

Self-Evaluation Report



***Texas State Board of Dental Examiners
September 2015***

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Texas State Board of Dental Examiners Self-Evaluation Report

I. Agency Contact Information

**Texas State Board of Dental Examiners
Exhibit 1: Agency Contacts**

	Name	Address	Telephone & Fax Numbers	Email Address
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Table 1 Exhibit 1 Agency Contacts

II. Key Functions and Performance

Provide the following information about the overall operations of your agency. More detailed information about individual programs will be requested in a later section.

A. Provide an overview of your agency's mission, objectives, and key functions.

The Mission of the Texas State Board of Dental Examiners is to protect the public health and safety and promote high quality and safe dental care by providing enforcement, licensing, peer assistance, and related information services to licensees and their patients.

The Texas Occupations Code, Title 3, Subtitle D, Chapters 251 et. seq., (Dental Practice Act) defines the practice of dentistry and charges the Board with the responsibility for regulation of such practice. General rulemaking authority is granted to the Board under Section 254.001 of the Dental Practice Act, and authority to address specific subjects is granted throughout the Dental Practice Act. Further, the Texas Health and Safety Code, Title 6, Chapter 467, Peer Assistance Program, authorizes the Board to contract with and make peer assistance services available to licensees.

The Board is supported in its mission by agency staff.

The agency's objectives are to:

1. Efficiently process license and registration applications, ensuring that the applicants have met all required qualifications set out in statute and rule;
2. Thoroughly investigate complaints filed by the public or opened by the agency to determine whether a violation of law or rule has occurred and to ensure the public safety; and
3. Act against violators of the law consistently through the use of remedial and disciplinary measures for licensees and cease and desist orders for non-licensees.

The agency's key functions are to:

1. License qualified dentists and dental hygienists after successful completion of a clinical examination, and/or by credentials;
2. Register dental assistants after successful completion of required education and subsequent competency examination;
3. Register qualified dental laboratories;
4. Annually renew dental and dental hygiene licenses and dental assistant and dental laboratory registrations;
5. Investigate all complaints received from the public or opened by the agency:
 - a. Determine jurisdiction
 - b. Gather documentation and interview witnesses
 - c. Obtain the opinion of an expert dental reviewer if needed
6. Prosecute complaints through informal or formal disciplinary or remedial means as provided by statute;
 - a. Review investigative file
 - b. Evaluate evidence of violations
 - c. Propose settlement agreements
 - d. Convene informal settlement conferences (ISC)
 - e. Coordinate with peer assistance program
 - f. Prosecute cases at the State Office of Administrative Hearings (SOAH)
 - g. Monitor ongoing compliance of licensees/registrants against whom the Board has taken action
7. Draft rules relating to and clarifying the regulation of the practice of dentistry
 - a. Research rulemaking topics
 - b. Organize stakeholder meetings
 - c. Obtain stakeholder input
 - d. Receive and respond to public comment
8. Respond to questions concerning the Dental Practice Act (DPA) and rules
9. Coordinate Board-related activities with Board members and the Office of the Governor
10. Respond to Public Information Act (PIA) requests.

B. Do your key functions continue to serve a clear and ongoing objective? Explain why each of these functions is still needed. What harm would come from no longer performing these functions?

Yes, each of the key functions continues to serve a clear and ongoing objective.

The licensing function is needed in order to ensure that only qualified individuals can practice dentistry. This protects the public and ensures standards of practice are met through education and other qualifications. If dentists or hygienists were not licensed, there would be no assurance that practitioners had received proper education, training, or were of good character and fitness for practice.

The investigation and prosecution functions are needed to ensure that dentists are complying with the law and rules regulating the practice of dentistry. This function protects the public by ensuring that dentists who do not follow the law and rules face action by the Board, including disciplinary and remedial measures, in order to deter future violations. Public actions by the Board also protect the public by notifying the public of a licensee's past violations. On-going monitoring of licensee's compliance with Board action is necessary in order to ensure that the action serves its intended purpose.

The rulemaking function of the Board is necessary in order to explain and provide guidance to the public and the Board's licensees concerning the Dental Practice Act (DPA). The DPA gives the Board rule-making authority which allows the Board to clarify the statute and provide a greater level of detail concerning regulations.

Answering questions concerning the practice of dentistry is a necessary function in order to help licensees comply with the DPA and Board rules and to inform the public of the laws and rules that apply to the practice of dentistry.

Responding to requests under the Public Information Act are a necessary function in order to provide the public with public documentation concerning the Board's licensees and general functions. The Board is required by law to respond to open records requests. Responding to open records requests from the public ensures transparency.

C. What evidence can your agency provide to show your overall effectiveness and efficiency in meeting your objectives?

The agency's quarterly performance measure reports (Actual Performance for Output/Efficiency Measures with Updates) demonstrate the agency continues to achieve and strive for improvement in its service delivery. See Attachment 11.

The division reports presented to the Board at each of its quarterly Board meetings, as well as the commentary provided by the agency's Directors, provide additional insight into the continued effectiveness of the agency. See Attachment 15.

Since January 1, 2014, the agency has seen marked improvements in its ability to resolve cases. This is due to the changes introduced to the agency as a result of HB 3201, enacted in the 83rd Legislative Session. HB 3201 will be discussed at length throughout this Report.

In FY 2015, the agency resolved its final 2009, 2010, and 2011 complaints. In addition, the agency resolved 51 of the 70 complaints opened in 2012 that remained open on September 1, 2014. Of the 19 2012 complaints that remain open as of September 1, 2015, 15 of the complaints are in litigation at the State Office of Administrative Hearings, and only four continue in the informal resolution process with the agency.

Furthermore, in FY 2014, the agency filed 27 TSBDE complaints received by the agency for resolution at SOAH. In FY 2015, the agency more than doubled its litigation and filed 67 complaints received by the agency at SOAH for resolution. This indicates several things: the agency is appropriately recommending settlement agreements to the Board and appropriately pursuing litigation; and the agency is moving faster to seek resolution of cases, despite the cost in time and money of litigation. More specifically, this increase indicates that agency staff in the Legal division are better able to handle an active litigation docket and that the litigation pursued by the Legal Division is well-supported by the evidence collected by Investigations and the expert reviews facilitated by the Dental Division.

D. Does your agency's enabling law continue to correctly reflect your mission, objectives, and approach to performing your functions? Have you recommended changes to the Legislature in the past to improve your agency's operations? If so, explain. Were the changes adopted?

The agency's enabling law generally reflects the agency's mission, objectives, and approach to performing our functions. However, the Dental Practice Act could be modified to improve the agency's ability to perform its key functions.

In the 83rd legislative session, the Legislature passed HB 3201 and expanded the agency's budget in order to allow the agency to function more efficiently. The agency worked with the legislature on HB 3201. HB 3201 established an expert review panel of Texas dentists to evaluate the agency's standard of care cases. This allows the agency to more effectively determine standard of care issues as part of the investigation of complaints and provides the agency with a pool of dentists who are willing to serve as testifying expert witnesses during SOAH proceedings. HB 3201 also gave the Board authority to issue remedial plans. Remedial plans assist the Board in resolving complaints through non-disciplinary action. The Board was given additional FTEs during the last legislative session, fully-staffing the agency, and allowing agency divisions to efficiently perform key functions.

During the 84th legislative session, the agency hoped for clarification of Section 251.003(a)(4) of the Texas Occupations Code, concerning what it means to own, maintain, or operate an office or place of business in which the person employs or engages under any type of contract another person to practice dentistry. The legislature did not make any changes to this section of the Dental Practice Act.

The agency has not approached the legislature about several changes in law that would enable the agency to better perform its key functions. These include improvements to the dental assistant registration scheme, the acknowledgement of new provider models in the dental industry, modifications to the procedures prescribed for temporary suspension of a license, the authority to require substance abuse and/or mental or physical health evaluations, and other issues of importance to the health and safety of the citizens of Texas.

E. Do any of your agency's functions overlap or duplicate those of another state or federal agency? Explain if, and why, each of your key functions is most appropriately placed within your agency. How do you ensure against duplication with other related agencies?

No other agency has jurisdiction over a dentist's license to practice dentistry in Texas. While other agencies may investigate similar cases and similar allegations, the authority to take action on the dentist's license rests wholly with this agency. In addition, the agency works closely with other agencies to be sure that when this agency's casework overlaps with another agency, the agencies coordinate, rather than duplicate, their efforts.

For instance, the investigation and prosecution of Medicaid fraud falls under the authority and responsibility of the Health and Human Services Commission (HHSC) Office of the Inspector General (OIG). However, the Board does have the authority to take action on a dentist's license based on the dentist's bad conduct within the Medicaid program. While the Board's authority to take action exists, the Board's ability to take action against a dental license for Medicaid fraud hinges entirely on the findings made by HHSC or by a criminal court. It is a common misunderstanding that the Board has the independent authority to take action on an allegation of Medicaid fraud. Because of this, the Board does not independently investigate allegations of Medicaid fraud, but will pursue action against a license if a finding of Medicaid fraud results from another agency's investigation.

HHSC and the OIG can also suspend Medicaid privileges and request reimbursement for Medicaid fraud. The Board's ability to take action against the dental license for Medicaid fraud is distinct because it implicates the licensure of the dentist, whereas HHSC actions affect the dentist's ability to continue to be a Medicaid provider.

Similarly, the DEA and DPS can take action against a dentist's DEA/DPS permits for the prescribing of controlled substances when the holder of the permit violates prescribing laws. The Board can also take disciplinary action against the dentist's license for similar violations. Often, the Board's investigators work with DEA/DPS investigators on prescription abuse investigations. The Board's disciplinary action in this case is distinct from that of DEA/DPS because it implicates the dentist's license and additionally considers whether or not the dentist is habitually intemperate in the use of drugs (e.g. if the dentist is self-prescribing for non-dental purposes).

In the 83rd legislative session, the legislature tasked the Board with collecting information concerning Dental Service Organizations (DSOs). This directive was to gather information and did not require the agency to license or register the entities. In the 84th legislative session, the

legislature tasked the Secretary of State with registering DSOs that operate in Texas. These functions overlap to a certain degree; however, the recent legislation of SB 519, requires the Board and the Secretary of State enter a Memorandum of Understanding in order to enable best use of the information collected and preclude overlapping functions. The agency would not oppose modification of Section 254.019 of the DPA to ensure the agency does not duplicate the work done by the Office of the Secretary of State.

F. In general, how do other states carry out similar functions?

In general terms, other states similarly protect patient health and safety by monitoring and regulating the practice of dentistry through independent regulatory agencies, through consolidated health agencies, or through their respective Office of the Attorney General.

The American Association of Dental Boards compiles information from each member state on an annual basis. This information is available in Attachment 4.

G. What key obstacles impair your agency's ability to achieve its objectives?

In the past four years, the agency has had four Executive Directors and four General Counsels. This discontinuity on the executive level disrupts day-to-day operations and achievement of long-term strategic goals. The Executive Director's salary was capped at \$85,250 until September 1, 2015. In the 84th Legislative Session, the Board requested an increase to the statutory authorization and is now authorized to compensate the Executive Director at up to \$109,000 annually. A new Executive Director began on September 1, 2015. With this important transition in full swing, the agency expects increased stability and continued improvement as it welcomes its new leadership.

Similarly, the agency has a long history of non-executive staff turnover. The agency regularly loses experienced employees to other state agencies that can offer better compensation. In the 84th Legislative Session, the agency requested an exceptional item to fund the establishment of a career ladder. The career ladder will permit recognition of employees' tenure and incentivize higher performance goals and retention.

The agency still operates out of paper case files. Because the agency relies on field investigators and expert dental reviewers (DRP) located throughout the state, physical case files are sent to and from agency headquarters in Austin, Texas every day. Not only does transit time affect overall days to resolution, but it disrupts the continuity of the investigative process, further delaying case resolution as the parties involved turn to other matters in the interim. With the passage of HB 3201 in the 83rd Legislative Session, the agency received funding to convert to a paperless system. The agency is working with PaperVision Enterprise (PVE) to develop a system that will be accessible through the internet to agency staff, field investigators, DRP members, and Board members. The agency expects PVE to dramatically, and positively, affect internal processes by minimizing administrative work and expenses and speeding up the investigation process. For instance, each standard of care case must be reviewed by two DRP members. Currently the case file is mailed to the first DRP member; the first DRP member reviews the file and writes an opinion and then mails the file to HQ. Once received by HQ, the

file is mailed to the second DRP member, who reviews the file and then mails the file to HQ. Once PVE goes live, there will be no mailing, and the DRP members will review the files simultaneously. Assuming one week to mail and two weeks to review, PVE will reduce the DRP case review from eight weeks to two weeks. Similar reduction in processing time will apply to other workflows in the investigative process.

The agency still carries a backlog of older, unresolved cases. This continues to affect the agency's metrics and hinders the visibility of the agency's current efforts and successes. Prior to the 83rd Legislative Session, the agency was authorized to carry 36 FTEs. This was woefully inadequate to serve the State of Texas and the agency's needs. The agency is now authorized 58 FTEs, and generally carries around 56 FTEs. This level of staffing should be sufficient to timely process incoming complaints moving forward; however, that is not staff's only responsibility. The agency must continue to work through the historical complaints that remain from when the agency was under-staffed. At the same time the agency's staffing increased, so did the expectations of the agency.

Executive staff expects that the regular benefits of sufficient staffing will begin being clearly seen in FY 2017. The agency's performance in FY 2015 demonstrates the direction the agency is moving and its continued efforts to resolve the backlog while resolving new, current cases.

In FY 2015, the agency resolved its final 2009, 2010, and 2011 complaints. In addition, the agency resolved 51 of 70 2012 complaints that were open on September 1, 2014. Of the 19 2012 complaints that remain open as of September 1, 2015, 16 of the complaints are in litigation at the State Office of Administrative Hearings, and only three continue in the informal resolution process with the agency.

H. Discuss any changes that could impact your agency's key functions in the near future (e.g., changes in federal law or outstanding court cases).

FTC v. North Carolina Dental Board

The Supreme Court of the United States affirmed a Fourth Circuit Court Decision in favor of the Federal Trade Commission's allegations that the North Carolina Dental Board engaged in anti-competitive behavior in its issuance of cease and desist letters to a variety of entities engaged or involved in teeth whitening businesses.

This decision is important to every regulatory body because it suggests that absent active state supervision, Board members who participate in the occupation or industry may be subject to federal antitrust laws and liability. For this Board, it is clear that ten of the Board's fifteen members are active industry participants as licensed dentists or registered dental hygienists. It is unclear whether the appointments process, the Sunset Review process, standard reporting requirements, and other auditing required by the State are sufficient to prove that the Board members and their rulemaking are actively supervised by the State.

On June 17, 2015, the FTC announced that they would be issuing guidance in the coming months to clarify this question. While the future of administrative law remains a huge question

in light of this ruling, to Dental Boards across the country, this ruling hits even closer to home. The North Carolina statute, on which the North Carolina Board based its cease and desist actions is very similar to the DPA. Section 90-29 of the North Carolina Dental Practice Act holds that a “person shall be deemed to be practicing dentistry in this State who...[r]emoves stains, accretions or deposits from the human teeth.” Similarly, Section 251.003 of the Texas Occupations Code holds that “a person practices dentistry if the person...performs or offers to perform by any means the: cleaning of human teeth; removal of stains, concretions or deposits from teeth in the human mouth.” This ruling may affect the agency’s ability to issue proposed orders cease and desist orders against entities it believes are engaged in the unlawful practice of dentistry.

Pending Litigation

The Board is engaged in litigation related to three of its rules:

1. 22. Tex. Admin. Code 108.54, Advertising of Specialties
The Court will determine whether or not the Board can determine which areas of practice may be advertised as specialty areas. This could affect the Board’s ability to adopt rules to prevent false, misleading, or deceptive advertising.
2. 22 Tex. Admin. Code 108.6, Report of Patient Death or Injury Requiring Hospitalization
The Court will determine whether self-reports of patient death or hospitalization, required by Rule 108.6, are confidential investigative documents. This could affect the agency’s ability to investigate patient deaths and hospitalizations for violations of the standard of care.
3. 22 Tex. Admin. Code 108.12, Dental Treatment of Sleep Disorders
The Court will determine whether the rule exceeds the scope of practice of dentistry. This could affect the Board’s ability to regulate the treatment of sleep disorders by dentists.

National Trends

1. Medicaid Fraud
Medicaid fraud in the delivery of orthodontic treatment received national attention in recent years. The agency expects Medicaid fraud in the delivery of pediatric anesthesia services to garner similar attention in the future.
2. Midlevel Dental Providers
Some states are licensing or considering licensing midlevel dental providers. SB 787 and HB 1940 were introduced in the 84th Legislative Session and would have called for the licensing of midlevel Dental Hygiene Practitioners in Texas. They were not enacted by the Legislature.
3. New Practice/Provider Models
The Dental Practice Act and Board rules have not kept pace with the shift from single-owner-operated dental practices towards dental group practices and other provider models.

I. What are your agency's biggest opportunities for improvement in the future?

1. Strengthening the Compliance Division

In FY 2014, the Board resolved 157 cases with public action. In FY 2015, the Board resolved 254 cases with public action. Nearly all of these cases require compliance monitoring. The agency has two compliance officers monitoring these public actions as well as all Board actions from past years that require ongoing compliance. Increasing the ability of the Compliance Division to monitor public actions of the Board will ensure that the actions taken by the Board remain meaningful and are consistently enforced. This could be accomplished by additional compliance officers or the creation of an independent Compliance Division.

2. Clarity in the statute related to ownership of a dental practice.

Over the past two years, agency staff has spent a significant amount of time researching and discussing the interpretation of Tex. Occ. Code §251.003(a)(4) with stakeholders, the Ownership Committee, and Board members. Members of the Legislature indicated throughout the 84th Legislative session that they disagreed with the Board's interpretation of the law, and the Board declined to adopt a series of proposed rules as a result. At the same time, investigative staff has continued to investigate allegations of violations of this section of the statute, but it is unclear to what extent the Legislature wants the Board to pursue action against violations of it.

3. Clarity in the Statute and Increased Oversight of Anesthesia-related Services and Outcomes

Subchapter D of Chapter 258 of the Dental Practice Act addresses Enteral Administration of Anesthesia. The subchapter was added in 2001 and has not been amended.

Dental office anesthesia poses an increased risk of death and other negative patient outcomes, especially in emergency situations. The agency should continue its monitoring and increase its oversight of the use of sedation/anesthesia to ensure the patients of Texas are protected.

Approximately 7000 active Texas dentists hold a permit to administer Level 1 Sedation; approximately 3000 Texas dentists hold a permit to administer Level 2 Sedation. Approximately 1500 dentists hold a permit to administer Level 3 sedation, and approximately 500 dentists hold a permit to administer Level 4 sedation.

As the agency develops and customizes its paperless office management (PVE), it has developed a system by which it can track data on anesthesia-related adverse outcomes that are reported to the agency. This will enable the agency to better monitor licensees in their practice and overall trends in the use or misuse of anesthesia.

In addition, Tex. Occ. Code §258.156 authorizes the Board to conduct inspections of "an office site and of documents of a dentist's practice that relate to the enteral administration of

anesthesia.” The agency has developed a protocol for gathering additional practice and treatment-specific anesthesia information when an anesthesia complication has been reported to the Board. A very similar protocol could be used for virtual inspection of anesthesia-related records. The next step is to develop a protocol for on-site inspections of office-based anesthesia. This on-the-ground approach will further the agency's understanding, investigation, and prevention of anesthesia-related adverse outcomes and protect the public health. At the same time, this authority to conduct on-site inspections does not extend to parenteral administration of anesthesia. Parenteral anesthesia is administered as an injection, typically intravenously. The agency and the public would benefit from explicit statutory authority to permit, regulate, and investigate any form of anesthesia or sedation. The need for statutory change is discussed at Major Issue 2.

With current funding, the agency expects to be able to contract with anesthesia experts to conduct some anesthesia reviews and/or inspections over the next two years. Conducting annual or bi-annual inspections of each of the hundreds of permit-holders would require additional staff, additional staff training and/or funding.

4. Simplification of Dental Assistant Registration Process

The Dental Practice Act authorizes the Board to issue four separate certificates to dental assistants to perform various clinical functions. These certificates have different statutory requirements for application and renewal and are each processed separately by agency staff. They likewise have different continuing education requirements. The result is a system that is unnecessarily complicated for applicants and certificate holders and burdensome and inefficient for staff. A Legislative change to restructure or reform the certificate scheme, as addressed in our Major Issues Section, would significantly free up staff resources and decrease the complexity for applicants.

5. Revision of Disciplinary Matrix based on law change and policy change.

The Disciplinary Matrix is a public document published by the Board in the *Texas Register*. It assists agency staff and Board members in appropriate negotiation of its settlements by identifying possible sanctions and requirements for specific violations. Currently the Matrix requires disciplinary action for any Class B misdemeanor offense committed within 5 years of an application for licensure or while holding a license. For example, at its August 14, 2015, Board meeting, the Board issued 49 Consent Orders to dental assistant applicants, in which the Board issued a reprimand for a misdemeanor conviction or deferred adjudication and approved the application for registration. Reconsideration of the Matrix by the Board or restructuring the Board's disciplinary authority in statute could significantly free up agency resources and reduce barriers to licensing for license and certificate holders.

6. Performance measures that accurately mirror those of other agencies and are better defined and more specific.

Beginning in FY 2016, the agency's performance measures feature new definitions, due in part to changes made by HB 3201. Specifically, HB 3201 draws a distinction between complaints that are received by the agency and complaints on which the agency officially proceeds. These revisions and their accompanying performance measure definitions will allow for greater accuracy and clarify as to the rate of case resolution and make it easier to identify bottlenecks in the process.

7. Continued training and success of the Dental Review Panel and a fully-staffed agency will allow us to more efficiently and fairly investigate complaints and discipline dentists.

8. Implementation of PaperVision Enterprises will allow the agency to shift to a paperless workplace which will increase efficiency and reduce redundancy in agency processes.

J. In the following chart, provide information regarding your agency's key performance measures included in your appropriations bill pattern, including outcome, input, efficiency, and explanatory measures.

Texas State Board of Dental Examiners
Exhibit 2: Key Performance Measures — Fiscal Year 2014

Key Performance Measures	FY 2014 Target	FY 2014 Actual Performance	FY 2014 % of Annual Target
Percent of Complaints Resulting in Disciplinary Action	20%	13.13%	65.65%
Percent of Licenses with No Recent Violations: Dentist	97%	97.85%	100.88%
Percent of Licensees Who Renew Online	80%	82.86%	103.58%
Percent of New Individual Licenses Issued Online	15%	24.93%	166.20%
Number of Complaints Resolved	1,200	1,157	96.42%
Average Time for Complaint Resolution (Days)	280	485.60	173.43%
Average Time to Resolve Complaints Pending Litigation (Days)	325	648.23	199.46%
Number of Jurisdictional Complaints Received	1,200	1,039	86.58%
Number of Licensed Individuals Participating in a Peer Assistance Program	85	88	103.53%
Number of New Licenses Issued to Individuals: Dentists	1,000	965	96.50%
Number of Licenses Renewed (Individuals): Dentists	15,900	16,018	100.74%
Number of New Licenses Issued to Individuals: Dental Hygienist	600	776	129.33%
Number of Licenses Renewed (Individuals): Dental Hygienist	12,000	12,326	102.72%
Number of New Registrations Issued: Dental Assistants	7,500	9,622	128.29%
Number of Registrations Renewed: Dental Assistants	36,000	33,950	94.31%
Total Number of Business Facilities Licensed	800	951	118.88%

Table 2 Exhibit 2 Key Performance Measures

III. History and Major Events

Purpose and Responsibility of the Agency

The mission of the Texas State Board of Dental Examiners is to protect the public health and safety and promote high quality and safe dental care by providing enforcement, licensing, peer assistance, and related information services to licensees and their patients.

Statutory Basis

Title 3, Subtitle D, Chapters 251 et. seq., defines the practice of dentistry and charges the Board with responsibility for regulation of such practice. Further, the Health and Safety Code, Title 6, Chapter 467, Peer Assistance Program authorizes the SBDE to make contract peer assistance services available to licensees.

General rulemaking authority is granted to the SBDE under Section 254.001 of the Occupations Code and authority to address specific subjects is granted throughout the Dental Practice Act.

Historical Perspective

1897

House Bill 90, 25th Regular Session, provided for regulating the practice of dentistry in the State of Texas, penalties for violations of regulations, and the appointment of a State Board of Dental Examiners. The Board was comprised of six dentists appointed by the governor for a term of two years.

1957

Senate Bill 425, 55th Regular Session, provided for the licensure and regulation of dental hygienists in the state.

1971

Senate Bill 365, 62nd Regular Session, expanded the Board from six to nine members; provided for cancellation of licenses for failure to pay fees; prohibited prescribing of drugs not necessary to the treatment of dental-related disorders; and prohibited personal use of drugs which cause disorientation, reduce mental or physical capacity, or may be addictive.

Senate Bill 246, 62nd Regular Session, authorized the Board to adopt rules to define the areas of practice and govern the relationships between dentists, dental hygienists, dental assistants, dental laboratories, and other healing arts. The bill provided that rules, prior to adoption and enforcement, were to be submitted to the Attorney General for review.

1973

Senate Bill 222, 63rd Regular Session, provided for regulation of dental laboratories and dental technicians, providing rulemaking authority, disciplinary authority, and an advisory board.

1977

Senate Bill 565, 65th Regular Session, provided certain civil immunities to members of dental peer-review, judicial, or grievance committees and members of the Board in the performance of their duties.

Senate Bill 779, 65th Regular Session, provided authority to appoint and reimburse certain persons to aid the board; providing for a Dental Hygiene Advisory Committee and providing terms of office and duties of its members.

1981

Senate Bill 763, 67th Regular Session, raised the number of members to twelve, with the addition of three public members.

1985

House Bill 728, 69th Regular Session, required that all revocations, cancellations, or suspensions of licenses by the Board comply with the Administrative Procedure and Texas Register Act.

1989

Senate Bill 586, 71st Regular Session, related to the funding of an approved peer assistance program by the Board.

1991

In 1991, (House Bill 817, 72nd Texas Legislature, Regular Session), two dental hygienists and one additional dentist were added to the composition of the board raising the number of members to 15.

1995

Senate Bill 18, 74th Regular Session, was enacted. This bill related to the re-establishment and operation of the State Board of Dental Examiners and to the regulation of the practice of dentistry and dental hygiene; providing penalties; and making an appropriation. The bill raised the number of public members to six for a total of 18 members.

1999

Senate Bill 524, 76th Regular Session, authorized the Board to issue warning letters to licensees found to have violated the DPA or Board rules. The bill exempted disciplinary action from the confidentiality privilege afforded to investigative files.

2001

Senate Bill 533, 77th Regular Session, required the Board, if it determines that the continued performance by a person licensed by the Board of a procedure for which the person holds a permit would constitute, a clear, imminent, or continuing threat to a person's physical health or well-being, to temporarily suspend the person's license or permit. The bill required the State Office of Administrative Hearings to hold a subsequent hearing on any other action, in addition to a suspension, to be taken against the license or permit holder.

Senate Bill 539, 77th Regular Session, provided that on or before September 2002, a licensee obtain a permit to administer enteral conscious sedation and pay a fee (annually) in an amount set by the Board and provided that the Board may conduct on-site office inspections as necessary or upon request.

Senate Bill 533, 77th Regular Session, authorized the Board to suspend a licensee's sedation/anesthesia permit on an emergency basis.

2003

Senate Bill 263, 78th Regular Session, reduced the Board membership from 18 to 15 members; established informal settlement conferences and gave the Board the authority to order restitution in an agreement resulting from an informal settlement conference; allowed for injunctions, cease and desist and emergency cease and desist orders with regards to the practice of dentistry without a license. The bill also established new requirements to register dental assistants who makes dental x-rays; and required the licensure of faculty members of dental and dental hygiene schools.

House Bill 660, 78th Regular Session, entitled the State Board of Dental Examiners to obtain criminal history record information on an applicant for a license, a holder of a license, or anyone who is requesting a determination of eligibility for a license.

2005

Senate Bill 610, 79th Regular Session, allowed the Board to designate four regional examining bodies whose test scores would be used for licensure as a dentist and dental hygienist; provided the Board with the ability to suspend a license of a license holder upon proof of a prior conviction; and required all dental assistants who make dental x-rays to hold an x-ray certificate issued by the Board.

2007

House Bill 3876, 80th Regular Session, required that a dentist be designated as a custodian of records for a dental clinic. It required that the custodian of records must produce the patient records immediately upon request by the State Board of Dental Examiners and the treating dentist and provided penalties for noncompliance.

2009

Senate Bill 455, 81st Regular Session, amended the Texas Occupations Code to create a coronal polishing certificate issued by the Texas State Board of Dental Examiners to a dental assistant who meets the requirements set forth in the bill.

Senate Bill 887, 81st Regular Session, authorized the Board to establish procedures for the alternative informal assessment of administrative penalties for violations.

House Bill 963, 81st Regular Session, expanded the grounds for license suspension or revocation, disqualification for a license, or denial of an opportunity to take a licensing examination to include a conviction of any of the following offenses: an offense that does not directly relate to the duties of the licensed occupation and that was committed less than five years before the date of the person's license application; an offense for which a person is not eligible for judge-ordered community supervision; or a sexually violent offense.

House Bill 2808, 81st Regular Session, amended provisions of the Occupations Code relating to the power of a licensing authority to revoke, suspend, or deny a license on the basis of certain criminal proceedings. The bill prohibited a licensing authority from considering a person to have been convicted of an offense for such purposes if a judge dismissed certain proceedings and discharged the person at the end of a period of supervision unless the licensing authority determines that the person may pose a continued threat to public safety or that employment of the person in the licensed occupation would create the opportunity to repeat the prohibited conduct or if the person is an applicant for or the holder of a license that authorizes the person to provide law enforcement or public health, education, or safety services or certain financial services.

2013

House Bill 3201, 83rd Regular Session, substantially increased funding and full-time-equivalent positions; required the Board to collect information described in Section 254.019 of the Dental Practice Act (i.e., relating to ownership of dental practices and agreements with dental service organizations) from dentists and provide a report regarding such information to the legislature on November 1, 2014.

The Board was authorized to create a Dental Review Panel to assist with the review of complaints related to professional competency. The DRP is comprised of 105 licensed Texas dentists who review and write expert reports reviewing and identifying the allegations in the agency's standard of care cases. The reports are used by agency staff to determine which case resolution is appropriate. DRP has hugely benefited the Legal division's ability to resolve and prosecute cases.

HB 3201 also granted the Board the authority to issue public, non-disciplinary action in the form of a Remedial Plan. The Board issued its first Remedial Plans at its February 29, 2015, Board meeting. Since that time the Board has issued 44 Remedial Plans, closing 52 TSBDE cases, proving the Remedial Plan is a very effective settlement and case resolution tool.

Along with HB 3201, the agency was authorized to grow from 36 full-time-employees to 58 currently budgeted fulltime employees. In order to accomplish such an increase in staff, substantial time has been spent hiring and training new employees and considerable investment has been made restructuring the agency's office space and infrastructure. The agency expects to maintain 58 FTEs throughout FY 2016.

2015

Senate Bill 519, 84th Regular Session, requires the Secretary of State and the Board to enter into an interagency memorandum to share information collected on the registration of Dental Support Organizations in Texas.

Senate Bill 195, 84th Regular Session, authorizes the Board to establish reasonable and necessary fees to cover the cost of an official prescription program established and maintained by the Texas Pharmacy Board.

House Bill 2849, 84th Regular Session, permits dental schools and dental hygiene schools accredited by the Commission on Dental Accreditation of the American Dental Association to offer coronal polishing education.

Senate Bill 1307, 84th Regular Session, amends the definition of "Active Duty", "Armed forces of the United States", "Military Service member", "Military spouse", and "Military veteran"; exempts an individual who holds a license issued by the Board from any increased fee or penalty imposed by the agency for failing to renew the license in a timely manner if the individual establishes that they failed to renew the license in a timely manner because the individual was serving as a military service member; allows a two-year extension to a military service members who hold a license to complete continuing education requirements and any other requirement related to the renewal of a military service member's license; authorizes the Executive Director of a state agency to waive any prerequisite to obtaining a license for military service member, military veteran or military spouse that holds a current license issued by another jurisdiction that has licensing requirements substantially equivalent to Texas requirements and or within the five years preceding the application date held the license in this state. The bill also requires a state agency to prominently post a notice on the home page of the agency's Internet website describing the provisions available to military services members, military veterans and military spouses.

Senate Bill 807, 84th Regular Session, authorizes the Board to waive the license application and examination fees paid to the state for an application who is a military service member or military veteran whose military service, training, or education substantially meets all the requirements for licensure; or a member service member, military veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements substantially equivalent for a license in Texas.

IV. Policymaking Structure

A. Complete the following chart providing information on your policymaking body members.

**Texas State Board of Dental Examiners
Exhibit 3: Policymaking Body**

Member Name	Term / Appointment Dates / Appointed by	Qualification	City
Rodolfo G. Ramos, Jr., DDS	6 years/2009-2015/ Governor	Dentist Member, Presiding Officer	Houston
Steven J. Austin, DDS	6 years/2013-2019/ Governor	Dentist Member, Board Secretary	Amarillo
Kirby Bunel, Jr., DDS	6 years/2013-2019/ Governor	Dentist Member	Texarkana
James W. Chancellor, DDS	6 years/2009-2015/ Governor	Dentist Member	Garden Ridge
Emily W. Christy	6 years/2011-2017/ Governor	Public Member	San Antonio
Renee S. Cornett, RDH	6 years/2009-2015/ Governor	Hygienist Member	Austin
D. Bradley Dean, DDS	6 years/2011-2017/ Governor	Dentist Member	Frisco
Whitney Hyde	6 years/2009-2015/ Governor	Public Member	Midland
Christie M. Leedy, DDS	6 years/2011-2017/ Governor	Dentist Member	Abilene
Timothy J. O'Hare, JD	6 years/2013-2019/ Governor	Public Member	Farmers Branch
Lois M. Palermo, RDH	6 years/2013-2019/ Governor	Hygienist Member	League City
David M. Tillman	1 year/2015/ Governor	Dentist Member	Aledo
Lewis M. White, JD	6 years/2013-2019/ Governor	Public Member	Katy
Jason A. Zimmerman, DDS	2 years/2015-2017/ Governor	Dentist Member	Keller
Vacant			

Table 3 Exhibit 3 Policymaking Body

B. Describe the primary role and responsibilities of your policymaking body.

The policymaking body (Board) ensures that an effective program for dentistry is carried out using the facilities, resources, and staff of the agency.

The primary roles and responsibilities of the policymaking body are as follows:

1. The Board employs an Executive Director and ensures that the Executive Director properly carries out the management and administrative functions of the agency;
2. The Board approves an operating budget to guide the agency's fiscal activities and approves the agency's Legislative Appropriations Request;
3. The Board imposes appropriate disciplinary or remedial action against licensees who are found to have violated the Act or the Board's rules;
4. The Board adopts rules necessary to administer and enforce the Dental Practice Act, including rules that define or describe the standard of care and standards of ethical practice; establish guidelines for complaint investigations, and prescribe procedures for the imposition of action by the Board;
5. The Board provides specialized and technical information and advice to assist agency staff in carrying out agency objectives;
6. Designated Board members serve as examiners on the Western Regional Examining Board (WREB) exams.

C. How is the chair selected?

The chair (Presiding Officer) is appointed by the Governor of Texas, with the advice and consent of the Senate.

D. List any special circumstances or unique features about your policymaking body or its responsibilities.

In addition to the Board, the Dental Practice Act also creates the Dental Hygiene Advisory Committee, comprised of three dental hygienists appointed by the governor; two public members appointed by the governor; and one dentist member appointed by the Board. Pursuant to Tex. Occ. Code Section 262.051, DHAC "shall advise the board on matters relating to dental hygiene."

Similarly, the Dental Practice Act creates the Dental Laboratory Certification Council, comprised of three members appointed by the Board. Pursuant to Section 266.101 of the Dental Practice Act, DLCC reviews each application for registration or renewal and may recommend rules related to dental laboratories to the Board.

E. In general, how often does your policymaking body meet? How many times did it meet in FY 2014? In FY 2015?

The Board meets on a quarterly basis.

FY 2014	FY 2015	FY 2016
November 8, 2013	November 21, 2014	November 20, 2015
February 28, 2014	February 27, 2015	February 26, 2016
May 9, 2014	May 29, 2015	May 27, 2016
August 8, 2014	August 14, 2015	August 12, 2016

F. What type of training do members of your agency's policymaking body receive?

The agency provides online training and in-person training to Board members.

Online training includes statutorily required training related to Open Government, Open Meetings, and Public Information Act training provided by the Office of the Attorney General and additional training course coordinated by the Health Professions Council. The HPC training is divided into two segments. The first covers the history and purpose of State Occupational Professional Licensing, the role of the Board Member, Texas legislative budget processes, statutory framework, administrative rulemaking, and the functions of licensing boards/agencies. The second component of the HPC training is a summary of law and review of statutes prepared by the Office of the Attorney General.

The agency also provides in-house training to each new board member involving a hands-on, one-on-one session with the Executive Director and each division director. Board members receive information on the history of the Dental Board, its legislative requirements, the agency strategic plan, mission and goals, and the role and scope of their duties and responsibilities to the Board, agency, and the people of Texas. The training materials are available to Board members for reference at any time on the internal Board member website maintained by the agency.

In the 84th Legislative Session, Senate Bill 357 was introduced. It specifically prescribed training to be required of the members of the Board and required the Board to adopt by rule a code of conduct. While the bill was not enacted, the agency has begun a comprehensive review of its Board member training to be sure its Board members are adequately trained as to the role they play in the governance of the State.

See attachment 16 for current Board Member training materials.

G. Does your agency have policies that describe the respective roles of the policymaking body and agency staff in running the agency? If so, describe these policies.

Yes. In addition to the attached materials related to the role and responsibilities of the Board, each division has distinct policies and duties. The agency is divided into six divisions: Executive; Dental Practice, Finance and Administration; Investigations; Legal; and Licensing.

The Executive Division provides leadership and motivation to meet the Board's mission, manages the day-to-day operation of the agency, and ensures strategic goals are met. The Executive Division embraces a planning strategy that: 1) establishes objectives based on its mission, 2) specifies sound strategies as a framework for all agency decision-making, and, 3) makes allowance and prepares for building organizational resilience.

The Dental Practice Division provides consultation and technical assistance to agency staff. The Division is key in the preliminary investigation of complaints filed with the Board to determine if an official investigation should be commenced. Specifically, the Division considers how to evaluate whether the standard of care was violated by the licensee.

The Finance and Administration Division performs administrative and support functions for the agency including managing the internal operating budget, reporting performance measures, purchasing, accounts payable, accounts receivable, travel reimbursement, payroll and personnel management, property management, and mail distribution.

The Investigations Division receives, processes, and investigates complaints filed by the public. It enforces compliance with disciplinary actions and conditions as set forth for each action by the Board.

The Legal Division prosecutes violations of the laws and rules related to the practice of dentistry. The Division also provides legal information to members of the public and provides legal services and guidance to the Board and agency staff relating to the regulation of the practice of dentistry and the administration of the agency. The Division is also responsible for researching and drafting recommendations for Board rulemaking.

The Licensing Division reviews, processes and issues licenses, registrations and certificates to applicant dentists, dental hygienists, dental assistant, dental laboratories, and mobile dental facilities. Licensing provides information to applicants and the general public and also annually renews licenses, registrations and certificates.

The table on the next page illustrates a breakdown of roles and responsibilities between the Board and agency staff.

AREA	BOARD	EXECUTIVE DIRECTOR/AGENCY EXECUTIVE STAFF
Long-term Goals (Over 1 Year)	Approves	Recommends and Provides Input
Short-term Goals (Less than 1 Year)	Monitors	Establishes and Carries Out
Day-to-Day Operations	No Role	Makes all Management Decisions
Budget	Approves, Reviews, Audits	Develops, Recommends, Implements
Capital Purchases	Oversight Only	Prepares and Approves
Decisions on Building, Renovation, Contracts, Leasing Expansion	Oversight and Approval through Budget	Proposes and Executes
Supply Purchases	No Role	Establishes Policy and Adequate Record Keeping approval levels among staff
Major Repairs	Approval through Annual Budget Process	Authorizes Repairs
Minor Repairs	No Role	Authorizes Repairs
Emergency Repairs	Works with the Executive Director	Notifies and acts with concurrence with the Presiding Officer
Cleaning and Maintenance	No Roles	Works with Texas Facilities Commission
Fees	Adopts Policy	Develops Fee Schedule
Billing, Credit and Collections	Adopts Policy	Proposes Policy and Implements
Hiring of Agency Staff	No role in overall staff hiring except for the hiring of the Executive Director. The Executive Director Selection Committee reviews applications for the Executive Director position and recommends top candidates for consideration and approval by the full Board.	Approves All Hiring
Agency Strategic Plan	Oversight and Approval, Works with Executive Staff	Proposes Plan and Implements
Business Continuity Plan (COOP)	Oversight Only	Approves and Implements

H. What information is regularly presented to your policymaking body to keep them informed of your agency's performance?

1. Quarterly Division Reports provide a progress report on division statistics, business process updates and developments, recommendations made to the policymaking body requiring their input, consideration, and/or action, and personnel updates from the previous board meeting. The Executive Director reports on general agency matters as well as the status of cases that were filed with the agency more than two years ago in accordance with Tex. Occ. Code §255.007(a).
2. Regular reporting related of the agency's Performance Measures provides the Board with the strategic planning, budgeting structure, evaluation and decision-making processes, and accountability systems including performance budgeting and performance monitoring which ensures the policymaking body is informed, stays informed and up-to-date and in-line with targeted and projected performance measures.

3. Annual reporting on “Organizational Excellence” initiatives provide to the Board an organizing framework to align and integrate efforts to maintain the public’s confidence and keep the agency moving forward with targeted and projected goals and measures. Furthermore this reporting informs the public on the agency’s progress towards reaching its goals and allows the public to better navigate the dental care system.
4. Information and updates on Agreed Settlement Orders, Remedial Plans, Modification Orders, Consent Orders, Voluntary Surrender Orders, and dismissal of cases requiring a Board vote are regularly and consistently provided to the Board for consideration and approval.
5. Information and updates on Rules are regularly and consistently provided to the Board for consideration, review and possible action including but not limited to adoption, re-adoption, or withdrawal in accordance with Texas Government Code, Section 2001.039.
6. Information, updates, and recommendations on Hearings at the State Office of Administrative Hearings (SOAH) are regularly and consistently provided to the Board.
- I. **How does your policymaking body obtain input from the public regarding issues under the jurisdiction of the agency? How is this input incorporated into the operations of your agency?**

The Board receives public input through:

1. Public testimony at Board meetings, committee meetings, and public hearings;
2. Formal scheduled appearances at Board meetings, committee meetings, and public hearings;
3. Written testimony at Board meetings, committee meetings, and public hearings;
4. Written public comments on proposed rulemaking undertaken pursuant to the Administrative Procedures Act.
5. Staff reports of stakeholder input received at staff-led stakeholder meetings, customer input received through Customer Service Survey, and informal comments received by the agency through its email, phone, fax, or mail systems.

Public input helps improve program effectiveness and efficiency and also helps to strengthen administrative and management systems and controls which in turn help the Board provide useful, objective, and timely information to agency staff and interested stakeholders.

In addition to input regarding agency operations, much of the public input received by the Board or the agency relates substantively to policy or rulemaking considerations.

An additional, and critical, component of the Board and the agency’s future success is a focus on continuous quality improvement supported by a self-assessment that will allow the Board to evaluate past performance in order to improve future performance. The foundation for this accountability is the agency’s commitment to customer service satisfaction. The agency has placed a high priority on customer satisfaction and intends to improve satisfaction by deploying

strategies that will allow the Board to continuously identify and assess customers' needs and satisfaction. The Customer Service Survey is one of the first strategies to be implemented. It was designed to gather such input and information.

J. If your policymaking body uses subcommittees or advisory committees to carry out its duties, fill in the following chart.

**Texas State Board of Dental Examiners
Exhibit 4: Subcommittees and Advisory Committees**

Name of Subcommittee or Advisory Committee	Size / Composition / How are members appointed?	Purpose / Duties	Legal Basis for Committee
Dental Hygiene Advisory Committee (DHAC)	Six members: three dental hygienists and two public members appointed by the Governor and one dentist appointed by the Board. Members of this advisory committee serve staggered 6-year terms.	To advise the Board on matters relating to dental hygiene.	The law pertaining to DHAC is found in the Texas Occupations Code (Dental Practice Act) under Chapter 262, Subchapters B and C.
Dental Laboratory Certification Council (DLCC)	Three Certified Dental Technicians appointed by the Board for two-year terms.	To advise the Board on matters relating to dental laboratories.	The law pertaining to DHAC is found in the Texas Occupations Code (Dental Practice Act) under Chapter 262, Subchapters B and C.
Enforcement Committee (standing)	Enforcement Committee members are appointed by the Presiding Officer.	To advise the Board on matters relating to the Dental Practice and Investigations Divisions.	The law pertaining to the Enforcement Committee is found in the Texas Occupations Code (Dental Practice Act) under Chapter 262, Subchapters B and C.
Licensing Committee (standing)	Licensing Committee members are appointed by the Presiding Officer.	To advise the Board on matters relating to the Licensing Committee.	The law pertaining to Licensing Committee is found in the Texas Occupations Code (Dental Practice Act) under Chapter 262, Subchapters B and C.
Quality Control Committee (standing)	Quality Control Committee members are appointed by the Presiding Officer.	To advise the Board on matters relating to defining, prioritizing, overseeing and monitoring performance improvement activities within the agency.	The law pertaining to the Quality Control Committee is found in the Texas Occupations Code (Dental Practice Act) under Chapter 262, Subchapters B and C.
Ad Hoc Advisory Committees	As needed	As needed	Texas Govt. Code Chapter 2001 and Board Rule 107.60(e)

Table 4 Exhibit 4 Subcommittees and Advisory Committees

V. Funding

A. Provide a brief description of your agency's funding.

TSBDE is required by statute to generate sufficient funds each year to cover all expenditures. Historically, TSBDE generates annual revenue far in excess of what is needed to cover all agency expenditures. TSBDE is appropriated general revenue and appropriated receipts.

B. List all riders that significantly impact your agency's budget.

In Fiscal Year 2014 and 2015, TSBDE had a contingent revenue rider, 83rd Legislature, GAA, Article VIII, page 8, Rider 2 and a contingency rider for HB 3201, 83rd Legislature, GAA, Article IX, page 79, Section 18.28.

C. Show your agency's expenditures by strategy.

Texas State Board of Dental Examiners
Exhibit 5: Expenditures by Strategy — 2014 (Actual)

Goal / Strategy	Amount Spent	Percent of Total	Contract Expenditures Included in Total Amount
Goal 1.1 /Complaint Resolution	2,503,937.69	64.7	217,998.75
Goal 1.2/Peer Assistance Program	124,250.00	3.2	97,500.00
Goal 2.1/Licensure & Registration	777,362.93	20.1	286,590.28
Goal 2.2/Texas.gov	295,030.50	7.6	295,030.50
Subtotal:	3,700,581.12	95.6	897,119.53
Goal 3.1/Indirect Admin - Licensure	86,280.00	2.2	
Goal 3.2/Indirect Admin – Complaint Resolution	86,299.50	2.2	
GRAND TOTAL:	3,873,160.62	100.0	897,119.53

Table 5 Exhibit 5 Expenditures by Strategy

D. Show your agency's sources of revenue. Include all local, state, and federal appropriations, all professional and operating fees, and all other sources of revenue collected by the agency, including taxes and fines.

Texas State Board of Dental Examiners
Exhibit 6: Sources of Revenue — Fiscal Year 2014 (Actual)

Source	Amount
General Revenue Fund	3,977,964
Appropriated Receipts	296,158
TOTAL	4,274,122

Table 6 Exhibit 6 Sources of Revenue

E. If you receive funds from multiple federal programs, show the types of federal funding sources.

**Texas State Board of Dental Examiners
Exhibit 7: Federal Funds — Fiscal Year 2014 (Actual)**

Type of Fund	State / Federal Match Ratio	State Share	Federal Share	Total Funding
None	0	0	0	0
TOTAL		0	0	0

Table 7 Exhibit 7 Federal Funds

F. If applicable, provide detailed information on fees collected by your agency.

**Texas State Board of Dental Examiners
Exhibit 8: Fee Revenue — Fiscal Year 2014**

Fee Description/ Program/ Statutory Citation	Current Fee/ Statutory Maximum	Number of Persons or Entities Paying Fee	Fee Revenue	Where Fee Revenue is Deposited
Dentist – Application by Credentials – Occupations Code Sec. 254.004	\$2,800	142	\$397,600	Unappropriated General Revenue
Dentist – Initial Application by Exam – Occupations Code Sec. 254.004	\$220	893	\$196,460	Unappropriated General Revenue
Dentist – Renewals – Occupations Code Sec. 254.004	\$151 – 1 year	15,899	\$2,400,749	Unappropriated General Revenue
Dentist – HB3201 Surcharge - Occupations Code Sec. 254.004	\$55	15,656	\$861,045	General Revenue
Dentist Faculty – Initial Application – Occupations Code Sec. 254.004	\$120.00	23	\$2,760	Unappropriated General Revenue
Dentist Faculty – Renewals – Occupations Code Sec. 254.004	\$96.00 – 1 year	124	\$11,904	Unappropriated General Revenue
Dentist Professional Fee - Occupations Code Sec. 254.004	\$200.00	15,972	\$3,194,419	Unappropriated General Revenue
Dentist Intern – Resident Tracking Number	\$50.00	79	\$3,950	Unappropriated General Revenue
Dental Hygienist – Application by Credentials – Occupations Code Sec. 254.004	\$630	107	\$67,410	Unappropriated General Revenue
Dental Hygienist – Initial Application – Occupations Code Sec. 254.004	\$120	699	\$83,880	Unappropriated General Revenue
Dental Hygienist – Renewals – Occupations Code Sec. 254.004	\$101.00 – 1 year	12,326	\$1,244,926	Unappropriated General Revenue

Self-Evaluation Report

Fee Description/ Program/ Statutory Citation	Current Fee/ Statutory Maximum	Number of Persons or Entities Paying Fee	Fee Revenue	Where Fee Revenue is Deposited
Dental Hygienist Faculty – Initial Applications – Occupations Code Sec. 254.004	\$120.00	0	\$0	Unappropriated General Revenue
Dental Hygienist Faculty – Renewals – Occupations Code Sec. 254.004	\$84.00 – 1 year	9	\$756	Unappropriated General Revenue
Dental Assistant – Initial Registrations – Occupations Code Sec. 254.004	\$36	8,037	\$289,332	Unappropriated General Revenue
Dental Assistant – Renewals Registrations – Occupations Code Sec. 254.004	\$30 - 1 year	33,950	\$1,018,500	Unappropriated General Revenue
Dental Assistant – Other Certificates and Renewals – Occupations Code Sec. 254.004	Various – 1 year	5,068	\$83,376	Unappropriated General Revenue
Dental Labs – Initial Registrations – Occupations Code Sec. 254.004	\$125	63	\$7,875	Unappropriated General Revenue
Dental Labs – Renewals – Occupations Code Sec. 254.004	\$132 – 1 Year	855	\$112,860	Unappropriated General Revenue
Mobile Dental Facility – Application – Occupations Code Sec. 254.004	\$120	15	\$1,800	Unappropriated General Revenue
Mobile Dental Facility – Renewals – Occupations Code Sec. 254.004	\$60 – 1 year	60	\$3,600	Unappropriated General Revenue
Nitrous Oxide Anesthesia Applications - Occupations Code Sec. 254.004	Varies	1,318	\$56,960	Unappropriated General Revenue
Nitrous Oxide Anesthesia Renewals - Occupations Code Sec. 254.004	\$10 – 1 year	11,360	\$113,600	Unappropriated General Revenue
Late Fees/Penalties - Occupations Code Sec. 254.004	Various	13,903	\$336,767	Unappropriated General Revenue
Fines - Occupations Code Sec. 254.004	Various	117	\$246,330	Unappropriated General Revenue
Peer Assistance Fee for Dentist – Occupations Code Sec. 254.004	\$9 – 1 year	16,179	\$145,612	General Revenue/Unappropriated GR
Peer Assistance Fee for Dental Hygienist – Occupations Code Sec. 254.004	\$2 – 1 year	12,520	\$25,041	General Revenue
Texas Online subscription Fee for Dentist – Occupations Code Sec. 254.004	\$10 – 1 year	16,091	\$160,910	General Revenue

Fee Description/ Program/ Statutory Citation	Current Fee/ Statutory Maximum	Number of Persons or Entities Paying Fee	Fee Revenue	Where Fee Revenue is Deposited
Texas Online subscription Fee for Dental Hygienist – Occupations Code Sec. 254.004	\$6 – 1 year	12,409	\$74,454	General Revenue
Texas Online subscription Fee for Dental Assistants – Occupations Code Sec. 254.004	\$2 – 1 year	28,473	\$56,946	General Revenue
Texas Online subscription Fee for Dental Labs – Occupations Code Sec. 254.004	\$3 – 1 year	849	\$2,547	General Revenue
Duplicate Certificates/Licenses - Occupations Code Sec. 254.004	\$10	106	\$1,060	Unappropriated General Revenue
Duplicate Certificates/Licenses - Occupations Code Sec. 254.004	\$15	30	\$450	Unappropriated General Revenue
Duplicate Certificates/Licenses - Occupations Code Sec. 254.004	\$25	2,068	\$51,700	Unappropriated General Revenue
Juris Exam Admin Fee - Occupations Code Sec. 254.004	\$20 – 3 years	8,429	\$168,580	Unappropriated General Revenue
Seminars, Workshops (Estrategy)– GAA, 81 st Leg RS, Art IX, Sec. 8.09	\$34 – 3 years	8,429	\$286,590	Appropriated Receipts
Sale of Copies & other Printed Records – GAA, 81 st Leg RS, Art IX, Sec. 12.02	Various	Unknown	\$8,293	Appropriated Receipts
Sale of Publications – Printed Laws & Rules, Signs – GAA, 81 st Leg RS, Art IX, Sec. 12.02	Various	Unknown	\$1,275	Appropriated Receipts
Administrative Fee for Criminal Evaluations / Reactivate a retired license - Occupations Code Sec. 254.004	Varies	126	\$5,050	Unappropriated General Revenue

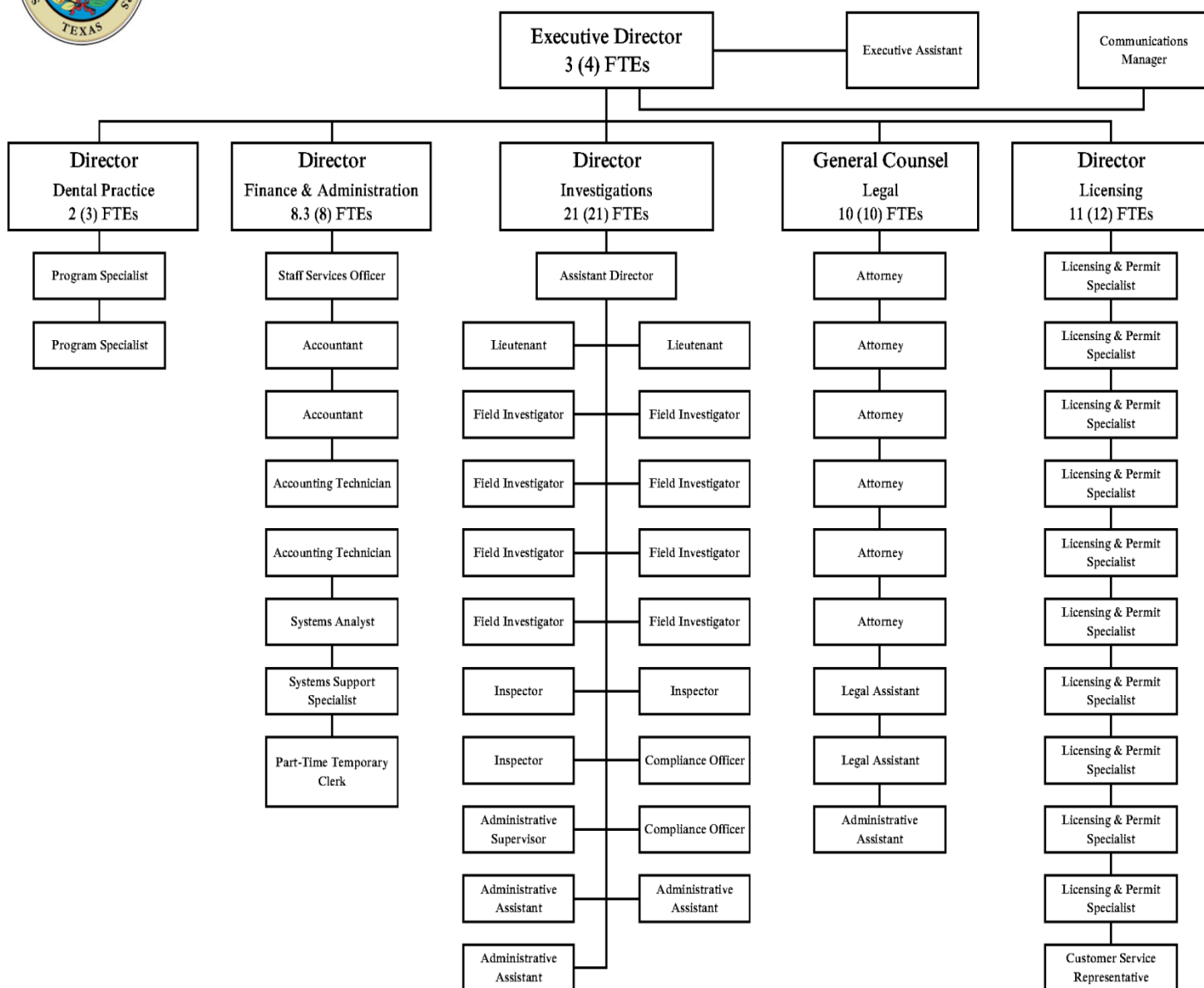
Table 8 Exhibit 8 Fee Revenue

VI. Organization

- A. Provide an organizational chart that includes major programs and divisions, and shows the number of FTEs in each program or division. Detail should include, if possible, Department Heads with subordinates, and actual FTEs with budgeted FTEs in parenthesis.



Texas State Board of Dental Examiners Organizational Chart Fiscal Year 2016



B. If applicable, fill in the chart below listing field or regional offices

Texas State Board of Dental Examiners
Exhibit 9: FTEs by Location — Fiscal Year 2014

Headquarters, Region, or Field Office	Location	Co-Location? Yes / No	Number of Budgeted FTEs FY 2014	Number of Actual FTEs as of August 31, 2014
Headquarters/Central	Austin	No	38	30
Region 1: Dallas/Fort Worth	Denton	No	1	1
Region 1: Dallas/Fort Worth	McKinney	No	1	1
Region 1: Dallas/Fort Worth	N. Richland Hills	No	1	1
Region 1: North Central Texas	Athens	No	1	1
Region 2: Houston	La Marque	No	1	1
Region 2: Houston	Houston	No	1	1
Region 2: Houston	Santa Fe	No	1	1
Region 2: Huntsville	Huntsville	No	1	1
Region 3: Central Texas	Austin	No	3	3
Region 3: Central Texas	Buda	No	1	1
Region 4: South Central Texas	La Grange	No	1	1
Region 4: South Central Texas	San Antonio	No	2	2
Region 4: South Central Texas	Schulenburg	No	1	1
			TOTAL: 54	TOTAL: 46

Table 9 Exhibit 9 FTEs by Location

C. What are your agency's FTE caps for fiscal years 2014–2017?

FY2014: 56.8 FTEs

FY2015: 58.0 FTEs

FY2016: 58.0 FTEs

FY2017: 58.0 FTEs

D. How many temporary or contract employees did your agency have as of August 31, 2014?

One (1), part-time temporary employee as of August 31, 2014

- E. List each of your agency's key programs or functions, along with expenditures and FTEs by program.

Texas State Board of Dental Examiners
Exhibit 10: List of Program FTEs and Expenditures — Fiscal Year 2014

Program	Number of Budgeted FTEs FY 2014	Actual FTEs as of August 31, 2014	Actual Expenditures
Complaint Resolution	36.5	32.25	\$2,503,937.69
Peer Assistance Program	0.5	0.50	\$124,250.00
Licensure & Registration	12.0	8.83	\$777,362.93
Texas.gov	0.0	0	\$295,030.50
Indirect Administration	5.0	4.33	\$172,579.50
TOTAL	54.0	45.91	\$3,873,160.62

Table 10 Exhibit 10 List of Program FTEs and Expenditures

VII. Guide to Agency Programs

This section addresses the history, function, and success of the following agency programs divided by strategy:

1. Indirect Administration
2. Licensing Division
3. Enforcement Group
 - a. Investigations/Compliance Division
 - b. Dental Division
 - c. Legal Division
 - i. Case Resolution
 - ii. Rulemaking
 - iii. Other services
 - d. Executive Division

1. Indirect Administration

A. Provide the following information at the beginning of each program description.

Name of Program or Function: Indirect Administration

Location/Division: Headquarters / Finance and Administration

Contact Name: Irma Rodriguez

Actual Expenditures, FY 2014: \$172,579.50

Number of Actual FTEs as of June 1, 2015: 8.0 FTEs

Statutory Citation for Program:

B. What is the objective of this program or function? Describe the major activities performed under this program.

Key functions of Indirect Administration include budgeting, accounting, purchasing, personnel, property management, information technology, and mail distribution.

Key objectives of this program include the following:

- To prepare, submit, and monitor the agency's Legislative Appropriation Request and Biennial Operating Budget; prepare and monitor annual internal operating budgets.
- To comply with all Comptroller Accounting Policies, Notices to State Agencies relating to fiscal matters by specified due dates.
- To prepare and submit all required accounting and fiscal reports and reconciliations to the appropriate oversight agencies.
- To assess the needs of the agency and supervise the purchasing and supply activities in accordance with all Comptroller Texas Procurement and Support Services Division (TPASS) rules and procedures.
- To serve as the agency's Human Resource, Payroll, Employee Benefits, Risk & Safety Office in ensuring agency compliance with all applicable state and federal personnel statutes.
- To manage the information resource needs of the agency.
- To prepare quarterly and annual performance measures reports.
- To review legislation that has an impact on the practice of dentistry and agency operations; to prepare all fiscal notes for the agency.
- To manage and coordinate space needs for the agency.
- To assist the Executive Director in preparing and submitting the TSBDE Strategic Plan.
- To provide verbal and written information to the Board staff.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and outcome performance measures that best convey the effectiveness and efficiency of this function or program.

Indirect Administration handles daily operations of the agency, budgeting, accounting, cash receipts, payroll, human resources, purchasing, property management, and information

technologies. The administrative functions are an essential part of TSBDE and as such, it will always be needed.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

The administration functions are an essential part of the agency's operations and continue to be necessary.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

This function serves all of the agency employees and Board members. Functions include daily operations of the agency, budgeting, accounting, cash receipts, payroll, human resources, purchasing, property management, and information technologies. The administrative functions are an essential part of TSBDE and as such, it will always be needed.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. Indicate how field/regional services are used, if applicable.

The Finance and Administration section is administered by the Director of Finance and Administration who reports directly to the Executive Director. The Division Director is supervisor of six FTE's in this section: Senior Accountant, Accountant I, Accounting Technician II, Accounting Technician II, Staff Services Officer, and Information Technology Manager.

The general duties and function of these staff are described as follows:

Budget – The Division Director performs these activities:

- Prepares budget reports submitted by the agency.
- Prepares the Annual Financial Report submitted by the agency.

Accounting and Fiscal Activities – The four accounting staff perform these general activities:

- Prepares financial transactions involving agency vouchers, payrolls, and revenues submitted by the agency.
- Records, classifies, examines, and analyzes financial records, cash documents, or reports.
- Maintains inventory of office equipment and accounting records.
- Responsible for maintaining an effective accounting control system.
- Responsible for opening and processing incoming mail.
- Maintains payroll records

Purchasing Activities – The Staff Services Officer performs these general activities:

Purchases commodities, services, equipment, etc, that require knowledge of the TPASS purchasing policies and procedures; prepares Historically Underutilized Businesses (HUB) reports.

Human Resources and Safety – The Staff Services Officer and the Senior Accountant perform these general activities:

- Conducts several functions such as new hire processing, terminations, benefits safety, risk management, worker's compensation, and record keeping.
- Maintains liaison with federal and state agencies with regard to human resources and payroll requirements.
- Provides advice and information to agency personnel.

Information Resource Technologies – The Information Technology Manager and the Systems Support Specialist perform these general activities:

- Coordinate the development, implementation and maintenance of a local area network (LAN).
- Responsible for network installation, testing, maintenance, enhancement, and documentation.
- Performs research and recommendations of software and hardware requirements for the agency.
- Prepares all reports required by the Department of Information Resources, including the Biennial Operating Plan and Strategic Plan for Information Resources.
- Maintains system security by developing policies and procedures designed to ensure the integrity of the agency LAN/WAN environment and determine standards on network security.
- Provide agency training on software/hardware as needed.

Specific policies and procedures are dictated through a number of sources, primarily the State Comptroller of Public Accounts, Office of State Auditor, Legislative Budget Board, Governor's Budget Office, the General Appropriations Act, Texas Government Code, and other state and federal oversight agencies.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

Indirect Administration is funded by general revenue. The agency is entirely self-supporting by generating sufficient revenues from licensure fees to support the agency's operations. The agency receives two types of appropriations, general revenue and appropriated receipts.

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions to the target population. Describe the similarities and differences.

In the area of administration, there are programs across other state agencies that perform identical functions; however, a thorough analysis of these functions must be conducted before an assumption can be made that similar services can be provided to agency employees and customers, or that any cost efficiencies can be achieved through outsourcing or combining these functions.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

TSBDE has an interagency agreement with the Health Professions Council (HPC) to provide a prorated funding amount to assist the Council in carrying out its legislative mandate. The Council's administrative sharing efforts include the following:

- Maintains the function and security of the VERSA licensing database.
- Provides web-based programming and design in the development and support of TSBDE's website.
- Facilitates information sharing regarding information technology problems among member agencies.
- Toll Free Complaint Line – HPC's toll-free complaint hotline which provides referral services for persons seeking information about a health profession regulated by the state.
- Provides Risk Management; Agencies continue to use HPC's joint Risk Management Manual and Disaster Recovery Plan.
- Assists with TSBDE's job posting advertising.

J. If the program or function works with local, regional, or federal units of government, include a brief description of these entities and their relationship to the agency.

None.

K. No contracted expenditures are made through this program.

L. No grants are awarded by this program.

M. What statutory changes could be made to assist this program in performing its functions? Explain.

None.

None.

2. Licensing Division

A. Name of Program or Function: Licensing Division

Location/Division: Licensing Division

Contact Name: Vicki Shoesmith, Director of Licensing

Actual Expenditures, FY 2014: \$777,362.93

Number of Actual FTEs as of June 1, 2015: 12.0 FTEs allocated

Statutory Citation for Program: Tex. Occ. Code Chapter 256, Chapter 265, and Chapter 258, Subchapter D.

B. What is the objective of this program or function? Describe the major activities performed under this program.

The objective of the licensing program is to license qualified and competent persons to practice dentistry and dental hygiene in Texas. The program issues permits to qualified licensed dentists to administer different levels of sedation/anesthesia. The program also registers dental assistants to take radiographs and certifies dental assistants to: (1) monitor the administration of nitrous oxide; (2) place pit and fissure sealants; and (3) perform coronal polishing. Additionally, the program registers dental laboratories. The program also processes renewals and reinstatements of the above licenses and registrations.

Program activities include:

- Communication with applicants and prospective applicants.
- Data entry of application information.
- Review and analysis of applications received online and by mail.
- Recommendation of eligibility of applicants to the Board, Executive Director and General Counsel.
- Reports and recommendations to the Executive Director and Board regarding rules that affect the Licensing Division.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and outcome performance measures that best convey the effectiveness and efficiency of this function or program.

The chart on the following page illustrates the types and quantities of licenses issued in FY 2014. The second set of charts illustrates the speed at which the division processed the applications and the number of licensees who availed themselves of online application options in FY 2014.

License Type	Total Licenses Issued	Total Licenses Renewed
Dentists	965	15,180
Exam	774	
Credentials	120	
Foreign Grad	38	
Temporary	0	
Faculty	20	
Reinstated	13	
Dental Hygienists	776	3,167
Exam	669	
Credentials	98	
Temporary	1	
Reinstated	8	
Dental Assistants	6,294	6,697
RDA Registration	3,786	
Pit and Fissure Sealants	478	
Nitrous Oxide Monitoring	1,346	
Coronal Polishing	684	
Dental Laboratories	875	
Sedation/Anesthesia Permit		
Nitrous Oxide Conscious Sedation	727	
Level 1 – Minimal Sedation	571	
Level 2 – Moderate Enteral Sedation	754	
Level 3 – Moderate Parenteral Sedation	128	
Level 4 – Deep Sedation or General Anesthesia	39	
Portability Permit (Level 3 or 4)	20	

New Licenses Issued within 10 days

	Total Licenses Issued	Total Issued within 10 days	% Issued within 10 days
Dentists	965	329	34.09%
Hygienists	776	569	73.32%

Licenses Renewed within 7 days

	Total Licenses Renewed	Total Renewed within 10 days	% Issued Renewed 10 days
Dentists	15,213	14,344	94.29%
Hygienists	11,672	10,983	94.1%

Percent of Licensees Who Renew Online

	Total Licenses Renewed	Total Renewed Online	% Renewed Online
Dentists	15,213	12,945	85.1%
Hygienists	11,672	10,012	85.78%
Registered Dental Assistants	29,165	23,483	80.58%

Percent of New Individual Licenses Issued Online (Outcome 1-2-4)

	Total Licenses Renewed	Total Renewed Online	% Renewed Online
Dentists	965	284	29.43%
Hygienists	776	150	19.33%

- D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.**

General History

In 2011, the agency began participating in a shared regulatory database system along with six other agency members of the Health Professions. The new system, Versa Regulation, was implemented to transition database systems from legacy end-of-life hardware in the ADROC facility to DIR's Austin Data Center.

Versa Regulation, developed and marketed by Iron Data (formerly Versa Systems), includes application processing, licensing, cash, and reporting features. The system is

secure, encrypted, and web-based. It enables the licensing division to utilize modern database technology to efficiently and effectively manage licensee data.

In addition to the internal changes required by a database transition, Versa Online also introduced a public-facing website that permits applicants for dental licensure by examination to submit applications online.

Registered Dental Assistants (Radiology Certification)

In 2003, Senate Bill 263 (78th Legislative Session) required dental assistants making x-rays to hold a certificate of registration issued by the Board. The bill required assistants to pass an examination administered by the board covering procedures for making dental x-rays; jurisprudence, and infection control or be certified as a dental assistant by the Dental Assistant National Board. This first certificate was called the “SBDE Radiology Certificate”.

In 2005, Senate Bill 610 (79th Legislative Session) required dental assistants to complete a course and pass an examination covering radiology, infection control and jurisprudence either through self-study, interactive computer course, or lecture course. A Dental Assistant Advisory Committee was created. The Committee established course and examination requirements for the new “Registered Dental Assistant (RDA) Certificate.” New rules were adopted by the Board. Dental assistants who previously held the SBDE Radiology Certificate were grandfathered for a period of two years to become compliant with the new Registered Dental Assistant (RDA) Certificate. To qualify for the new RDA Certificate a dental assistant who held the SBDE Radiology Certificate was required to pass an examination on Infection Control and Texas Jurisprudence administered through a Prometric Testing Center. Upon successful completion of both exams the “grandfathered” dental assistant would apply to the Board providing a copy of their SBDE Radiology Certificate and Prometric Exam results. Dental Assistants who never held a Radiology Certificate were required to comply with the newly adopted rules to qualify for an RDA Certificate.

In 2006, the Director of Licensing began reviewing applications and course materials submitted by qualified schools and programs accredited by the Commission on Dental Accreditation of the American Dental Association or dental industry professional organizations interested in offering an RDA Course. Dental Assistants were then, and are now, required to show proof of completion of a Dental Board-approved RDA Course or hold a DANB Certified Dental Assistant (CDA) Certification.

Anesthesia/Sedation Permits:

Anesthesia permitting changed significantly in 2011 when the Board adopted rules modelled after the American Dental Association’s Guidelines for Administration of Sedation.

The Board's rules now define sedation and its associated permitting by the level of consciousness of the patient, rather than the method of administration of the anesthesia.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

Entities served by this program include:

- Applicants for licensure or registration
- Dentists
- Dental Hygienists
- Registered Dental Assistants/Certificate-holders
- Dental Laboratories
- Dental patients

Eligibility requirements are described in (F) below.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

Entities served by this program include:

- Applicants for licensure or registration
- Dentists
- Dental Hygienists
- Registered Dental Assistants/Certificate-holders
- Dental Laboratories
- Dental patients

Eligibility requirements are described in (F) below.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. Indicate how field/regional services are used, if applicable.

This program is administered by the Licensing Division of the agency. The Director of Licensing reports to the Executive Director. Staff includes ten Licensing and Permit Specialists and one Customer Service Representative. Two FTEs are dedicated to processing applications for dental licensure; one FTE is dedicated to processing applications for dental hygiene licensure; and three FTEs are dedicated to processing the registration of dental assistants. Applications are received by the Accounting Division and forwarded to the Licensing Division for data entry. Each Licensing and Permit Specialist screens the application to determine if the required documents have been received. Staff advises the applicant of any items lacking to make a determination for eligibility. Questions related to an applicant's eligibility are presented to the

Legal Division who may make a determination or refer the applicant to the Board for determination.

An applicant for dental licensure has a variety of methods by which he or she may obtain a license to practice dentistry. The following chart describes the different qualifications required for the various types of dental licenses.

Applicants for dental licensure must be 21 years of age and possess good moral character and professional fitness.

License Type	Main Requirements (excluding jurisprudence assessment, payment of fees, completion of application, CE requirement, and CPR certification requirement)	Fees
Dentist		
Dental licensure by credentials	<ul style="list-style-type: none"> graduation from CODA-accredited dental school. completion of National Boards Parts 1 and 2. completion of state or regional general dentistry clinical exam. proof of dental practice for 3 of the 5 years immediately preceding application; or proof as a dental educator for the 5 years immediately preceding application to Texas. currently licensed as a dentist in good standing in another state, District of Columbia, or a territory of the United States. 	<ul style="list-style-type: none"> \$2855 Application Fee, plus PBIS fee which ranges from \$350 to \$500. \$425 Renewal Fee for non-anesthesia permit holders. \$435 Renewal Fee for anesthesia permit holders.
Dental temporary licensure by credentials	<ul style="list-style-type: none"> graduation from a CODA-accredited dental school. completion of National Boards Parts 1 and 2. completion of a general dentistry clinical examination administered by the WREB, CRDTS, SRTA or CITA or CDCA. currently employed by a nonprofit corporation that accepts Medicaid reimbursement. endorsement by the state board of dentistry in the jurisdiction in which the applicant practices at the time of application. completion of 12 hours of CE taken within the preceding 12 months. 	<ul style="list-style-type: none"> \$700 Application Fee \$425 Renewal Fee for non-anesthesia permit holders. \$435 Renewal Fee for anesthesia permit holders.
Dental licensure for foreign graduates	<ul style="list-style-type: none"> graduation from CODA-accredited dental school; or graduation of a non-accredited dental school and completion of a two-year CODA-accredited specialty training program. completion of a general dentistry clinical examination administered by the WREB, CRDTS, SRTA or CITA or CDCA dated within the five (5) years from the date of examination. completion of National Boards Parts 1 and 2. endorsement by the state board of dentistry in the jurisdiction in which the applicant practices at the time of application. 	<ul style="list-style-type: none"> \$475, plus WREB, CRDTS, CITA, SRTA, CDCA fee which ranges from \$1675 to \$2360. \$425 Renewal Fee for non-anesthesia permit holders. \$435 Renewal Fee for anesthesia permit holders.
Dental licensing for military services members and	<ul style="list-style-type: none"> holds an unrestricted dental license issued by another jurisdiction. graduation from CODA-accredited dental school. 	<ul style="list-style-type: none"> \$475 Application Fee. \$425 Renewal Fee

military veterans	<ul style="list-style-type: none"> • completion of a general dentistry clinical examination administered by the WREB, CRDTS, SRTA or CITA or CDCA. • completion of National Boards Parts 1 and 2. • endorsement by the state board of dentistry in the jurisdiction in which the applicant practices at the time of application. 	<p>for non-anesthesia permit holders.</p> <ul style="list-style-type: none"> • \$435 Renewal Fee for anesthesia permit holders. • Exemption from penalties if licensee establishes failure to renew due to being on active duty serving outside the State of Texas.
Dental licensing for military spouses	<ul style="list-style-type: none"> • must be married to a military service member on active duty. • holds a current license issued by another jurisdiction with licensing requirements substantially equivalent to Texas licensing requirements or a term of 12 months from the date the license is issued, whichever term is longer; or • held a Texas dental license within the 5 years preceding application while the applicant lived outside Texas for at least 6 months. Demonstrate by alternative methods in order to meet the requirements to obtain a dental license. (Standard method of demonstrating competency is the specific examination, education, and/or experience required to obtain a dental license) - in lieu of standard methods of demonstrating competency and based on the applicant's circumstances, alternative methods may include any combination of the following: education, continuing education; exams (written and/or practical); letters of good standing; work experience; or other methods required by the SBDE Executive Director; or • graduation from CODA-accredited dental school. • completion of a general dentistry clinical examination administered by the WREB, CRDTS, SRTA or CITA or CDCA. • completion of National Boards Parts 1 and 2. • endorsement by the state board of dentistry in the jurisdiction in which the applicant practices at the time of application. • copy of military change of station orders. 	<ul style="list-style-type: none"> • \$475 Application Fee. • \$425 Renewal Fee for non-anesthesia permit holders. • \$435 Renewal Fee for anesthesia permit holders.
Dental volunteer charity care	<ul style="list-style-type: none"> • holds a retired status Texas dental license. • may not, without prior approval from the Board, provide services if he or she was subject of disciplinary action in the 3 years preceding the license's entry into retired status. • may not receive remuneration for dental services. 	<ul style="list-style-type: none"> • No Application Fee. • No Renewal Fee. • Dentist must reapply annually to hold this license.
Temporary licensure for charitable purpose	<ul style="list-style-type: none"> • not be the subject of final disciplinary action. • not be the subject of a pending disciplinary action in any jurisdiction in which the dentist is or has been licensed. • endorsement by the state board of dentistry in the jurisdiction in which the applicant practices at the time of application. • graduation from CODA-accredited dental school. • completion of National Boards Parts 1 and 2. • Either one of the following: <ul style="list-style-type: none"> - currently licensed in another state, District of Columbia or a 	<ul style="list-style-type: none"> • No Application Fee. • No Renewal Fee. • Practice is limited to the inclusive dates of practice provided by the applicant.

	<p>territory of the U.S. provided that such licensure followed successful completion of a general dentistry clinical examination administered by another state or regional examining board; or</p> <ul style="list-style-type: none"> - was previously licensed in another state, District of Columbia, or territory of the U.S. provided that such licensure followed successful completion of a general dentistry clinical exam administered by another state or regional board, not more than two years before the dentist applies for a license was licensed in good standing at the time the dentist ceased practicing dentistry. • must disclose the following: <ul style="list-style-type: none"> - description of charity care to be given. - name, location and contact information of the sponsoring charitable event. - specific location and date of the charity care to be provided. - procedure for continued dental care for patients. - procedure for maintenance of patient records. - any other relevant information regarding charity care to be given as requested by the Board. 	
Dental Faculty Licensure	<ul style="list-style-type: none"> • graduation from dental school. • holds a full-time or part-time salaried faculty position at a CODA-accredited dental school. • endorsement from the Dean, Department Chair or Program Director of the employer-school. 	<ul style="list-style-type: none"> • \$120 Application Fee. • \$115 Renewal Fee. • License expires upon termination of employment. • Not authorized to practice outside the auspices of the employment dental school or program.
Dental provisional licensure	<ul style="list-style-type: none"> • submit an application for licensure by examination or licensure by credentials and • must be sponsored by a person who holds an appropriate license under this subtitle and with whom the provisional licensure holder will practice during the time the person holds a provisional license. (The Board may waive the sponsorship requirements if the Board determines that compliance with that requirement would be a hardship to the applicant. The applicant has the burden of demonstrating hardship). • holds a license in good standing for at least 2 years in another jurisdiction that has licensing requirements substantially equivalent to Texas. • graduation from a CODA-accredited dental school. • completion of National Boards Parts 1 and 2. • completion of a general dentistry clinical examination administered by the WREB, CRDTS, SRTA or CITA or CDCA dated within the five (5) years from the date of examination. 	<ul style="list-style-type: none"> • \$475 Application Fee (by exam) • \$2855 Application Fee (by credentials) • License is valid until the date the board approves or denies the pro-visional license holder's application for licensure.

Applicants for dental hygiene licensure must be 18 years of age and possess good moral character and professional fitness.

License Type	Main Requirements (excluding jurisprudence assessment, payment of fees, completion of application, CE requirement, and CPR certification requirement)	Fees
Dental Hygiene		
Dental hygiene licensure by credentials	<ul style="list-style-type: none"> • graduation from CODA-accredited dental hygiene school. • completion of National Boards. • completion of state or regional dental hygiene clinical exam. • proof of dental hygiene practice for 3 out of the 5 years immediately preceding application; or • proof as a dental hygiene educator for the 5 years immediately preceding application to Texas. • currently licensed in good standing in another state, District of Columbia, or a territory of the United States. 	<ul style="list-style-type: none"> • \$641 Application Fee, plus PBIS fee which ranges from \$350 to \$400. • \$106 Renewal Fee.
Dental hygiene temporary licensure by credentials	<ul style="list-style-type: none"> • graduation from Council on Dental Accreditation (CODA)-accredited dental school. • completion of National Boards. • completion of the SBDE Jurisprudence Assessment within one year immediately prior to application. • completion of a dental hygiene clinical examination administered by the WREB, CRDTS, CITA, SRTA or CDCA within the five (5) years from the date of examination. • endorsement by the state board of dentistry in the jurisdiction in which the applicant practices at the time of application. • currently employed by a nonprofit corporation that accepts Medicaid reimbursement. 	<ul style="list-style-type: none"> • \$231 Application Fee • \$106 Renewal Fee.
Dental hygiene faculty licensure	<ul style="list-style-type: none"> • graduation from dental school. • hold a full-time or part-time salaried faculty position at a CODA-accredited dental school. • endorsement from the Dean, Department Chair or Program Director of the employer-school. • 	<ul style="list-style-type: none"> • \$126 Application Fee. • \$89 Renewal Fee. • License expires upon termination of employment. • Not authorized to practice outside the auspices of the employment dental school or program.
Dental hygiene licensing for military services members and military veterans	<ul style="list-style-type: none"> • holds an unrestricted dental license issued by another jurisdiction or has not held a license previously. • graduation from CODA-accredited dental school. • completion of a general dentistry clinical examination administered by the WREB, CRDTS, SRTA or CITA or CDCA. • completion of National Boards Parts 1 and 2. • endorsement by the state board of dentistry in the jurisdiction in which the applicant practices at the time of application. • copy of Military Orders or Military I.D. Card 	<ul style="list-style-type: none"> • No Application Fee. • \$106 Renewal Fee. • Exemption from penalties if licensee establishes failure to renew due to being on active duty serving out-side the

		State of Texas.
Dental hygiene licensing for military spouses	<ul style="list-style-type: none"> • must be married to a military service member on active duty. • holds a current license issued by another jurisdiction with licensing requirements substantially equivalent to Texas licensing requirements or a term of 12 months from the date the license is issued, whichever term is longer; or • held a Texas dental license within the 5 years preceding application while the applicant lived outside Texas for at least 6 months. Demonstrate by alternative methods in order to meet the requirements to obtain a dental license. (Standard method of demonstrating competency is the specific examination, education, and/or experience required to obtain a dental license) <ul style="list-style-type: none"> - in lieu of standard methods of demonstrating competency and based on the applicant's circumstances, alternative methods may include any combination of the following: education, continuing education; exams (written and/or practical); letters of good standing; work experience; or other methods required by the SBDE Executive Director; or • graduation from CODA-accredited dental school. • completion of a general dentistry clinical examination administered by the WREB, CRDTS, SRTA or CITA or CDCA. • completion of National Boards Parts 1 and 2. • endorsement by the state board of dentistry in the jurisdiction in which the applicant practices at the time of application. • copy of Military Orders or Military I.D. Card. 	<ul style="list-style-type: none"> • No Application Fee. • \$106 Renewal Fee.
Certification to monitor the administration of nitrous oxide	<ul style="list-style-type: none"> • completion of 8 hours of didactic education and testing taken through a CODA-accredited dental, dental hygiene or dental assisting program. • current BLS CPR certification. 	<ul style="list-style-type: none"> • \$12 Application Fee
Certification to apply pit and fissure sealants	<ul style="list-style-type: none"> • certificate of completion from a CODA-accredited dental or dental hygiene program prior to December 1980 or • letter from Dean or Program Director verifying sealant training was part of the curriculum and taught to clinical competency or • copy of transcript or a course description. 	<ul style="list-style-type: none"> • \$15 Application Fee • \$15 Renewal Fee. • Application and Renewal are required of hygienists who completed training before 1980.

License Type	Main Requirements (excluding jurisprudence assessment, payment of fees, completion of application, CE requirement, and CPR certification requirement)	Fees
Dental Assistants		
Certification to monitor the administration of nitrous oxide	<ul style="list-style-type: none"> • completion of 8 hours of didactic education and testing taken through a CODA-accredited dental, dental hygiene or dental assisting program. • current Basic Life Support (BLS) Cardiopulmonary Resuscitation (CPR) certification. • completion of SBDE Jurisprudence Assessment by dental assistants who have received training in a non-Texas dental assisting program. 	<ul style="list-style-type: none"> • \$12 Application Fee
Certification to apply pit and fissure sealants	<ul style="list-style-type: none"> • applications received before September 1, 2009: <ul style="list-style-type: none"> - work under the direct supervision of the licensed dentist enrolled as a Medicaid provider. - completion of 16 hours of clinical/didactic training from a CODA-accredited dental hygiene or dental assisting program. - at least two years of work experience as a dental assistant. - current BLS CPR certification. - maintain certification by taking 6 hours of technical and scientific Continuing Education (CE) annually. • applications received on or after September 1, 2009: <ul style="list-style-type: none"> - completion of 8 hours of clinical/didactic training from a CODA-accredited dental hygiene or dental assisting program. - at least two years of work experience as a dental assistant. - current BLS CPR certification. - maintain certification by taking 6 or 12 hours of CE annually based on the number of optional SBDE certifications held. 	<ul style="list-style-type: none"> • \$30 Application Fee • \$18 Renewal Fee.
Certification to perform coronal polishing	<ul style="list-style-type: none"> • graduate of a CODA-accredited dental assisting program that includes specific didactic/clinical training; or • completion of 8 hours of clinical/didactic training from a CODA-accredited dental assisting program; or • certificate of completion issued by the Dental Assisting National Board (DANB). • at least two years of work experience as a dental assistant. • current BLS CPR certification. • maintain certification by taking 6 or 12 hours of CE annually based on the number of optional SBDE certifications held. 	<ul style="list-style-type: none"> • \$12 Application Fee
Certification to make x-rays	<ul style="list-style-type: none"> • completion of didactic education and testing taken through any school or program accredited by CODA or any dental industry professional organization approved by the Board; or • completion of the Dental Assistant National Board (DANB) Radiology Exam and Infection Control Exam and completion of the SBDE Jurisprudence Assessment within one year immediately prior to application; or • current DANB Certified Dental Assistant (CDA) credential. • current BLS CPR certification. 	<ul style="list-style-type: none"> • \$36 Application Fee. • \$32 Renewal Fee.

License Type	Main Requirements (excluding jurisprudence assessment, payment of fees, completion of application, CE requirement, and CPR certification requirement)	Fees
Dental Laboratories		
Dental laboratory registration	<ul style="list-style-type: none"> at least one dental technician working on premises who is certified by a recognized board of certification for dental technology unless exempted by statute. 	\$125 Registration Fee. \$135 Renewal Fee.

License Type	Main Requirements (excluding jurisprudence assessment, payment of fees, completion of application, CE requirement, and CPR certification requirement)	Fees
Anesthesia/Sedation Permits		
Anesthesia Permitting – Administration of Nitrous Oxide/Oxygen Inhalation Sedation	<ul style="list-style-type: none"> completion of a minimum 14 hours of comprehensive training consistent with the American Dental Association (ADA) Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students; or completion of a CODA-accredited or recognized pre-doctoral dental or post-doctoral dental training program. current BLS CPR certification. 	<ul style="list-style-type: none"> \$32 Application Fee. \$10 Renewal Fee.
Anesthesia Permitting – Level 1 Minimal Sedation	<ul style="list-style-type: none"> completion of a minimum 16 hours of training consistent with the ADA Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students; or completion of comprehensive training taken through a CODA-accredited advanced education program. current BLS CPR certification. maintain permit by taking 6 hours of CE biennially on medical emergencies associated with a Level 1 Permit. 	<ul style="list-style-type: none"> \$32 Application Fee. \$10 Renewal Fee.
Anesthesia Permitting – Level 2 Moderate Enteral Sedation	<ul style="list-style-type: none"> completion of a minimum 24 hours of comprehensive training consistent with the ADA Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students; and management of 10 case experiences in enteral moderate sedation, (3 live clinical case experiences managed by participants in groups no larger than 5. Remaining cases may include simulation and/or video presentations, but must include experience in returning (rescuing) a patient from deep to moderate sedation. current BLS CPR certification; and current Advanced Cardiac Life Support (ACLS) or Pediatric Advanced Life Support (PALS) certification if treating adults and children 13 years of age and older; or current PALS certification if treating children 12 years of age or younger. maintain permit by taking 8 hours of CE biennially on medical emergencies associated with a Level 2 Permit. 	<ul style="list-style-type: none"> \$60 Application Fee. \$10 Renewal Fee.
Anesthesia Permitting - Level 3 Moderate Parenteral Sedation	<ul style="list-style-type: none"> completion of a minimum 60 hours of comprehensive training consistent with the ADA Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students; and management of 20 dental patient, under supervision, using 	<ul style="list-style-type: none"> \$60 Application Fee. \$10 Renewal Fee.

Self-Evaluation Report

	<p>moderate parenteral sedation; or</p> <ul style="list-style-type: none"> • completion of an CODA-accredited advanced education program; or • completion of an internship or residency which includes intravenous moderate sedation training. • current BLS CPR certification and • current ACLS or PALS certification if treating adults and children 13 years of age and older; or • current PALS certification if treating children 12 years of age or younger. • maintain permit by taking 8 hours of CE biennially on medical emergencies associated with a Level 3 Permit. 	
Anesthesia Permitting - Level 4 Deep Sedation or General Anesthesia	<ul style="list-style-type: none"> • completion of a CODA-accredited advanced education program that affords comprehensive and appropriate training necessary to administer and manage deep sedation or general anesthesia. • current BLS CPR certification; and • current ACLS or PALS certification if treating adults and children 13 years of age and older; or • current PALS certification if treating children 12 years of age or younger. • maintain permit by taking 12 hours of CE biennially on medical emergencies associated with a Level 4 Permit. 	<ul style="list-style-type: none"> • \$60 Application Fee. • \$10 Renewal Fee.
Anesthesia Portability Privilege – Level 3 Moderate Parenteral Sedation	<ul style="list-style-type: none"> • holds a Level 3 – Moderate Parenteral Sedation Permit. • submit proof of administration of 30 cases of personal administration of Level 3 sedation. • current BLS CPR certification; and • current ACLS or PALS certification if treating adults and children 13 years of age and older; or • current PALS certification if treating children 12 years of age or younger. 	<ul style="list-style-type: none"> • \$100 Application Fee.
Anesthesia Portability Privilege – Level 4 Deep Sedation or General Anesthesia	<ul style="list-style-type: none"> • holds a Level 4 – General Anesthesia or Deep Sedation Permit. • current BLS CPR certification; and • current ACLS or PALS certification if treating adults and children 13 years of age and older; or • current PALS certification if treating children 12 years of age or younger. 	<ul style="list-style-type: none"> • \$100 Application Fee.

- G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).**

The agency is funded by general revenue. The agency is entirely self-supporting by generating sufficient revenues from licensure fees to support the agency's operations. The agency receives two types of appropriations, general revenue and appropriated receipts.

- H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions to the target population. Describe the similarities and differences.**

Because the registered dental assistant program and dental assistant certificates require separate applications and certifications for the different functions, the program duplicates some of its own work when an applicant seeks multiple certifications.

- I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.**

After an initial application is entered into the system, an entity number is assigned, and future applications may be associated with that entity number and biographical information, thereby preventing duplication of some data entry efforts.

- J. If the program or function works with local, regional, or federal units of government, include a brief description of these entities and their relationship to the agency.**

Health Professions Council.

The HPC is responsible for the administration and maintenance of the Versa Regulation and Versa Online licensing systems. HPC communicates between agency staff and the vendor regarding application changes and upgrades. HPC also offers Help Desk services to licensees and applicants who use the online application. HPC also prepares reports, statistical data, letters and licenses for the agency. Additionally, HPC facilitates the mailing of renewal reminder cards by submitting a file to UT Mail Services to address and mail the reminder postcards.

Texas Attorney General Child Support Division (OAG).

Texas Family Code, Chapter 232, Sections 232.0135 and 232.015 requires the Office of Attorney General (OAG) and Texas licensing authorities to work together to revoke, deny, or suspend licenses, permits and certifications of individuals who have defaulted on their child support payments. Licensing Division staff routinely visit the OAG website to download the list of licensees who are in default, place a hold on the license, and notify the licensee of the hold being placed on the license. The OAG notifies the Director of Licensing when the licensee is no

longer in default or has entered a status permitting release (renegotiation of child support obligations for example). At this time the hold may be removed from the license, and the licensee is notified.

Texas Guaranteed Student Loan Corporation (TGSLC).

Texas Education Code, Chapter 57, Section 57.49 requires the Texas Guaranteed Student Loan Corporation to identify licensees and registrants who are in default on loan obligations. Board Rule 107.3 requires the agency to deny renewal of a license if in default on a student loan. Annually the agency electronically submits licensee data to the TGSLC. Quarterly, the TGSLC electronically transmits a file to the HPC Database Administrators for upload to Versa Regulation that identifies licensees in default of a student loan. A hold is placed on the license until the Director of Licensing receives a notification from TGSLC stating the student loan is no longer in default or in a status permitting release.

Texas Department of State Health Services (DSHS) - Texas Disaster Volunteer Registry.

This registry system is an initiative to pre-register, manage, and mobilize clinical and non-clinical volunteers to help in responding to all types of disasters. The volunteer management system is part of a nation-wide effort to make sure that volunteer professionals can be quickly identified and their credentials checked so they can be properly utilized in response to a public health emergency or disaster. The registry is managed by the DSHS vendor IMX Integration Services. HPC electronically transmits a file to the vendor that contains current licensing information on licensed dentists, dental hygienists and registered dental assistants.

Texas.gov – Dentist Professional Profiling Program.

Senate Bill 187, 77th Legislature, required certain licensing agencies to collect information from their licensees and make this information available to the public through Texas.gov. The purpose is to provide the public with access to information about licensed professionals to allow them the ability to make better-informed decisions regarding their selection of service providers. Much of the data collected is self-reported by license holders.

Department of Information Resources (DIR), Statewide Health Coordinating Council and TexasOnline – Minimum Data Set Collection.

Senate Bill 29, 80th Legislature, authorized DIR, through TexasOnline and in consultation with the Statewide Health Coordinating Council and the Health Professions Council (HPC), to add fields to online license renewal applications and initial licensure applications, capturing more information on Texas licensed dentists and dental hygienists. This information is electronically transmitted to the Council from the HPC.

Texas Department of Public Safety (TxDPS) and Federal Bureau of Investigation (FBI).

Fingerprint Criminal Records Check/Services.

Board Rule 101.1 requires all dentists and dental hygienists applying for a license to submit fingerprints for the retrieval of criminal history record information.

The State of Texas has contracted with Morpho Trust, through Identogo.com, for applicants to complete the criminal records check. Texas applicants have their fingerprints scanned at a LiveScan Fingerprint Facility. Out-of-state applicants have their fingerprints rolled by a law enforcement officer then submitted to the Morpho Trust/LiveScan Processing Unit in Springfield, IL for processing.

The agency has been assigned a specific identification number that must be listed on fingerprint cards. This number identifies individuals as being an applicant for licensure with the agency.

The Director of Licensing determines which division staff require access to the TxDPS Criminal Records database. As applications for dental or dental hygiene are received a criminal records check is conducted. The application for individuals with a criminal history are forwarded to the Legal Division for a determination of licensure eligibility.

Crime Records Services.

As a part of the application process for all dentists and dental hygienists, Licensing Division staff conduct a DPS and FBI criminal history background check using the online TxDPS Crime Records database. Division staff access to this database is managed by the Director of Licensing.

Controlled Substance Registration Program.

Licensing Division staff notify, via e-mail, the DPS Controlled Substances Program staff when dentist licensees retire their license.

K. No contracted expenditures are made through this program.

L. No grants are awarded by this program.

M. What statutory changes could be made to assist this program in performing its functions? Explain.

Several statutory changes could assist this program in its licensing and registering functions.

Dentist Licensure:

Tex. Occ. Code §256.003 requires the Board to provide for the examination of a dental license. The Board no longer provides the examination of an applicant for dental licensure. In addition to the Integrated National Board Dental Examination (INBDE), conducted by the Joint Commission on National Dental Examination (JCND), dentists are required to complete a general dentistry clinical examination administered by a regional testing service. Texas contracts with the Western Regional Examining Board (WREB) and recognizes clinical examination results issued by the Southern Regional Testing Agency (SRTA), Commission on Dental Competency Assessments (CDCA), the Central Regional Dental Testing Service (CRDTS), Council on Interstate Testing Agencies (CITA).

Tex. Occ. Code §256.005(a)-(c) requires the Board to notify examinees of examination results. The Board no longer administers an examination therefore notification is no longer needed.

Tex. Occ. Code §256.105 requires licensees to notify the agency of address and employer changes. However, neither the DPA nor the Board's rules require a licensee to provide timely notification of a name change. Currently a name change is optional and a fee of \$25 is due at the time of renewal and \$50 due any other time during the renewal year. Additional statutory language addressing a name change would assist the Licensing Division.

Registered Dental Hygienist Licensure:

Tex. Occ. Code §265.004 requires dental assistants to hold pit and fissure sealant certificates in order to be properly delegated the duty of applying pit and fissure sealants. Modern education programs train dental hygienists to apply pit and fissure sealants; however, historical programs may not have included that training. Because of this, the agency requires some dental hygienists to complete the requirements and apply for the dental assistant pit and fissure sealant certificate authorized under Tex. Occ. Code §265.004. An explicit requirement that certain dental hygienists must obtain the certificate would provide better notice to the public and prospective applicants of the requirements of dental hygiene licensure.

Similarly, the agency requires dental hygienists to obtain Nitrous Oxide Monitoring Certificates before monitoring a patient being administered nitrous oxide. In the February 16, 2001 issue of the *Texas Register*, Rule 108.34 was published as adopted. It was noted as a "verbatim repeat of repealed rule 109.175." The rule required dental auxiliary personnel to pass an examination and obtain certification to monitor the administration of nitrous oxide. While the requirement that personnel hold nitrous oxide certification has been in place in rule for many years, there is no explicit authority in the Dental Practice Act requiring or authorizing the Board to issue or require these certificates. An explicit authorization that dental auxiliary personnel obtain the certificate in order to monitor nitrous oxide would provide better notice of licensing requirements and ensure the safety of dental patients in Texas.

Dental Assistant Registration/Certification:

Consistency in the statute authorizing and describing the issuance of dental assistant registrations and certificates would assist this program.

Tex. Occ. Code §265.004 describes the educational requirements to obtain a pit and fissure sealant certificate. Tex. Occ. Code §265.005 describes the educational requirements to obtain a radiology certificate. Tex. Occ. Code §265.006 describes the requirements to obtain a coronal polishing certificate. The educational requirements to obtain a nitrous monitoring certificate are not in statute and are found in Board Rule 114.4. These sections also describe other obligations of certificate-holders including change of information requirements, renewal requirements, display of certificate requirements, and continuing education requirements.

It would streamline the agency's processes and provide clearer information to prospective applicants, educational entities, and delegating dentists if the requirements to obtain and maintain each certificate were consistent with the other certificates.

In addition, the addition of statutory authorization for the issuance of a nitrous oxide monitoring certificate would reflect long-standing agency practice. See (VII)(2)(b)(M) above.

Dental Laboratory Registration:

Tex. Occ. Code §266.102(e) requires the agency to annually provide to each licensed dentist a list of registered dental laboratories. This information is available on the agency's website, and is updated regularly. Providing it on an annual basis is redundant and outdated.

Tex. Occ. Code §§266.052(a)(2); 266.153(a) and (a)(1); 266.154(b) through (e); and 266.202(a), (c), and (d) refer to the "manager" of a dental laboratory. Some dental laboratories have multiple managers. Specifying that this refers to the general manager or primary manager would clarify who, other than the owner, may be responsible for the submission of an initial application, renewal application or any compliance with any other Texas laws or the Board rules.

Tex. Occ. Code §266.153 could be amended to require the submission of a change of information within 60 days in order to maintain consistency with other license types.

Sedation/Anesthesia Permits:

Tex. Occ. Code Chapter 258, Subchapter D addresses Enteral Administration of Anesthesia. "Enteral" refers to anesthesia that is "absorbed through the gastrointestinal tract or mucosa." Tex. Occ. Code §258.151 specifies enterally administered anesthesia could be administered orally, rectally, sublingually, or intranasally.

The Subchapter instructs the Board to adopt rules related to the enteral administration of sedation. The Board repealed those rules in 2011 and adopted new rules that differentiated between levels of consciousness, rather than routes of administration based on the ADA Guidelines for the Use of Sedation and General Anesthesia published in 2012.

The emphasis on the method of administration rather than the level of sedation achieved reflects a historical mindset and should be updated in the statute. The focus should be on the level of sedation reached rather than on the method of administration because some combinations of drugs administered enterally or parenterally could result in a dangerous level of sedation that is beyond the permit-level of the dentist.

Additionally the statute does not explicitly authorize the Board to issue permits related to other levels/methods of sedation (including parenteral and general anesthesia). Permitting licensees in sedation is essential to ensuring that dentists who administer sedation to patients are appropriately qualified and monitored.

N. Provide any additional information needed to gain a preliminary understanding of the program or function.

1. Professional Background Information Service (PBIS). Dentist applicants applying for licensure by credentials must obtain a Level II background check with the PBIS. The PBIS is a non-profit organization that provides a verified primary source record of a dentist's credentials. PBIS compiles background information regarding the applicant from multiple sources. Primary source records are compared to information provided by the applicant. Original certified documents are obtained and verified directly from primary sources. PBIS certifies photocopies of the credentials for distribution to the State Boards. The American Association of Dental Examiners Clearinghouse, individual State Boards, the National Practitioner Data Bank and other sources are queried for disciplinary actions, peer reviews and civil judgements. A national data bank system is queried for personal background information, i.e., criminal history, past addresses, etc. Procured information is cross referenced for discrepancies and omissions in the applicant's self-reporting. A complete PBIS report on the applicant is sent to the Dental Board for consideration with the rest of the application.
2. Jurisprudence Assessment – eStrategy Solutions. Licensees are required to submit proof of completion of the Jurisprudence Assessment upon initial licensure and once every three years following initial licensure. It is also required for reinstatement of a retired dental license. Licensees may be required to complete the Jurisprudence Assessment in order to comply with a Remedial Plan or disciplinary action of the Board.

The Jurisprudence Assessment is available online. The questions were developed and analyzed by a psychometrician in 2006. The Legal Division is currently reviewing and updating the question pool.

The assessment is engineered to be "No Fail" in keeping with the understanding that it not be a barrier to licensure while holding the licensee or applicant accountable for understanding Texas laws and the Board's rules. The assessment is available online 24 hours a day, 7 days a week, the cost is \$54.00 and Help Desk Support is available daily during regular business hours.

3. Dentist License Renewal Questionnaire. Tex. Occ. Code §254.019 was enacted in the 83rd Legislative Session. It requires the agency to collect information from licensees related to employees, business names, Medicaid participation, dental service agreements, and other data, upon issuance and renewal of dental licenses. The information is reported to the Legislature biannually.
4. Approval of CE Providers. The Director of Licensing reviews and approves applications and/or course materials from qualified organizations interested in offering education and training on optional certificates issued by the Board.

This includes courses on Pit and Fissure Sealants, Monitoring Nitrous Oxide, Coronal Polishing and courses qualifying a dental assistant for the Board's Registered Dental Assistant (RDA) certificate that includes Radiology, Infection Control and Texas Jurisprudence. interested in offering an RDA Course must submit the RDA Course Provider Application and a fee of \$100. Course must comply with the Dental Practice Act and the Board's Rules and Regulations.

5. Associated Boards and Councils. The Dental Assistant National Board (DANB) was founded in 1948 and is the national certification board for dental assistants. DANB is a nonprofit organization, is a member of the Institute for Credentialing Excellence, DANB's Certified Dental Assistant (CDA) certification programs are accredited by the National Commission for Certifying Agencies (NCCA).

The Dental Laboratory Certification Council (DLCC) advises the Board on matters relating to dental laboratories and is composed of three members who are dental technicians certified by a recognized board of certification for dental technology and is an owner, manager, or employee of a dental laboratory registered with the board. Council members serve two-year terms not to exceed four total terms. The DLCC reviewed each application for registration or renewal of a registration to determine if the applicant meets the requirements of Chapter 266 of the Dental Practice Act. The Council may also recommend to the board rules relating to dental laboratories; and perform additional duties as required by the board.

O. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- **why the regulation is needed;**
 - **the scope of, and procedures for, inspections or audits of regulated entities;**
 - **follow-up activities conducted when non-compliance is identified;**
 - **sanctions available to the agency to ensure compliance; and**
 - **procedures for handling consumer/public complaints against regulated entities.**
1. Regulation is needed to ensure that the licensed dentists meet minimum qualifications for licensure and practice in compliance with the statute.
 2. The agency conducts monthly audits of randomly selected licensee's continuing education.
 3. Compliance, disciplinary, and complaint procedures are discussed in the Enforcement Group subsection that follows.

P. For each regulatory program, if applicable, provide the following complaint information.

As mentioned in the section above addressing the agency's opportunities for improvement, the agency's performance measures definitions have changed in recent years. FY 2016 performance measures will differentiate between complaints received by the agency, complaints received by the agency that were determined jurisdictional and officially proceeded on, complaints received by the agency that were determined jurisdictional and not officially proceeded on, and complaints received by the agency that were not determined jurisdictional and not officially proceeded on.

Texas State Board of Dental Examiners
Exhibit 11: Information on Complaints Against Regulated Persons or Entities
Fiscal Years 2013 and 2014; Fiscal Year 2015 Projections

	Fiscal Year 2013	Fiscal Year 2014	Fiscal Year 2015 (projected)
Total number of complaints	1001	1120	1089
Total number of complaints received from the public	803	862	866
Total number of complaints initiated by agency	198	258	223
Number of complaints pending from prior years	As of 8/2/2013: 2009 – 4 2010 – 14 2011 – 131 2012 – 533 2013 – 652 Total: 1334	As of 8/8/2014: 2009 – 3 2010 – 2 2011 – 8 2012 – 90 2013 – 364 2014 – 695 Total: 1162	As of 9/1/2015: 2012 – 21 2013 – 83 2014 – 302 2015 – 854 Total: 1260
Number of complaints found to be non-jurisdictional	101	78	69
Number of jurisdictional complaints received	900	1039	1020
Number of complaints resolved	978	1240	1044
Number of jurisdictional complaints resolved	861	1163	973
Average number of days for complaint resolution	509.66	485.60	447
Complaints closed by disciplinary action:			
warning	46	61	102
reprimand	18	33	67
probated suspension	37	32	41
suspension	10	3	1
revocation	0	9	4
voluntary surrender	0	14	8

Table 11 Exhibit 11 Information on Complaints Against Persons or Entities

3. Enforcement Group

Name of Program or Function: 3(a) Investigations/Compliance Division
 3(b) Dental Practice Division
 3(c) Legal Division
 3(d) Executive

Actual Expenditures, FY 2014: \$2,503,937.69

Number of Actual FTEs as of June 1, 2015: 35.0 FTEs

3(a). Investigations/Compliance Program

A. Provide the following information at the beginning of each program description.

Name of Program or Function: Investigations and Compliance

Location/Division: Investigations Division

Contact Name: Lisa Jones, Director of Investigations

Division Staff as of June 1, 2015: 21.0 FTEs

Statutory Citation for Program: Tex. Occ. Code Chapter 255, Public Interest Information and Complaint Procedures

B. What is the objective of this program or function? Describe the major activities performed under this program.

The Investigations Division is charged with investigating all jurisdictional complains filed with the agency, assisting the Legal Division in the prosecution of the complaints through informal or formal disciplinary means as provided by applicable statutes, pursuing compliance with disciplinary actions and conditions as set forth for each disciplinary case, and interacting with the public, professional societies, dental schools, state regulatory and/or federal agencies.

When a complaint is filed with the agency, the Investigations Division processes the complaint and provides the complaint to the intake attorney to assess the agency's jurisdiction over the complaint. The complaint is then assigned to an investigator or inspector. The inspectors and investigators work in the field and are mailed the appropriate documents. The inspectors contact the parties involved in the allegations at issue in the case (Respondent, Complainant, any subsequent treating dentists) to obtain patient documents and other additional relevant information. The investigators perform similar tasks but also conduct on-site inspections if necessary. After the inspector/investigator completes their investigation, they prepare an investigative report summarizing their findings. The inspector/investigator then sends the investigative materials back to the Austin office for processing.

Investigators assist the Legal Division in various ways, including serving subpoenas or orders on licensees, conducting additional investigation at the request of the Legal Division, and testifying on behalf of the Board at the State Office of Administrative Hearings.

The Investigations Division is supported by administrative staff that coordinates the transfer of documents between the Divisions and the inspectors/investigators, updates the Versa database with complaint information, and answers questions from Complainants and Respondents related to the complaint process.

The Compliance Division's role is to assist dentists in compliance with Agreed Settlement Orders or Remedial Plans and to monitor compliance. The Compliance Division receives Orders and Remedial Plans from the Legal Division and provides information to licensees concerning compliance. The Compliance Division also approves continuing education courses and grants/denies extensions of deadlines when appropriate. If a dentist is failing to comply with a stipulation in an Order or Remedial Plan, the Compliance Division sends letters to the dentist concerning the non-compliance. If the non-compliance continues, a new complaint is opened and the case is transferred to the Legal Division for further action by the Board.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and outcome performance measures that best convey the effectiveness and efficiency of this function or program.

Investigative staff completes 600-900 investigations per year, depending on staffing levels.

Prior to the passage of HB 3201, all complaints received by the agency were investigated by Field Investigators. This means that cases involving only standard of care (SOC) allegations, which traditionally do not require a site visit, and more complex cases involving extensive field work were worked by the same investigator – increasing the days to case resolution of all assigned cases.

With the passage of HB 3201, standard of care cases are now assigned to Inspectors who gather evidence and medical records related to SOC cases. This allows the field investigators to dedicate their time and efforts to timely on-site inspections and field work.

In FY2015, the first full year of the Inspector program, 649 complaints were assigned directly to Inspectors for processing. This meant field investigators had 649 less cases to pull them from away from their more complex field investigations.

The inspector program has been a huge success, but training time and turn-over of staff will affect its effectiveness in the future. Even a small turn-over rate can drastically reduce the number of investigations completed each year as inspectors or investigators are replaced and subsequently trained by other staff.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

The investigative staff includes both commissioned (peace officers) and non-commissioned (civilian) investigative staff. House Bill 875 in the 78th Regular Legislative Session authorized the

agency to commission investigators as Peace Officers. Commissioned Investigators conduct investigations in cases involving all types of complaints requiring field investigations as well as assist local law enforcement in criminal investigations of violations such as practicing dentistry without a license and other criminal statutes related to the practice of dentistry.

Non-commissioned investigators who do not hold a Peace Officer commission are assigned cases that do not have a known potential criminal component. Inspectors (non-commissioned investigators) gather patient records and other documents related to standard of care investigations. The inspector positions were created as a result of the passage of HB 3201 in the 83rd Legislative Session.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

The functions performed by the Investigations Division affect Respondents, Complainants, subsequent treating dentists, other medical providers, and any other person involved in an investigation.

The functions performed by the Compliance Division affect licensees who are required to comply with an Order or Remedial Plan issued by the Board, patients affected by the Order or Remedial Plan issued by the Board, and prospective patients of licensees who have been required by the Board to submit to remediation.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. Indicate how field/regional services are used, if applicable.

A complaint received by the agency can cycle through as many as 14 different phases. In general, the phases follow the following order:

1. Complaint Receipt
2. Administrative Pre-Processing
3. Intake Attorney Review
4. Dental Director Review
5. Director of Investigation Review
6. Case Assignment
7. Administrative Post-Processing
8. Preliminary Investigation
9. Full Investigation
10. Post Investigative Review
11. Dental Review Committee Review
12. Legal Processing
13. Closure
14. Compliance

The purpose and duties related to each phase is as follows:

1. Complaint Receipt - The complaint is received at the agency by mail, fax, email or hand delivery. It is date-stamped by the mail clerk and then sent to the Investigations Division administrative section.
2. Administrative Pre-Processing - The administrative section of the Investigations Division processes the complaint by checking for prior complaints, prior disciplinary action and probationary status. Basic complaint information is entered into the Enforcement database and a control number is assigned. The complaint is forwarded to the Intake Attorney for review.
3. Intake Attorney Review - The Intake Attorney reviews the complaint and makes a determination as to jurisdiction. If a complaint is found to be non-jurisdictional, it is recommended for closure and forwarded to the Director of Investigations for a second review. If the complaint is jurisdictional, it is summarized, classified as Standard of Care (SOC) related and/or Non-Standard of Care (Non-SOC) related, allegations are entered and basic review notes are entered. Depending on case classification, the complaint is then forwarded to either the DOI or Dental Director.
4. Dental Director Review –
 - a. Complaints containing SOC allegations are forwarded to the Dental Director for review. The Dental Director may recommend dismissal if the complaint, based on the allegations evidence provided by the complainant, does not allege a jurisdictional SOC allegation. Dismissal recommendations are forwarded to the General Counsel for Legal Processing.
 - b. If the complaint alleges a jurisdictional SOC violation, the Dental Director will note specific SOC allegations and note what records or evidence is required to verify those allegations. The Dental Director may also add additional allegations based on the evidence presented and will recommend whether the case should be classified as a Preliminary Investigation (PI) or Full Investigation (FI) based on the allegations and potential for patient harm. Upon completion of the Dental Director review, the case is forwarded to the DOI for investigator assignment.
5. Director of Investigations Review –
 - a. Complaints containing Non-SOC allegations are forwarded to the DOI for review by the Intake Attorney. The DOI may recommend dismissal if the complaint, based on the allegations and evidence provided by the complainant, does not allege a jurisdictional Non-SOC allegation. Dismissal recommendations are forwarded to the General Counsel for Legal Processing.
 - b. If the complaint alleges a jurisdictional Non-SOC violation, the DOI will note specific Non-SOC allegations and investigative directives as well as

indicate administrative directives related to complainant and respondent notification. The DOI may also add additional allegations based on the evidence presented and will classify the complaint as a Preliminary Investigation or Full Investigation based on the allegations and potential for patient harm.

- c. SOC only cases forwarded by the Dental Director with a PI recommendation, absent any indication of potential patient harm or additional non-SOC allegations, are assigned to an Inspector by the DOI as a preliminary investigation. Cases may be assigned to a Field Investigator if caseloads warrant it or onsite visits are required to complete the preliminary investigation.
 - d. Cases classified by the DOI as Full Investigation cases are assigned to Field Investigators.
 - e. The DOI will assign a case Priority based on the severity of the alleged violation and potential for patient harm.
6. Case Assignment – Cases are assigned to Investigative staff based on the following criteria:
- a. SOC only cases are primarily assigned to Inspectors. The DOI may assign SOC cases to Field Investigators if factors of the case dictate.
 - b. Complaint geographical location is not a factor of consideration in case assignment to Inspectors. The DOI may use caseloads, Inspector expertise, case familiarity or any other relevant factor to determine Inspector assignment to any given case.
 - c. Non-SOC cases or cases involving potential imminent patient harm are assigned to Field Investigators. Factors such as geographical location and Investigator expertise should be considered when assigning cases to a Field Investigator. The DOI may, however, use any relevant criteria when determining case assignment.
 - d. When case circumstances dictate, the DOI may assign two or more investigators to assist in a case. One investigator must be designated as the primary investigator however. Factors to be considered when assigning more than one investigator to a case include, but are not limited to, potential for investigator harm – such as in cases with criminal activity alleged, number of witnesses/respondents to interview, number of related cases, etc.
 - e. The DOI may reassign a case to another investigator at any time.
7. Administrative Post Processing
- a. After initial reviews and investigator assignment, cases are returned to the administrative section for processing. Administrative personnel will

complete the complaint data entry process and include all notes and additional information added during the review process.

- b. After data entry is complete, the administrative personnel will prepare a case file and transfer the case to the assigned investigative personnel.

8. Preliminary Investigation

- a. Cases classified as a Preliminary Investigation during the review process are assigned to an Inspector to complete the investigation. Inspectors will obtain all available relevant patient records from the Respondent and any subsequent or previous dental or medical providers.
- b. Preliminary Investigations, including all applicable post-investigation reviews, must be completed within 60 days from the date the investigation was initiated. On the 61st day, a preliminary investigation will be re-classified as a full investigation if the investigative and review processes are not complete.
- c. If, during the course of a preliminary investigation, evidence is obtained that indicates a possible non-SOC violation (other than basic record keeping violations), the case will be re-classified as a full investigation and returned to the DOI for assignment to a field investigator.
- d. Inspectors, with the guidance and assistance of Supervisors and the Dental Director, will use the Investigative Procedures in this policy as a guide for conducting a thorough investigation.
- e. Upon completion of a preliminary investigation, the Inspector will submit an Preliminary Report to his or her supervisor for approval. The Supervisor may approve the report and forward the case to the Director of Investigations for further action; may return the case to the Inspector for follow-up investigation; or may reassign the case as needed.
- f. The DOI shall supervise and ensure that the accountability of preliminary investigations shall follow the established protocol as specified in the Occupations Code and/or the TSBDE Rules and Regulations.

9. Full Investigation

- a. Any case alleging criminal activity, such as practicing without a license, fraud, practicing impaired, etc. or allegations of gross-negligence including allegations of patient death or serious bodily harm, must be assigned to a Field Investigator for a Full Investigation.
- b. Cases consisting of Non-SOC allegations, except minor record keeping allegations associated with a SOC complaint will be assigned to a Field Investigator for a Full Investigation. Field Investigators, with the guidance and assistance of Field Supervisors, will use the Investigative Procedures in this policy as a guide for conducting a thorough investigation.

- c. Upon completion of an investigation, the Field Investigator will submit an Investigative Report to his or her supervisor for approval. The Supervisor may approve the report and forward the case to the Director of Investigations for further action; may return the case to the Field Investigator for follow-up investigation; or may reassign the case as needed.
- d. The DOI and all Field Supervisory personnel shall supervise and ensure that the accountability of investigations shall follow the established protocol as specified in the Occupations Code and/or the TSBDE Rules and Regulations.

10. Post Investigative Review

- a. Upon completion of an investigation, the DOI may approve the report and forward the case to the Dental Director for review, recommend legal action or dismissal and forward the case to the Legal Division; may return the case to the Field Investigator for follow-up investigation; or may reassign the case as needed.
- b. The Dental Director shall review all SOC-related cases returned from Preliminary or Full Investigation and: recommend further investigation; recommend dismissal and forward the case to the Quality Control Committee (QCC); submit the case to the Dental Review Committee for review; or forward the case to the Legal Division for action.

11. Dental Review Panel – See VII(3)(b)

- a. SOC cases are returned to the Dental Director for possible Dental Review Panel (DRP) for SOC violations per the Dental Division policy and procedures.
- b. The Dental Director will determine, based on agency policy and Rules and Regulations, which cases are reviewed by the DRP.
- c. The Dental Director may, through the DOI, request further investigation in order to assist the DRP with their case reviews.
- d. Investigations Division personnel will make every reasonable effort to assist the Dental Director with follow-up investigation requests in a timely manner.

12. Legal Processing – See VII(3)(c)(i)

- a. Any case recommended for legal action by the DOI will be transferred to the Legal Division (General Counsel) for review.
- b. The DOI may direct any complaint to the Legal Division for a legal review/opinion at any time during the complaint process.
- c. The Legal Division may return a case for follow-up investigation at any time.

- d. Investigations Division personnel will make every reasonable effort to assist the Legal Division with follow-up investigation requests in a timely manner.

13. Closure

- a. Cases or complaints may be closed under the following circumstances and under the specified procedures:

- i. New Incoming Complaints:

- During Complaint Review, the Intake Attorney and at least one Director (typically the Director of Investigation or the Dental Director) agree that the allegations, even if found to be true, are not within the agency's jurisdiction or would not be a violation of the law or Board rules.

- ii. After Preliminary Investigation

- Cases that complete the Preliminary Investigation phase may be dismissed if, after review by the Dental Director and the Dental Review Panel, no violation is found. Cases dismissed after preliminary review must be approved for dismissal by the Dental Director and the General Counsel.

- iii. After Full Investigation

- Cases involving only Non-SOC allegations that complete a full investigation may be dismissed if after Director of Investigation review and General Counsel Review, no violation is found. Non-SOC cases dismissed after full investigation must be approved for dismissal by both the Dental Director and the General Counsel.
- Cases involving only SOC allegations that complete a full investigation may be dismissed if, after review by the Dental Director and the Dental Review Panel, no violation is found. Cases dismissed after preliminary review must be approved for dismissal by the Dental Director and the General Counsel.
- Cases involving both SOC and Non-SOC allegations that complete a full investigation may be dismissed if, after review by the Director of Investigations, the Dental Director and the Dental Review Panel, no violation is found. Cases dismissed under this heading must be approved for dismissal by the Dental Director and either the General Counsel or Director of Investigation.

- iv. Violations found during investigation

- Any case where violations are found should be forwarded to the Legal Division for review for possible prosecution or dismissal per Legal Division policies.

v. Administrative Record of Case History

- Investigative personnel shall make a record in the Enforcement Database noting the transfer of any complaint or case from one individual to another or from one division to another at the time of transfer.

14. Compliance

- a. The compliance program is managed by the Investigative division.
- b. The Compliance Officer and Compliance Administrative Assistant are responsible to monitor and assure that Respondents under active Board Orders, Remedial Orders or Consent Orders are compliant with any stipulations in their related orders. Compliance personnel are also responsible for recording and monitoring payment or appeals of Administrative Penalty Violation Notices (Citations).
- c. Upon determination that a licensee has not met, has failed, or refuses to comply with, the requirements specified in his/her board order, or has failed to timely remit fines for Administrative Citations, the Compliance Officer will provide a written report to the Director of Investigations describing such circumstances.
- d. The Director of Investigations will determine whether or not to initiate a complaint against the licensee. Any initiated complaint will be forwarded to the Intake Attorney for review and processing through the normal complaint processing procedures.
- e. Appealed Administration Citations will be forwarded to the Legal Division by Compliance staff.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

The agency is funded by general revenue. The agency is entirely self-supporting by generating sufficient revenues from licensure fees to support the agency's operations. The agency receives two types of appropriations, general revenue and appropriated receipts.

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions to the target population. Describe the similarities and differences.

Medicaid-related complaints that are also related to the practice of dentistry are investigated by Health and Human Services Commission (HHSC) Office of the Inspector General (OIG) and the Office of the Attorney General (OAG). The agency refers any Medicaid Fraud related complaint to the OIG; the OIG in turn refers criminal cases to the OAG. The agency works jointly with both the OAG and OIG to investigate the standard of care related allegations, when doing so would not jeopardize any criminal case that OAG and/or OIG may be investigating.

The Department of Public Safety (DPS) and Drug Enforcement Agency (DEA) issue permits to dentists to prescribe controlled substances. DPS/DEA investigates dentists for violations of laws related to controlled substances. The Investigations Division also investigates issues related to the prescription of controlled substances and will work jointly with the DEA/DPS agents or receive case referrals from DEA/DPS.

Local law enforcement investigates the unlicensed practice of dentistry and pursue civil or criminal action against the unlicensed person. The SBDE also can issue a proposed order to cease and desist or refer cases to the OAG to pursue an injunction. The Investigations Division can work jointly with local law enforcement on these matters.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

Agency staff routinely contacts OIG and OAG when Medicaid may be related to a complaint filed with this agency. OIG dental staff routinely forward complaints to the Investigations Division when they identify concerns related to the standard of care in a Medicaid complaint or reimbursement request filed with HHSC.

J. If the program or function works with local, regional, or federal units of government, include a brief description of these entities and their relationship to the agency.

Agency Investigative staff routinely work closely with the following agencies:

Local Law Enforcement: TSBDE Investigators work with local law enforcement in the criminal investigation of allegations of practicing without a license or other dental related criminal offenses or offenses occurring in a dental office. Examples include fraud, sexual assault, identity theft, prescription fraud, drug diversion, stalking, insurance fraud, improper photography or visual recording, etc. In smaller jurisdictions, where local law enforcement lacks the resources or expertise to conduct a criminal investigation, TSBDE investigators will conduct the investigation and file any necessary criminal charges with a local District or County Attorney.

Texas State Board of Pharmacy (TSBP): TSBDE Investigators work with the TSBP on cases involving drug diversion by dental licensees. The two agencies also provide joint training services for TSBDE and TSBP commissioned personnel as required by the Texas Commission on Law Enforcement.

Texas Department of Public Safety (DPS): TSBDE Investigators work with DPS to jointly investigate drug diversion cases. DPS also provided investigative evidentiary lab services for TSBDE investigations.

Texas Health and Human Services Office of the Inspector General (OIG): TSBDE Investigators work with OIG to investigate allegations related to Medicaid providers. Examples include fraud, violations of the standard of care, etc.

Texas Office of the Attorney General (OAG): TSBDE Investigators work with the OAG in cases related to Medicaid fraud. The OAG and TSBDE also work together in cases alleging practicing dentistry without a license.

U.S. Drug Enforcement Administration (DEA): TSBDE Investigators work jointly with the DEA on any allegation of drug diversion by a dental licensee or registrant. Investigations include both administrative and criminal investigations.

Federal Bureau of Investigation (FBI): TSBDE Investigators work jointly with the FBI on fraud and other federal criminal allegations against a dental licensee or registrant. Examples include Medicaid Fraud (OIG/OAG/FBI joint task forces); money laundering, indecency with a child, child trafficking, possession of child pornography, forgery etc.

U.S. Customs and Border Protection (USBP): TSBDE Investigations work jointly with USBP on cases where it's alleged that TSBDE licensees have entered the US illegally or under false identities.

Other out of state Regulatory/State Dental Boards: TSBDE Investigators work jointly with other dental licensing boards from other states/jurisdictions when a licensee is licensed in both states, or is seeking licensure in both states.

K. If contracted expenditures are made through this program please provide:

- a short summary of the general purpose of those contracts overall;
- the amount of those expenditures in fiscal year 2014;
- the number of contracts accounting for those expenditures;
- top five contracts by dollar amount, including contractor and purpose;
- the methods used to ensure accountability for funding and performance; and
- a short description of any current contracting problems.

In FY2014, the agency entered into a contract with DataXportNet LLC to install and configure an electronic document management system in the Enforcement group. While this contract will benefit the agency as a whole, the Director of Investigations manages that contract and relationship. The contract included the purchase of licenses for the PaperVision Enterprise

software, scanning equipment, and yearly support and maintenance cost. Total expenditures under this contract were \$130,263.75.

L. No grants are awarded by this program.

M. What statutory changes could be made to assist this program in performing its functions? Explain.

The Investigations Division could benefit from clarity in the definition of the practice of dentistry in Tex. Occ. Code §251.003.

The Investigations Division could benefit from modifying Tex. Occ. Code §255.006(d)(5) to permit contracting with non-state employees for occasional investigative services.

N. Provide any additional information needed to gain a preliminary understanding of the program or function.

None.

O. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- why the regulation is needed;
- the scope of, and procedures for, inspections or audits of regulated entities;
- follow-up activities conducted when non-compliance is identified;
- sanctions available to the agency to ensure compliance; and
- procedures for handling consumer/public complaints against regulated entities.

1. Investigation of licensees and compliance monitoring is necessary in order to ensure that licensees maintain the skill and competence to practice dentistry and ensure the public's safety.
2. See response to Question F.
3. See Response to Question F.
4. Tex. Occ. Code §263.002(a) authorizes the Board to issue a warning letter, reprimand, suspend with probation, suspend, or revoke a license for violating laws or rules related to the practice of dentistry.
5. See response to Question F.

3 (b) Dental Practice Division

- A. Name of Program or Function:** Dental Practice Division – Dental Review Panel Program
Location/Division: Dental Practice Division
Contact Name: Brooke Bell, Dental Director
Division Staff as of June 1, 2015: 2.0 FTEs (1.0 additional FTE allocated)
Statutory Citation for Program: Tex. Occ. Code §§255.0065; 255.0066; 255.0067.
- B. What is the objective of this program or function? Describe the major activities performed under this program.**

Objective

The objective of the Dental Practice Division is to:

- provide professional services, including rule development and committee support;
- implement and maintain policies, systems and measures regarding clinical and professional issues and determinations;
- evaluate standard of care complaints and serve as the liaison to the Dental Review Panel; and
- promote voluntary compliance with the Dental Practice Act and rules and provide related information to Board licensees.

Division Functions

Among many functions of the agency, the following are accomplished by the Dental Practice Division staff:

- Conducting the preliminary review of complaints filed with TSBDE to determine if an investigation should be conducted to determine if the standard of care may have been violated by the licensee.
- Serving as the liaison and coordinator of the Dental Review Panel.
- Coordinating Standard of Care Case Reviews provided by our Dental Review Panel.
- Providing consultation and technical assistance to Board staff.
- Planning and directing dental division programs, activities, and plans departmental objectives.
- Participating in the planning, administering, and monitoring of the department, including budgeting and performance measures.
- Reviewing the Dental Practice Act and Board Rules relating to the practice of dentistry and departmental policies and procedures and initiates or recommends changes.

Dental Practice Division Staff Roles and Responsibilities

The Dental Practice division is comprised of two full time employees, the Dental Director and the Program Specialist.

Dental Director

The Dental Director performs advanced dentistry program work. Specifically, the Dental Director plans and directs dental programs and activities and provides consulting services regarding the preliminary review of complaints filed with the agency. In addition, she works as a liaison between the Dental Review Panel and Board staff. The Dental Review Panel is comprised of external, paid experts who produce written expert reviews of the standard of care in complaints filed with the agency. The charge of the DRP, which the Dental Director ensures is fulfilled, is to utilize dental expertise to serve the Texas public by helping to safeguard dental experiences through the review of Standard of Care complaints in a time sensitive but thorough manner.

The Dental Director also works closely with the Investigation and Legal divisions. For the Investigation Division she aids the Investigators and Inspectors in gathering appropriate investigative evidence requested for prompt and thorough review of all Standard of Care complaints. For the Legal Division, she provides consultation relative to dental questions impacting case research and planning.

One particularly time consuming role involves continually monitoring and providing feedback relative to the quality of the SOC Case Reports which are received back from the Dental Review Panel. Feedback is provided to each reviewer for each report regarding formatting or content errors.

Additional duties involve assisting agency staff in monitoring of state and national trends in dentistry and the regulation of dentistry and reporting to the Executive Director any implications of such trends including recommendations for Board action. She is also expected to maintain effective relationships with patient/consumer advocate organizations, professional associations, dental service providers, dental societies and dental schools and training programs.

Program Specialist

The Program Specialist for the Dental Practice division coordinates all secure digital file access and randomly selects and assigns the appropriate reviewer for the appropriate case analysis. He updates the Versa database relative to case location within the division. He provides limited IT support to reviewers relative to accessing online training and our secure digital case files.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and outcome performance measures that best convey the effectiveness and efficiency of this function or program.

The Dental Practice Division did not exist until HB3201 was enacted in the 83rd Legislative Session. The Dental Review Panel Program/Dental Practice Division was funded on September 1, 2013. The Dental Director was hired November 1, 2013. The framework for the program was in place as of December 2013. The initial group of DRP members completed training and began reviewing cases as of February 2014. DRP members have now been reviewing cases for

16 months, and 44% of the cases for which they have provided reports were cases that were received prior to the program being funded, ie: complaints received by the Board prior to September 1, 2013.

In the two years the DRP program has been active, DRP has reviewed approximately 900 cases for violations of the standard of care. However, because of its youth, the program is too young for a truly meaningful data comparison and statistical analysis of the program.

Nonetheless, one of the agency's most important performance measures is days to case resolution. Since the Dental Practice Division's inception was September 1, 2013, it is important to analyze case data from that date to present.

The average days to resolution of "new" cases that have been reviewed by DRP is approximately 178 days. This means that cases with no violation of the Standard of Care are being opened, reviewed by DRP, and closed well before our target days to resolution of 280 days in FY 2015 (300 days in FY 2016).

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

The original intention of DRP was to review the SOC complaints received by the agency after September 1, 2013. However, in early 2014, in order to overcome the backlog of unresolved cases that the agency was facing, agency staff made a strategic decision to utilize DRP to provide SOC case reviews for complaints received prior to HB 3201, as well as to review the "new" cases received since September 1, 2013.

This meant the DRP was suddenly charged with completing all pending Standard of Care case reviews, for both new and old cases. Although that decision did help the agency process the older cases faster, the use of DRP to process older cases slowed its ability to review new cases. Queuing up the pre-DRP cases nearly doubled the number of cases awaiting DRP review. As of this report, approximately 44% of the total cases that DRP has reviewed since it was initiated were "old" cases, received by the agency prior to the inception of DRP.

Although this shift was unexpected and has significantly slowed the movement of new cases, the alternative would have been to continue to require Board members to provide Standard of Care reviews for the older cases. This would have resulted in the agency running two review protocols at the same time. For the overall good of the agency and with timely case resolution in mind, the chosen path was preferred, even taking into account the consequences.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

The DRP Program affects licensees and complainants by providing non-biased, time sensitive opinions relative to Standard of Care in a case. DRP members must be licensed Texas dentists

who have held a Texas dental license for at least ten years and be in good standing with the Board.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. Indicate how field/regional services are used, if applicable.

There are six basic categories of complaints:

1. Quality of Care/Standard of Care
2. Sanitation
3. Professional Conduct
4. Administrative Violations
5. Dental Laboratories
6. Business Promotion

DRP members only review Quality of Care/Standard of Care complaints.

Before the cases are transferred to the Dental Practice Division, they are reviewed by other agency staff.

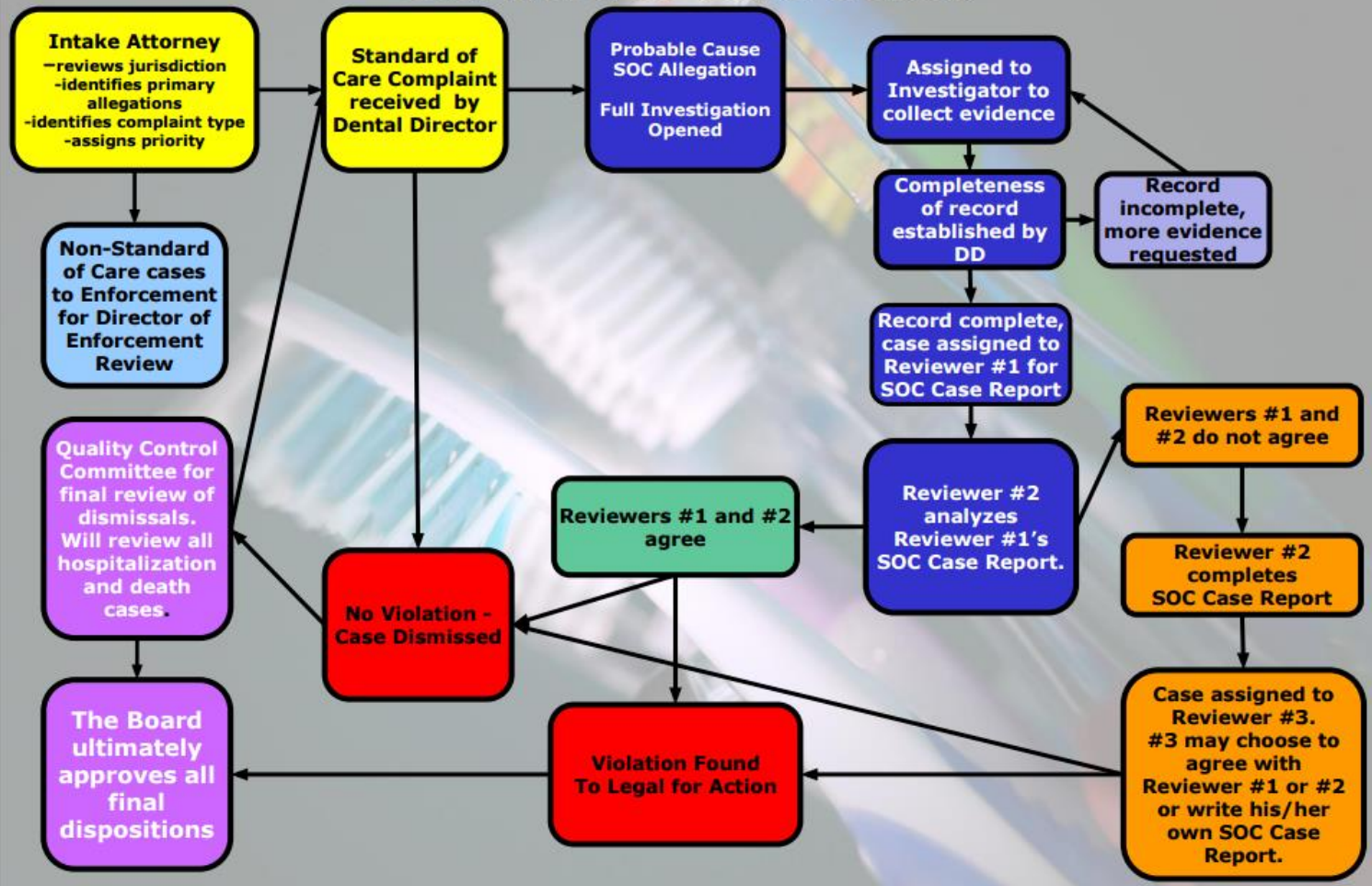
Complaint Process

1. After the complaint has been received by the agency and is administratively processed, the Intake Attorney is the first to review the case.
 - a. If the case does not involve a Standard of Care (SOC) allegation, the Intake Attorney passes it on to the Director of Investigations (DOI).
 - b. If the case is found to show probable cause regarding a SOC allegation the case is passed on to the Dental Director (DD). The DD recommends gathering evidence, and the case is assigned to an investigator or inspector by the DOI to collect the requested evidence.
2. After a complaint is received, the Respondent is given a summary of the allegations unless doing so would jeopardize the investigation.
 - a. In the case of sanitation or impairment allegations, the investigators often choose unannounced visits to collect evidence.
3. The agency requests the Respondent reply with any patient records associated with the complaint and, if they so choose, a written response within 15 days from notice of complaint to provide the agency. Failure to provide requested records in a timely fashion is a violation.

The graphic on the next page illustrates the processing of Standard of Care complaints and self-reports from start to finish. A more detailed explanation of DRP processes follows the graphic.

Basic Complaint Flowchart

Standard of Care Cases



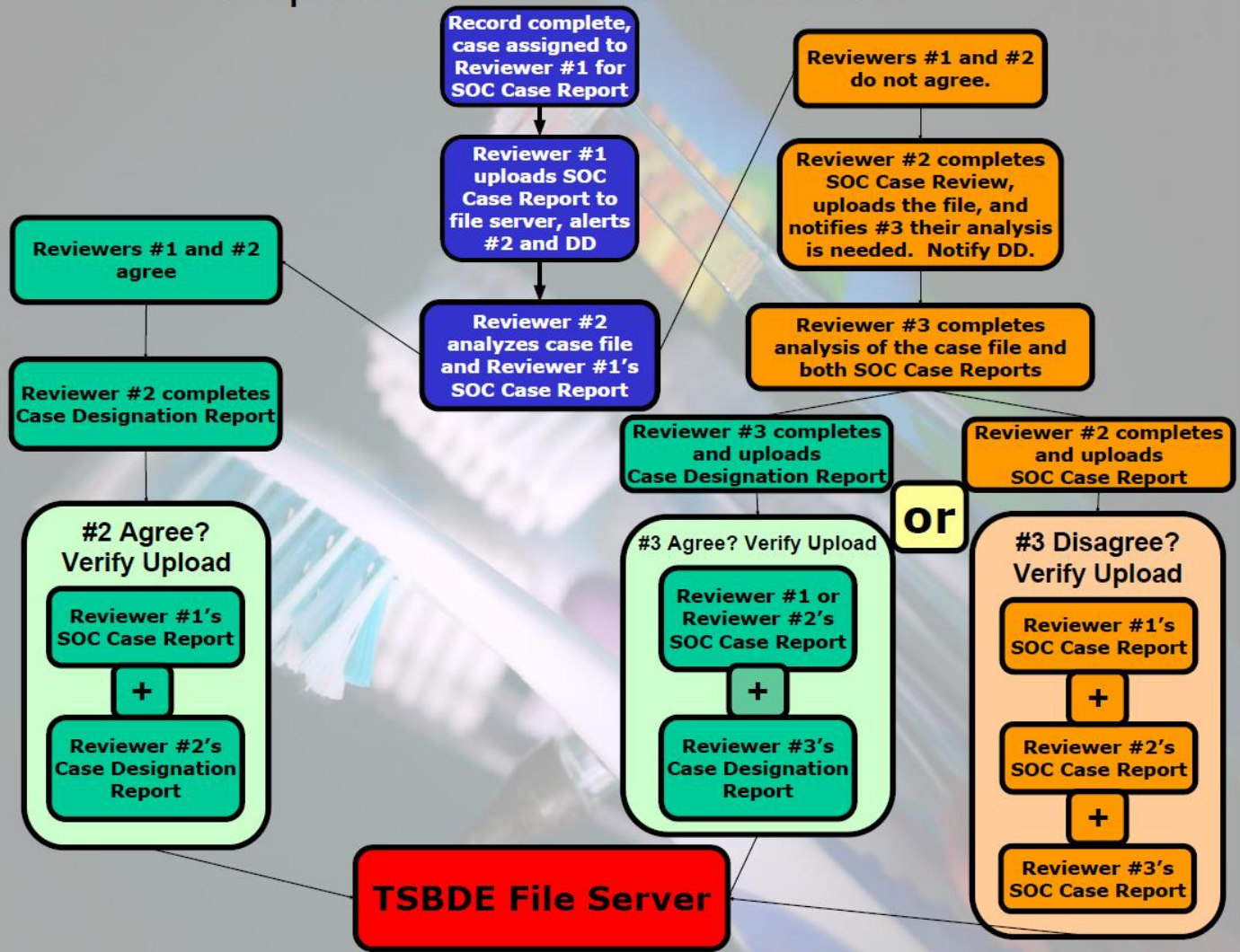
Post-Evidence Processing

- Once the case returns to TSBDE after the proper evidence has been gathered, the Dental Director first establishes that all applicable evidence has been obtained and that evidence is of diagnostic quality. If either of those criteria are not met, the case is returned to the investigator or inspector to collect additional evidence.
- Next, the Dental Director's assistant randomly assigns the case to Reviewer #1 and Reviewer #2. While making this semi-random assignment the DD's assistant is to take into account the Reviewer's location, dental specialty (if applicable), and areas of expertise for general dentists. If Reviewer #3 is needed, that reviewer is assigned at a later date.
- Once the first two reviewers are assigned, the Dental Director's assistant contacts each of the reviewers regarding the case in question via email. A memo is attached to the email with the following information:
 - The name of the dentist or hygienist being investigated (the Respondent) and case number;
 - A brief synopsis of the case;
 - A list of the materials to be reviewed;

- d. Names and reviewer number of other reviewers assigned
 - e. The size (number of pages of records) of the case
4. Reviewers #1 and #2 are asked to review the initial information in the memo as soon as possible after receipt to determine if they have the time to devote to this review, have a potential conflict of interest with the respondent or complainant, and if they are qualified and comfortable performing this review.
- a. If the Reviewer believes that he/she may have a conflict of interest, with the respondent or complainant in the case, he/she is expected to notify the Dental Director's assistant as soon as possible so that another reviewer may be assigned promptly. The same process is also utilized if he/she does not have time to complete the report within the allotted time frame.
 - b. The Reviewer is to provide the SOC Case Report in a prescribed format used by all DRP members. TSBDE provides templates for all reviewers to use. The two basic templates are "SOC Met" and "SOC Was Not Met". In addition to the basic template, TSBDE also provides a template for the case designation report. Reviewers #2 and #3 also have the option to use that template and submit a case designation report which designates Reviewer #1 or Reviewer #2's report as the SOC report for the case.
5. The report submission and upload process is as follows.
- a. Reviewer #1 completes their SOC Case Report, uploads it to the file server, and the system will alert Reviewer #2 the report is ready for their analysis.
 - b. Reviewer #2 then accesses the file server, views the full case file, and Reviewer #1's SOC Case Report.
 - c. If there is agreement between #1 and #2, Reviewer #2 simply completes and uploads their Case Designation Report to the file server designating Reviewer #1's report as the agreed upon report. The system alerts the DD and her assistant the case reports are complete.
 - d. In the event of a disagreement, Reviewer #2 completes their own SOC Case Report, uploads it to the file server, and notifies the DD's assistant that the case file and reports are ready for a third reviewer.
 - e. When the Reviewer #3 is needed, he/she will upload their report and notify the DD and her assistant that the case reports are complete.

The slide on the next page illustrates the process described above.

Report Submission Flowchart



Post SOC Report Processing

Once the proper reports have been uploaded to the TSBDE server, the DD then reviews the reports, provides personalized feedback to each reviewer regarding the individual reports, and then assigns the case to one of the following:

1. Legal Division - If an SOC violation has been found and verified by at least two reviewers, the case moves on to the Legal Division. The legal division then analyzes the case and determines where the severity of the violation falls on the disciplinary matrix. The respondent may be offered dismissal, dismissal with recommendations, a remedial plan, a Board order, etc. The respondent then has the option to sign the first offer or request

an ISC or SOAH hearing.

2. Investigations Division - If the reviewers do not find an SOC violation but do find evidence of a non-SOC violation, the case may be forwarded straight to Legal or possibly back to the investigations division for more investigation regarding the newly found violation.
 3. Quality Control Committee (QCC) - This committee includes all the Board Members who are dentists. If the reviewers do not find any violations of any kind then the case file is placed in queue with QCC for dismissal. The case file is sent to a QCC member to review and approve for dismissal or if they do not approve, the case “bounces back” into the review process. Occasionally the Board Member can request the cast be returned to the inspector or investigator for additional evidence.
- G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).**

The agency is funded by general revenue. The agency is entirely self-supporting by generating sufficient revenues from licensure fees to support the agency’s operations. The agency receives two types of appropriations, general revenue and appropriated receipts.

- H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions to the target population. Describe the similarities and differences.**

The Office of the Inspector General has a dental division that investigates and audits possible Medicaid fraud. The two agencies are similar in that both investigate dental issues by analyzing patient records; however, when it comes to patient treatment TSBDE focuses on care that is below the Standard of Care (SOC) and the OIG’s dental division focuses on treatment that does not meet Medicaid guidelines. For them, the treatment could meet SOC but not meet Medicaid guidelines and thus not need to be forwarded to TSBDE for investigation. Basically, the two agencies use a different ruler to measure compliance with our respective agencies. Clearly, TSBDE analyzes and reports on treatment for all the licensees in Texas and the OIG’s dental division only analyzes and reports on Medicaid providers who are also licensees in Texas.

Our Dental Review Panel program laws and rules are modeled after the Texas Medical Board’s Expert Review Panel Program; however, the difference is obvious in that we process dental complaints rather than medical complaints.

- I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency’s customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.**

The agency currently has a MOU with the OIG's Dental Division which dictates sharing information and evidence between the two agencies. This agreement aids TSBDE in increasing efficiencies regarding complaints that involve both agencies. The result of the sharing of evidence and information is that each agency can process the complaints within our own system as quickly as possible.

J. If the program or function works with local, regional, or federal units of government, include a brief description of these entities and their relationship to the agency.

Please see H. and I. above relative to the agency's relationship with the OIG's Dental Division.

K. If contracted expenditures are made through this program please provide:

- a short summary of the general purpose of those contracts overall;
- the amount of those expenditures in fiscal year 2014;
- the number of contracts accounting for those expenditures;
- top five contracts by dollar amount, including contractor and purpose;
- the methods used to ensure accountability for funding and performance; and
- a short description of any current contracting problems.

Payments on contracts with the expert reviewers that comprise the Dental Review Panel totaled \$66,050.00 in FY 2014. These payments were made to 95 members of the Dental Review Panel.

L. No grants are awarded by this program.

M. What statutory changes could be made to assist this program in performing its functions? Explain.

Tex. Occ. Code §259.109 requires dental records to be produced upon a request no later than 30 days after the date of the request. It would benefit the Dental Practice Division and case resolution to require licensees to provide records to the Board upon Board request in 15 days rather than 30. The 60 day preliminary investigation period introduced with HB 3201 is not as useful as it could be since the agency often spends half of the preliminary investigation period waiting to obtain records from the Respondent.

3(c)(1). Legal Division – Case Resolution

A. Name of Program or Function: Case Resolution - Legal

Location/Division: Legal Division

Contact Name: Nycia Deal, General Counsel

Division Staff as of June 1, 2015: Ten FTEs – (1) General Counsel, (6) Attorneys, (2) Legal Assistants, (1) Administrative Assistant

Statutory Citation for Program: Tex. Occ. Code §§255.006(a)(6); 263.0065; 263.0077; 263.002(a); 263.004; 263.0075; 263.0076; 264.051; 264.0525

B. What is the objective of this program or function? Describe the major activities performed under this program.

The objective of this program is to resolve cases in a timely manner based on sound assessment of the evidence collected during the investigative phase. The objective is also to ensure that licensees who violate the Dental Practice Act and Board Rules are sanctioned consistently and fairly, in order to remediate the licensee and protect the public.

Following an investigation, cases are transferred to the Legal Division. The General Counsel assigns the cases to an attorney for review, and the case assignment activity is logged in the Versa database. Following review of the allegations and evidence, the attorney may recommend one of the following actions, described in detail in the following pages, to advance the case resolution:

1. Non-Disciplinary Action
 - a. Dismissed by Legal – No Violation
 - b. Dismissed by Legal – Board Vote
 - c. Remedial Plan
2. Disciplinary Action
 - a. Agreed Settlement Order
 - b. Voluntary Surrender Order
 - c. Temporary Suspension
3. Other Methods of Resolution
 - a. Informal Settlement Conferences
 - b. SOAH Mediation or Litigation
4. Action against Non-Licensees
 - a. Cease and Desist Order
 - b. Injunction

1. Non-Disciplinary Action

- a. Dismissed by Legal – No Violation (DLNV)

Pursuant to Tex. Occ. Code §255.006(a)(6), if the investigation resulted in no evidence of a violation of the Dental Practice Act or Board rules, staff has the authority to close the case.

There are two primary case types: dental standard of care (SOC) cases and conduct cases (e.g. criminal conduct, impairment, dishonorable conduct). In a dental care case, there is no evidence of a violation when two Dental Review Panel (DRP) members agree that the dental records and other evidence indicate no violation of the SOC. In a conduct case, there is no evidence of a violation when the investigation (memorialized in an investigative report) produced no evidence of a violation.

In a care case, the original allegation may have been “the dentist failed to meet the SOC in a root canal treatment.” If the DRP agrees that the dentist did meet the SOC, the case may be dismissed before being transferred to Legal. If the case is transferred to Legal for further review, and the Legal staff finds no evidence of a violation, the Legal Division may seek DLNV. In a conduct case, the original allegation may have been “the dentist has unlicensed personnel working in his/her office.” If the investigation found no unlicensed personnel working in the dentist’s office, and the complainant is unavailable or unwilling to testify, Legal will seek DLNV.

In these cases, the staff attorney drafts a memo to the General Counsel noting the lack of evidence of a violation in the matter and requesting dismissal of the case. If the General Counsel agrees and approves the case’s closure, a member of the Legal Division closes the case in the Versa database and mails closure letters to the Respondent and the Complainant.

In the fourth quarter of FY 2015, 58 cases were closed DLNV.

b. Dismissed by Legal – Board Vote (DLVT)

In contrast to DLNV above, agency staff does not have the authority to dismiss cases that do produce evidence of a violation of the Dental Practice Act or Board rules. However, Tex. Occ. Code §263.0065 contemplates that Board employees may review the cases and recommend the dismissal of these complaints to the Board. Tex. Occ. Code §263.0065(b) states that this recommendation “must be approved by the Board at a public meeting.”

In these cases, the staff attorney drafts a memo analyzing the evidence in the case and submits the memo to the General Counsel for approval of the recommendation. The memo recommending dismissal is then presented to the Board for their approval of the dismissal. The Board considers these dismissal recommendations at their quarterly Board meetings and votes on their approval.

In a care case, the original allegation may have been “the dentist failed to meet SOC in a root canal treatment.” If the DRP agreed that the dentist met the SOC in the treatment, but failed to properly document the treatment, Legal may seek DLVT. In this example, a violation did occur. However, a simple record-keeping violation may not rise to the level of public action against a licensee. In these cases, the Board is asked to vote to dismiss the case as a relatively minor infraction. In many of these cases, the dismissal is

accompanied by a recommendation to the licensee. In the example above, the DLVT memo may request the Board vote to dismiss the case with a recommendation that the licensee complete six hours of continuing education (CE) in record-keeping. Staff does not require that the licensee provide proof of this CE.

If the Board concurs with agency staff's recommendation, it votes to dismiss the case at its Board meeting. Following the Board meeting Legal Division staff closes the case in the database and sends a dismissal letter, making the recommendation, to the licensee. The complainant is also mailed a letter explaining that the case has been closed without further action by the Board.

In the fourth quarter of FY 2015, 29 cases were closed DLVT.

c. Remedial Plan (RP)

In the 83rd Legislative Session, Tex. Occ. Code §263.0077 was added to the Dental Practice Act. This section authorizes the board to issue Remedial Plans to resolve complaints and specifies limitations on the issuance of RPs.

RPs are public, non-disciplinary actions. This means that although RPs are not reported as adverse action to the National Practitioners' Databank, they are public action that is available upon request. At this time, the Board's website displays "disciplinary action" on a dentist's public profile. Without technological upgrades to the Texas Online system used by various agencies, RPs cannot be linked directly through an individual dentist's public profile.

The Board has delegated the authority to propose RPs to its attorneys. A proposed RP must be signed by the licensee and approved by a vote of the Board at a public Board meeting before it is considered issued and in effect. Completion of the RP's terms is monitored by the Compliance Division of the Board. The Board considers RPs to be a settlement tool. As such, they are not available to resolve a case once it has been filed at the State Office of Administrative Hearings.

The Board issued its first RPs at its February 29, 2015, Board meeting. This means that the Board has issued RPs at three of its Board meetings: February 2015, May 2015, and August 2015. The Board has issued 44 RPs to resolve 52 cases. In the fourth quarter of FY 2015, 29 cases were closed by RP.

2. Disciplinary Action

a. Agreed Settlement Order (ASO)

Pursuant to Tex. Occ. Code §263.002(a), Grounds for Disciplinary Action in General, the Board is authorized to issue a warning letter, reprimand, place a licensee on probated suspension, place a licensee on enforced suspension, or revoke a licensee for violation of the Dental Practice Act or Board rules.

The use of the term “warning letter” in this section is problematic because it could suggest non-disciplinary – or even non-public action, but the Board considers each of the above-named actions to be public, disciplinary action that is reported to the National Practitioners’ Databank as adverse action.

The Board has delegated the authority to propose Agreed Settlement Orders (ASOs) to its attorneys. All proposed ASOs are drafted by an attorney, peer reviewed by the other attorneys, and approved by the General Counsel. A proposed ASO requires the licensee’s agreement to the terms of the ASO. The ASO must be signed by the licensee before a notary and approved by a vote of the Board at a public Board meeting before it is in effect. Completion of the ASO’s terms is monitored by the Compliance Division of the Board. The requirements of an ASO are called stipulations and may range from the imposition of an administrative monetary fine to evaluation and participation in a peer assistance program to completion of relevant continuing education.

ASOs may be modified pursuant to Board Rules 107.66 and 107.67. If a request for modification is received, agency staff may convene an Informal Settlement Conference to consider the request and recommend that the Board ratify a Modification Order.

ASOs are public, disciplinary action. ASOs are available through the licensee search on the agency’s website, are available through a Public Information Act (PIA) request, and are reported to the National Practitioner Databank.

b. Voluntary Surrender Order (VSO)

In some cases, the only appropriate resolution is the termination of a licensee’s ability to practice dentistry. In these cases the attorney may offer the licensee the opportunity to sign a Voluntary Surrender Order (VSO), giving up his or her license. If a licensee decides to voluntarily surrender and accepts the VSO language proposed by the attorney, the Executive Director of the agency accepts the VSO on behalf of the Board, and the Voluntary Surrender is effective immediately. Delegating the acceptance of the VSO to the ED enables the agency to more quickly resolve cases of extreme sensitivity and seriousness by not delaying the final action until a public meeting of the Board. A VSO is considered disciplinary action. In FY 2015, 9 cases were closed by VSO.

c. Temporary Suspension in an Emergency (TS)

Alternatively, the General Counsel or the attorney assigned the case may recommend the temporary suspension of a license if the evidence suggests that the licensee’s continued practice of dentistry would constitute a clear, imminent, or continuing threat to a person’s physical health or well-being, pursuant to Tex. Occ. Code §263.004.

In these situations, the attorney seeks the temporary suspension of the license before, or while, addressing other possible resolutions.

The temporary suspension hearing is held before an executive committee of the Board that convenes by telephone. While the meeting agenda is posted as an Open Meeting

with the Office of the Secretary of State at least two hours before the executive committee meeting convenes, the hearing is held “without notice” to the licensee. The Dental Practice Act permits the hearing to be held without notice, so long as at the same time the Executive Committee votes to suspend a license, a hearing on the temporary suspension is set at SOAH, to be held no more than thirty days after the Executive Committee’s temporary suspension hearing. Because the statute does not clearly delineate the purpose of the thirty day hearing, the agency interprets this SOAH hearing to be a Probable Cause Hearing to consider whether the license should remain suspended.

To initiate the temporary suspension process, the attorney drafts a Petition for Temporary Suspension that identifies the factual allegations that support a finding that the licensee poses a threat to the public and requests the Board vote to suspend the license. The attorney provides the Petition; indexed exhibits that support the Petition; the meeting agenda; and a proposed Order of Temporary Suspension to the Executive Committee in advance of the hearing. The attorney must also obtain a SOAH case number, obtain a hearing date, and prepare a Formal Complaint and Notice of Hearing prior to the Temporary Suspension hearing.

If the Executive Committee votes to suspend the license, the attorney must arrange for service of the Order of Temporary Suspension upon the licensee; file the Formal Complaint and Notice of Hearing at SOAH; and serve the same on the licensee.

The Probable Cause Hearing is held before an Administrative Law Judge (ALJ) at the State Office of Administrative Hearings (SOAH). At the Probable Cause Hearing, the attorney argues that there is probable cause for the continuation of the suspension that was voted on by the Board or Executive Committee of the Board. If the ALJ finds no probable cause to continue the suspension, they may order the license reinstated. If the ALJ finds probable cause to continue the suspension, the matter is set for a second hearing, no later than the thirtieth day after the probable cause hearing. The agency interprets this hearing to be the hearing on the merits of the underlying conduct that constitutes a violation of the Dental Practice Act or Board rules. At this hearing, the attorney presents evidence to support the ultimate disciplinary action he or she recommends.

At any time in this process, the licensee may negotiate a settlement with the attorney and avoid further litigation at SOAH.

In FY 2015, the Legal Division temporarily suspended four licenses.

3. Other Methods of Case Resolution

a. Informal Settlement Conference (ISC)

If the matter is not moving towards resolution by any of the above methods, the attorney may set the case for an Informal Settlement Conference (ISC) under the authority given at Tex. Occ. Code §§263.0075 and 263.0076. One or more Board

members preside over the ISC, which is also attended by the staff attorney assigned to the case, the General Counsel, and a representative of the Compliance and/or Dental Practice Divisions.

In FY 2014, the agency scheduled seven days of ISCs. In FY 2015, the agency scheduled 12 days of ISCs. In FY 2016, the agency scheduled 16 days of ISCs. The agency aims to dedicate at least 16 days each year to Informal Settlement Conferences. This permits the movement of approximately 128 cases at ISCs annually. However, the Legal Division resolved 254 cases in FY 2015 by Order or Remedial Plan – nearly double the Legal Division’s goal for the number of cases heard at ISC in a year. This means that if each case were to go through the ISC process with current resources and Board member availability, the agency would be unable to meet its performance measures.

The Dental Practice Act requires that the agency provide 45 days notice of the Informal Settlement Conference. ISC procedures are more specifically described in Board Rule 107.63. At the February 27, 2015, Board meeting agency staff introduced a “Staff Presentation of Rule Concept” document announcing staff’s intention to review and recommend amendments to Rule 107.63. As a part of this process, agency staff has accepted and continues to accept the submission of informal comments from stakeholders. Agency staff anticipates presenting its recommendation at the November 2015 or February 2016 Board meeting.

Currently, the ISC process is initiated when the attorney and the licensee are unable to reach a settlement. In an effort to respect the time of the Board members who must travel to attend the ISCs, the agency generally declines to send cases through the ISC process that do not involve allegations related to violations of the standard of care.

b. State Office of Administrative Hearings (SOAH)

If the proposed settlement offer made by the attorney or at an Informal Settlement Conference is not accepted by the licensee, the attorney must prepare for litigation at the State Office of Administrative Hearings.

The attorney prepares a Formal Complaint for filing at SOAH. The Formal Complaint undergoes the peer review process in which each of the five other staff attorneys reviews and comments on the draft Formal Complaint. Once the draft is finalized, the attorney submits the draft Formal Complaint with a Litigation Preparation Memo to the General Counsel for approval of the Formal Complaint and the beginning of the expert retention process.

Upon approval by the General Counsel, the Legal Assistant that is assigned to the attorney works with the Dental Director to retain an expert to serve as a testifying expert in the case. During this process, the attorney files the Formal Complaint at SOAH.

In some cases, mediation may be appropriate, and the case is referred to the Alternative Dispute Resolution docket rather than the SOAH trial docket.

4. Action Against Non-Licensees

a. Cease and Desist Orders

The agency has limited authority to investigate and act against non-licensees. Pursuant to Tex. Occ. Code §264.0525, the agency may serve a proposed Cease and Desist Order on a person it believes is engaging or likely to engage in practicing dentistry without a license. The definition of dentistry is found at Tex. Occ. Code §251.003. This means the only conduct against which the agency can propose a Cease and Desist Order is conduct on that list. For example, if a non-dentist engages in unlawful solicitation of patients in violation of Board Rule 108.58, for example, making large cash payments to Medicaid patients for their appointments, the agency does not have the authority to propose a Cease and Desist Order against a non-dentist for that conduct.

However, if the allegations involve an unlicensed person performing dental surgery on another person, the agency may propose a Cease and Desist Order. These orders are signed by the Executive Director and go into effect on a date stated within the order, unless the person to whom the Order is directed requests a hearing in writing on the Cease and Desist Order before that date.

If a hearing is requested, Legal Division staff files an initiating document at SOAH as a courtesy to the requestor. The Dental Practice Act requires that the hearing be held no later than the 30th day after the written request for hearing is received. This means no meaningful discovery can take place prior to the final hearing unless the parties agree to a continuance of the hearing. These procedures are prescribed by Tex. Occ. Code §264.0525.

In FY 2015, seven complaints were closed by final Cease and Desist Order.

b. Injunctive Relief

Pursuant to Tex. Occ. Code §§264.051 and 264.052, the agency may request the Office of the Attorney General or a District Attorney seek to enjoin a person from practicing dentistry without a license or to enjoin a licensed dentist from violating law that regulates the practice of dentistry. As with the cease and desist action described above, injunctive relief is not available against a non-dentist engaging in conduct that is not listed in Tex. Occ. Code §251.003. The agency has no authority to take action against a non-dentist for engaging in Medicaid fraud, for instance.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and outcome performance measures that best convey the effectiveness and efficiency of this function or program.

Case resolution through the Legal Division has improved since the passage of HB 3201. Specifically from FY 2014 to FY 2015, the Legal Division has increased the number of cases

resolved by public action of the Board (Orders or Remedial Plans) and decreased the number of cases dismissed.

Legislative performance measures call for 20% of complaints to be resolved by public action of the Board. 13% are to be resolved by disciplinary action, and 7% are to be resolved by remedial action.

The chart below demonstrates that the Legal Division is resolving far more complaints by public action of the Board than it has historically. Furthermore, the division is resolving a greater percentage of complaints received by the Board with public action, rather than dismissal. The percentage figure shown represents the line item as a percentage of the total number of cases resolved by the agency in each fiscal year.

	FY 2013	FY 2014	FY 2015
Cases resolved by Order or RP	162 (17%)	157 (13%)	254 (24%)
Cases closed by Legal as DLNV or DLVT	377 (39%)	668 (54%)	382 (37%)
Total cases resolved by Legal	539 (55%)	825 (67%)	636 (61%)
Total cases resolved by Agency	976	1240	1045

Furthermore, the Legal Division has more than doubled the number of complaints that it files at SOAH. In FY 2014 the Legal Division filed 27 complaints received by the agency for resolution at SOAH. In FY 2015, the Legal Division filed 67 complaints received by the agency for resolution. These SOAH figures reflect only complaint-based litigation; they do not reflect litigation related to an appeal of a denial of an application for licensure or registration. Those cases are discussed in Section VII(3)(c)(iii).

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

Again, HB 3201 brought great change to the agency and the Legal Division's case resolution program. Most significantly, the use of external, paid experts to produce written reports has provided the Legal Division with the tools it needs to better

understand its own cases, to prosecute the cases at SOAH, and to enlist the testimony of expert witnesses.

The introduction of Remedial Plans has also expedited the resolution of cases and the remediation of licensees. Before January 1, 2014, the Board did not have the authority to issue RPs. The only options available to resolve pending cases were dismissal or disciplinary action. In order to address the subset of cases that held weak evidence or minor violations, the Legal Division offered “Conditional Dismissals” (CDs). CDs required licensees to comply with certain requirements. Upon successful completion of these requirements, the complaint was dismissed. RPs supplant CDs. Because RPs are public, while CDs were not, the issuance of RPs allows for a better reflection of the types of issues being addressed by the Board, directing the Board’s attention to trends in the practice of dentistry and providing transparency to the public.

Finally, the additional resources allocated to the agency in the 83rd Legislative Session enabled a needed expansion of the Legal Division. In 2011, the Legal Division was comprised of a General Counsel, three staff attorneys, two legal assistants, and a part-time administrative assistant. Currently the Legal Division is comprised of a General Counsel, an Assistant General Counsel, five staff attorneys, two legal assistants, and an administrative assistant. Additional resources have benefitted each function of the Legal Division, including its ability to expedite case resolution.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

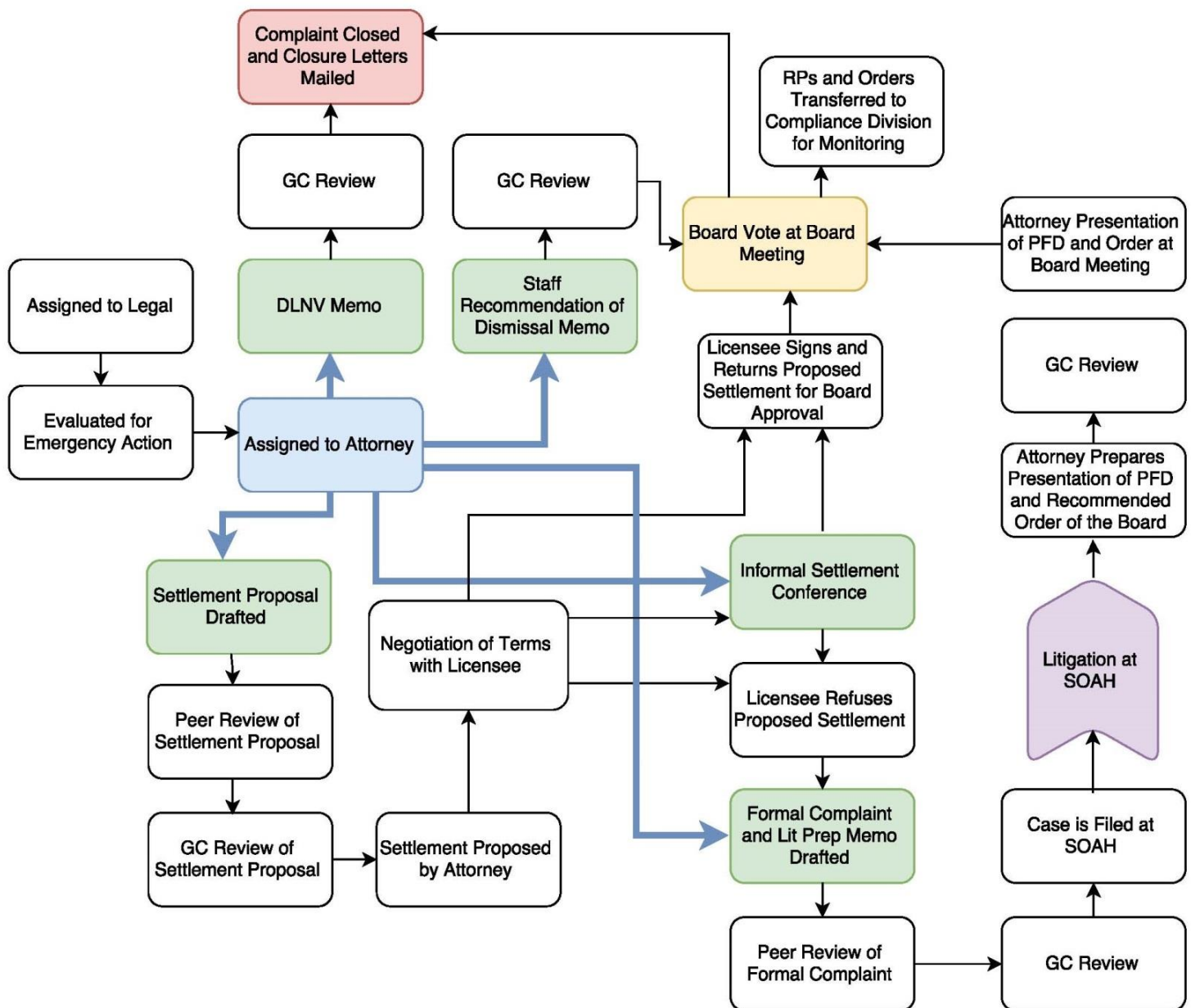
The Legal Division’s Case Resolution program affects licensees and registrants, unlicensed respondents, complainants, and patients.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. Indicate how field/regional services are used, if applicable.

Each attorney produces a detailed case inventory on a monthly basis. Based on the respective caseloads of the attorneys, the relative complexity of the cases, and the number of cases in active litigation, the General Counsel assigns cases to the attorneys on a case-by-case basis.

The division’s internal performance measures require each attorney to extend settlement offers on at least eight cases each month. If the attorney is unable to comply with the performance measure, they are required to submit a Waiver Memo to the General Counsel for approval, explaining the reasons for the deficiency. Attorneys are also instructed to answer telephone calls and emails within twenty-four hours. Attorneys should try to set at least one case for each informal settlement conference. The General Counsel also provides goals for case resolution for each quarter in an effort to reduce the time that a case is in the Legal Division.

The flowchart below depicts the basic movement of a case from its assignment to the Legal Division through its resolution.



G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

The agency is funded by general revenue. The agency is entirely self-supporting by generating sufficient revenues from licensure fees to support the agency's operations. The agency receives two types of appropriations, general revenue and appropriated receipts.

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions to the target population. Describe the similarities and differences.

Internally, the Dental Practice Division and Investigations Division also resolve cases. The Dental Division and Investigations Division resolve cases that are non-jurisdictional or for which an investigation revealed no evidence of a violation.

Externally, other state Dental Boards provide similar services in facilitating the resolution of complaints against dentists, dental hygienists, and registered dental assistants. In Texas, the Office of the Inspector General, the Office of the Attorney General Medicaid Fraud Control Unit, and the Office of the Attorney General Civil Medicaid Fraud Division all investigate and prosecute Medicaid fraud. The Drug Enforcement Agency and Department of Public Safety investigate and prosecute violations related to controlled substances.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

While the internal divisions listed in response to Question H also resolve cases, their role in case resolution is fairly limited. Further, the Legal Division's role in resolving cases involving Texas licenses is distinct from the activity other state Dental Boards in that other state boards do not take action against Texas licensees or registrants.

The response to Question H also lists several Texas agencies that oversee investigation and prosecution of Medicaid fraud. The Dental Board cannot independently determine that Medicaid fraud has occurred. The agency's authority to act on Medicaid fraud is codified at Tex. Occ. Code §263.002(14), which holds that a dentist who "knowingly provides or agrees to provide dental care in a matter that violates a federal or state law that regulates a plan to provide, arrange for, pay for, or reimburse any part of the cost of dental care services" is subject to disciplinary action.

In order for the Legal Division to recommend the Board take disciplinary action against a dentist for Medicaid fraud, it must rely on a finding made by one of the agencies with primary jurisdiction over Medicaid fraud – for instance, a criminal conviction of Medicaid fraud or a judge's finding of fact that a licensee violated Medicaid rules or regulations. Because the Dental Board cannot independently investigate and prosecute these allegations, it avoids duplication of those efforts by deferring Board action until Medicaid fraud has been established.

The agency is working to enter a new MOU with the OIG. The purpose of the MOU is to ensure information sharing between the agency, particularly when either agency takes final disciplinary action against a licensee or a provider.

The Legal Division has a good working relationship with the OIG attorneys and has informally coordinated the exchange of investigative information relevant to the missions of both agencies.

The Legal Division also works closely with the Professional Recovery Network (PRN) as the agency's contracted peer assistance provider. The Legal Division may recommend that the Board require licensees or registrants who have demonstrated an issue with alcohol or drugs to submit to an evaluation by PRN and comply with any PRN recommendations that result from the evaluation.

The Legal Division often receives case referrals from the DEA or DPS. The DEA and DPS issue permits to licensees to prescribe controlled substances. The DEA, DPS, and the Dental Board can request that a licensee surrender these permits. While the DEA and DPS focus their investigations on specific violations of the regulations concerning controlled substances, the Dental Board focuses on whether controlled substances were prescribed within the minimum standard of care and if there is a dental purpose for the prescription.

J. If the program or function works with local, regional, or federal units of government, include a brief description of these entities and their relationship to the agency.

The Legal Division refers cases to the Office of the Attorney General when it believes that a person against whom the Board has issued a Cease and Desist Order is practicing dentistry without a license in violation of the Board's Cease and Desist Order. The Legal Division also refers cases to the Office of the Attorney General when the cases involve a high degree of financial complexity. For example, if the Investigations Division investigated a large corporate entity engaged in practicing dentistry without a license, the Legal Division may refer the case to the Office of the Attorney General for consideration of prosecution and imposition of civil penalties authorized by Tex. Occ. Code §264.102.

When a parallel investigation has been conducted or is being conducted by another agency, the Legal Division may communicate with the other agency to determine case status and outcomes.

The Legal Division also communicates the results of the Board's disciplinary actions to other state agencies, including HHSC, as well as the National Practitioner Databank.

K. No contracted expenditures are made through this program.

L. No grants are awarded by the program.

M. What statutory changes could be made to assist this program in performing its functions? Explain.

Informal Settlement Conferences are a valuable tool that enables the Legal Division, the licensees, and the Board to work together to achieve a mutually agreeable resolution of a case. However, the statutory language that describes or authorizes ISCs appears in multiple sections of the Dental Practice Act and could be updated to reflect current practices and capacities of the agency. Specifically, Tex. Occ. Code §§263.0065 and 263.0075 could be reviewed and consolidated.

On the same note, when a dental treatment fails due to a dentist's failure to meet the standard of care in the treatment, restitution is an important component of action taken by the Board because a failed treatment likely requires the patient pay for re-treatment by a subsequent dentist. The attorneys frequently recommend restitution in the ASOs they propose; however, the authority to require restitution falls under Tex. Occ. Code §263.0075, which references ISCs. As the agency does not currently have the capacity to send every case through ISC, clear authority to require restitution in an ASO or RP, whether or not an ISC has been held, would benefit the public and assist the Legal Division in fulfilling the agency's mission.

N. Provide any additional information needed to gain a preliminary understanding of the program or function.

The attorneys' recommended resolution of a case is determined by their application of the Board's Disciplinary Matrix to the allegations and evidence in the case. The Disciplinary Matrix is a public document voted on by the Board and published as a notice document in the *Texas Register*. It was most recently amended and re-published in the September 5, 2014, issue of the *Texas Register*. The Matrix lays out a range of sanctions and stipulations for specific violations of the Dental Practice Act or Board rules. The application of aggravating or mitigating factors guides movement within those ranges. See Attachment 17 for Disciplinary Matrix.

3(c)(ii) Legal Division – Rulemaking Program**A. Provide the following information at the beginning of each program description.****Name of Program or Function:** Rulemaking - Legal**Location/Division:** Legal Division**Contact Name:** Nycia Deal, General Counsel**Division Staff as of June 1, 2015:** See 3(c)(1)(A) above**Statutory Citation for Program:** Tex. Occ. Code §254.001**B. What is the objective of this program or function? Describe the major activities performed under this program.**

The objective of this program is to assist the Board in its general rulemaking authority pursuant to Tex. Occ. Code §245.001.

The Legal Division supports the Board's rulemaking function by developing rulemaking topics; researching rulemaking topics; coordinating stakeholder meetings; drafting rule language; coordinating Board committee meetings; ensuring compliance with the Administrative Procedures Act; coordinating rule reviews; presenting possible rulemaking at Board meetings; posting rulemaking action in the *Texas Register*; receiving public comment on proposed rulemaking; and apprising the Board of possible consequences of rulemaking.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and outcome performance measures that best convey the effectiveness and efficiency of this function or program.

The rate of rulemaking action by the Board fluctuates based on complexity of rulemaking topics and allocation of available agency resources.

The current focus of the Legal Division in the context of rulemaking is to review and recommend revision of rules related to agency processes. Specifically, Chapter 107 of the Board's rules contains multiple rules describing agency processes that were enacted in 1976 and have not been amended. In addition to that important review, substantive rulemaking related to the advertising of specialty areas and the appropriate termination of the dentist-patient relationship have been introduced as future rulemaking topics. Agency staff expects to revisit the 2011 amendments to the anesthesia rules in the coming months as well.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

At the February 29, 2015, Board meeting, the Legal Division announced a new rulemaking process to standardize and make available to the public a general timeline of rulemaking action.

This is a process of general applicability and intended to be deployed in whole when the Board considers complex rulemaking and in part when the Board considers less complex rulemaking.

The new process, depicted on the following page, calls for an initial announcement of a rulemaking topic, prior to the Board's proposal of new rules or rule changes. While the Administrative Procedures Act requires an opportunity for public comment following the proposal of a rule, agency staff believes that additional, informal notice of possible rulemaking may benefit many involved parties. This informal announcement and call for informal input benefits the public in its awareness of possible action of the Board, benefits agency staff in its ongoing collection of information as it researches rulemaking topics, and benefits the Board by allowing it the most complete information in its consideration of possible rulemaking.

Prior to the development of this process, the primary discussion regarding the content of the rules occurred after the rule was formally proposed through written and live public comment at Board Meetings. While this is indicative of Board engagement in the public comment process, agency staff believes offering an opportunity for more discussion prior to the proposal of the rule will result in better-formed proposals. Rather than a series of proposals, withdrawals, and re-proposals, the intention of the new process is to permit drafting and re-drafting with public input, prior to a formal proposal.

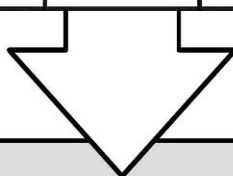
This process also introduces the use of Stakeholder Meetings as a method by which agency staff may meet with and elicit informal input from stakeholders. Thus far, two stakeholder meetings have been held, and a third is scheduled for October 23, 2015. See Attachment 18 for recent Stakeholder Meeting materials.

The goal of staff's new rule-making process is to improve rule-making by incorporating stakeholder and committee input and expertise prior to Board proposal of a rule.

The process is flexible and responsive to the needs of the subject matter. Not all rule concepts require the application of all stages of the process; however, staff intends to solicit and report on stakeholder input prior to recommending proposal of any complex rule.

Current Rule-making Process

Identify need for rule	Staff drafts rule	1st Board meeting Propose rule	1st public comment period	Stakeholder meeting (optional)	2nd Board meeting Re-propose rule with changes	2nd public comment period	Stakeholder meeting (optional)	3rd Board meeting Action on re-proposed rule
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New Rule-making Process

1st Board meeting - Rule concept introduced - Refer to appropriate committee and/or Staff for information-gathering	Staff publishes <i>Notice of Intent to Consider Rule-making</i> on website	1st stakeholder meeting Staff drafts first draft of rule language 2nd stakeholder meeting Staff modifies draft language based on input	Board committee meeting - Staff presents report on stakeholder input - Staff modifies draft language based on committee input	2nd Board meeting - Staff presents reports on stakeholder input and committee input - Staff presents rule draft - Action on rule draft (proposal)	Public comment period	3rd Board meeting Action on proposed rule (adoption)
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Rule-making Process | February 16, 2015

- E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.**

The rulemaking function of the Legal Division affects all licensees and all members of the Texas public. At any point in the process, any interested person is invited to submit informal comments to stakeholders@tsbde.texas.gov; attend a stakeholder meeting; offer public comment at a meeting of the Board; or submit a formal public comment following the proposal of a rule.

- F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. Indicate how field/regional services are used, if applicable.**

See Diagram in Section D above.

- G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).**

The agency is funded by general revenue. The agency is entirely self-supporting by generating sufficient revenues from licensure fees to support the agency's operations. The agency receives two types of appropriations, general revenue and appropriated receipts.

- H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions to the target population. Describe the similarities and differences.**

The Legal Division works with the members of the Dental Hygiene Advisory Council in their review of rules proposed by the Board that may affect the practice of dental hygiene.

The Texas Medical Disclosure Panel is appointed by the Commissioner of Health and Human Services. On January 15, 2015, it amended 25 Tex. Admin. Code §601.2, Procedures Requiring Full Disclosure of Specific Risks and Hazards. This rule enumerates the procedures for which Informed Consent is required. The rule omits certain dental procedures for which the Board or agency staff believes informed consent is required by Board Rule 108.7(6). The agency submitted a comment during the rule comment period.

- I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.**

The Legal Division is working hard to facilitate communication with the agency's customers. The new rulemaking process, with its emphasis on communication to the public and external entities, should help avoid duplication or conflict with other agencies.

- J. If the program or function works with local, regional, or federal units of government, include a brief description of these entities and their relationship to the agency.**

During the research portion of the rulemaking process, agency staff reviews reports and rules that have been adopted by other Dental Boards and agencies with similar missions. Similarly, the Legal Division has fielded public comments and conversed with staff of federal agencies with an interest in the agency's rulemaking.

- K. No contracted expenditures are made through this program.**
- L. No grants are awarded by this program.**
- M. What statutory changes could be made to assist this program in performing its functions? Explain.**

Tex. Occ. Code §254.0011 authorizes the Board to “adopt rules relating to the practice of dentistry as described by Section 251.003(a)(9) to prohibit a dentist from engaging in contracts that” would allow a non-dentist to engage in the conduct described in Tex. Occ. Code §251.003(a)(9). The section goes on to say that these rules “may not preclude a dentist’s right to contract with a management service organization. It is unclear whether the Board’s authority to adopt rules prohibiting a dentist from engaging in certain contracts is limited to contracts that would violate Section 251.003(a)(9). The Board believes that the explicit authorization to make rules prohibiting a certain type of contract does not limit its general rulemaking authority to make rules prohibiting other types of contracts. However, the statute is not clear as to whether or not the Board may adopt rules that prohibit contracts that violate sections of the Dental Practice Act other than Section 251.003(a)(9).

Furthermore, the Board interprets “may not preclude a dentist’s right to contract with a management service organization” to mean that Board rules may not prohibit a dentist from contracting with a management service organization. However, a rule that defines what kinds of contracts or contract terms may violate Section 251.003(a)(9) (or other sections of the Dental Practice Act), could effectively prohibit the contract provisions and contract relationships that such a rule would identify as violating the statute. It is unclear whether the legislature would consider such an effect to preclude a dentist’s right to contract. From the Board’s perspective, if its rulemaking may not define appropriate and inappropriate contracting, then the rulemaking authority described in Section 251.003(a)(9) is toothless.

3(c)(iii) Legal Division – Other Duties

A. Provide the following information at the beginning of each program description.

Name of Program or Function: Other Services - Legal

Location/Division: Legal Division

Contact Name: Nycia Deal, General Counsel

Division Staff as of June 1, 2015: See 3(c)(1)(A) above

Statutory Citation for Program: Tex. Occ. Code §255.006; Tex. Govt. Code Chapter 552; Tex. Occ. Code Chapter 53;

B. What is the objective of this program or function? Describe the major activities performed under this program.

In addition to the case resolution and rulemaking functions provided by the Legal Division, the division also performs the following:

1. Initial review of complaints received;
2. Responding to requests under the Public Information Act;
3. Review of applications for the consequences of criminal convictions, proposal of Consent Orders, and representation of the agency at SOAH; and
4. Responding to legal questions and customer service issues raised by licensees and members of the public.

One attorney performs functions (1), (2), and (3), and all seven attorneys of the Legal Division perform function (4).

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and outcome performance measures that best convey the effectiveness and efficiency of this function or program.

1. In FY 2015, the Legal Division (through the designated intake attorney) completed intake review of approximately 1000 complaints received by the agency. The intake attorney position was established in the 83rd Legislative Session by HB 3201 and serves as an initial review of complaints received to determine whether the Board has jurisdiction to consider the complaint and to identify preliminary issues or information.
2. In FY 2015, the Legal Division responded to 124 requests under the Public Information Act and requested 15 Office of the Attorney General letter rulings related to the disclosure of information.
3. In FY 2015, the Legal Division reviewed 501 applications for licensure or registration to analyze and recommend action related to the consequences of criminal convictions and proposed 158 Consent Orders.

4. On a weekly basis, the Legal Division fields approximately 30 to 40 questions from licensees or members of the public inquiring into the interpretation of the law or rules.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

1. As mentioned, the intake process was formalized through HB 3201 in the 83rd Legislative Session. In addition to assessing jurisdiction, the initial attorney review of the complaint allegations enables better communication throughout the agency as to specific emergency situations and general trends in the practice of dentistry.
2. In 2014, the *Dallas Morning News* filed suit against the agency for release of dentists' self-reports of patient death and patient hospitalization, required by Rule 108.6. The agency's request for an OAG opinion regarding the release of this information was untimely, but the OAG held that the requested documents were statutorily confidential as part of the Board's investigative files. As a result of the lawsuit and the agency's process errors responding to the initial request, the agency fundamentally changed its Open Records Process. To support this change, the attorney most recently hired to the Legal Division was an interagency transfer from the OAG Open Records Division and serves as the agency's Public Information Officer, in addition to multiple other functions.
3. In approximately 2011, the agency modified its internal processes to accommodate review of the criminal histories of applicants for licensure or registration. If an applicant is denied a license or registration based on his or her criminal history, he or she may request a hearing before SOAH.

An alternative to the hearing process is the issuance of a Consent Order. A Consent Order is drafted by the Legal Division and offered to the licensee in lieu of denial of the license. If the Board ratifies the Consent Order, the license or registration is issued, and the Consent Order functions as an immediate disciplinary action against the licensee or registrant.

In FY 2014, the agency filed for four hearings on denied applications. In FY 2015, the agency filed for nine hearings on denied applications. In FY 2015 the agency filed for three hearings on denied applications.

In FY 2013, the Board approved 95 Consent Orders granting licenses or registrations. In FY 2014, the Board approved 141 Consent Orders granting licenses or registrations. In FY 2015, the Board approved 158 Consent Orders granting licenses or registrations. **Consent Orders are not included in the agency's performance measures related to case/complaint resolution and disciplinary action.**

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

The functions performed by the Legal Division affect licensees, complainants, members of the public, and applicants for licensure or registration.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. Indicate how field/regional services are used, if applicable.

1. A designated intake attorney coordinates with the Investigations Division to review the initial complaint worksheets for jurisdiction during the preliminary investigation period.
2. A designated attorney serves as the Legal Division's liaison to the Licensing Division, processing and reviewing applications for the consequences of criminal convictions, issuing Criminal History Evaluation Letters, and recommending approval, denial, or proposal of a Consent Order.
3. A designated attorney serves as the Public Information Officer and receives, reviews, and responds to Public Information Act requests, with the assistance of other attorneys and other divisions as needed to collect the requested information.
4. All attorneys of the Legal Division are required to answer questions presented by members of the public. Generally, questions are initially received by the Legal Administrative Assistant by telephone or email. The Administrative Assistant distributes the questions to the attorneys on a rotating basis.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

The agency is funded by general revenue. The agency is entirely self-supporting by generating sufficient revenues from licensure fees to support the agency's operations. The agency receives two types of appropriations, general revenue and appropriated receipts.

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions to the target population. Describe the similarities and differences.

The agency website features an online search for copies of public disciplinary action against dentists. Some PIA requestors require the Legal Division to deliver the information to the requestor rather than utilizing the online search function.

- I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.**

None.

- J. If the program or function works with local, regional, or federal units of government, include a brief description of these entities and their relationship to the agency.**

Some of the questions received by the Legal Division are referred to another, more appropriate agency including: local law enforcement, Office of the Attorney General, United States Department of Health and Human Services – Office for Civil Rights, Texas Workforce Commission, Office of Public Insurance Counsel, Texas Department of Insurance, Occupational Safety and Health Administration, and other licensing agencies.

- K. No contracted expenditures are made through this program.**

- L. No grants are awarded by this program.**

- M. What statutory changes could be made to assist this program in performing its functions? Explain.**

Clarification of the Board's disciplinary authority related to Registered Dental Assistants and their affiliated certificates could result in a reduction in the number of applications the Legal Division must review and a reduction in the number of Consent Orders issued.

Tex. Occ. Code §263.002 authorizes the Board to discipline licensees, but it makes no mention of registrants. If the Board's authority to take action against registrants were limited to the approval, denial, or revocation of the registration, it would affect the agency's application review process, expedite the registration of some dental assistants, and obviate the need for the majority of the Consent Orders issued by the Board. For example, at its August 14, 2015, Board meeting, the Board issued Consent Orders to 49 dental assistants, in which the Board reprimanded each of them for a misdemeanor conviction or deferred adjudication and approved the application for registration.

3(d) Executive Division

A. Provide the following information at the beginning of each program description.

Name of Program or Function: Executive Division

Location/Division: Executive Division

Contact Name: Kelly Parker, Executive Director

Division Staff as of June 1, 2015: 3.0 FTEs (Including 1.0 vacancy – Executive Director)

Statutory Citation for Program: Tex. Occ. Code §253.001

B. What is the objective of this program or function? Describe the major activities performed under this program.

In addition to providing leadership and motivation to meet the agency's vision, the division also performs the following activities:

1. Manages the day-to-day operation of the agency;
2. Ensures that the strategic goals of the agency are met;
3. Implements agency objectives and monitors the agency's performance and operational effectiveness and efficiencies;
4. Provides policy advice to the Board and implement Board policies;
5. Ensures agency compliance with statewide goals;
6. Interacts with Texas dental, dental hygiene, dental assisting, and dental laboratory technician schools;
7. Monitors and reviews state and national issues affecting the dental community and implement legislation passed by the Texas Legislature that affects agency operations and the practice of dentistry;
8. Participates in national organizations and forums;
9. Disseminates and monitors agency information via social media, newsletters, formal media request, and agency website;
10. Oversees the overall budget, space allocation, purchasing, and contracting needs of the agency; and
11. Responds to questions and customer service issues raised by the media, general public, stakeholders, consumer organizations and members of the legislature.

The Executive Assistant and the Communications Manager are instrumental in assisting the Executive Director perform the functions and duties of this division's programs and accomplish the stated mission, goals, and objectives of the Board.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and outcome performance measures that best convey the effectiveness and efficiency of this function or program.

In FY 2014 and 2015, the Executive Division showed the effectiveness and efficiency of the division's programs and functions by reaching and completing the following goals and benchmarks:

1. Completion of the 2015-2019 Strategic Plan;
2. Completion and submission of the Business Continuity Plan to the State Office of Risk Management;
3. Completion and submission of the Survey of Employee Engagement in coordination with the Institute for Organizational Excellence at the University of Texas at Austin;
4. Increasing the number of state services accessible by Internet;
5. The creation and establishment of agency information via social media for our targeted stakeholders and licensees;
6. Conducting a nation-wide solicitation for peer review input and feedback on policies, processes, strategic planning, and issues affecting the dental community;
7. Preparation and Coordination of the 2015 Sunset Review;
8. Implementation of the Leadership 360 Survey. An evaluation and review process that allows staff an opportunity to provide honest, reliable feedback on the leadership abilities, behaviors, and skills of top agency management;
9. New Board Member training and Board Member workshops conducted for the 2015 2019 Strategic Plan;
10. Representation of the Board's Legislative Appropriations Request (LAR) and corresponding performance measures before the legislature;
11. Creation and hiring of additional FTEs granted through the LAR to ensure that Texans are effectively and efficiently served by high-quality professionals and businesses; and
12. The creation of monthly action reports on the accomplishment of Division objectives for incorporation into the Board's Annual Report and ensure that Texans are effectively and efficiently served by high-quality professionals.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

In 2014, an Information Specialist was hired to facilitate communication and transparency with the licensees, stakeholders, members of the Legislature, and the media. This position has enabled the division to introduce two important communications initiatives: a quarterly email newsletter and an overhaul of the agency website.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

The functions performed by the Executive Division affect agency employees, Board members, licensees, complainants, members of the public, applicants for licensure or registration, executive leadership of other governmental agencies, members of the Legislature and other governmental officials, members of the media.

- F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. Indicate how field/regional services are used, if applicable.**

The Executive Division is administered by the Executive Director who reports directly to the Board. In addition to supervising the heads of other divisions, two employees of the Executive Division report directly to the Executive Director: a Communications Manager and an Executive Assistant.

- G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).**

The agency is funded by general revenue. The agency is entirely self-supporting by generating sufficient revenues from licensure fees to support the agency's operations. The agency receives two types of appropriations, general revenue and appropriated receipts.

- H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions to the target population. Describe the similarities and differences.**

None.

- I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.**

None.

- J. If the program or function works with local, regional, or federal units of government, include a brief description of these entities and their relationship to the agency.**

The Executive Division liaises with leadership of other governmental agencies, the Office of the Governor, and members of the Legislature.

- K. If contracted expenditures are made through this program please provide:**
- a short summary of the general purpose of those contracts overall;
 - the amount of those expenditures in fiscal year 2014;
 - the number of contracts accounting for those expenditures;
 - top five contracts by dollar amount, including contractor and purpose;
 - the methods used to ensure accountability for funding and performance; and
 - a short description of any current contracting problems.

In FY2014, the agency entered into an interagency contract with Governor's Center for Management Development – University of Texas at Austin which consisted of \$11,125.00 of expenditures. The agency received professional facilitation, design, development, review, advisory and related support services for completion of its FY2015 – 2019 Strategic Plan.

In FY2014, the agency entered into a contract with Austin Ribbon and Computer Supplies for assistance with the business continuity plan. Total expenditures under this contract was \$10,560.00.

L. No grants are awarded by the program.

M. What statutory changes could be made to assist this program in performing its functions? Explain.

None.

VIII. Statutory Authority and Recent Legislation

- A. Fill in the following charts, listing citations for all state and federal statutes that grant authority to or otherwise significantly impact your agency. Do not include general state statutes that apply to all agencies, such as the Public Information Act, the Open Meetings Act, or the Administrative Procedure Act. Provide information on Attorney General opinions from FY 2011–2015, or earlier significant Attorney General opinions, that affect your agency's operations.

Texas State Board of Dental Examiners
Exhibit 12: Statutes / Attorney General Opinions

Statutes

Citation / Title	Authority / Impact on Agency (e.g., "provides authority to license and regulate nursing home administrators")
Occ. Code, Ch. 53, Consequences of Criminal Conviction	Provides authority to revoke, suspend, or deny a license based upon criminal background.
Occ. Code, Ch. 55, Licensing of Military Service Members, Military Veterans, and Military Spouses	Requires agency to waive late-renewal licensing fees for certain individuals; provide for alternative licensing procedures for military spouses; and provide for expedited licensing procedures for military spouses.
Occ. Code, § 56.003, Authority to Take Action in Event of Default or Breach	Provides authority to take disciplinary action against a licensee who has defaulted on a student loan or has breached a student loan repayment contract or scholarship contract.
Occ. Code, § 57.002, Requirements for Governing Board Membership	Prohibits membership of a private trade organization as a precondition as serving on the Board.
Occ. Code, § 59.001, Confidentiality of Social Security Number	Provides that the social security number of an applicant or licensee provided to the agency is confidential.
Occ. Code, § 101.204, Remedies	Grants agency authority to revoke or deny a license for a violation of Chapter 101, Subchapter E (relating to false, misleading, or deceptive advertising, overcharging, or overtreating).
Occ. Code, § 101.252(a), Injunction	Authorizes the agency to bring an action for an injunction to stop a violation of Chapter 101 (false, misleading, or deceptive advertising, overcharging, overtreating, or failure to provide billing information).
Occ. Code, § 105.002(b), Unprofessional Conduct	Authorizes agency to discipline the license of an individual who engages in unprofessional conduct, as that term is described in § 105.002(a).
Occ. Code, § 251.003, Practice of Dentistry	Defines the practice of dentistry.

Occ. Code, Chapter 252, State Board of Dental Examiners	Establishes the Board and its membership requirements.
Occ. Code, Chapter 253, Executive Director and Personnel	Authorizes employment of Board staff.
Occ. Code Chapter 254, Board Powers and Duties	Sets out Board's authority and duties to engage in rulemaking, establish fees, maintain records, monitor license holders, provide information to licensees, develop and implement certain policies, enter into an agreement with the Health and Human Services Commission, and collect information from dentists and dental service organizations
Occ. Code Chapter 255, Public Interest Information and Complaint Procedures	Sets out Board's duties in accepting complaints, maintaining a record of complaints, and investigating and disposing of complaints.
Occ. Code Chapter 256, Licensing of Dentists and Dental Hygienists	Authorizes Board to license qualified dentists and dental hygienists.
Occ. Code Chapter 257, License Renewal	Authorizes Board to establish a system for renewing dental and dental hygiene licenses.
Occ. Code Chapter 258, Practice by Dentist	Describes standards to which a dentist's practice is held, and describes Board's authority and duties in enforcing those standards.
Occ. Code Chapter 262, Regulation of Dental Hygienists	Defines the practice of dental hygiene, authorizes Board to regulate all matters concerning the practice of dental hygiene, and creates and defines duties of Dental Hygiene Advisory Committee.
Occ. Code § 263.001, Grounds for Refusal to Issue License	Authorizes Board to refuse to issue a dental license or a dental hygiene license under certain circumstances.
Occ. Code § 263.002, Grounds for Disciplinary Action in General	Authorizes Board to take disciplinary action against a license in certain circumstances.
Occ. Code § 263.004, Temporary Suspension in Emergency	Authorizes Board to temporarily suspend a license.
Occ. Code § 263.006, Suspension or Revocation Required for Certain Drug Offenses	Requires Board to suspend or revoke a license for certain criminal offenses.
Occ. Code §§ 263.0065-263.0077	Provides for informal or agreed methods of case resolution.
Occ. Code Chapter 264, Subchapter A, Administrative Penalty	Authorizes Board to assess an administrative penalty for a violation of the Dental Practice Act and sets out procedural requirements for assessment of penalty.
Occ. Code Chapter 264, Subchapter B, Injunction; Cease and Desist Order	Authorizes Board to issue a cease and desist order and sets out procedural requirements for its issuance.

Occ. Code § 265.001, Registration	Authorizes Board to adopt and enforce rules requiring the registration of dental assistants.
Occ. Code § 265.004, Pit and Fissure Sealant Certificate	Requires Board to issue pit and fissure sealant certificate to qualified dental assistant.
Occ. Code § 265.005, X-Ray Certificate	Requires a dental assistant to hold a certificate of registration issue by the Board before taking dental x-rays.
Occ. Code § 265.006, Coronal Polishing Certificate	Requires Board to issue coronal polishing certificate to qualified dental assistant.
Occ. Code Chapter 266, Regulation of Dental Laboratories	Requires Board to register qualified dental laboratories; describes practice requirements of dental laboratories; authorizes Board to refuse to issue a registration certificate or suspend or revoke a registration certificate; creates Dental Laboratory Certification Council (DHAC); and sets out powers and duties of Board and DHAC.
Occ. Code Chapter 267, Licensing of Faculty Members of Dental or Dental Hygiene Schools	Authorizes Board to issue a faculty license to a qualified instructor at a dental school or dental hygiene school.

Table 12 Exhibit 12 Statutes

Attorney General Opinions

TSBDE has requested Attorney General Opinions in the past. Those opinions do not affect the agency's current operations. The past opinions generally address questions about statutes or rules that are no longer in effect.

- B. Provide a summary of recent legislation regarding your agency by filling in the charts below or attaching information already available in an agency-developed format. Briefly summarize the key provisions. For bills that did not pass, briefly explain the key provisions and issues that resulted in failure of the bill to pass (e.g., opposition to a new fee, or high cost of implementation). Place an asterisk next to bills that could have a major impact on the agency.**

**Texas State Board of Dental Examiners
Exhibit 13: 84th Legislative Session**

Legislation Enacted

Bill Number	Author	Summary of Key Provisions
HB 2849	Rep. Sheffield	Expands education venues to include dental schools and dental hygiene schools. Requires the Board to adopt rules necessary to implement the amendment as soon as practicable after the effective date of the bill.
SB 195	Sen. Schwertner	Eliminates DPS controlled substance permit. Provides Texas Pharmacy Board with certain rulemaking authority, including recordkeeping, inventory requirements,

		<p>Requires Pharmacy Board to maintain controlled substances prescription database and provide qualified practitioners with the official prescription forms.</p> <p>Amends Health and Safety Code 481.352 (relating to an interagency prescription monitoring work group) to add as a member the executive director of the SBDE or the director's designee.</p> <p>Authorizes the Pharmacy Board to charge a fee for administration of its new duties, and requires the Dental Board to transfer the appropriate amounts to the Pharmacy Board to cover the fees.</p>
SB 519	Sen. Schwertner	<p>Requires a dental support organization, as defined in Business and Commerce Code section 73.001, to register annually with the Secretary of State.</p> <p>Requires Dental Board and Secretary of State to enter into an interagency memorandum to share the info collected by the SOS with the Board.</p> <p>Amends Occ. Code 254.019 to replace term "dental service organization" with "dental support organization" and tie definition to section 73.001.</p> <p>Amends 254.019(b)(4) to require the Board to collect information regarding whether a dentist contracts or enters into an agreement with a dental support service, rather than whether the dentist is employed by the dental service organization.</p>

Table 13 Exhibit 13 Legislation Enacted 84th Leg

Legislation Not Passed

Bill Number	Author	Summary of Key Provisions / Reason Bill Did Not Pass
*HB 1409 (companion SB 571)	Rep. S. Thompson	<p>Would have permitted certain dental hygienists to administer local anesthesia.</p> <p>Would have required SBDE to prescribe by rule the requirements for a course to train dental hygienists to administer local anesthetic agents and develop a procedure for the approval of courses.</p> <p>Last legislative action: H Committee report sent to Calendars 4/24/2015.</p>
*HB 1940 (companion SB 767)	Rep. S. Thompson	<p>Would have created a new license regulated by SBDE for dental hygiene practitioners, who would have expanded duties including prescriptive authority, diagnosing and treatment planning, and local anesthetic.</p> <p>Would have required SBDE to adopt rules to administer and regulate the new license.</p> <p>Last legislative action: H Left pending in Public Health Committee 4/7/2015.</p>
*HB 2266	Rep. Fletcher	<p>Would have changed the makeup of the Board by requiring seven dentist members instead of eight and by imposing a new requirement that one member of the Board be a dental technician or a dentist who is also a dental technician.</p> <p>Last legislative action: H Referred to Public Health Committee 3/13/2015.</p>
HB 2330 (companion SB 960)	Rep. Zerwas	<p>Would have amended Occ. Code Ch. 251 to specify activities that are presumed to constitute improper influence on a dentist's professional judgment, and specify activities that are presumed to not constitute improper influence on a dentist's professional judgment.</p>

		<p>Would have limited the SBDE's rulemaking authority with regard to a dentist's right to contract with a management service organization or a person for the provision of management services.</p> <p>Last legislative action: H Left pending in Public Health Committee 4/28/2015.</p>
*HB 3154	Rep. Fletcher	<p>Would have amended Occ. Code Ch. 258 to specify the requirements and limitations of dental expert witness activity.</p> <p>Would have authorized SBDE to take action against a dentist who engaged in prohibited expert witness activity.</p> <p>Last legislative action: H Referred to Public Health 3/24/2015.</p>
*SB 357	Sen. Schwertner	<p>Would have required SBDE to adopt a training manual and a code of conduct, and adopt rules to implement the adoption of the training manual and code of conduct.</p> <p>Would have also required the state auditor to conduct a review to assess whether SBDE had exceeded its statutory authority.</p> <p>Last legislative action: S Referred to Health and Human Services Committee 2/2/2015.</p>
*SB 571 (companion HB 1409)	Sen. Rodríguez	<p>Would have permitted certain dental hygienists to administer local anesthesia.</p> <p>Would have required SBDE to prescribe by rule the requirements for a course to train dental hygienists to administer local anesthetic agents and develop a procedure for the approval of courses.</p> <p>Last legislative action: S left pending in in Health and Human Services Committee 4/6/2015.</p>
*SB 787 (companion HB 1940)	Sen. Rodríguez	<p>Would have created a new license regulated by SBDE for dental hygiene practitioners, who would have expanded duties including prescriptive authority, diagnosing and treatment planning, and local anesthetic.</p> <p>Would have required SBDE to adopt rules to administer and regulate the new license.</p> <p>Last legislative action: S Referred to Health and Human Services Committee 3/2/2015.</p>
SB 960 (companion HB 2330)	Sen. Uresti	<p>Would have amended Occ. Code Ch. 251 to specify activities that are presumed to constitute improper influence on a dentist's professional judgment, and specify activities that are presumed to not constitute improper influence on a dentist's professional judgment.</p> <p>Would have limited the SBDE's rulemaking authority with regard to a dentist's right to contract with a management service organization or a person for the provision of management services.</p> <p>Last legislative action: S Left pending in Health and Human Services Committee 5/6/2015.</p>

Table 14 Exhibit 13 Legislation Not Passed 84th Leg

IX. Major Issues

ISSUE 1: Change the Name of the Agency

ISSUE 2: Clarify Anesthesia Permitting

ISSUE 3: Clarify Mobile Facilities Permitting

ISSUE 4: Clarify Ownership in the Dental Context

ISSUE 5: Clarify the Practice of Dentistry at Ambulatory Surgical Centers

ISSUE 6: Clarify Cease and Desist Procedures

ISSUE 7: Clarify Temporary Suspension in an Emergency Procedures

ISSUE 8: Authorize Required Peer Assistance Evaluations

ISSUE 9: Clarify Dental Assistant Registration/Certification

ISSUE 10: Clarify Authority for Board to Take Action Against Dental Assistants

ISSUE 11: Clarify Confidentiality of Board Records

ISSUE 12: Clarify Whether or Not Deferred Adjudication May Be Considered a Conviction for the Purposes of Board Action

ISSUE 13: Advertising of Dental Specialties

ISSUE 1: Change the Name of the Agency

A. Brief Description of Issue

The Texas State Board of Dental Examiners licenses and disciplines licensees, but it does not conduct examinations for licensure. The name is an artifact of a by-gone time and could be modified to better reflect the current mission of the agency.

B. Discussion

The agency has not administered dental examinations since the 1990s. Instead, Tex. Occ. Code §§256.003(c) and 256.055(c) authorize the Board to designate regional examinations as qualifying examinations for dental or dental hygiene licensure. In addition to a change in the name of the Board, several statutory provisions linger referencing the Board's former role as an examining board. Should the name of the agency be changed, those statutory provisions should be modified or eliminated as well: Tex. Occ. Code §§256.002; 256.003; 256.005; 256.006; 256.054; 256.055; 256.056; and 256.057.

C. Possible Solutions and Impact

Changing the agency's name from the Texas State Board of Dental Examiners to the Texas Dental Board or the Board of Dentistry will more accurately reflect the current functions of the agency. The Board is colloquially referred to as the "Dental Board" already, so it is unlikely that a formal name change would confuse licensees or other stakeholders. However, a name change would require updating the agency's website and stationary.

ISSUE 2: Clarify Sedation/Anesthesia Permitting

A. Brief Description of Issue

The Board does not have statutory authority to adequately protect the public health in the administration of sedation/anesthesia by dentists.

The current statute does not address the regulation of sedation/anesthesia administered through non-enteral methods and utilizes “method of administration” rather than “level of sedation” to discuss a dentist’s administration of anesthesia.

B. Discussion

The current statute authorizes the Board to adopt rules, issue permits, and conduct inspections related to the enteral administration of anesthesia. Tex. Occ. Code §258.151 defines “enteral” to mean “any technique of administering anesthesia in which the anesthetic is absorbed through the gastrointestinal tract or oral mucosa.”

The statute does not authorize the Board to adopt rules, issue permits, and conduct inspections related to other administrations of sedation/anesthesia, including parenteral administration. Parenteral administration of sedation/anesthesia involves an injection or an infusion. In other words, the statute does not explicitly authorize the Board to regulate intravenous anesthesia and other non-enteral administrations of anesthesia¹.

Despite this, the Board has required its licensees to obtain permits to administer various levels of sedation/anesthesia since at least 2001. Repealed Rule 108.33, Sedation/Anesthesia Permit, became effective on February 20, 2001, and refers to three permit levels: nitrous oxide/oxygen inhalation conscious sedation, parenteral conscious sedation, and parenteral deep sedation/general anesthesia. The preamble to the adoption of this rule states that it is a “verbatim repeat of repealed Rule 109.174.” In 2011 the Board amended its sedation/anesthesia rules to reframe them using a “level of sedation” system of classification rather than a “method of administration” classification. The Board currently issues the following permits:

1. Nitrous oxide conscious sedation
2. Level 1 – Minimal Sedation
3. Level 2 – Moderate Enteral Sedation
4. Level 3 – Moderate Parenteral Sedation
5. Level 4 – Deep Sedation or General Anesthesia
6. Portability – Level 3 or 4

Approximately 2000 dentists hold Level 3 or Level 4 permits to parenterally administer sedation.

¹ Tex. Occ. Code §258.001(4) references the use of a “local anesthetic agent, inhalation sedative agent, parenteral sedative agent, or general anesthetic agent” in the context of appropriate delegations to non-dentists.

Second, the current statute utilizes an outdated mode of classification. The current statute classifies sedation/anesthesia based on the method of administration (ie: enteral vs. parenteral). The modern guidelines published by the American Dental Association call for classification of anesthesia based on the level of consciousness or sedation achieved. The Board's most recent sedation/anesthesia rules also adopt this framework. This framework takes into account the fact that drugs administered by any method may be combined to achieve levels of sedation that exceed the level of sedation intended by the practitioner or for which the practitioner was trained.

C. Possible Solutions and Impact

As discussed in Section (II)(J) above, the agency is working to strengthen its ability to monitor anesthesia-related adverse outcomes. This effort is both proactive and reactive. The proactive component is the agency's development of inspection protocols that could be used to randomly audit permit-holders, and the reactive component is the agency's development of more robust data tracking of anesthesia-related complaints it has received.

1. One option is for the Legislature to determine that the Board does not have the authority to regulate non-ental administration of anesthesia. This would do away with the Level 3 and Level 4 permits currently issued to licensees and limit the Board's authority to inspect and investigate higher levels and/or more serious methods of sedation/anesthesia.
2. Another option is to clarify that the Board regulates all methods of sedation/anesthesia for dental purposes. This may require the Board to amend its sedation/anesthesia rules to revert to the "method of sedation" framework. Alternatively, the statute could reflect a delegation of authority to the Board related to all methods of anesthesia, and the Board could continue its current implementation of anesthesia-related requirements based on the level of sedation achieved.
3. A third option is to clarify that the Board regulates all levels of sedation/anesthesia for dental purposes. This would reflect the current practice of the Board and guidelines issued by the American Dental Association.
4. An additional option is for the Legislature to authorize and direct the Board to engage in regular virtual or on-site inspections of dentists' use of anesthesia at any level. While the agency is planning to do so as an adjunct to its anesthesia permitting and investigations programs, the most aggressive approach to the monitoring and investigation of anesthesia in the dental office would require additional FTEs and funding.

ISSUE 3: Clarify Mobile Dental Facility/Portable Dental Unit Permitting

A. Brief Description of Issue

Board Rules 108.40, 108.41, and 108.42 were adopted by the Board and became effective on February 20, 2001, and have not been amended. Board Rule 108.43 was also adopted on February 20, 2001. It was amended effective on July 10, 2001.

These rules address permitting and operating requirements related to Mobile Dental Facilities and Portable Dental Units operated under a permit granted by the Board pursuant to Board Rule 108.40. Rule 108.41 indicates that permit holders may be: a licensed Texas dentist, an organization authorized by the Dental Practice Act to employ licensed dentists, and an organization “not otherwise included herein that demonstrates to the SBDE that it is an appropriate entity to provide mobile or portable dental services.”

However, the Dental Practice Act does not explicitly authorize the permitting or regulating of these facilities.

B. Discussion

Pursuant to the rules named above, the agency processes and permits individuals and entities that operate Mobile Dental Facilities and Portable Dental Units. Approximately 50 individuals and entities hold permits, and an entity may obtain a single permit to authorize all units listed on its permit application.

It appears the Board instituted the permit requirement in response to inquiries about services provided in mobile facilities. Nonetheless, the statute does not explicitly authorize the agency to issue this type of entity permit.

The February 16, 2001, issue of the *Texas Register* at 26 TexReg 1498 explained the Board’s rationale in imposing the permitting requirements:

“... most mobile and portable facilities providing dental services in Texas are doing so without having provided any information to the Board concerning operations. Thus, when the Board receives inquiries from legislators, local officials, other state agencies or the public regarding any mobile or portable dental operations it is not in a position to provide reliable information. Of great concern to the Board is whether the services are provided in a manner to meet standard of care requirements, whether arrangements have been made for follow-up care, especially in emergency situations, and whether records of treatment provided will be available to the patients.”

C. Possible Solutions and Impact

1. One option is for the Legislature to explicitly delegate to the Board the authority to permit mobile dental facilities. A modification of the statute could clarify the agency’s role in monitoring dental treatment at mobile dental facilities, requiring inspections or

audits for instance. Furthermore, the statute could specify the Board's disciplinary authority to restrict or revoke the facility's permit based on violations of the law, as well as take action against the licenses of the dentists providing services at such a facility. The statutory change could also codify and/or modify some of the requirements of the current rule. For instance, Rule 108.43(b)(3) requires an annual report of all treatment that occurred in a Mobile Dental Facility or a Portable Dental Unit. While affirming the Board's authority to issue such permits would result in clarity to the agency and the public, meaningful enforcement of the program may require additional agency staff.

2. Another option is for the Legislature to determine that the Board does not have the authority to permit these entities. This would result in a repeal of the 2001 rulemaking and affect Licensing division processes. The Legislature could instead require the Board to collect information from dentists related to the locations at which they provide treatment. This would ensure that the agency is able to collect, maintain, and provide information related to provision of dental care to patients outside the brick and mortar locations at which the dentists practice dentistry. The downside to this option is that this type of data production could be burdensome to dentists, particularly those whose primary practice occurs in a mobile unit. This may also result in unreliable information. In addition if the entity is no longer required to hold a permit, the Board would have no method by which to investigate or discipline the entity for violations of the law.

ISSUE 4: Clarify Ownership in the Dental Context

A. Brief Description of Issue

The Board issues Cease and Desist Orders against individuals who are practicing dentistry without a license by unlawfully treating patients without holding a license issued by the Board. See Major Issue 6. However, concerns related to corporate Medicaid fraud prompted discussions during recent Legislative Sessions related to the corporate practice of dentistry. It was pointed out that the Board also has the authority to investigate and prosecute non-dentist corporate entities for engaging in PDWL by owning, operating, or maintaining an office where dentistry is practiced by a person with whom the corporate entity has any type of contract.

Subparagraph 251.003(a)(4) of the Dental Practice Act holds that a person practices dentistry in Texas if he or she “owns, maintains, or operates an office or place of business in which the person employs or engages under any type of contract another person to practice dentistry.”

- A non-dentist who performs these functions in a dental practice is engaging in practicing dentistry without a license and is subject to action under Tex. Occ. Code §264.0525.
- The dentist involved in a non-dentist’s PDWL may also be subject to disciplinary action under Tex. Occ. Code §263.002(a)(8), which authorizes the Board to place on probation, suspend, or revoke the license of a dentist who “holds a dental license and employs, permits, or has employed or permitted a person not licensed to practice dentistry in an office of the dentist that is under the dentist’s control or management.”

B. Discussion

Background

The Board’s interest in corporate PDWL grew out of its recognition of the spread of Medicaid fraud in Texas and the growth of dental business models that appear to focus on monetary gain rather than patient care. With this in mind, the Board grew concerned that its dentists were partnering with non-dentists to establish “sham” ownership of dental practices that were functionally owned, maintained, or operated by non-dentist entities driven by financial interests.

The Board attempted to clarify the characteristics of a business arrangement that would suggest the ownership situation described above by interpreting and offering guidance on Tex. Occ. Code §251.003(a)(4). That interpretation has been the subject of many important discussions over the past two years.

The Board successively proposed three different versions of a new rule (108.74) at its August 2014, November 2014, and February 2015, Board meetings. Importantly, it did not adopt new Rule 108.74. It also proposed amendment of existing Rule 108.70 at its August 2014 meeting, but it took no further action on that proposal.

The intention of the Board's efforts with proposed Rule(s) 108.74 was to provide clarity as to the meaning of:

- "owns, maintains, or operates,"
- "an office or place of business in which...[a] person...practice[s] dentistry," and
- "employs or engages under any type of contract another person to practice dentistry."

As a result of the feedback from stakeholders and members of the Legislature, the Board declined to adopt any of its proposals. Throughout this process, the Board held two public hearings in accordance with Section 2001.029 of the Texas Government Code, as well as multiple public meetings of the Ownership Committee and meetings with stakeholders. During this time period, the agency also introduced a new rulemaking process to provide more robust pre-rulemaking stakeholder engagement and research in future rulemaking efforts.

This major issue implicates several other important issues related to national trends in provider models and business practices, the investigation and prosecution of Medicaid fraud, the rise in the provision of dental treatment at ambulatory surgical centers, the Board's authority to act against dentists and non-dentists, the Board's authority to adopt rules interpreting its controlling statute, and other aspects of the Dental Practice Act.

History

In the 77th Legislative Session, Tex. Occ. Code §254.0011 was added to the Dental Practice Act. This section authorizes the Board to adopt rules prohibiting a dentist from engaging in contracts that allow a non-dentist to influence or interfere with the exercise of the dentist's "independent professional judgment."

The Section goes on to say that the rules adopted by the Board "may not preclude a dentist's right to contract with a management service organization." Pursuant to the authority granted in the 77th Legislative Session, the Board adopted Board Rule 108.70 in 2001. It contains a list of conduct presumed to violate Tex. Occ. Code §251.003(a)(9) and a list of conduct presumed not to violate the same section. The Board's initial rulemaking efforts in 2014 proposed the amendment of Rule 108.70 to incorporate characteristics of business arrangements or "factors" identified in recent court decisions in which a non-dentist was found to be the *de facto* owner of a dental practice based on a business arrangement. This conduct would violate Tex. Occ. Code §251.003(a)(4).

Unsettled Questions

Several questions were raised during the discussion related to the Board's proposed rulemaking.

Does Section 254.0011 restrict the Board's rulemaking to Section 251.033(a)(9)?

One issue raised during the Board's proposed rulemaking attempts was that Tex. Occ. Code §254.0011 limits the Board's authority to adopt rules related to contracts.

The notion was that the Board is restricted in its contract-related rulemaking to the subset of contracts that would violate Tex. Occ. Code §251.003(a)(9). In other words, this position held that the Board is not authorized to adopt rules related to contracts in any context other than to address conduct under §251.003(a)(9), when a non-dentist “controls, influences, attempts to control or influence, or otherwise interferes with the exercise of a dentist’s professional judgment regarding the diagnosis or treatment of a dental disease, disorder or physical condition.”

The agency interpreted Tex. Occ. Code §254.0011 to explicitly authorize contract-related rulemaking in one context, without prohibiting contract-related rulemaking in other contexts. The agency needs guidance as to the reach of Tex. Occ. Code §254.0011.

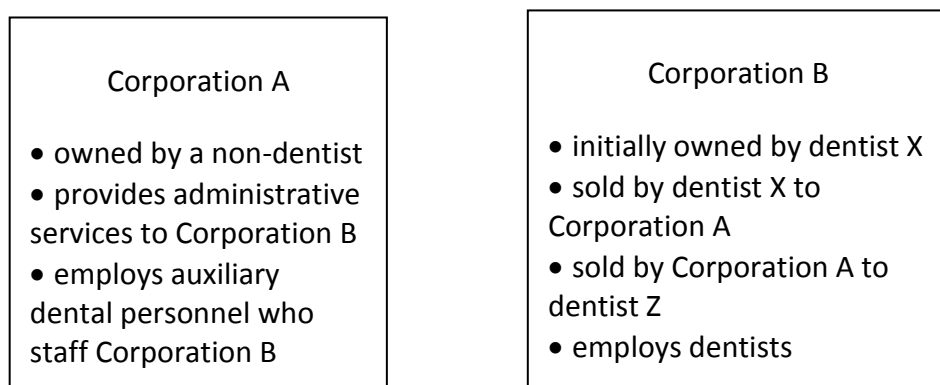
What constitutes owning, maintaining, or operating a place of business?

As mentioned above, agency staff, in partnership with the Board’s Ownership Committee, researched and attempted to identify conduct that could constitute ownership, maintenance, or operation of a dental practice in order to clarify and interpret §251.003(a)(4). In developing this list of “factors,” staff leaned on recent case law to develop an understanding of what the courts took into consideration to find that a non-dentist was the *de facto* owner of a dental practice.

While the Board’s rulemaking related to these factors was unsuccessful, it is unclear whether the Legislature intends for the Board to disregard these factors and consider only “true” ownership, demonstrated through business formation documents filed with the Office of the Secretary of State, to violate Tex. Occ. Code §251.003(a)(4).

What constitutes an office or place of business in which the person employs or engages under any type of contract another person to practice dentistry?

Another point presented during the discussions regarding owning, maintaining, and operating was that Tex. Occ. Code §251.003(a)(4) does not prohibit a non-dentist from owning, maintaining, or operating a dental practice, so long as the non-dentist does not employ (or engage under any type of contract) another person to practice dentistry, as diagramed below.



Since Corporation B is owned by Dentist Z, Corporation A could not be considered the owner without considering ownership “factors” or defining what degree of maintaining or operating implicates the statute.

However, assuming for a moment that Corporation A does maintain/operate or is the *de facto* owner of Corporation B, precisely as contemplated by current Tex. Occ. Code §251.003(a)(4) ---

Corporation A nonetheless would not violate Tex. Occ. Code §251.003(a)(4) because it does not employ the dentists who work at Corporation B, unless the agency could prove that Corporation A was also the *de facto* employer of the dentists.

Again, it is unclear whether the Legislature wants the Board to investigate what is happening behind the scenes in these business arrangements or to superficially analyze the evidence for indicia of “true” ownership only.

Compounding the agency’s attempts to understand and enforce its statute, the agency’s investigators have encountered difficulty obtaining the documents and records necessary to assess whether or not a dentist may be aiding or abetting PDWL by a non-dentist business entity. Specifically, licensees have resisted Board subpoenas requiring production of ownership, employment, and other contracts between dentists and non-dentist corporate entities. In order to determine whether a violation of the Tex. Occ. Code §251.003(a)(4) or (9) has occurred, those documents must be evaluated. Should the Legislature speak on this major issue, clarification of the Board’s subpoena power at Tex. Occ. Code §263.008 would be helpful in the agency’s investigation of allegations related to dentist and non-dentist engagement in these practices.

C. Possible Solutions

1. The Legislature could direct the Board to refer allegations related to corporate PDWL to the Office of the Attorney General for investigation or prosecution, pursuant to Tex. Occ. Code §264.051. The Legislature could direct the Board to close or hold its cases against the related dentists who may have aided or abetted corporate PDWL pending resolution by the OAG. This would enable the agency to direct its resources to the patient care cases in which it has expertise and allow other government officials to determine State policy on this major issue. However, it would not clarify the meaning of the statute. Clarity as to the intended meaning of Tex. Occ. Code §251.003(a)(4) would still be necessary to allow the agency to provide accurate responses to inquiries from licensees and members of the public.
2. The Legislature could authorize non-dentists to own, operate, or maintain dental practices and eliminate Tex. Occ. Code §251.003(a)(4) from the definition of PDWL. Similarly, the Legislature could authorize non-dentists to employ dentists, so long as the dentist maintained his or her own independent professional judgment. Should the Legislature choose to allow non-dentists to employ dentists, it would be helpful to the agency for the Legislature to identify the factors to consider when the agency determines whether a non-dentist has interfered with a dentist’s professional judgment.

3. The Legislature could clarify that Tex. Occ. Code §251.003(a)(4) refers to “true” ownership only and eliminate “maintain or operate” from the definition of PDWL.
4. The Legislature could identify the factors the Board should consider in determining whether the level of control exerted by a non-dentist amounts to owning, maintaining, or operating a business. The Legislature could look to case law and settlement agreements made in other states that cite the evidence considered when those courts or governmental bodies made findings that a non-dentist owned, maintained, or operated a business in violation of the law.
5. The Legislature could define the term “dental practice” and specify who may own or control the dental practice and what constitutes ownership or control of a dental practice.

D. Impact

Any of these changes would provide much-needed clarity to the agency and licensees. Agency investigators continue to investigate and attempt to collect evidence related to allegations of non-dentist ownership, operation, or maintenance of dental practices. Until the agency receives additional guidance through rulemaking or statutory change, resolution of these cases will be delayed.

ISSUE 5: Clarify the Practice of Dentistry at Ambulatory Surgical Centers

A. Brief Description of Issue

Given the ongoing discussion concerning the Board's authority to investigate and regulate dentists and non-dentists working together to provide dental services to patients, the agency needs clarity regarding the practice of dentistry at ambulatory surgical centers (ASC) and the Board's authority to investigate and regulate conduct and treatment at ASCs.

The Department of State Health Services (DSHS) licenses Ambulatory Surgical Centers (ASC), pursuant to Texas Health and Safety Code Chapter 243. DSHS defines ASC at 25 Tex. Admin. Code 135.2 as "a facility that primarily provides surgical services to patients who do not require overnight hospitalization or extensive recovery, convalescent time or observation..."

In the context of dentistry, ASCs commonly provide pediatric dental services under general anesthesia to children under the Medicaid program. This major issue implicates familiar questions of ownership and employment of dentists, but it also concerns a vulnerable patient population, a deep level of sedation/anesthesia, and the issues concomitant with treatment under the Medicaid program.

B. Discussion

The agency has only recently begun building an understanding of the role of ASCs in the treatment of dental patients. Despite this, it has several concerns related to the agency's duty to investigate violations of the law and protect the public health.

Ownership of ASCs

Application of Tex. Occ. Code Section §251.003(a)(4) means that a dentist may not be employed or engaged "under any type of contract" at an ASC that is owned by anyone other than a dentist. Because no other statute exempts dentists who work at ASCs from this requirement, a dentist may only be employed or engaged "under any type of contract" at ASCs that are owned by dentists. It is clear from recent investigations that dentists are being employed or engaged "under any type of contract" at ASCs that are not owned by dentists².

Under the current statute, the agency should investigate these cases and pursue a Cease and Desist Order against the ASC owner and disciplinary action against the dentist. As mentioned in Issue 4, it is unclear what authority the agency has to fully investigate alleged violations of §251.003(a)(4). Specifically, in order to determine whether a dentist is "employ[ed] or engage[d] under any type of contract" the agency would need access to employment contracts between the dentist and the ASC.

² Tex. Occ. Code §260.003 does permit a dentist to be "employed by or contract with an organization if the organization is a non-profit corporation...and the organization is approved by the board as an organization that provides services to underserved populations for no fee or a reduced fee."

Advertising of ASCs

The agency has observed ASCs advertise pediatric anesthesia services or other dental services without disclosing that the dentist providing the treatment is a general dentist, or a dentist at all. The concern is that the parents of pediatric patients who are referred to an ASC are misled into believing that the ASC is providing a specialty service. In fact, a general dentist may be referring a pediatric patient for services at an ASC by another general dentist. As mentioned in discussions related to Major Issue 4, the agency may take action against a dentist whose name is affiliated with an advertisement that violates the Dental Practice Act or Board Rule, but the agency has no authority to pursue penalties against a non-dentist that fails to comply with Board Rules regarding advertising, signage, and other restrictions related to misleading the public.

Treatment at ASCs

Finally, and most importantly, it is unclear whether the Board may adopt rules placing restrictions or requirements on the dental treatments provided at ASCs.

The agency's current concern is whether or not treatment options are presented to the parents or guardians of pediatric patients who are referred to ASCs. For instance, a patient's general dentist may determine that a pediatric patient needs extractions. While pediatric extractions may be accomplished under general anesthesia, there are other options available to perform dental procedures on pediatric patients, including behavior management, protective stabilization, and lower levels of sedation/anesthesia. The pediatric patient should not be referred to the ASC without being provided other sedation/anesthesia options.

Further, the patient should be independently evaluated at the ASC and provided sedation/anesthesia options there as well. Despite this, it appears that some ASCs providing pediatric dental services offer only general anesthesia services. The fact that no other anesthesia options are available obviates any possibility of sedation/anesthesia options being presented to the patient's parents or guardians at the time of treatment. This pattern of referrals to ASCs may result in greater numbers of pediatric patients being unnecessarily sedated, under general anesthesia, for dental procedures.

This is not only potentially harmful to the patient, as general anesthesia carries greater risk than lower levels of sedation, but is also costly to the State. Medicaid reimbursement of general anesthesia services is more costly than that of the lower levels of sedation that could be utilized.

C. Possible Solutions

1. The Legislature could specifically address the employment of dentists at ASCs. If the Legislature chose to allow dentists to be employed by non-dentists at ASCs, it could authorize the Board to take action against the dentist or the ASC for violations of the law or Board Rules committed by either the licensed dentist or non-dentist owner/employer. If the Legislature maintained that non-dentist-owned ASCs could not

employ dentists, the agency would appreciate guidance as to the considerations it may make and the authority it has to investigate allegations related to the employment of the dentist.

2. The Legislature could specifically address conduct that violates the Dental Practice Act or Board Rules by an individual or entity that is not under the Board's jurisdiction.
3. The Legislature could clarify whether the Board may impose requirements on the services and treatments offered at "an office or place of business...at which [a] person practices dentistry." The Legislature could indicate whether or not the Board has any authority to speak specifically to corporate entities licensed by DSHS as ASCs.

ISSUE 6: Clarify Cease and Desist Procedures

A. Brief Description of Issue

1. Summary

Tex. Occ. Code §264.0525 authorizes the Board to “serve a proposed Cease and Desist Order on a person the board believes is engaging or is likely to engage in an activity without a license or registration certificate.”

The issuance of a proposed Cease and Desist Order and the eventual entry of a final Cease and Desist Order must be considered very seriously by the agency and the Board. A Cease and Desist Order may affect the livelihood of individuals and the business interests of organizations. Because of the high stakes of such action, the Dental Practice Act could benefit from additional clarity as to the procedure and parameters of the Board’s authority to issue proposed Cease and Desist Orders and to enter final Cease and Desist Orders.

2. Explanation of statute

Under Tex. Occ. Code §264.0525, the Board (through the Executive Director) may issue a proposed Cease and Desist Order to a person who it believes has practiced dentistry without a license (PDWL). The proposed order becomes final on a date specified in the proposed order unless the person identified in the proposed order submits a written request for a hearing prior to that date. If so, the hearing shall be held no later than 30 days from that request.

The section does not fully contemplate the procedure when a proposed Cease and Desist Order is challenged and a hearing on the proposed Cease and Desist Order is held. Specifically, while it directs the parties to a contested case hearing under Tex. Govt. Code §2001, it does not specify the parties’ roles in the proceeding, ie: who files the petition and who carries the burden of proof. It allows no distinction between an unlicensed individual and a corporate entity, and it does not allow time for meaningful discovery without agreement of the parties. Finally, it does not fully explain how the final Cease and Desist Order, after the hearing, is entered by the Board.

Additionally, Tex. Occ. Code §264.0526 authorizes the Board to issue an emergency cease and desist if the Board finds that the PDWL conduct “constitutes a clear, imminent, or continuing threat to a person’s physical health or well-being.” An emergency Cease and Desist Order goes into effect on the 11th day after service. There is no record of the Board ever taking emergency cease and desist action. This section is problematic because the clear, imminent, or continuing threat standard is used elsewhere in the Dental Practice Act to gauge conduct by licensees. This confuses the standards, as a particular behavior by a licensee may not rise to that level of threat to the public, but the same behavior performed by a non-licensee may. In other words,

the practice of dentistry is inherently more dangerous when engaged in by some unlicensed individuals.

B. Discussion

Tex. Occ. Code §251.003 outlines what conduct constitutes the practice of dentistry. §251.004 identifies persons and conduct that may be exempt from the definition of the practice of dentistry and therefore not subject to a Cease and Desist Order by the Board. Any unlicensed individual who engages in conduct outlined in Section 251.003, and not subject to an exemption, is engaging in the PDWL and is subject to a Cease and Desist Order under Tex. Occ. Code §264.0525.

This unauthorized conduct could range from a prophylaxis (dental cleaning) performed by a person licensed as a dental hygienist in another jurisdiction to a multi-million dollar internet business that sells DIY dentures.

Under Tex. Occ. Code §264.0525, the agency has no discretion to modify the timeline for the hearing on a proposed Cease and Desist Order against either a person or entity engaging in PDWL. Because Section 264.0525 requires a hearing to be held in 30 days, there is no opportunity for the parties to conduct discovery, including depositions. Discovery requests must be sent 30 days before the end of the discovery period. This means the agency must send its discovery requests out on the day that the hearing is requested and can expect a response no sooner than 10 days before the hearing. In some simple cases, this may be acceptable, but for more complex cases, more complex discovery is necessary.

This compressed timeline reveals that the statute does not contemplate the difference between individuals who unlawfully practice dentistry and corporate entities that unlawfully practice dentistry. To further muddy the waters, based on Office of the Attorney General Opinion No. DM-498, it's not clear that any of the action authorized in this Subchapter – injunction, cease and desist, emergency cease and desist – are applicable against corporate entities.³

Procedurally, Tex. Occ. Code §264.0525 lacks clarity as to the initiation of the action and the parties' respective roles. It is not clear which party is to file the request for hearing at the State Office of Administrative Hearings. Similarly, it is not clear how the request for hearing should be styled or which party carries the burden of proof. Historically, the agency has filed the request for hearing with SOAH as a courtesy to a party who has requested a hearing. However, it is not clear whether the charging document should be drafted as though the agency bears the burden to prove PDWL or the challenging party must prove that they have not engaged PDWL. If the burden of proof falls on the agency, as discussed above, an extended timeline is needed for the agency to collect admissible evidence to support the allegations of unlicensed practice of dentistry. On the other hand, if the challenging party bears the burden to prove they have *not* engaged in PDWL, more than 30 days may not be needed before the hearing may commence.

³ <https://www.texasattorneygeneral.gov/opinions/opinions/48morales/op/1998/htm/dm0498.htm>

The statute is also unclear as to how the matter concludes. In other contested cases, the Administrative Law Judge (ALJ) issues a Proposal for Decision (PFD) which is then presented to the Board for its consideration at a quarterly Board meeting. Pursuant to Subsection 2001.058(a) of the Texas Government Code, the Board is permitted to modify the PFD so long as it supports its modifications by noting the legal or factual basis for such in the Order. Under Tex. Occ. Code §264.0525, however, the Board is not permitted to modify the PFD, although it may modify the proposed Cease and Desist Order based on the PFD. Since the Board has delegated to the ED the authority to issue a proposed Cease and Desist Order, and the PFD is not subject to modification before being memorialized in a final Cease and Desist Order, it is reasonable to conclude that the ED may issue the final Cease and Desist Order. Despite this possible reading, agency policy has held that the PFD in a Cease and Desist challenge is presented to the Board for consideration at one of its quarterly meetings. This delays the conclusion of the matter, extending the timeframe for case resolution and delaying the date on which the cease and desist goes into effect.

C. Possible Solutions and Impact

1. Clarify that natural persons and corporate entities are subject to Tex. Occ. Code §264. This would preclude jurisdictional arguments and ensure that no individuals or entities could engage in PDWL.
2. Delineate when injunctive action through the Office of the Attorney or district attorney is appropriate versus cease and desist action by the Board. This would allow the agency to better allocate resources. Currently, the agency investigates all cases alleging the unlicensed practice of dentistry. The agency then must decide whether to prosecute the person or entity or to refer the completed investigation file to another agency.
3. Specify that the hearing on the proposed Cease and Desist Order is to be held at SOAH or modify the statute so that the hearing on the proposed Cease and Desist Order is held before a committee of the Board and appealable to District Court. Section 165.052 of the Texas Occupations Code authorizes the Texas Medical Board to issue Cease and Desist Orders after notice and opportunity for a hearing. Pursuant to 22 Tex. Admin. Code 187.83, that hearing is held “before a panel of board representatives at the earliest practicable time after providing the individual with at least 30 days notice.” Modeling a change to the Dental Practice Act after the Texas Medical Board’s statutory authority to convene cease and desist hearings would resemble the process used by this agency in the instance of a temporary suspension in an emergency, authorized at Tex. Occ. Code §263.004.
4. Assign the burden of proof to one of the parties. If the burden of proof is on the agency to prove the person is practicing dentistry without a license, extend the 30 day timeline to allow the agency to gather admissible evidence of PDWL. This would preclude distracting preliminary arguments on burden-shifting.

5. Specify whether or not the Executive Director is authorized to enter a final Cease and Desist Order on behalf of the Board. Currently, the ED proposes the initial Cease and Desist Order, and if a PFD is issued by the ALJ, the PFD is presented to the full Board. Making it clear that the ED has the authority to modify and issue the final Cease and Desist Order in accordance with the PFD would speed the resolution of the investigations and ensure that the final order is entered without delay. This issue highlights a general need to clean up the statutory language to make clear which duties fall on the Board as an entity, which duties are to be accomplished by agency staff, and which duties may be delegated to agency staff by the Board.
6. Indicate the limitations of Board rulemaking on the issue. Some of the solutions suggested above could be accomplished by agency rule-making. However, since this section implicates business interests of persons and entities, the Board recognizes it must tread carefully to not implicate any tendency towards anti-competition. As such, the Board would request a revision to the Dental Practice Act to sharply define its rulemaking authority as to the conduct that may precede issuance of Cease and Desist Orders.

ISSUE 7: Clarify Temporary Suspension in Emergency Procedures

A. Brief Description of Issue

Tex. Occ. Code §263.004 requires the Board or an executive committee of the Board to temporarily suspend a license or permit, if it finds that the continued performance by a licensed person would constitute a clear, imminent, or continuing threat to a person's physical health or well-being.

The suspension of a license must be considered very seriously by the Board and agency staff. The suspension of a license may affect the livelihood of the license holder, even beyond the duration of the suspension. As such, clarity as to the procedure and parameters of the Board's authority to temporarily suspend licenses is needed.

Furthermore, legislation enacted in the 84th legislative session suggests modifications of Tex. Occ. Code §263.004 of the DPA are needed.

B. Discussion

Tex. Occ. Code §263.004 prescribes a procedure for a temporary suspension in an emergency. Language in subsection (b) suggests that at the time of a without notice temporary suspension hearing, a hearing must be set at SOAH "on the temporary suspension." Subsection (c) requires that the Board "hold a hearing not later than the 30th day after the date the license or permit is suspended." It goes on to say that "a second hearing on the suspension and on any other action to be taken against the license or permit holder" is to be held "not later than the 60th day after the date the license or permit is temporarily suspended."

This suggests that a without notice temporary suspension hearing is held on Day 1 before the Board. A second hearing "on the suspension" is held on Day 30 at SOAH, and a third hearing "on the suspension and on any other action to be taken against the license" is held on Day 60 at SOAH. Historically, the agency has interpreted the second hearing "on the suspension" (Day 30) to be a probable cause hearing to consider (1) whether the agency had probable cause to suspend the license and/or (2) whether probable cause to continue the suspension exists. However, there is no mention of probable cause in the statute. The agency has interpreted the third hearing "on the suspension and on any other action to be taken against the license" (Day 60) to consider the underlying/ultimate disciplinary action the agency seeks.

Under current agency processes, the temporary suspension hearing on Day 1 is held before a committee of the Board to consider a "Petition for Temporary Suspension." In this Petition, staff identifies the conduct that it believes constitutes a clear, imminent, or continuing threat to a person's physical health and well-being. This illustration will assume that staff has identified a failed drug screen as the evidence to support a finding of threat. If the Board grants staff's request in the Petition, it issues an Order of Temporary Suspension. On the same day that the Order is issued staff files a Formal Complaint at the State Office of Administrative Hearings alleging that the failed drug screen constitutes dishonorable conduct – as it is misconduct involving alcohol or drugs and is evidence of habitual intemperance with alcohol or drugs – as

well as the threat found by the Board at the Day 1 hearing. With staff's Formal Complaint, it also files a First Notice of Hearing, which notices the Day 30 hearing, which staff has interpreted to be a Probable Cause hearing. At this hearing, the ALJ will be asked to consider the threat identified in the Order of Temporary Suspension and alleged in Staff's Formal Complaint. The ALJ will not be asked to determine the other allegations related to dishonorable conduct. If staff prevails at the Day 30 hearing, the suspension continues and staff issues a Second Notice of Hearing for the Day 60 hearing. At the Day 60 hearing, the ALJ will be asked consider whether the evidence supports a finding that the licensee violated rules and laws pertaining to dishonorable conduct and is subject to disciplinary action in accordance with the Board's Disciplinary Matrix.

This process is complex enough to warrant consideration of modification, but in addition it seems that Tex. Occ. Code §263.004 contemplates a different process for temporary suspension hearings that are held *with* notice to the licensee. The only mention of notice is in Subsection (b), which holds that the Board "may not temporarily suspend...without notice or hearing unless at the time of the emergency suspension, the Board or the executive committee requests the State Office of Administrative Hearings to set a date for a hearing on the temporary suspension." This suggests that if notice of the temporary suspension is given, the request for Day 30 hearing need not be simultaneous with the Day 1 hearing, or possibly the Day 30 hearing is not required at all. Subsection (c) provides little clarity because it holds that SOAH "shall hold a hearing [Day 30] not later than the 30th day" after the suspension and that SOAH "shall hold a second hearing [Day 60] on the suspension and on any other action" not later than the 60th day. Because subsection (b) suggests different treatment of temporary suspension hearings held with notice, but subsection (c) refers to both Day 30 and 60 Day hearings in a general directive, it is unclear whether or not notice of the initial temporary suspension hearing held on Day 1 has any effect on subsequent procedure.

As mentioned, recent legislative changes suggest may suggest modification of Tex. Occ. Code §263.004.

SB 1267 amended Tex. Govt. Code §2001 to address agencies' suspension of licenses based on "imminent peril to the public health, safety, or welfare." This language is inconsistent with Tex. Occ. Code §263.004. SB 1267 also contemplates only two hearings, rather than the three required of this agency under Tex. Occ. Code §263.004. SB 1267 does not include the Day 30 hearing "on the suspension." Instead, it requires that the Day 60 hearing on "the proceedings for revocation or other action" be initiated "not later than the 30th day after the date the summary suspension order is signed."

Furthermore, SB 1267 states that it does not grant "the power to suspend a license without notice and an opportunity for a hearing." Generally, the agency holds its temporary suspension hearings without notice to the licensee. Clarity is needed as to whether this amendment affects the agency's authority to do so.

C. Possible Solutions and Impact

Although the agency process described above is complex, it serves the agency well. The solution needed is for the statutory language to clearly confirm that the agency's interpretation of the statute is appropriate or to correct the interpretation by issuing other, explicit instruction.

Clarity is needed because the procedure used in the suspension of a license implicates serious due process issues. The agency needs to be certain that it is complying with the law, and licensees that may be subject to suspension action by the Board need to have notice of the process and the rights they have within the process.

1. The Day 30 and Day 60 hearings are close in time and duplicative in content. The agency recognizes that the intent of these hearing was likely to ensure that no licensee was unduly deprived the privilege of his/her license while the agency delayed proceedings. However, providing for one of these hearings would protect the licensee's rights without over-burdening the process. Another option is to consolidate the ALJ's decision on the suspension and on ultimate disciplinary action into one consolidated hearing.
2. Alternatively, the Day 30 hearing "on the suspension" could stand in order to ensure that no licensee is unduly deprived, but the timeframe of the 60 day hearing could be extended. Compressing a full merits hearing on underlying allegations and disciplinary conduct into a 60 day timeframe is difficult enough considering discovery needs, but under the current framework, the agency attorney is also responsible for two other hearings in the same time period that he or she is preparing for the Day 60 merits hearing. Because the process is so burdensome to agency staff, temporary suspensions in emergencies related to patient care are delayed while agency works to prepare its case for three hearings in 60 days.
3. The standard of review to be employed by the ALJ in his/her determinations at the Day 30 and Day 60 hearings should be specified in statute. This provides notice to all the parties and guides the ALJ in his/her decision-making.

ISSUE 8: Authorize Required Peer Assistance Evaluations

A. Brief Description of Issue

Pursuant to Subsection 467.004 of the Texas Health and Safety Code, the agency contracts with the Professional Recovery Network (PRN) to provide peer assistance services to licensees who may be impaired by substance abuse/dependence or mental illness.

1. The Dental Practice Act does not provide a mechanism for the agency to require an evaluation of a licensee by a PRN-approved evaluator in order to determine whether or not the licensee is safe to practice dentistry. The agency may recommend that a licensee undergo an evaluation, but if the licensee refuses, agency attorneys must prove that the licensee is addicted to or habitually intemperate in the use of alcohol or drugs in order to obtain disciplinary action that will then require an evaluation. The agency attorneys will rarely have sufficient evidence of substance abuse without an evaluation by an expert in substance abuse. Furthermore, this is a lengthy process that can result in a potentially impaired practitioner practicing for months while the case moves through litigation (if the agency does not have the evidence to support a temporary suspension as discussed in Issue 7).
2. The Dental Practice Act does not have a specific confidentiality section related to a PRN evaluation document, other PRN documents, or other documents related to peer assistance or that may contain confidential information.
3. Similarly, the agency has no authority to require a physical evaluation of a licensee who may be unable to practice dentistry as a result of a physical condition, nor does the Dental Practice Act discuss the use of licensee's confidential medical records in a disciplinary proceeding.

B. Discussion

Through PRN, licensees are evaluated by a PRN-approved evaluator who determines whether or not a licensee is safe to practice dentistry. If an evaluator determines that a licensee is not safe to practice dentistry, the evaluator recommends treatment and monitoring with which the licensee must comply to be considered safe to practice.

The agency requires PRN membership in Agreed Settlement Orders if there are Findings of Fact related to drug diversion, substance abuse, or criminal history related to substance abuse. However, the Dental Practice Act does not provide any other mechanism for the agency to require an evaluation of a licensee in order to determine whether or not the licensee is safe to practice dentistry. If the licensee refuses an evaluation by PRN and will not sign an Agreed Settlement Order requiring PRN membership, the attorneys must prove at SOAH that the licensee is addicted to or habitually intemperate in the use of alcohol or drugs in order to take any disciplinary action. This is difficult to prove without an evaluation by an expert in addiction and substance abuse. In order to protect the public from impaired dentists, the agency should be able to require a PRN evaluation if there is an indication of impairment.

Section 611.004(a)(2) of the Texas Health and Safety Code provide that a professional may disclose confidential mental health information to medical or law enforcement personnel if the professional determines that there is a probability of imminent physical injury to the patient or others. Section 611.006 discusses authorized disclosure of confidential mental health records in judicial or administrative proceedings. Section 611.006(a)(11) provides for disclosure in a judicial or administrative proceeding where the court or agency has issued an order or subpoena. Section 611.006(a)(3) provides for disclosure if the patient waives the patient's right to confidentiality in writing.

These provisions in the Health and Safety Code do not specifically discuss use of confidential mental health information in an administrative proceeding related to the patient's license. Also, if the Board convenes the Executive Committee to temporarily suspend a license based on confidential mental health information, there is little guidance as to whether that is considered an administrative proceeding for the purposes of disclosure. The agency would benefit from more clarity as to when and how they may use confidential mental health information in an administrative proceeding.

C. Possible Solutions and Impact

1. The Dental Practice Act could include a provision that allows the agency to require an evaluation by PRN based on probable cause that the licensee is impaired. Other agencies in Health Professions Council have statutory authority to require an evaluation related to substance abuse or mental illness.

For instance, the Medical Practice Act provides that the Texas Medical Board (TMB) can require a physician to submit to a mental or physical evaluation if TMB has probable cause of impairment. See Tex. Occ. Code §164.056. If the physician refuses to submit to an evaluation, TMB issues an order requiring that the physician show cause as to why they should not be required to submit to an evaluation and schedules a hearing within 30 days. At the hearing, the physician can present evidence as to why they should not be required to submit to an evaluation. After the hearing, TMB can issue an order requiring that the physician submit to an evaluation. If the physician fails to comply with the order requiring an evaluation, TMB can take disciplinary action against the physician. The Texas State Board of Pharmacy (TSBP)'s statute also contains a similar provision. See Tex. Occ. Code §565.052.

Similar statutory language in the Dental Practice Act would enable the agency to better protect the public from impaired licensees. The statutory language could also provide guidance to the agency and the licensee as to the hearing procedure

The impact of a statutory addition allowing the Board to require an evaluation by PRN would ensure that potentially impaired licensees are evaluated by PRN and treated if necessary. The agency attorneys would not be required to prove addiction or habitual intemperance in the use of alcohol or drugs in the absence of a PRN evaluation or substantial evidence indicating impairment. Instead, the agency attorneys would

have to prove probable cause of impairment, which is a lower evidentiary standard to meet, and appropriate in order to protect patient health.

2. Both the TMB and the TSBP's statutes contain provisions specific to the confidentiality of mental health information. Pursuant to Tex. Occ. Code §564.003, the TSBP may disclose this information during a proceeding conducted by SOAH, a panel of the Board, or a subsequent trial or appeal of a board action or order. The statute also permits disclosure to expert witnesses and investigators for preparation for or presentation in the proceeding. Similar language in the Dental Practice Act would be helpful to the TSBDE and would prevent the unlawful disclosure of confidential mental health information.

ISSUE 9: Clarify Dental Assistant Registration/Certification

A. Brief Description of Issue

Chapter 265 of the Dental Practice Act concerns the Regulation of Dental Assistants. It authorizes dentists to delegate reversible dental acts to a dental assistant and specifies three certificates to be issued by the Board to dental assistants to perform various clinical functions. The Board issues the three certificates identified in the statute, as well as a fourth certificate in the monitoring of nitrous oxide.

These certificates have different statutory requirements for application and renewal and are each processed separately by the agency. They likewise have different continuing education requirements. The result is a system that is unnecessarily complicated for applicants and certificate holders and burdensome and inefficient for the agency.

B. Discussion

Texas Occupations Code §265.001 authorizes the Board to register dental assistants. In addition, Chapter 265 of the Dental Practice Act authorizes the Board to issue the following certificates: pit and fissure, coronal polishing, and x-ray. The agency relies on vague and self-referential statutory authority to issue nitrous oxide monitoring certificates.⁴ Nonetheless, the agency's nitrous monitoring certificate requirement for has been in place for decades.

Although it has the statutory authority to do so, the Board does not register dental assistants in the traditional sense of the term (i.e., requiring only submission of the registrant's name, without any verification of qualifications or training), and instead requires applications for the issuance of the four certificates listed above. To complicate matters somewhat, the agency uses the term "registered dental assistant" to refer to a dental assistant who holds an x-ray certificate, likely because the statute refers to this certificate as a "certificate of registration."

The agency issues each of the four certificates separately. A dental assistant may hold all, some, or none of the certificates. Each certificate has a different application form and administrative requirements. For example, under Tex. Occ. Code §265.005(i), the x-ray certificate must be renewed annually, but the coronal polishing certificate has no renewal requirement. Further, the number of continuing education hours required of a dental assistant in Tex. Occ. Code §265.007 is tied to certificate renewal and the number of certificates held by a dental assistant. Since not all certificates must be renewed, it can be unclear to dental assistants how many hours of continuing education he or she must complete annually.

The current scheme is confusing for applicants and certificate holders. It also has created an inefficient system for agency staff, who must process each certificate application and renewal separately, even for a single applicant or certificate holder. Enforcement actions are also

⁴ Tex. Occ. Code §258.002 provides that a dentist may delegate a dental act to a dental assistant if that dental assistant is qualified and trained to perform the act and if the assistant holds the appropriate certificate, if a certificate is required to perform the act. Board Rule 114.4 requires a nitrous oxide monitoring certificate.

cumbersome because the agency must take a separate action against each certificate. For example, if a certificate holder has been convicted of a felony, the Board must take action against each individual certificate.

An additional quirk of this system is that the agency requires some registered dental hygienists to obtain and maintain the pit and fissure certificate and the nitrous monitoring certificate depending on their date of graduation from dental hygiene school.

C. Possible Solutions and Impact

1. Direct the agency to issue one expanded-function certificate that would include the x-ray, pit and fissure, coronal polishing, and nitrous oxide monitoring functions. This would ultimately eliminate the confusion for applicants and certificate holders and reduce administrative burden on agency staff. One drawback to this solution is that it would require an applicant to undergo the education requirements for all areas covered by the expanded function certificate. This education would be required even if the applicant does not intend to use all functions or will not be asked by the delegating dentist to perform all functions covered by the expanded-function certificate. To illustrate, the pit and fissure function is most commonly used in pediatric practices, and an assistant working in a dental practice that does not serve children would be less likely to perform this service. That assistant may only require the x-ray certificate in order to successfully to serve the dental practice. This solution would also require a system for grandfathering current certificate holders.
2. In the alternative, a statutory change could provide that the Board issues one certificate for x-rays to maintain the "registered dental assistant" classification, and a separate certificate for expanded function that would include the pit and fissure, coronal polishing, and nitrous oxide monitoring functions. This solution would likewise require grandfathering of current certificate holders. Other U.S. jurisdictions appear to employ both this and the above solution.⁵
3. Streamline renewal requirements and continuing education requirements and direct the agency to streamline the application and renewal processes. Even if the certificates are not consolidated, the continuing education and renewal requirements could be simplified so that all certificates would be renewed at the same time and would have the same continuing education requirements. Similarly the application forms could be consolidated into one global application on which an applicant selected one or more of the certificates for which he or she was apply. This would reduce confusion for applicants and certificate holders and would also reduce agency inefficiencies.
4. Clarify Board's authority to issue nitrous oxide monitoring certificate.
5. Clarify the requirement for dental hygienists to obtain dental assistant certificates. assistant certificates to perform certain duties.

⁵ <http://www.aapd.org/assets/1/7/StateLawsonDAs.pdf>

ISSUE 10: Clarify Authority of Board to Take Disciplinary Action Against Dental Assistants

A. Brief Description of Issue

The Board issues certificates to dental assistants under Chapter 265 of the DPA. It is generally accepted that the Board has authority to take action against a certificate, but the statutory authority to do so is not especially clear in some circumstances because the relevant statute in Chapter 263 refers only to "licenses."

B. Discussion

The Board's authority to take action against a certificate in certain circumstances could be clearer. Chapter 263 authorizes the Board to take enforcement action against a license issued under subtitle D in certain circumstances. The statute does not specifically mention certificates, which opens enforcement actions to challenge when the action is against a certificate and is based on Chapter 263. For example, Tex. Occ. Code §263.006 requires the Board to revoke a license holder's license issued under the Dental Practice Act on final conviction of a felony. The statute does not refer to a certificate, but the agency still relies on section 263.006 to revoke the certificate-holder's certificate.

While Tex. Occ. Code §265.001, which regulates dental assistant registration, permits the Board to "adopt and enforce rules requiring the registration of dental assistants," Chapter 265 does not provide for the specific circumstances in which the Board has authority to take enforcement action against a dental assistant's certificate. This has resulted in uncertainty about the Board's authority, and could subject an enforcement action against a certificate to challenge.

C. Possible Solutions and Impact

1. Amend Chapter 263 of the Dental Practice Act to include authority to take action against certificates. Amending 263 would provide clearer guidance to the Board, agency staff, and certificate holders regarding the legislature's intent to grant the Board authority to take disciplinary action against a dental assistant certificate.
2. If Chapter 265 is amended to consolidate or modify the certificate system as addressed in Major Issue 8, ensure that amendments to Chapter 263 incorporate changes to Chapter 265.
3. Limit the Board's authority to take action against certificates to revocation or temporary suspension in an emergency of the certificate and approval or denial of the application. This would reduce the agency's burden to review applications for initial disciplinary action against certificate-holders and increase access to certification and job opportunity for the applicants. The downside is that a dentist employer or patient may

not be aware of a certificate-holder's prior criminal convictions without the Board action memorializing such.

4. If the Legislature chooses to limit the Board's action to approval or denial of an application and temporary suspension in an emergency or revocation of the certificate, consider whether the Board should take any action regarding its prior disciplinary actions against certificates.

ISSUE 11: Clarify Confidentiality of Board Records

A. Brief Description of Issue

1. Summary

Tex. Occ. Code §254.006 addresses the confidentiality of the Board's investigation files and other records. However, the agency could benefit from additional clarity as to the Board's role regarding disclosure of information and protecting information that is confidential.

2. Explanation of statute

Tex. Occ. Code §254.006(b) provides: "Investigation files and other records are confidential, except the board shall inform the license holder of the specific allegations against the license holder. The board may share investigation files and other records with another state regulatory agency or a local, state, or federal law enforcement agency." It additionally holds that records pertaining to disciplinary actions of the Board are subject to public disclosure.

Under this law, the Board's investigation files and other records are confidential, except for records pertaining to disciplinary actions taken by the Board.

Specifically, the section does not address whether the agency may release the written complaint received by the agency to the licensee against whom it was filed, nor does it address whether complaints received by the agency may be filed anonymously. The section also does not contemplate the procedure for disclosing records collected during an investigation for case resolution purposes. It is not clear that a release of documents can only be used for its intended purpose and cannot be used for other purposes. It is not clear on the procedure for disclosing records for litigation or settlement purposes. It also does not specify that the Board is not a covered entity and therefore not subject to HIPAA. Finally, it does not include a procedure for peer assistance records and the confidentiality of those records when the patient is the dentist, dental hygienist, or dental assistant who is under investigation by the agency.

B. Discussion

Written complaints

The agency is required to provide a licensee the "specific allegations" against the licensee. The statute does not specify when the specific allegations must be provided to the licensee. The previous statute required the agency to turn over the written complaint that initiated the investigation into a licensee. The current statute makes all investigative confidential but does not address whether the agency may provide the complaint – or what protection it must or may give the complainant's identity.

Second opinion records

The Board's investigation files contain patient records created by the licensee who is the subject of the investigation. However, the investigation file may also contain records from

dentists who provided subsequent treatment to the patient. This refers to a patient who was originally seen by the respondent dentist for treatment, but decided to seek a second opinion from another dentist or was re-treated by another dentist. In order to fully investigate a patient's care, the agency obtains as many relevant dental records as it can. Generally, the Board provides these records, including the records of the subsequent treating dentist to the Respondent. However, an issue arises when the person who filed the complaint is not the person about whom the complaint was filed – in other words – when the patient at issue did not file the complaint.

Tex. Occ. §258.105(a)(1) provides that a patient's confidentiality is waived in an administrative proceeding “brought by the patient against a dentist, including a malpractice, criminal, or license revocation proceeding, and the disclosure is relevant to a claim or defense of the dentist.” This means that the agency may disclose the patient's confidential records to further case resolution of the administrative matters that it handles.

However, if a third party filed a complaint on behalf of a patient or because of a patient, the Board has the authority to demand the patient's records, but the patient must sign a waiver in order for the Board to use those records as evidence in its own proceeding. For example, a registered dental assistant, may file a complaint against Dentist 1 related to Dentist 1's care of Patient A. The Board tries to retrieve Patient A's records from Dentist 1, but Dentist 1 says Dentist 2 actually owns the records. The Board then retrieves the records from Dentist 2. Since the patient did not file the original complaint, it is unclear on whether the records received from Dentist 2 can be provided to Dentist 1 in order for Dentist 1 to address the treatment provided and prepare a defense.

Intended purpose

The confidentiality statute does not provide that release of records can only be used for its intended purpose and cannot be used for other purposes. An example of where this is found in the Dental Practice Act in Chapter 258, which provides dental records and dentist/patient communications are privileged. Specifically, Tex. Occ. Code §258.108 provides, “a person who receives privileged information [under section 258.102] may disclose the information to another person only to the extent disclosure is consistent with the purpose for which the information was obtained.”

Litigation or settlement purposes

The confidentiality statute is not clear that the Board can release investigation files for litigation or settlement purposes.

HIPAA

The confidentiality statute does not state that the Board's information is not subject to HIPAA.

Peer assistance records

The confidentiality statute does not include a procedure related to peer assistance records and the confidentiality of those records when the patient is the dentist, dental hygienist, or dental assistant. The Board contracts with the Professional Recovery Network (PRN) to assist licensees with impairment due to substance abuse/dependence or mental illness.

Before filing records with the State Office of Administrative Hearings in a case related to patient care, the agency would de-identify the medical records so that the patient's protected health information remained confidential.

But the statute is not clear on how to treat patient information when the patient is the licensee who is the subject of the administrative proceeding or disciplinary hearing.

Chapter 467 of the Health and Safety Code addresses peer assistance programs for certain professionals. Section 467.007(a) provides, "any information, report, or record that an approved peer assistance program or a licensing or disciplinary authority receives, gathers, or maintains under [chapter 467] is confidential." Section 467.007(b)(1) provides, "information that is confidential under Subsection (a) may be disclosed at a disciplinary hearing before a licensing or disciplinary authority in which the authority considers taking disciplinary action against an impaired professional whom the authority has referred to a peer assistance program."

Section 467.007 is specific only to the disclosure of peer assistance records at a disciplinary hearing. The Board would benefit from clarity in its own statute as to whether peer assistance information of licensees is subject to disclosure in Agreed Settlement Orders and other informal proceedings of the Board.

C. Possible Solutions and Impact

1. In practice, anonymous complaints are difficult to investigate and prosecute, so the agency may benefit from a statutory change that holds that written complaints may not be made anonymously but will be maintained confidentially. This provision could also account for the necessary disclosure of a patient's identity (in order to retrieve relevant records), but protect the identity of the complainant by explicitly requiring the agency to withhold the complaint document from disclosure to the licensee under investigation. The agency is not currently required to turn over the complaint document.
2. Include a provision in the Dental Practice Act that provides that a patient's confidentiality is protected from public disclosure but may be disclosed to necessary parties for the purposes an administrative proceeding brought by the patient *or* a third party. This allows the Board to efficiently work on cases, while still protecting the patient's confidentiality when the patient is not the complainant.

3. Include a provision in the Dental Practice Act that provides that release of records can only be used for its intended purposes. This allows the Board to release records for litigation or settlement purposes in order to resolve a case, but specifies the release can only be used for those purposes.
4. Include a provision in the Dental Practice Act that provides that the agency is not subject to HIPAA.
5. Include a provision in the Dental Practice Act that specifies when peer assistance records are subject to disclosure and when they are considered confidential if the patient is a licensee. For example, specifying the Board's procedure for disclosing peer assistance information in agreed settlement orders and whether a licensee's agreement to settle waives his or her right to confidentiality. A provision of this type would allow the Board to protect the public from impaired licensees, while also protecting the licensee's confidential information.

ISSUE 12: Clarify Whether or Not Deferred Adjudication May be Considered a Conviction for the Purposes of Board Action

A. Brief Description of Issue:

Tex. Occ. Code §263.006 requires the Board to suspend or revoke a license based upon initial or final convictions for certain criminal offenses. The statute requires a suspension upon “an initial conviction” of a felony or certain misdemeanors under the Texas Penal Code, or “initial finding by the trier of fact of guilt” of certain drug-related offenses. Upon a “final conviction” for any of these offenses, the Board must revoke the license. Tex. Occ. Code § 263.006 does not discuss deferred adjudications, or indicate whether a deferred adjudication should be considered an “initial conviction” or “final conviction” for purposes of discipline under the section.

Tex. Occ. Code §53.021 also authorizes the Board to revoke, suspend, or deny a license upon conviction of certain offenses, but it is unclear whether Chapter 53 intended to permit the Board to consider deferred adjudication a “conviction” for licensing and disciplinary purposes.

B. Discussion

Tex. Occ. Code §263.006 does not supply any guidance on how the Board should consider deferred adjudications as they are currently administered by Texas courts, and it is unclear whether deferred adjudication should be considered an initial conviction or a final conviction for disciplinary purposes. Section 53.021 is similarly unclear.

Criminal Procedure

In Texas, deferred adjudication involves the court accepting a guilty plea or a no contest plea with a finding that the evidence supports the defendant’s guilt. When the judge accepts a plea of guilty or nolo contendere and orders the defendant to be placed on deferred adjudication community supervision, the judge defers the entry of an adjudication of guilt. With no adjudication of guilt, there is no clear final conviction for purposes of Tex. Occ. Code §263.006. Likewise, deferred adjudication also does not supply an “initial conviction,” because if a defendant successfully completes the terms of the deferred adjudication community supervision, no entry of guilt is made.

Board Rule 101.8

Because Tex. Occ. Code §263.006 does not address deferred adjudications, the Board adopted Rule 101.8(i), which allows the agency to consider a deferred adjudication as a final conviction for licensing purposes.

This rule is a simplified version of the calculus required by Tex. Occ. Code §53.021(c)-(e), which describes considerations a licensing authority must make when determining if deferred adjudication represents a “conviction.” Section 53.021(c) bars a licensing authority from considering successfully completed deferred adjudication community supervision as a conviction, unless specific exceptions in Tex. Occ. Code §53.021(d) or (e) apply. By adopting

Rule 101.8(i), the Board attempted to clarify the action the agency should take when considering a deferred adjudication for licensing purposes.

Despite the Board's attempt to simplify and clarify the deferred adjudication issue, the Board's rule and position is not consistently accepted by the State Office of Administrative Hearings.

Without statutory guidance, applicants and licensees may be subject to inconsistent application of the statute and disparate treatment of their criminal histories.

C. Possible Solutions and Impact

1. Authorize the Board to adopt rules that are stricter than Chapter 53 of the Texas Occupations Code. This would mirror the Medical Practice Act and allow the Board more flexibility to determine its policy as to the treatment of criminal offenses.
2. Amend Tex. Occ. Code §263.006 to eliminate the differentiation between an "initial conviction" and a "final conviction." This would require the statute to do away with the suspension on initial conviction directive. Amending in this way would allow the statute to clarify the action the Board should take regarding deferred adjudications, as well as decisions on appeal and those that have been overturned. However, if the amended statute did not clarify the appropriate action for the Board to take on decisions that were under appeal, the current situation may be exacerbated by this change. As the statute currently considers convictions on a federal level, this would require consideration of the federal adjudicatory process as well.
3. Clarify that a deferred adjudication represents a final conviction for purposes of the already-existing disciplinary framework. By supplying a definition to be applied across the entire chapter, this would allow the Board to consider deferred adjudication in applications as well as disciplinary proceedings. This would simplify the consideration required by the agency, but could negatively affect those who successfully complete the terms of deferred adjudication community supervision. This would also require clarification of the role of Chapter 53 of the Texas Occupations Code in the Board's decision-making process. A specific exception from Chapter 53 would represent the most straightforward approach. Otherwise, the Board must be directed how and when to apply the calculus of Tex. Occ. Code § 53.021 and when it should not apply.
4. Clarify that a deferred adjudication represents an initial conviction for purposes of the already-existing disciplinary framework. This outcome would create considerable confusion, as the duration of deferred adjudication community supervision can be many years. Board staff would be required to monitor the compliance of individuals on community supervision to ensure their successful completion of the entire prescribed term, with the requirement of a second disciplinary action in the event an individual failed to complete the terms of community supervision. Additionally, the clarification would need to explain the implications of successfully completed deferred adjudication for applications and further disciplinary proceedings. This outcome would also require the consideration of Chapter 53 described above.

5. Clarify that a deferred adjudication should not be considered a conviction for any disciplinary purposes. This outcome would put on hold any disciplinary action by the Board until the individual in question successfully completes the assigned deferred adjudication community supervision. If the individual successfully completed the community supervision and the judge discharged the individual, then the Board would take no disciplinary action. If the individual failed to successfully complete the deferred adjudication community supervision, the Board would take disciplinary action upon the judge's entry of the finding of guilt. This outcome would allow individuals who have committed offenses but have mitigating factors to avoid discipline by the Board.

ISSUE 13: Advertising of Dental Specialties

A. Brief Description of Issue

Pursuant to Tex. Occ. Code §259.005, the Board is authorized to adopt rules restricting advertising that is false, misleading, or deceptive. Board Rule 108.54 addresses Advertising of Specialties. It identifies which areas of dental practice may be considered “specialty areas” of dental practice for the purposes of advertising. Rule 108.54 also addresses the qualifying criteria a dentist must meet in order to advertise as a specialist in one of the specialty areas.

B. Discussion

The Board is currently engaged in litigation related to Rule 108.54. Regardless of the outcome of the litigation, the Board should continue to protect patients from misleading statements by dentists related to their education and qualifications.

C. Possible Solutions

1. The Legislature could identify areas of practice that are recognized dental specialties in Texas and state the education or credential requirements for a dentist to call him or herself a specialist in a recognized dental specialty. Additionally, the Legislature could allow an alternate method for dentists to identify themselves as specialist, for instance through alternative demonstrations of competency or use of a disclaimer or disclosure related to the dentist’s qualifications as specialist.
2. The Legislature could designate a credentialing body or organization(s) as the authority on dental specialties and defer to that body or organization’s determination of dental specialties and the education or educational requirements for dental specialties. Additionally, the Legislature could allow an alternate method (other than through the designated credentialing body or organization(s)) for dentists to identify themselves as specialist, for instance through alternative demonstrations of competency or use of a disclaimer or disclosure related to the dentist’s qualifications as specialist.
3. The Legislature could delegate to the Board the authority to identify recognized dental specialties in Texas and determine the education or credential requirements for a dentist to call him or herself a specialist in a recognized dental specialty. Additionally, the Legislature could require the Board to provide, by rule, an alternate method for dentists to identify themselves as specialist, for instance through alternative demonstrations of competency or use of a disclaimer or disclosure related to the dentist’s qualifications as specialist.
4. The Legislature could authorize the Board to credential specialty licenses by identifying and establishing distinct specialty area license types. This would require the Legislature to authorize additional employees and the development of a new licensing program to accommodate the new license types.

X. Other Contacts

- A. Fill in the following charts with updated information on people with an interest in your agency, and be sure to include the most recent email address.

Texas State Board of Dental Examiners Exhibit 14: Contacts

Interest Groups

Group or Association Name/ Contact Person	Address	Telephone	Email Address
Capital Area Dental Society (CADS)/Matthew Heck	P.O. Box 202966, Austin, TX 78702-2966	(213) 393-6606	matthewjheckdds@gmail.com
Dental Laboratory Association of Texas (DLAT)/Elyese Anderson	P.O. Box 118932, Carrollton, TX 75011	(800) 376-2955	DLATeleseanderson@gmail.com
Professional Recovery Network (PRN)/Courtney Hulbert	6207 Bee Caves Road, Suite 120, Austin, TX 78746	(512) 615-9176	chulbert@texaspharmacy.org
Texans for Dental Reform (TDR)/Gwen Mitchell	12050 Beamer Road, Houston, TX 77089	(281) 481-3470	gmitchell@texansfordentalreform.org
Texas Academy of General Dentistry (TAGD)/Francine Johannesen	1016 La Posada Drive, Suite 200, Austin, TX 78752	(512) 371-7144	francine@tagd.org
Texas Coalition of Dental Support Organizations (TCDSO)/Steve Bresnen	1801 Lavaca Street, Suite 13L, Austin, TX 78701	(512) 917-0011	steve@bresnenassociates.com
Texas Dental Assistants Association (TDAA)/Sharon Dickinson	3501 Paint Drive, Denton, TX 76210	NA	sdickins1@aol.com
Texas Dental Association (TDA)/Mike Geeslin	1946 S IH 35, Suite 202, Austin, TX 78704	(512) 443-3675	mike@tda.org
Texas Dental Hygiene Educator's Association (TDHEA)/Marian Tajchman	101 Baldwin Blvd., Corpus Christi, TX 78404	(361) 698-2852	mtajchman@delmar.edu
Texas Dental Hygienists' Association (TDHA)/LeeAnn Winkler	P. O. Box 28181, Austin, TX 78755	(512) 220-7800	lwinkler@texasdha.org
Texas Society of Oral and Maxillofacial Surgeons (TSOMS)/Kelly Ann Shy	4499 Medical Drive, Suite 190, San Antonio, TX 78229	(210) 614-3915	kellyannshy@alamoOMS.com

Table 15 Exhibit 14 Interest Groups

Interagency, State, or National Associations

Group or Association Name/ Contact Person	Address	Telephone	Email Address
Academy of General Dentistry (AGD)/John A. Thorner	560 W. Lake Street, Sixth Floor, Chicago, IL 60661-6600	(312) 440-4303	John.thorner@agd.org
American Association of Dental Boards (AADB)/Jim Tarrant	211 E Chicago Ave, Suite 760, Chicago, IL 60611	(312) 440-7464	jtarrant@dentalboards.org
American Dental Association (ADA)/Kathleen T. O'Loughlin	1111 14 th Street NW, Suite 1200, Washington, DC 20005	(202) 898-2400	oloughlink@ada.org
American Dental Hygienists' Association (ADHA)/Jason Nippa	444 North Michigan Avenue, Suite 340, Chicago, IL 60611	(312) 440-8909	jasonn@adha.net
American Student Dental Association (ASDA)/Nancy Honeycutt	211 E Chicago Avenue, Suite 700, Chicago, IL 60611	(312) 440-2795	ASDA@ASDAnet.org
Association of Dental Support Organizations (ADSO)/Lauren Rowley	1235 S Clark Street, Suite 1210, Arlington, VA 22202	(703) 300-3507	lrowley@theadso.org
Association of Mature American Citizens (AMAC)/Daniel Weber	5 Orville Drive, Suite 400, Bohemia, NY 11716	(631) 589-6675	dweber@amac.us
Minnesota Board of Dentistry/Joyce Nelson	2829 University Avenue, SE, Suite 450, Minneapolis, MN 55414-3246	(612) 548-2129	joyce.nelson@state.mn.us
National Association of Dental Plans (NADP)/Emeline Augustini	12700 Park Central Drive, Suite 400, Dallas, TX 75251	(972) 458-6998	eaugustini@nadp.org

Table 16 Exhibit 14 Interagency, State, and National Association

Liaisons at Other State Agencies

Agency Name / Relationship / Contact Person	Address	Telephone	Email Address
Department of Information Resources/Manager-Capitol Complex Telephone Services/Gloria Gould	300 W 15 th , Suite 1300, Austin, TX 78701	(512) 475-2513	gloria.gould@dir.texas.gov
Office of the Attorney General/Attorney/Harold Liller	300 W 15 th Street, Austin, TX, 78701	(512) 936-1297	harold.liller@texasattorneygeneral.gov
Office of the Attorney General/Attorney/Ann Hartley	300 W 15 th Street, Austin, TX, 78701	(512) 463-2018	ann.hartley@texasattorneygeneral.gov
Office of the Attorney General/Jim Todd	209 W 14 th Street, Austin, TX, 78701	(512) 475-4055	jim.todd@texasattorneygeneral.gov
Health Professions Council/Administrative Officer/John Monk	333 Guadalupe St, Tower 2, Suite 220, Austin, TX 78701	(512) 670-8382	jmonk@hpc.texas.gov

Agency Name / Relationship / Contact Person	Address	Telephone	Email Address
Legislative Budget Board/Business and Economic Development/Nora Velasco	1501 Congress Ave #5, Austin, TX 78701	(512) 463-1200	nora.velasco@lbb.state.tx.us
Office of the Governor/Agency Liaison/Kara Crawford	100 San Jacinto, Austin, TX 78701	(512) 463-1778	kara.crawford@gov.texas.gov
State Agency Council/Chair/Jo Dale Guzman	n/a	(512) 936-9460	jguzman@sao.state.tx.us
State Auditor's Office/Cesar Saldivar	1501 North Congress Ave, Suite 4.224	(512) 936-9500	csaldivar@sao.state.tx.us
State Office of Risk Management/COOP Consultant/Maureen Clement	300 W 15 th St, 6 th Floor, Austin, TX 78701	(512) 936-1477	marueen.clement@sorm.state.tx.us
Texas Board of Chiropractic Examiners/Executive Director/Yvette Yarbrough	333 Guadalupe St, Tower 3, Suite 825, Austin, TX 78701	(512) 305-6700	yvette@tbce.state.tx.us
Texas Board of Nursing/Executive Director/Katherine A. Thomas	333 Guadalupe St, Tower 3, Suite 460, Austin, TX 78701	(512) 305-6811	kathy.thomas@bon.texas.gov
Texas Board of Veterinary Medical Examiners/Executive Director/Nicole Oria	333 Guadalupe St, Tower 3, Suite 810, Austin, TX 78701	(512) 305-7561	Nicole.oria@tsbvme.state.tx.us
Texas Department of Public Safety/Manger Security Programs/Kari Raesz	1500 N Congress Ave, Austin, TX 78701	(512) 936-2203	kari.raesz@dps.texas.gov
Texas Department of State Health Services/Statewide Wellness Coordinator/Rocky Payne	1100 West 49 th Street, Austin, TX 78756	(512) 776-3672	Rocky.payne@dshs.state.tx.us
Texas Ethics Commission/Director of the Disclosure Filings Division/Robbie L. Douglas	201 E 14 th St, 10 th Floor, Austin, TX 78701	(512) 463-5800	Robbie.douglas@ethics.state.tx.us
Texas Facilities Commission/Property Manager/Loren Smith	333 Guadalupe St, Tower 1, Austin, TX 78701	(512) 936-2117	Loren.smith@tfc.state.tx.us
Texas Medical Board/ Executive Director/Mari Robinson	333 Guadalupe St, Tower 3, Suite 610, Austin, TX 78701	(512) 305-7084	mari.robinson@tmb.state.tx.us
Texas Register-Texas Secretary of State/Michelle Miner	1019 Brazos, Room 245, Austin ,TX 78711	(512) 463-5561	mminer@sos.texas.gov
Texas State Board of Pharmacy/Executive Director/Gay Dodson	333 Guadalupe St, Tower 3, Suite 600, Austin, TX 78701	(512) 305-8026	gay.dodson@tsbp.state.tx.us
Texas Workforce Commission /Manager/Dennis Swinney	101 East 15 th St, Austin, TX 78778	(512) 463-4385	dennis.swinney@twc.state.tx.us

Table 17 Exhibit 14 Liaisons at Other State Agencies

XI. Additional Information

- A. Texas Government Code, Sec. 325.0075 requires agencies under review to submit a report about their reporting requirements to Sunset with the same due date as the SER. Include a list of each agency-specific report that the agency is required by statute to prepare and an evaluation of the need for each report based on whether factors or conditions have changed since the statutory requirement was put in place. Please do not include general reporting requirements applicable to all agencies, reports that have an expiration date, routine notifications or notices, posting requirements, federally mandated reports, or reports required by G.A.A. rider. If the list is longer than one page, please include it as an attachment. *See Exhibit 15 Example.*

Texas State Board of Dental Examiners
Exhibit 15: Evaluation of Agency Reporting Requirements

Report Title	Legal Authority	Due Date and Frequency	Recipient	Description	Is the Report Still Needed? Why?
House Bill 3201 Questionnaire	Tex. Occ. Code §254.019	Biennially - November 1, 2016	Legislature	HB 3201 required the agency to collect information from its licensees and other entities. The information collected relates to business arrangements between dentists and non-dentist service providers	Some of the information may be duplicated by the Office of the Secretary of State in its implementation of SB 519 following the 84 th Legislative Session.

Table 18 Exhibit 15 Agency Reporting Requirements

- B. Has the agency implemented statutory requirements to ensure the use of "first person respectful language"? Please explain and include any statutory provisions that prohibit these changes.

Board Rule 110.6, concerning deep sedation or general anesthesia, refers to "special needs patients" who are "mentally and/or physically challenged." In order to comply with the "first person respectful language" requirements, the Board should consider changing the language to "patients with special needs" or "patients with disabilities." Additionally Board rule 108.14 refers to "special needs patients" rather than "patients with special needs."

However, other language in the statute and the in rules should not be updated. The Dental Practice Act and Board rule 101.11 refer to "mentally incompetent dentists or dentists adjudicated to be mentally incompetent." This language refers to the legal status of mental incompetency and should not be changed as it reflects a legal status.

Tex. Occ. Code §263.002 describes the Board's grounds for disciplinary action in general. It refers to dentists who are "physically or mentally incapable" of practicing in a manner that is safe for dental patients. This does not necessarily refer to someone with a disability, but is a

much broader category related to the ability to practice dentistry safely. This language should remain broad in order for the Board to protect the public.

C. Fill in the following chart detailing information on complaints regarding your agency. .

The agency does not have meaningful data related to complaints against the agency. Anecdotally, the most frequent complaints involve licensees who feel the Board's action against their license was too harsh; complainants who feel the Board's action against a licensee's license was too mild; and callers who have difficulty navigating the phone system or online application process.

Beginning in FY 2015, the division directors will complete a monthly report for submission to the Executive Director reflecting complaints received within each division.

D. Fill in the following charts detailing your agency's Historically Underutilized Business (HUB) purchases.

**Texas State Board of Dental Examiners
Exhibit 17: Purchases from HUBs**

Fiscal Year 2013

Category	Total \$ Spent	Total HUB \$ Spent	Percent	Agency Specific Goal	Statewide Goal
Heavy Construction	\$0	\$0	0%		11.2%
Building Construction	\$0	\$0	0%		21.1%
Special Trade	\$0	\$0	0%		32.7%
Professional Services	\$4,169	\$4,169	100%		23.6%
Other Services	\$108,040	\$210	0.20%		24.6%
Commodities	\$97,562	\$76,039	77.94%		21.0%
TOTAL	\$209,772	\$80,420	38.34%		

Table 19 Exhibit 17 HUB Purchases for FY 2013

Fiscal Year 2014

Category	Total \$ Spent	Total HUB \$ Spent	Percent	Agency Specific Goal	Statewide Goal
Heavy Construction	\$0	\$0	0%		11.2%
Building Construction	\$14,179	\$0	0%		21.1%
Special Trade	\$0	\$0	0%		32.7%
Professional Services	\$125	\$0	0%		23.6%
Other Services	\$170,449	\$0	0%		24.6%
Commodities	\$40,783	\$32,440	79.54%		21.0%
TOTAL	\$225,537	\$32,440	14.38%		

Table 20 Exhibit 17 HUB Purchases for FY 2014

Fiscal Year 2015 from September 1, 2014 through February 28, 2015 (Semi-Annual)

Category	Total \$ Spent	Total HUB \$ Spent	Percent	Agency Specific Goal	Statewide Goal
Heavy Construction	\$0	\$0	0%		11.2%
Building Construction	\$0	\$0	0%		21.1%
Special Trade	\$0	\$0	0%		32.7%
Professional Services	\$0	\$0	0%		23.6%
Other Services	\$148,687	\$21,671	14.58%		24.6%
Commodities	\$179,510	\$136,928	76.28%		21.0%
TOTAL	\$328,197	\$158,599	48.32%		

Table 21 Exhibit 17 HUB Purchases for FY 2015

- E. Does your agency have a HUB policy? How does your agency address performance shortfalls related to the policy? (Texas Government Code, Sec. 2161.003; TAC Title 34, Part 1, rule 20.15b)**

Yes.

- F. For agencies with contracts valued at \$100,000 or more: Does your agency follow a HUB subcontracting plan to solicit bids, proposals, offers, or other applicable expressions of interest for subcontracting opportunities available for contracts of \$100,000 or more? (Texas Government Code, Sec. 2161.252; TAC Title 34, Part 1, rule 20.14)**

Yes.

- G. For agencies with biennial appropriations exceeding \$10 million, answer the following HUB questions.**

- 1. Do you have a HUB coordinator? If yes, provide name and contact information. (Texas Government Code, Sec. 2161.062; TAC Title 34, Part 1, rule 20.26)**

Not applicable.

- 2. Has your agency designed a program of HUB forums in which businesses are invited to deliver presentations that demonstrate their capability to do business with your agency? (Texas Government Code, Sec. 2161.066; TAC Title 34, Part 1, rule 20.27)**

Not applicable.

- 3. Has your agency developed a mentor-protégé program to foster long-term relationships between prime contractors and HUBs and to increase the ability of HUBs to contract with the state or to receive subcontracts under a state contract? (Texas Government Code, Sec. 2161.065; TAC Title 34, Part 1, rule 20.28)**

Not applicable.

H. Fill in the charts below detailing your agency's Equal Employment Opportunity (EEO) statistics.

**Texas State Board of Dental Examiners
Exhibit 18: Equal Employment Opportunity Statistics**

1. Officials / Administration

Year	Total Number of Positions	Percent African-American	Statewide Civilian Workforce Percent	Percent Hispanic	Statewide Civilian Workforce Percent	Percent Female	Statewide Civilian Workforce Percent
2013	2	0%	8.99%	50%	19.51%	100%	39.34%
2014	4	0%	8.99%	25%	19.51%	100%	39.34%
2015	5	0%	8.99%	20%	19.51%	100%	39.34%

Table 22 Exhibit 18 EEO Statistics for Officials/Administration

2. Professional

Year	Total Number of Positions	Percent African-American	Statewide Civilian Workforce Percent	Percent Hispanic	Statewide Civilian Workforce Percent	Percent Female	Statewide Civilian Workforce Percent
2013	18	5.5%	11.33%	11.1%	17.4%	27.8%	59.14%
2014	20.5	0%	11.33%	0%	17.4%	34%	59.14%
2015	20	0%	11.33%	0%	17.4%	25%	59.14%

Table 23 Exhibit 18 EEO Statistics for Professionals

3. Technical

Year	Total Number of Positions	Percent African-American	Statewide Civilian Workforce Percent	Percent Hispanic	Statewide Civilian Workforce Percent	Percent Female	Statewide Civilian Workforce Percent
2013	0		14.16%		21.36%		41.47%
2014	0		14.16%		21.36%		41.47%
2015	1	0%	14.16%	0%	21.36%	100%	41.47%

Table 24 Exhibit 18 EEO Statistics for Technical

4. Administrative Support

Year	Total Number of Positions	Percent African-American	Statewide Civilian Workforce Percent	Percent Hispanic	Statewide Civilian Workforce Percent	Percent Female	Statewide Civilian Workforce Percent
2013	13.5	26%	13.57%	14.8%	30.53%	100%	65.62%
2014	20.3	31%	13.57%	24.6%	30.53%	85.2%	65.62%
2015	18.4	27.2%	13.57%	24%	30.53%	92.4%	65.62%

Table 25 Exhibit 18 EEO Statistics for Administrative Support

5. Paraprofessional

Year	Total Number of Positions	Percent African-American	Statewide Civilian Workforce Percent	Percent Hispanic	Statewide Civilian Workforce Percent	Percent Female	Statewide Civilian Workforce Percent
2013	1	0%	14.68%	0%	48.18%	100%	40.79%
2014	5	0%	14.68%	40%	48.18%	100%	40.79%
2015	9	11%	14.68%	33.4%	48.18%	88.9%	40.79%

Table 26 Exhibit 18 EEO Statistics for Service and Maintenance

I. Does your agency have an equal employment opportunity policy? How does your agency address performance shortfalls related to the policy?

Yes, the agency's personnel manual contains an equal employment opportunity policy. The policy provides that "any employee experiencing a work-related problem, who perceives it to be a result of unlawful discrimination, harassment, or retaliation for making a complaint, should report this complaint to someone in the chain of command--- Division Manager, EEO Coordinator, Executive Director."

XII. Agency Comments

The agency recognizes that it will continue to face challenges through its next series of transitions. It welcomes this opportunity to improve agency function and continue to serve the people of Texas.