enforcement and other activities as the program matures. The costs and revenues are summarized in the table below.

Fiscal Year	Costs to the General Revenue Fund	Gains to the General Revenue Fund	Change in FTEs from 2003
2004	\$15,000	\$0	0
2005	\$275,000	\$275,000	+1
2006	\$312,500	\$387,500	+1
2007	\$312,500	\$312,500	+1
2008	\$312,500	\$312,500	+1

¹ Interviews with Board staff, professional associations, and practitioners. (Austin, Texas, San Antonio, Harlingen, Texas, October 9, November 8-9, November 19, November 28, December 12, 2001).

² Texas Occupations Code, ch. 258, sec. 258.001 to 258.003.

³ Texas Occupations Code, ch. 258, sec. 258.001.

⁴ Texas Administrative Code, Title 22, Part 5, chapter 114, rules 114.1 and 114.2.

Issue 6

Educators Who Provide Dental Services Are Not Subject to Adequate Board Oversight.

Summary

Key Recommendation

- Provide for licensing dental educators who provide dental services at accredited dental or dental hygiene schools in Texas.

Key Findings

- Dental and dental hygiene educators in Texas provide needed dental healthcare in the state.
- Educators are exempt from the Dental Practice Act, including its licensing and enforcement provisions.
- Because the Board has no jurisdiction over dental and dental hygiene educators, it cannot ensure safe practices or discipline an educator if a patient is harmed.
- Other notable healthcare professions, in Texas and other states, require educators to hold a license.

Conclusion

Dental and dental hygiene educators offer valuable services, not only to the students they teach, but also to Texans who visit school-run clinics for their dental healthcare needs. Yet, because the Dental Practice Act exempts educators from state licensing requirements and enforcement provisions, patients cannot file a complaint with the Board regarding the care they received.

The Sunset review evaluated the authority the Board should have over anyone who practices dentistry or dental hygiene in Texas. The review assessed how the State should balance regulation of dental professionals with the need to recruit quality dental and dental hygiene educators to Texas schools. Dental and dental hygiene schools must compete internationally for top faculty members, and subjecting a potential educator to onerous licensing restrictions could hurt recruitment efforts. Special faculty licenses will allow the Board to have enforcement authority over educators, and still allow Texas' dental and dental hygiene schools the flexibility to hire the experts they need.

Support

Educators and their students increasingly are providing services around the state.

Dental and dental hygiene educators in Texas provide needed dental healthcare in the state.

- Texas' three dental schools employ about 350 dentists as faculty members. Eighteen dental hygiene schools employ about 180 faculty members.
- In addition to providing academic instruction and classroom clinical experience, dental and dental hygiene educators offer vital access to dental healthcare in Texas. Educators and their students increasingly are providing services around the state, including in health profession shortage areas. For example, last year the University of Texas Health Science Center at Houston's Dental Branch provided 134,000 treatments at the school. Educators and students provided more than 75,000 treatments at over 81 outreach programs throughout the greater Houston area and gave approximately \$721,285 in unsponsored charity care.¹

Educators are exempt from the Dental Practice Act, including its licensing and enforcement provisions.

- Faculty members of an accredited Texas dental or dental hygiene school in which the educator performs services for the "sole benefit of the school" are exempt from the Dental Practice Act.² "Sole benefit of the school" is not defined in statute or Board rules.
- Dental and dental hygiene educators interviewed by Sunset staff said that while they are not required to have a license, most schools encourage faculty members to be licensed. About 75 percent of educators hold a Texas license.
- Dental and dental hygiene schools accept complaints regarding services provided by educators and their students. For example, the University of Texas Health Science Center at San Antonio Dental School has a quality assurance committee that reviews all complaints. The University of Texas Health Science Center at Houston's Dental Branch has designated an associate dean to oversee complaint resolution, and each patient goes through an exit interview.

Because the Board has no jurisdiction over dental and dental hygiene educators, it cannot ensure safe practices or discipline an educator if a patient is harmed.

- The Board has no enforcement authority over educators. Complaints the Board receives about faculty members are considered nonjurisdictional. As a result, staff could not accurately determine the number of complaints received regarding educators, although staff estimated that the Board received one complaint against an educator in fiscal year 2001. In a Sunset staff survey of the Board's

complaint process, a complainant expressed frustration at not being able to file a complaint with the Board about a dental educator.

- Although dental and dental hygiene schools maintain complaint processes, these schools lack the accountability that has been entrusted to the Board to ensure that all practitioners adhere to the Dental Practice Act and that violators be brought into compliance. The Board has no way to ensure that the public is protected from services provided by dental or hygiene educators. Some dental educators have indicated that although they believe schools effectively handle complaints, the Board would add a valuable enforcement role at dental and dental hygiene schools.
- To be licensed in the state, dentists and dental hygienists must demonstrate knowledge of the Texas Dental Practice Act by passing the Board's jurisprudence exam. However, educators do not have to demonstrate that they are familiar with state dentistry and hygiene laws, yet they are authorized to practice on patients.

The Board has no way to protect the public from poor dental services provided by educators.

Other notable healthcare professions, in Texas and other states, require educators to hold a license.

- A survey of Texas health licensing agencies by Sunset staff found examples of regulatory agencies that require educators to hold a license in the field in which they teach. The State Board of Medical Examiners, Board of Nurse Examiners, State Board of Podiatric Medical Examiners, Texas Optometry Board, and Board of Veterinary Medical Examiners issue special licenses for educators. For example, the Medical Board issues visiting professor permits and faculty temporary permits. With a faculty temporary permit, a physician appointed to a Texas medical school is authorized to practice medicine as it relates to the physician's duties and responsibilities assigned by the school. Permitted physicians must be familiar with Texas' medical laws and are subject to the board's disciplinary procedures.³
- Other state dental boards issue faculty or teaching licenses to dental and hygiene educators. For example, the Ohio State Dental Board issues dental and dental hygiene limited teaching licenses. To receive the teaching license, applicants must have graduated from a dental or dental hygiene school, including foreign schools or schools not approved by the American Dental Association, obtain authorization from the dean or program director, and pass an exam on Ohio dental laws. The Ohio Dental Board has enforcement authority over limited teaching license holders.⁴

The Maryland State Board of Dental Examiners issues a teacher's license to an applicant who holds a degree from a dental school, has at least five years of clinical dental experience, and is appointed to a full-time faculty position. The dental school dean must sign the application. The teacher's license authorizes the licensee to practice

dentistry only at established teaching sites and in the school's faculty programs. The license must be surrendered when the licensee ceases to hold an appointment as a full-time faculty member.⁵

Recommendation

Change in Statute

6.1 Provide for licensing dental educators who provide dental services at accredited dental or dental hygiene schools in Texas.

This recommendation would establish a faculty license for dental and dental hygiene educators who:

- hold a dental or dental hygiene degree from a school, college, or faculty of dentistry or dental hygiene;
- hold a full-time salaried faculty position at a Commission on Dental Accreditation-approved dental or dental hygiene school in Texas;
- submit an application for a faculty license to the Board within 30 days of employment;
- have the dean, department chair, or program director of the school endorse the application; and
- pass the Board's jurisprudence exam within six months of appointment.

The Board should begin issuing faculty licenses by March 1, 2004. Educators hired before September 1, 2003, should have one year, until September 1, 2004, to pass the jurisprudence exam and receive a faculty license. Educators hired on or after September 1, 2003, should be required to pass the Board's jurisprudence exam and receive a faculty license within six months of employment. Only educators who have direct patient contact must hold a faculty license; these license requirements do not apply to educators who solely conduct lectures or research or do not work directly with patients.

A faculty license does not authorize a license holder to enter into private practice. Holding a faculty license does not alter the activities and services educators currently are authorized to perform. The Board would assess a fee to cover the costs of licensing these educators. Faculty licenses should be renewed annually, and are void if the educator leaves the endorsing school. However, if a faculty member reapplies for a faculty license, either at the same school or a different one, the applicant should not be required to retake the jurisprudence exam.

Holding a faculty license should allow the licensee to access the Board's Peer Assistance Program, as the fee for the program should be included in the license fee. Dental and dental hygiene educators should be exempt from the State's annual professional fee.

This recommendation does not require international faculty members to pass a clinical exam or complete additional education requirements to receive the faculty license, and therefore would not limit a school's efforts to recruit foreign dentists and hygienists.

Impact

Issuing a faculty license to a qualified applicant ensures that the Dental Practice Act protects patients, regardless of whether the dental care they received was performed at a school or at a school's outreach clinic, by allowing the patient to file a complaint with the Board. While the faculty license gives the Board enforcement authority over faculty members, dental and dental hygiene schools maintain control and responsibility for the educators they recruit. Although this recommendation allows all qualified educators to receive a faculty license, the majority of educators likely will maintain their regular Texas dental or dental hygiene license, which allows them to practice privately.

Fiscal Implication

This recommendation would not have a fiscal impact to the State because any additional costs associated with licensing these educators would be covered by licensing fees. Based on numbers provided by the dental and dental hygiene schools in Texas, fewer than 100 dental educators and 50 dental hygiene educators would need to be licensed under this recommendation. Based on comparisons with similar fees, the initial application fee for a faculty license should not exceed \$150, and annual renewal fees should not exceed \$75. When setting the fees for faculty licenses, the Board should include a fee for the Peer Assistance Program.

¹ American Dental Education Association, *University of Texas Health Sciences Center-Houston Dental Branch*. Online. Available: www.adea.org/legislative_affairs/congressional_kit/utdb.htm. Accessed: January 3, 2002.

² Texas Occupations Code, ch. 251, sec. 251.004. Statute says to be exempt from the Dental Practice Act, faculty members must work at a "reputable" dental or dental hygiene school. Although "reputable" is not defined in statute or Board rule, it generally is accepted to mean a school that has been accredited by the Commission on Dental Accreditation of the American Dental Association.

³ Texas Administrative Code, Title 22, Part 9, Rule 171.6.

⁴ Ohio State Dental Board, *Licensing Information*. Online. Available: webtest.state.oh.us/den/licensinginfo.htm. Accessed: December 6, 2001.

⁵ Maryland Senate Bill 147, 415th General Assembly Session (2000).

Issue 7

Some of the Board's Licensing Requirements Restrict Dentists From Entering Into Practice in Texas.

Summary

Key Recommendations

- Reduce the years of practice required for dental licensure by credentials from five to three years.
- Authorize the Board to grant waivers, for certain circumstances, to the continuous practice requirements for licensure by credentials.
- Require the Board to consider accepting the results of other regional examining boards, and provide justification for not accepting results from any of the boards.

Key Findings

- The Board sets policies regarding licensing and credentialing requirements for dental healthcare professionals in Texas.
- Some of the Board's licensing requirements create barriers for dentists wanting to practice in Texas.
- Recent changes in the Dental Practice Act, as well as licensing requirements for other Texas health professions and dentists in other states, point to a less restrictive form of regulation.

Conclusion

Texas, like most other states, is concerned about access to dental healthcare. Many Texans, particularly in rural and underserved areas, do not have access to dental care, and dental industry experts predict a nationwide shortage of dentists in the future.

Last session, the Legislature recognized the importance of access to dental healthcare by addressing such issues as expanded roles for dental assistants, alternative training programs for dental hygienists, and relaxed licensing by credentials requirements for dentists working for nonprofit Medicaid providers.

As the agency responsible for licensure of dentists in the state, the Dental Board plays a role in addressing Texans' dental healthcare needs through its licensing and examination policies. Currently, some of the Board's policies may be unnecessarily burdensome on dental professionals and may discourage or even prevent dentists from moving to Texas to practice.

The Sunset review evaluated the licensing requirements for dental practitioners to determine their necessity in protecting the public and to assess their impact on access to dental care. By removing some of the barriers to licensure in the state, the Board can be more active in dealing with a shortage of dental professionals in Texas, which should help ensure that Texans have better access to dental healthcare.

Support

The Board sets policies regarding licensing and credentialing requirements for dental healthcare professionals in Texas.

- The Board is responsible for licensing dentists and dental hygienists in Texas. To practice in Texas, dentists and hygienists may be licensed either by examination or by credentials, based on criteria determined by the Board. The most common method is license by examination. The Board contracts with the Western Regional Examining Board (WREB) to administer clinical examinations for licensing dentists and hygienists. Also, on January 1, 2002, the Board began accepting exam results from the Central Regional Dental Testing Service (CRDTS). Dental professionals from other states who have passed the WREB exam within the past five years or the CRDTS exam since January 1, 2002, also satisfy the requirements for license by examination.
- Generally, an applicant seeks licensure by credentials because the applicant has already passed a regional exam, and has received a license from and been working in another state. Professionals who have not taken a WREB or CRDTS exam in the past five years must enter under the licensure by credentials process. An applicant for licensure by credentials must have practiced as a dentist or a dental educator for at least the five years before the application date for a Texas license.¹
- In fiscal year 2001, the Board issued 325 dental licenses by exam and 45 dental licenses by credentials. That same year, the Board issued 414 dental hygiene licenses by exam and 40 hygiene licenses by credentials. For information on the exact criteria required for licensure in Texas, see *Appendix A*.

Some of the Board's licensing requirements create barriers for dentists wanting to practice in Texas.

- The Board's requirements for licensure by credentials for out-of-state dentists moving to Texas are very stringent. To practice in Texas, a dentist from another state must have had five years of continuous experience immediately preceding the application to practice in Texas. An out-of-state dentist who took a regional exam other than WREB or CRDTS and who has practiced for less than five years can not receive a license by credentials in Texas. The dentist would have to take the WREB or CRDTS exam and apply for licensure by examination. As a result, qualified dental professionals may be reluctant or unable to move to Texas to practice dentistry in the state. This requirement also creates a burden for recent dental school graduates who want to move to Texas, but have not yet worked for five years.

To practice in Texas, a dentist from another state must have had five years of continuous experience.

- Some Board members admit that five years is an arbitrary number and that the requirement may be overly rigid. A recent example of an application for licensure by credentials illustrates this point. In this case, the staff rejected the application of a New York dentist with nine years of experience for not having five years of continuous experience because she had taken a three-month medical disability leave due to pregnancy. While the full Board waived the experience requirement on appeal, a strict reading of the statute would preclude such an outcome.²

- The Board limits the number of license by examination applicants by not accepting test results from certain regional examining boards. The Board accepts scores from WREB, which includes 11 states, and CRDTS, which includes 12 states. However, the Board does not accept results from the other two regional examining boards, the Northeast Regional Board of Dental Examiners and the Southern Regional Testing Agency, which together include 20 states and Washington, D.C. The chart, *Regional Dental Examining Boards*, outlines each examining board's member states.

Regional Dental Examining Boards	
Board	Member states
Western Regional Examining Board	Alaska, Arizona, Idaho, Montana, New Mexico, Oklahoma, Oregon, Texas, Utah, Washington, Wyoming
Central Regional Dental Testing Service	Colorado, Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Washington (dental only), Wisconsin, Wyoming
Northeast Regional Board of Dental Examiners	Connecticut, Illinois, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Washington, D.C., West Virginia
Southern Regional Testing Agency	Arkansas, Georgia, Kentucky, South Carolina, Tennessee, Virginia

- The Board's restrictive licensing policies contribute directly to access to dental healthcare. Access to care is a growing concern in Texas, as 69 of the state's 254 counties are classified as Dental Health Professional Shortage Areas by the U.S. Department of Health and Human Services' Health Resources and Services Administration.³ In 1998, Texas ranked 41st in the nation in dentists per capita, falling well below the national average of 48 dentists per 100,000 people.

Between 1991 and 1998, the number of dentists in Texas declined 4 percent, while the state's population grew 14 percent. The result was a 15 percent decline in dentists per capita, compared to a 12 percent decline nationwide.⁴

The Legislature has recognized that the Board's licensing functions affect the quantity of dentists practicing in Texas.

Recent changes in the Dental Practice Act, as well as licensing requirements for other Texas health professions and dentists in other states, point to a less restrictive form of regulation.

- The Legislature has recognized that the Board's licensing functions affect the quantity of dentists practicing in Texas. Recent legislation passed to address access to dental healthcare include the following provisions:
 - removing the experience requirements for dentists seeking licensure by credentials to work at nonprofit corporations that are Medicaid providers;
 - relaxing credentialing requirements for dental hygienists from five to three years; and
 - allowing dental assistants to apply pit-and-fissure sealants, preventative materials that fit in the crevices of a tooth, for Medicaid providers.
- Requirements to be licensed by credentials in other states vary from two years of continuous practice to 20 hours per week for five of the last seven years.
- Most health profession licensing agencies in Texas have more relaxed credentialing requirements. For example, the State Board of Medical Examiners and the Board of Nurse Examiners do not have a minimum number of years of practice requirement for applicants from out of state.^{5,6} The State Board of Pharmacy requires applicants for a license by reciprocity to prove they have been continuously engaged in the practice of pharmacy for two years immediately preceding application.⁷

Recommendation

Change in Statute

7.1 Reduce the years of practice required for dental licensure by credentials from five to three years.

This recommendation relaxes the licensure by credentials requirements for dentists wanting to practice in Texas, yet maintains standards stringent enough to ensure that only qualified dentists receive a Texas license. The recommendation is intended to mirror recent actions by the Legislature to ease licensure requirements to increase Texans' access to dental healthcare, and is consistent with other health professions.

7.2 Authorize the Board to grant waivers, for certain circumstances, to the continuous practice requirements for licensure by credentials.

The Board should develop rules that outline circumstances in which an applicant for dental or dental hygiene licensure by credentials could receive a waiver from the continuous practice requirements. For example, such circumstances could include maternity leave or illness. This recommendation provides the Board some flexibility in granting licenses by credentials and changes current practice that may unfairly restrict applicants.

Management Action

7.3 Require the Board to consider accepting the results of other regional examining boards, and provide justification for not accepting results from any of the boards.

This recommendation requires the Board to review the Northeast Regional Board of Dental Examiners and the Southern Regional Testing Agency, the two examining agencies whose results the Board does not accept. If the Board concludes that either of these examining boards does not have adequate exam criteria and chooses not to accept the exam results, the Board should publicly state the reasons that led to the decisions.

Impact

These recommendations are meant to relax some unnecessary barriers to dental licensure in Texas without reducing the competency of practitioners. In doing so, the Board may be able to increase the number of dentists in Texas and improve access to care in the state.

Fiscal Implication

These recommendations would not have a fiscal impact to the State. The Board should be able to process these changes and review the regional dental testing services using existing resources.

¹ Texas Occupations Code, ch. 256, sec. 256.101(a)(8).

² Ibid.

³ U.S. Department of Health and Human Services, Health Resources and Services Administration (HRSA), Bureau of Primary Health Care, Division of Shortage Designation (DSD). Online. Available: bphc.hrsa.gov/databases/newhpsa/newhpsa.cfm. Accessed: January 4, 2002. Designations are as of October 13, 2001.

⁴ U.S. Department of Health and Human Services, Health Resources and Services Administration, Bureau of Health Professions, National Center for Health Workforce Information and Analysis, "HRSA State Health Workforce Profiles — Texas," (Rockville, Md., December 2000), p. 47.

⁵ Texas Occupations Code, ch. 155, sec. 155.003.

⁶ Ibid., ch. 301, sec. 301.260.

⁷ Texas Administrative Code, Title 22, part 15, ch. 283, rule 283.8.

ACROSS-THE-BOARD RECOMMENDATIONS

State Board of Dental Examiners	
Recommendations	Across-the-Board Provisions
	A. GENERAL
Modify ¹	1. Require at least one-third public membership on state agency policymaking bodies.
Already in Statute	2. Require specific provisions relating to conflicts of interest.
Update	3. Require that appointment to the policymaking body be made without regard to the appointee's race, color, disability, sex, religion, age, or national origin.
Apply	4. Provide for the Governor to designate the presiding officer of a state agency's policymaking body.
Update	5. Specify grounds for removal of a member of the policymaking body.
Already in Statute	6. Require that information on standards of conduct be provided to members of policymaking bodies and agency employees.
Update	7. Require training for members of policymaking bodies.
Already in Statute ²	8. Require the agency's policymaking body to develop and implement policies that clearly separate the functions of the policymaking body and the agency staff.
Already in Statute	9. Provide for public testimony at meetings of the policymaking body.
Update	10. Require information to be maintained on complaints.
Already in Statute	11. Require development of an equal employment opportunity policy.
Apply	12. Require information and training on the State Employee Incentive Program.

¹ See Issue 2.

² Ibid.

State Board of Dental Examiners	
Recommendations	Across-the-Board Provisions
	B. LICENSING
Apply	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
Already in Statute	2. Provide for notice to a person taking an examination of the results of the examination within a reasonable time of the testing date.
Already in Statute	3. Authorize agencies to establish a procedure for licensing applicants who hold a license issued by another state.
Apply	4. Authorize agencies to issue provisional licenses to license applicants who hold a current license in another state.
Already in Statute	5. Authorize the staggered renewal of licenses.
Modify	6. Authorize agencies to use a full range of penalties.
Already in Statute	7. Revise restrictive rules or statutes to allow advertising and competitive bidding practices that are not deceptive or misleading.
Modify	8. Require the policymaking body to adopt a system of continuing education.

AGENCY INFORMATION

Agency Information

Agency at a Glance

To ensure the dental health of Texans, the State Board of Dental Examiners (the Board) regulates the state's dental industry. To meet its mission, the Board:

- licenses dentists and dental hygienists and registers qualified dental laboratories in Texas;
- investigates and resolves complaints received about dental practitioners;
- enforces the Dental Practice Act and takes disciplinary action when necessary;
- monitors ongoing compliance of disciplined licensees and registrants; and
- provides peer assistance for impaired licensees.

Key Facts

- **Funding.** The Board operated on a \$1.76 million budget and collected about \$1.9 million in revenue in fiscal year 2001. All costs are recovered by collecting fees from the industry.
- **Staffing.** The Board had 26 full-time equivalent (FTE) positions in fiscal year 2001. Employees work in the agency's Austin headquarters, with the exception of one field investigator each in Dallas, Houston, and San Antonio.
- **Licensing and Registration.** In fiscal year 2001, the Board had 11,123 active dental and 7,872 active hygienist licenses, and had 1,064 registered dental laboratories. The Board also processed 1,465 nitrous oxide monitoring exams, 1,059 jurisprudence exams, and 2,520 radiology exams.
- **Enforcement.** The Board received 758 complaints in fiscal year 2001, 659 of which were jurisdictional. The Board completed 670 investigations, closed 533 cases, sent 152 cases to settlement conference or the State Office of Administrative Hearings, and issued 31 orders.
- **Peer Assistance Program.** The Board contracts with a nonprofit corporation to provide assistance for chemically dependent and mentally impaired licensees. Seventy people participated in the program in fiscal year 2001.

In FY 2001 the Board had 11,123 active dental and 7,872 active hygienist licenses.

The Legislature did not continue the Board after its 1992 Sunset review.

Major Events in Agency History

The Legislature did not continue the Board after its 1992 Sunset review, in part because of disagreements between the dental and dental hygiene associations over the proposed reauthorization bill. As a result, the Board was abolished in 1993. Because the Dental Practice Act remained in effect, the Board developed a plan to continue the Act's provisions, including assigning functions to other agencies. In February 1995, less than one month after convening, the Legislature rebuilt the agency with an 18-member Board, re-established existing rules, and restored the funds and personnel that had been transferred to other agencies during the time of the Board's abolishment.

In 2001, the Legislature passed an omnibus dental healthcare bill, establishing zero tolerance for fraud in the dental Medicaid program; limiting use of stainless steel crowns; providing for a teledentistry pilot program; and requiring an alternative dental hygiene training program.¹ The Legislature also moved the Board's Sunset date from 2005 to 2003.²

Organization

Policy Body

The Board consists of 18 members – 10 dentists, two dental hygienists, and six public members – appointed by the Governor, with the advice and consent of the Senate. Members may only serve one term. The Board sets policy to regulate the dental industry and participates in licensing and disciplinary proceedings of dental professionals. Board members elect a president, who must be a dentist, and a secretary for one-year terms. The chart, *State Board of Dental Examiners Policy Body*, on the next page, identifies current Board members and the city of their residence.

Two statutory committees assist the Board. The Dental Hygiene Advisory Committee is composed of six members – three dental hygienists and two public members appointed by the Governor, and one dentist appointed by the Board. The Dental Laboratory Certification Council consists of three members appointed by the Board for two-year terms. The Board also has five standing committees that oversee agency policies relating to its licensing and examination, and enforcement functions, and other legal, executive, and legislative matters.

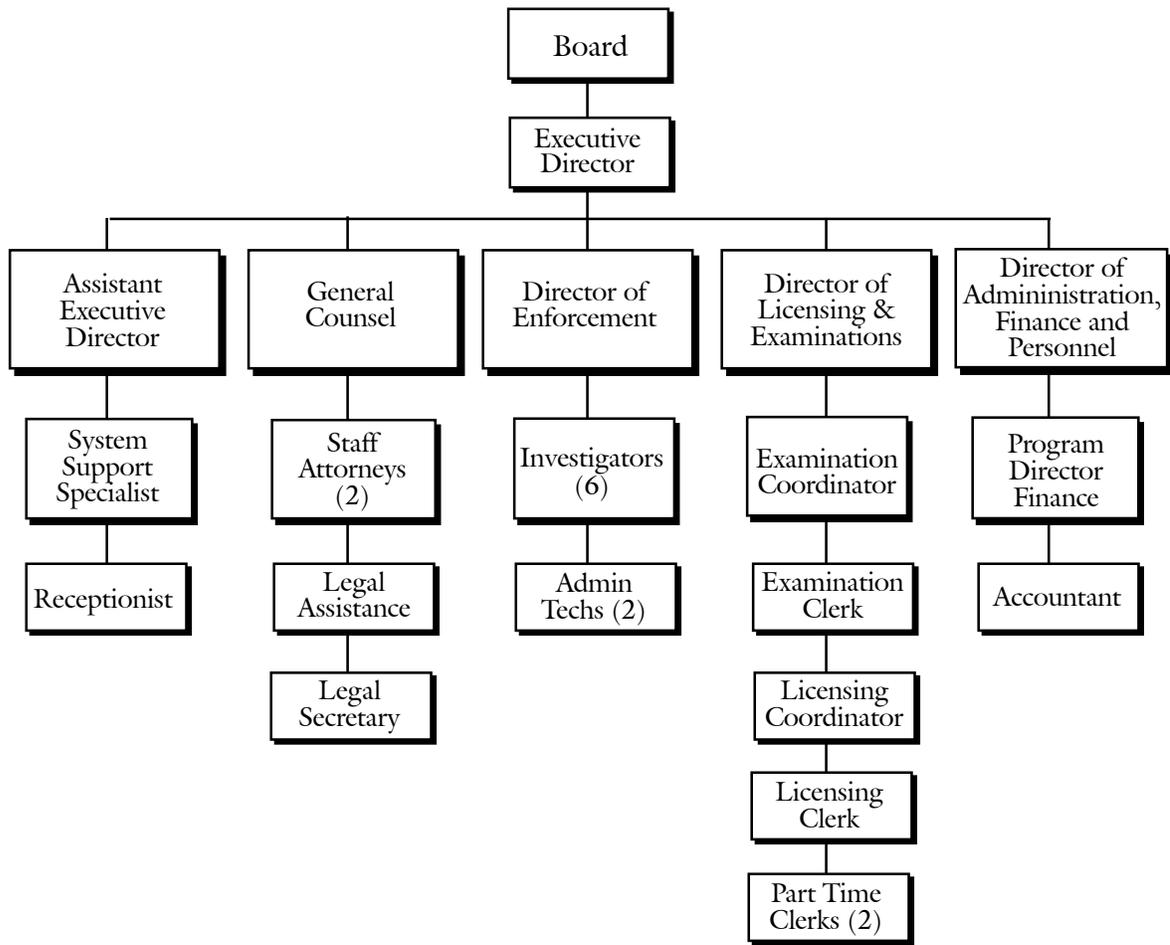
State Board of Dental Examiners Policy Body			
Member	City	Qualification	Term Expiration
Michael Plunk, DDS, President	Dallas	Dentist	2003
Nathaniel Tippit, DDS, Secretary	Houston	Dentist	2005
Tammy Allen, RDH	Fort Worth	Dental Hygienist	2007
Oscar X. Garcia	Brownsville	Public Member	2007
Cornelius Henry, DDS	Tyler	Dentist	2003
J. Kevin Irons, DMD	Austin	Dentist	2005
Amy Landess Juba	Amarillo	Public Member	2005
James W. Kennedy, DDS	Sugar Land	Dentist	2003
H. Grant Lappin	Houston	Public Member	2003
Gary W. McDonald, DDS	Kingwood	Dentist	2007
Martha Manley Malik, DDS	Victoria	Dentist	2005
Marti Morgan	Fort Worth	Public Member	2005
Phyllis Stine	Midland	Public Member	2007
Kent T. Starr, DDS	Waco	Dentist	2005
Paul E. Stubbs, DDS	Austin	Dentist	2007
Juan D. Villarreal, DDS	Harlingen	Dentist	2007
Marcia Waugh	El Paso	Public Member	2003
Gail Wilks, RHD	Longview	Dental Hygienist	2003

Staff

The Executive Director, under the direction of the Board, oversees the agency's day-to-day activities. Board employees work in five divisions: Licensing and Examination, Enforcement, Legal, Executive, and Administration and Finance. Board employees work in Austin except for three field investigators, with one each working in Dallas, Houston, and San Antonio. The *State Board of Dental Examiners Organizational Chart*, on the next page, shows the agency's divisions with the number of full-time equivalents in each.

Appendix C compares the agency's workforce composition to the minority civilian labor force. The Board has had some difficulty meeting goals, which is common for a small agency.

**State Board of Dental Examiners
Organizational Chart**



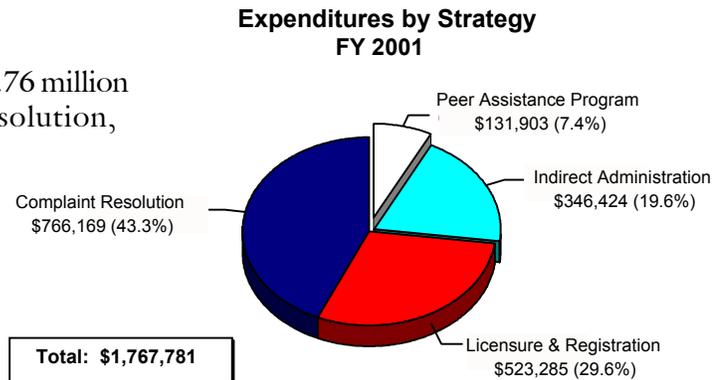
Funding

Revenues

The Board receives funding through General Revenue, which totaled about \$1.9 million in fiscal year 2001. The bulk of this funding comes from annual licensing and renewal fees for dentists and dental hygienists and peer assistance program fees. Appendix A provides more detail on initial application fees. All fees go directly into the General Revenue Fund. The Board also collected revenue from \$198,848 in appropriated receipts. In FY 2001, the Board collected about \$160,000 more than it spent.

Expenditures

In FY 2001, the Board expended about \$1.76 million among three strategies: complaint resolution, licensing and registration, and peer assistance. The chart, *Expenditures by Strategy*, illustrates the budget breakdown.



Appendix D describes the Board's use of Historically Underutilized Businesses (HUBs) in purchasing goods and services for fiscal years 1998 to 2001.

The Board uses HUBs in the categories of other services and commodities. In the area of greatest spending, for Other Services, the agency has fallen well short of the State's goal of 33 percent. However, the agency has consistently surpassed by a large margin the goal for commodities spending.

Agency Operations

The mission of the State Board of Dental Examiners is to protect the public by ensuring that only qualified dental professionals practice in Texas, and by sanctioning those practitioners who violate the law. To achieve this goal, the Board performs three core functions: licensing and registration, enforcement, and peer assistance. The Board is a member of the Health Professions Council, which coordinates functions among various healthcare licensing agencies. The following material highlights the Board's activities in these areas.

The Board's mission is to protect the public by ensuring that only qualified dentists practice in the state.

Licensing and Examination

Dentists – A person may become a licensed dentist in Texas either by passing an examination or by satisfying the Board's credentialing requirements. Appendix A, *License and Permit Requirements*, summarizes the requirements for licensure by examination or by credentials.

To be licensed through examination, a person must meet the following basic requirements.

- **Education** – Generally, the person must graduate from a dental school recognized by the Commission on Dental Accreditation (CODA) of the American Dental Association.³
- **Written examination** – The person must pass two separate written examinations, testing the person's knowledge of dentistry and Texas' Dental Practice Act.

- **Clinical examination** – The person must pass a general dentistry clinical examination administered by a regional examining board designated by the Board.

The Board has designated the Western Regional Examining Board (WREB) to develop and conduct the clinical examination, and the Board provides eight current or former members to serve on the regional board’s dental examining team to administer the clinical examination. Currently, 11 states are members of WREB, and use its examination to test the practical knowledge of their dental applicants.⁴ In January 2002, the Board began accepting examination results from the Central Regional Dental Testing Service, Inc. (CRDTS), which has 12 member states.⁵

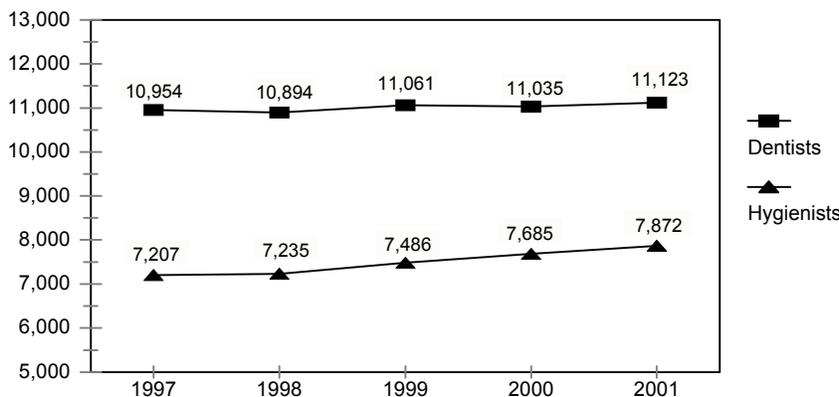
To be licensed by credentials, the typical way for a person from another state to be licensed, an applicant must hold an active license in another state, encompassing the same requirements described above for licensure by examination. In addition, an applicant must demonstrate a minimum of five years of continuous dental practice immediately before submitting the application, and must have completed 12 hours of continuing education within the year preceding the application.

The Legislature recently relaxed the requirements for dental professionals in nonprofits that accept Medicaid.

In the 2001 session, the Legislature relaxed the requirements for dental professionals to work in a nonprofit corporation that accepts Medicaid reimbursement. Under this change, the Board must issue a temporary license to an applicant who is employed by such a nonprofit corporation and who meets the requirements for licensure by credentials, except the requirement for practice experience.

The Board issued new licenses to 370 dentists, with 325 licensed by examination and 45 by credentials in 2001. The chart, *Licensed Dentists and Dental Hygienists*, shows the trend in the number of dentists in Texas in recent years.

**Licensed Dentists and Hygienists
1997 - 2001**



Dental Hygienists – Dental hygienists’ primary role is to clean and polish teeth. The Board licenses dental hygienists through a similar process as for dentists. Dental hygienists must graduate from a CODA-approved dental hygiene school, of which Texas has 18. In 2001, the Legislature adopted an alternative training program for dental hygienists that is equivalent to the training

provided under traditional programs.⁶ The Legislature also relaxed the requirement for licensure by credentials by reducing the requirement for a dental hygienist to be in continuous practice from five years to three years.⁷

In 2001, the Board issued new licenses to 454 dental hygienists, with 414 licensed by examination and 40 by credentials. The chart, *Licensed Dentists and Dental Hygienists*, on the previous page, shows the trend in the number of dental hygienists in recent years.

Dental Assistants – While the Board does not license dental assistants, who work under the direct supervision of a dentist, it does certify assistants in specialty areas. Dental assistants may be certified to take radiographs, or X-rays, by successfully completing a radiology examination administered by a dentist, or by successfully completing the Dental Assisting National Boards. Dental assistants also may receive certification to monitor the administration of nitrous oxide by successfully completing a Board examination. Both the radiology and nitrous oxide monitoring certifications require one-time registration and do not need to be renewed.

While the Board does not license dental assistants, it does certify assistants in specialty areas.

In 2001, the Legislature added a third area of certification for dental assistants. Effective March 2002, a dentist who is a Medicaid provider may delegate to a dental assistant the preparation and application of pit and fissure sealants. The dental assistant must be certified to apply pit and fissure sealants, which are preventative materials that fit in the crevices of a tooth, and must complete six hours of continuing education annually to maintain the certification.

Dental Laboratories – Texas is one of two states that registers dental laboratories. To satisfy the requirements for registration, a commercial laboratory must employ a certified dental technician who must be on premises at least 30 hours per week. However, labs that initially registered with the Board on or before September 1, 1987, are exempt from employing a certified dental technician. The National Board of Certification certifies dental technicians and the Board requires proof of current certification to renew the laboratory registration in January of each year. In 2001, the Board registered 1,064 dental laboratories.

Enforcement

The Enforcement Division investigates and prosecutes complaints about regulated entities. When the Board receives a complaint, the Director of Enforcement determines if the complaint is jurisdictional, then assigns it a priority number based on risk. Staff must investigate priority one complaints, where significant threat of injury exists, within 60 days, and all other complaints, or priority two complaints, within 120 days.

All complaints, except those relating to standard of care, are assigned to a staff investigator, who completes the investigation and writes a report on the findings. Investigated complaints go to a member of the Board's Enforcement Committee, who reviews the case and makes a recommendation for further action. Standard-of-care complaints are processed administratively and forwarded to a dentist member of the Enforcement Committee for evaluation and further action. The chart, *Basis of Complaints Received*, provides a breakdown by the type of allegation in the last year. The total number of complaints adds up to more than the total number of complaints received by the agency because some complaints have allegations in multiple categories.

Basis of Complaints Received FY 2001	
Allegation Category	Number of Complaints Received
Administration	0
Business Promotion	100
Dental Laboratories	6
Patient Morbidity	2
Practicing Dentistry Without a License	3
Professional Conduct	169
Quality of Care	376
Sanitation	17
Total	673

The Enforcement Committee member assigned to review a case may recommend dismissal, referral to an informal settlement conference, enforcement action via a contested case hearing conducted by the State Office of Administrative Hearings; or require further investigation. In fiscal year 2001, the average time to resolve a complaint was 310 days, down from 490 days in fiscal year 2000.

However, in the first quarter of fiscal year 2002, the average complaint resolution time was 533 days. This number greatly depends on the age of cases, as a high number of old cases resolved can significantly increase the average complaint resolution time. As of January 2000, the Board had 10 unresolved cases that were more than three years old.

Dental Peer Assistance Program

The Board contracts with a nonprofit corporation to provide assistance for chemically dependent and mentally impaired dentists and dental hygienists. The program provides professional referral and treatment to the impaired professional, while offering support and advocacy through rehabilitation. Participants enter the program voluntarily, through referral by a third party, or by referral from the Board. Program staff notify and update the Board on practitioners who may be impaired, and monitor their compliance with Board orders. In fiscal year 2001, 70 individuals participated in the Peer Assistance Program, and 90 percent completed the program within one year.

¹ Texas House Bill 3507, 77th Legislature (2001).

² Texas Senate Bill 309, 77th Legislature (2001).

³ The three accredited schools in Texas are the Baylor College of Dentistry in Dallas, the University of Texas Health Science Center at Houston, Dental Branch, and the University of Texas Health Science Center at San Antonio, Dental School.

⁴ The members of the Western Regional Examining Board are Alaska, Arizona, Idaho, Montana, New Mexico, Oklahoma, Oregon, Texas, Utah, Washington, and Wyoming.

⁵ The members of the Central Regional Dental Testing Service are Colorado, Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Washington (dental only), Wisconsin, and Wyoming.

⁶ H. B. 3507, 77th Legislature (2001).

⁷ Ibid.

APPENDICES

Appendix A

License and Permit Requirements

License Type	Requirements	Fees
Dental licensure by exam	<ul style="list-style-type: none"> • graduation from Council on Dental Accreditation (CODA)-approved dental school • completion of Western Regional Examining Board (WREB) or Central Regional Dental Testing Service (CRDTS) clinical examination • completion of National Boards Parts 1 & 2 • completion of Texas jurisprudence exam • current cardiopulmonary resuscitation (CPR) certification 	\$350, plus WREB or CRDTS fee, which ranges from \$900-\$1,260 (\$93 annual renewal fee)
Dental licensure by credentials	<ul style="list-style-type: none"> • graduation from CODA-approved dental school • completion of National Boards Parts 1 & 2 • completion of state or regional general dentistry clinical exam • proof of dental practice/dental educator for 5 years immediately preceding application to Texas • licensure in another state • no disciplinary actions or felony convictions • favorable report from National Practitioner Data Bank or American Association of Dental Examiners • completion of Texas jurisprudence exam • current CPR certification • 12 hours of continuing education taken within the preceding 12 months 	\$2,000 (\$93 annual renewal fee)
Dental licensure for foreign graduates	<ul style="list-style-type: none"> • graduation from CODA-approved dental school or • completion of a two-year CODA-approved specialty training program • completion of general dentistry WREB or CRDTS exam • completion of National Boards Parts 1 & 2 • completion of Texas jurisprudence exam • current CPR certification 	\$350, plus WREB or CRDTS fee, which ranges from \$900-\$1,260 (\$93 annual renewal fee)
Dental hygiene licensure by exam	<ul style="list-style-type: none"> • graduation from CODA-approved dental hygiene school • completion of WREB or CRDTS exam • completion of National Boards • completion of Texas jurisprudence exam • current CPR certification 	\$70, plus WREB or CRDTS fee, which ranges from \$500 - \$690 (\$57 annual renewal fee)

Appendix A

License Type	Requirements	Fees
Dental hygiene licensure by credentials	<ul style="list-style-type: none"> • graduation from CODA-approved dental hygiene school • completion of National Boards • completion of state or regional dental hygiene clinical exam • proof of dental hygiene practice/dental educator for 26 weeks of each of immediate 3 years preceding application to Texas • licensure in another state • no disciplinary actions or felony convictions • two favorable character references • completion of Texas jurisprudence exam • current CPR certification • 12 hours of continuing education taken within preceding 12 months 	\$475 (\$57 annual renewal fee)
Certification to take X-rays	One of the following: <ul style="list-style-type: none"> • completion of SBDE radiology exam • completion of the Dental Assisting National Boards • current Certified Dental Assistant credential 	\$37 for exam administered by dentist; \$11.50 for other two options
Certification to monitor the administration of nitrous oxide	<ul style="list-style-type: none"> • completion of SBDE nitrous oxide monitoring exam 	\$15
Dental Assistant certified to apply pit-and fissure sealants	<ul style="list-style-type: none"> • work under the supervision of a dentist who is a Medicaid provider; • have at least two years experience working as a dental assistant; • complete 16 hours of clinical/didactic training; and • maintain certification by taking six hours of CE annually 	\$50 (\$50 annual renewal fee)

Appendix B

Survey Results

As part of the review of the State Board of Dental Examiners, Sunset staff designed a survey to obtain input from individuals who have been involved with the Board's complaint process. In November 2001, Sunset staff sent this survey to a random selection of 50 people who filed a complaint, or the complainant, and 50 people who had a complaint filed against them, typically a licensee.

Sunset staff received 34 responses, or 34 percent of the total number of people surveyed. This number included 19 responses from people who had filed a complaint with the Board and 15 complaint respondents. The chart below summarizes the responses and shows selected comments made by survey respondents. Sunset staff did not attempt to verify the comments and does not present them as fact.

Question	Complainant responses	Licensee responses
How well does the Board make information about the agency and its complaint process accessible?	Half of respondents said the Board could do a better job of making information about the agency and its complaint process accessible.	Sixty-seven percent of respondents said the Board adequately makes information about the agency and its complaint process accessible.
Does the Board handle complaints in a timely manner?	Seventy-one percent said the Board does not handle complaints in a timely manner. Some added that it took years for the Board to resolve a case.	Fifty-four percent said the Board does not handle complaints in a timely manner
How well does the Board keep the individuals and establishments involved in a complaint informed of their case status?	Fifty-three percent said the Board does not do an adequate job of keeping the parties involved in a complaint informed of the case's status.	Forty-seven percent said the Board does an adequate job of keeping the parties involved in a complaint informed of the case's status.
How thoroughly does the Board investigate complaints?	Seventy-seven percent said the Board did a poor job of investigating complaints.	Eighty percent said the Board thoroughly investigates complaints.
How well does the Board explain what complaints it can and cannot investigate, and why complaints might be referred to other entities?	Ninety-two percent said the Board does a poor job of explaining what types of complaints it handles.	Half of respondents said the Board does a poor job of explaining what types of complaints it handles.
How well does the Board prevent fraudulent or unprofessional behavior among dental professionals?	Ninety-three percent said the Board does not do a good job of preventing fraudulent or unprofessional behavior among dental professionals.	Seventy-seven percent said that the Board does an adequate job of preventing fraudulent or unprofessional behavior among dental professionals.
Are the Board's disciplinary measures adequate to effectively sanction and deter fraudulent behavior?	Ninety-one percent said the Board's disciplinary measures do not effectively sanction and deter fraudulent behavior.	Seventy-seven percent said the Board's disciplinary measures effectively sanction and deter fraudulent behavior.

Appendix B

Question	Complainant responses	Licensee responses
<p>How can the Board improve its complaint process?</p>	<ul style="list-style-type: none"> • Complete investigations more quickly and have consistent disciplinary measures. • Discipline wrongful behavior. • Provide better communication and education regarding the complaint process. • Provide information other than a form letter regarding status of a complaint. • Handle each case individually, not as a group. • Do something about fraud. • Give complainant the chance to give more information. • Run investigation concurrently with other state and federal agencies. • Investigator should meet in person with complainant and respondent. Don't assume dentist is more credible than complainant. • Include public members. 	<ul style="list-style-type: none"> • Keep parties involved in a complaint informed. • Handle complaints in a more timely manner. • Provide information about the complaint process, including giving seminars and lectures. • Hire more investigators. • Filter out unjustified complaints. • Provide arbitration for complaints that are merely miscommunication.
<p>Please add any other comments about the State Board of Dental Examiners. If you suggest any changes, please provide:</p> <ul style="list-style-type: none"> - a brief statement of the suggested change; - benefits of your recommended change 	<ul style="list-style-type: none"> • Communicate better with complainants, including updates on case status. • Investigators should meet in person with complainant and respondent. • Don't assume dentist is more credible than complainant. • Dentists who commit crimes are overlooked. • Privatize operations. • Hold dental schools responsible for the work they do. 	<ul style="list-style-type: none"> • All death cases or other felonies should result in license revocation. • Check the background of licensees from previous state. • Filter unjustified cases and use licensed investigators. • Change mission statement from punitive to supportive, so dentists are not afraid to seek information. • Provide service in a more professional manner.

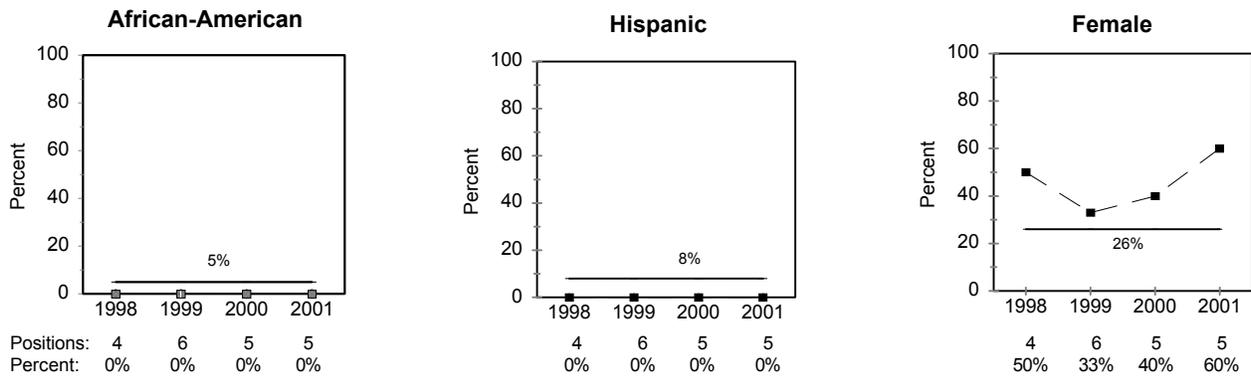
Appendix C

Equal Employment Opportunity Statistics

1998 to 2001

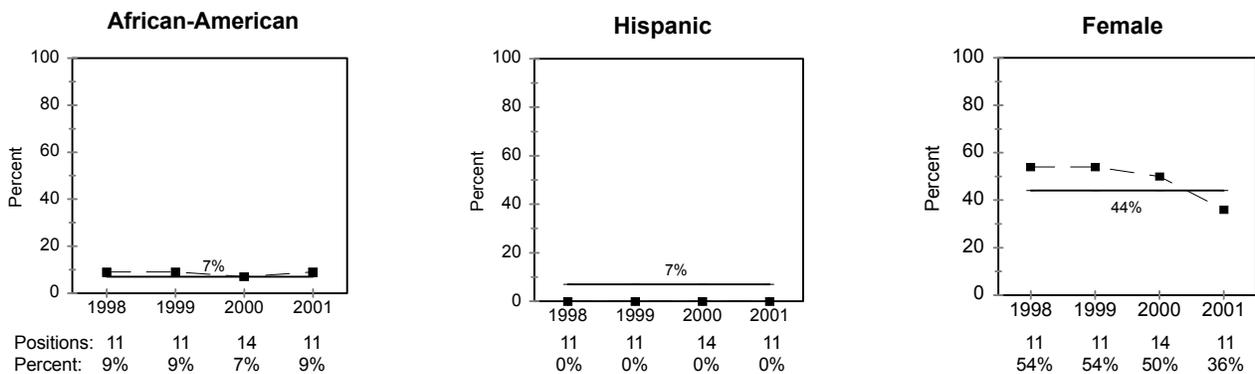
In accordance with the requirements of the Sunset Act the following material shows trend information for the agency’s employment of minorities and females in all applicable categories.¹ The agency maintains and reports this information under guidelines established by the Texas Commission on Human Rights.² In the charts, the flat lines represent the percentages of the statewide civilian labor force that African-Americans, Hispanics, and females comprise in each job category. These percentages provide a yardstick for measuring agencies’ performance in employing persons in each of these groups. The dashed lines represent the agency’s actual employment percentages in each job category from 1998 to 2001.

State Agency Administration



The Board exceeded the state goal for female employment every year, but fell short of the goals for Hispanic and African-Americans each year.

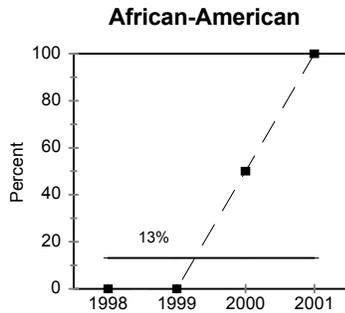
Professional



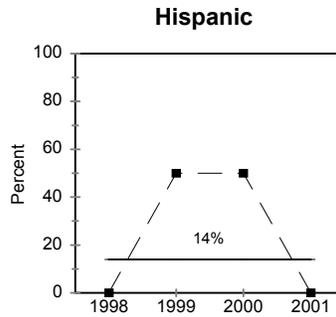
Although the Board generally met or exceeded the goals for female and African-American employment every year, it fell short of the goal for Hispanics during this period.

Appendix C

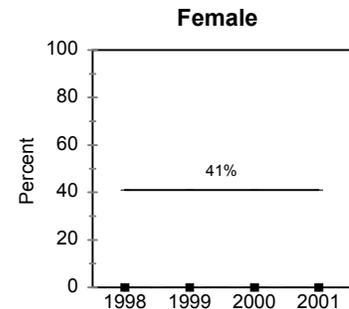
Technical



Positions: 1 2 2 1
Percent: 0% 0% 50% 100%



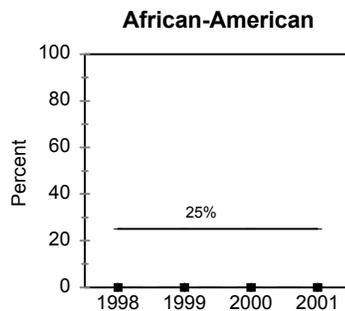
Positions: 1 2 2 1
Percent: 0% 50% 50% 0%



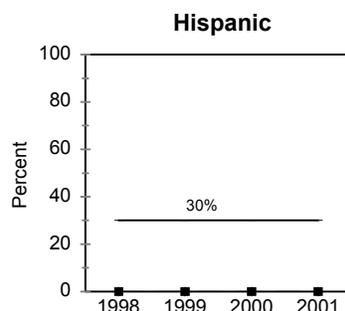
Positions: 1 2 2 1
Percent: 0% 0% 0% 0%

The Board exceeded the goals for African-American and Hispanic employees during two of the years, but had no female employees in this category.

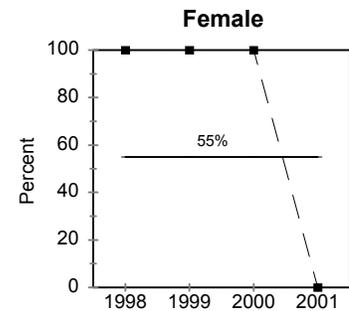
Paraprofessional



Positions: 1 2 2 0
Percent: 0% 0% 0% 0%



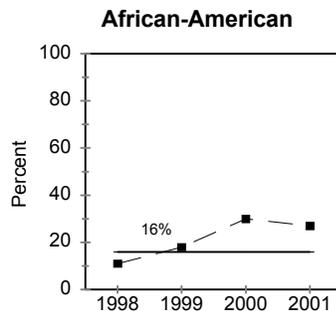
Positions: 1 2 2 0
Percent: 0% 0% 0% 0%



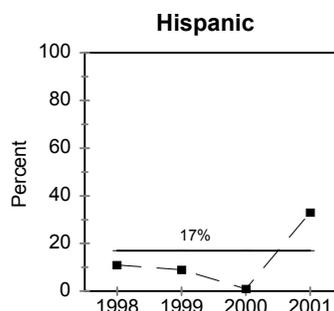
Positions: 1 2 2 0
Percent: 100% 100% 100% 0%

The Board had exceeded the state goal in this category but as of 2001, the agency no longer has any paraprofessional positions.

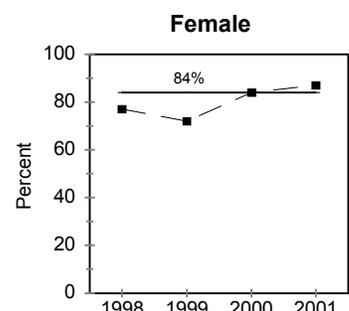
Administrative Support



Positions: 9 11 13 15
Percent: 11% 18% 30% 27%



Positions: 9 11 13 15
Percent: 11% 9% 1% 33%



Positions: 9 11 13 15
Percent: 77% 72% 84% 87%

The Board generally meets or exceeds the goals for females and African-Americans, and also exceeded the goal for Hispanics in fiscal year 2001.

¹ Texas Government Code ch. 325, sec. 325.011(9)(A) (Vernon 1999).

² Texas Labor Code ch. 21, sec. 21.501 (formally required by rider in the General Appropriations Act).

Appendix D

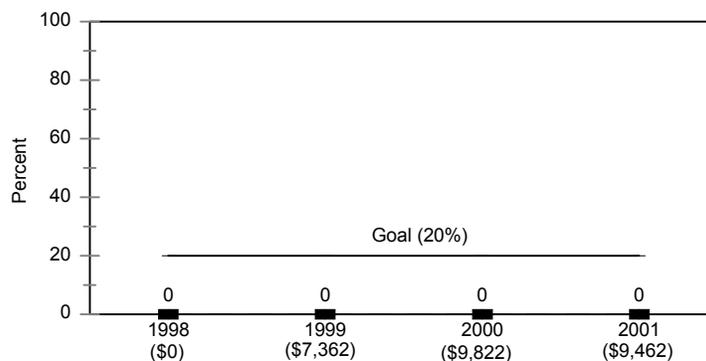
Historically Underutilized Businesses Statistics

1998 to 2001

The Legislature has encouraged state agencies to increase their use of Historically Underutilized Businesses (HUBs) to promote full and equal opportunities for all businesses in state procurement. The Legislature also requires the Sunset Commission to consider agencies' compliance with laws and rules regarding HUB use in its reviews.¹ The review of the State Board of Dental Examiners revealed that the agency is not complying with all state requirements concerning HUB purchasing, specifically, the agency has not adopted HUB rules, though it does reflect the Building and Procurement Commission's rules in its procedures. In addition, while the agency has two contracts of greater than \$100,000, it does not have to require the contractor to have a HUB subcontracting plan because both contracts pre-date this requirement.

The following material shows trend information for the State Board of Dental Examiners use of HUBs in purchasing goods and services. The agency maintains and reports this information under guidelines in the Texas Building and Procurement Commission's statute.² In the charts, the flat lines represent the goal for HUB purchasing in each category, as established by the Texas Building and Procurement Commission. The dashed lines represent the percentage of each spending with HUBs in each purchasing category from 1998 to 2001. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category. In the area of greatest spending for Other Services, the agency has fallen well short of the State's goal of 33 percent. However, the agency has consistently surpassed by a large margin the goal for commodities spending.

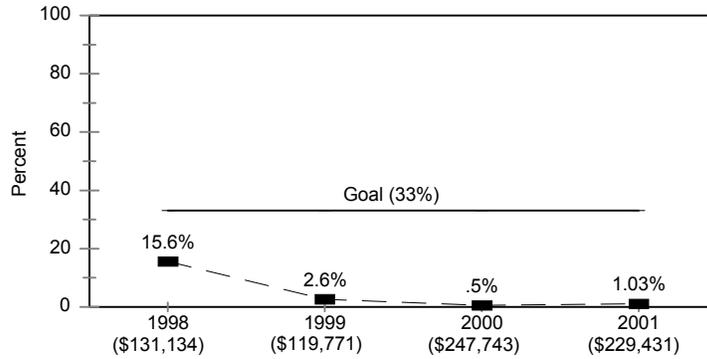
Professional Services



The Board had no expenditures with HUBs in this category.

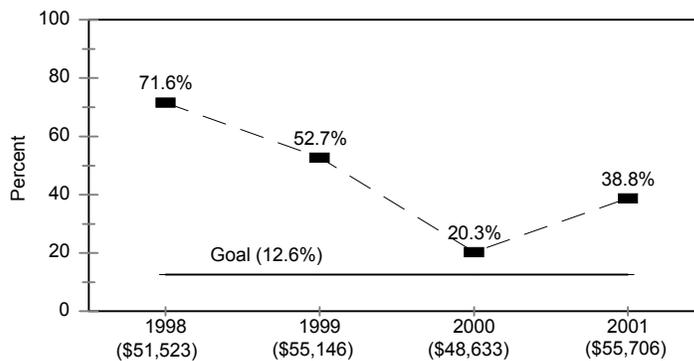
Appendix D

Other Services



Although the Board's spending in this category has generally increased in the past three years, its HUB spending has decreased, and the agency has not met the statewide goal.

Commodities



The Board exceeded the goal for commodities every year.

¹ Texas Government Code, ch. 325, sec.325.011 (9) (B) (1999).

² Ibid, ch. 2161, (1999).

Appendix E

Staff Review Activities

The Sunset staff engaged in the following activities during the review of the State Board of Dental Examiners.

- Worked extensively with agency staff.
- Attended Board meetings and met with Board members.
- Attended meetings of the Dental Hygiene Advisory Committee and the Dental Lab Certification Council, and met with committee members.
- Met with a representative of the Dental Peer Assistance Program.
- Conducted a written survey of complainants and respondents involved in the Board's complaint process.
- Met with in person or interviewed over the telephone staff from the Health and Human Services Commission, the Department of Health, the Health Professions Council, the State Board of Medical Examiners, State Board of Nurse Examiners, State Board of Pharmacy, and the U.S. Occupational Safety and Health Administration.
- Conducted interviews and solicited written comments from national, state, and local interest groups.
- Met with in person or interviewed over the telephone representatives from dental profession associations, including the Texas Dental Association, the Texas Dental Hygiene Association, the Texas Dental Assistants Association, the Texas Dental Hygiene Educators Association, and the Texas Dental Laboratory Association.
- Met with in person or interviewed over the telephone educators from dental and dental hygiene schools in Texas.
- Worked with the Governor's Office, Lieutenant Governor's Office, Speaker's Office, State Auditor's Office, Legislative Budget Board, legislative committees, and legislators' staffs.
- Reviewed reports by the State Auditor's Office, American Association of Dental Examiners, American Dental Association, and Centers for Disease Control.
- Researched the functions of and spoke with representatives from dental regulatory agencies in other states, the Dental Assisting National Board, and the Western Regional Examining Board.
- Visited a community dental clinic, a mobile dentistry unit, a dentist office, a dental lab, the University of Texas Health Science Center at San Antonio Dental School, and Texas State Technical College Dental Hygiene Program in Harlingen, Edinburg, and San Antonio.
- Reviewed Board documents and reports, state statutes, legislative reports, previous legislation, literature on dental issues, and performed background and comparative research using the Internet.

**SUNSET REVIEW OF THE
STATE BOARD OF DENTAL EXAMINERS**

Report Prepared By:

Andrea Varnell - Project Manager

**Meredith Whitten
Dawn Roberson**

Joe Walraven - Project Supervisor

**JOEY LONGLEY
DIRECTOR**

Sunset Advisory Commission
P.O. Box 13066
Austin, TX 78711

Robert E. Johnson Bldg., 6th Floor
1501 N. Congress Ave.
Austin, TX 78701
www.sunset.state.tx.us

(512) 463-1300
FAX (512) 463-0705