

EXECUTIVE SUMMARY

State Board of Dental Examiners

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For a relatively small agency, the State Board of Dental Examiners has had more than its share of problems over the years. The agency infamously was abolished through its 1993 Sunset review amid a legislative skirmish not of its own making. After its re-creation in 1995, the agency was placed under another Sunset review out of its regular order in 2003 because of concerns about serious enforcement deficiencies. In its last five years, the agency has been buffeted by high turnover among its leadership ranks, going through four executive directors and general counsels in that time.

While the older events do not necessarily explain the current situation at the agency, they do provide an important historical context. Of greater significance is the more recent history of employee turnover and the effect it has had on the agency and the governing board. The revolving door of executive directors and general counsels means that senior staff must constantly play catch-up to gain a complete understanding of the basic elements of the job. The agency loses institutional knowledge for how and why policies and procedures were developed, lessons learned, and what works and what does not. Most important, however, the agency loses the vision to see emerging problems and the leadership to help address strategic agency needs, qualities that take time to develop. With experience in the job and time to see things through, senior staff can work more effectively with the board to ensure that the agency has the resources — both staff and systems — and the tools and statutory authority to do its job well. Finally, sound agency leadership gives confidence to the Legislature that the resources and tools will be used appropriately to protect the public.

In such an environment of high turnover at the top of the organization, the board itself would understandably emerge to fill the void and take on a larger role in running the agency. Further, because board members typically have longer tenure than the agency's senior staff, they would understandably play a larger role in calling the shots for the agency. However, at such a disadvantage to the board, staff is far less likely to take initiative and far more likely to defer to the board on matters even when the board may need to hear staff's more objective voice.

Turnover among the agency's leadership ranks has had a significant effect on the agency and governing board.

The issue of board involvement in agency operations is not new to the dental board. Sunset staff raised the issue in the last review of 2002, noting that the board no longer developed and administered its own dental examination and thus had less need for its then-18 members to do its job. Sunset staff's initial recommendation to reduce the board size to 11 members was changed to the current 15 members through the legislative process.

In the current review, this situation of an oversized board has only continued. The board has even less to do because of legislation from 2013 eliminating its role in reviewing standard of care complaints, though dentist board members still find ways to get involved in such cases. Dentist board members have also pursued high profile rule packages that appear more motivated by business interests than demonstrated concern for public safety; all the while other emerging problems like regulating the administration of anesthesia went largely unaddressed.

This Sunset review occurs at an opportune time for the board. Positive signs are emerging from the current efforts of the agency's senior staff, implementing the Legislature's 2013 operational changes and other initiatives such as new approaches for engaging stakeholders. While these changes have occurred with the blessing of the board, the same dynamic that has governed the agency in recent years is still in place. At the time of this review, the executive director has only been in that position seven months; the general counsel, less than two years; and the dental director, less than two and a half years. Key departures could still threaten the progress made.

Structural changes to reduce the size of the board are needed to focus it on its public protection mission and help ensure the ongoing effectiveness of the agency. Other changes would better focus stakeholder processes for dental hygienists and dental laboratories; address deficiencies in the agency's regulation of dentists' administration of anesthesia; deregulate dental assistants by eliminating the unworkable patchwork of certificate programs that provides little public protection; and update licensing and enforcement processes that have not kept up with best practices. Sunset staff recommends continuing the agency for 12 years.

The following material summarizes all of the Sunset staff findings and recommendations on the State Board of Dental Examiners.

Issues and Recommendations

Issue 1

The Unusually Large Dental Board Inappropriately Focuses on Issues Unrelated to Its Public Safety Mission.

A shift in responsibility for technical complaint reviews to a panel of contracted experts in 2013 significantly decreased the workload for dentist board members. With less to do, the board, at the behest of dentist members, pursued significant rule changes more related to business practices than demonstrated public safety problems and despite widespread concern by stakeholders and other interests and a lack of broad consensus. Dentist members also continue their involvement in case resolution, ultimately undermining those efforts. Better aligning the number of dentist board members with the amount of technical expertise needed by the agency will help focus the board squarely on issues of public protection and make better use of staff resources.

In addition, board processes for stakeholder input hold promise for improved involvement, eliminating the need for two statutorily created advisory committees, the Dental Hygiene Advisory Committee and the Dental Laboratory Certification Council. Removing advisory committees from statute will allow the board more flexibility to convene more diverse groups of stakeholders for input on an as needed basis.

Key Recommendations

- Reduce the size of the board from 15 to nine members and adjust its composition to consist of four dentists, two dental hygienists, and three public members.
- Allow the board's statutory advisory groups to expire and direct the board to establish clearer processes for stakeholder input in rule.

Issue 2

State Regulation of Dental Assistants Is Unnecessary to Ensure Public Protection and Is an Inefficient Use of Resources.

The board's regulation of dental assistants has expanded over the past 25 years to consist of four separate certificate programs for commonly delegated tasks, though assistants can legally perform some work without holding any certificate. In fiscal year 2015 the board issued 50,469 dental assistant certificates, more than all other board issued credentials combined.

State regulation of dental assistants is not needed to protect public safety. Dental assistants can only work under the delegated authority of the dentist, who remains responsible for patient care and safety. Because they can only perform reversible tasks, they have very low volume of meaningful complaint and enforcement activity, little, if any, of which relates to standard of care. In addition, gaps in regulatory requirements undermine the very promise of public safety the regulations were supposed to provide. The regulatory program wastes licensing and legal resources and diverts board and staff focus from higher-risk agency responsibilities. Ultimately, addressing deficiencies to fix these regulations is not an option without dramatically expanding the scope of their practice, because the risk to the public relating to the current practice is so low. National credentialing and private market forces can provide any training or oversight of dental assistants desired by employers or the public. Removing regulatory responsibility for dental assistants from the board will allow the agency to focus on licensees that pose a higher risk to patients and the public.

Key Recommendation

- Discontinue the board's dental assistant certificate programs.

Issue 3

The Board Lacks Key Enforcement Tools to Ensure Dentists Are Prepared to Respond to Increasing Anesthesia Concerns.

Dentists administer anesthesia for a variety of dental procedures. In recent years, the board has seen an increase in related complaints involving serious patient harm and sometimes death. The board lacks the authority and resources to routinely inspect the offices of dentists providing some anesthesia services and does not require written emergency action plans for any dentist administering anesthesia to help ensure thoughtful planning and readiness for the unexpected. Dentists in other states and Texas doctors

administering anesthesia in offices are subject to related routine inspections, and office-based Texas physicians providing anesthesia must maintain written emergency action plans. Allowing the board to conduct inspections of dentists administering anesthesia in office settings and requiring related written emergency management plans of dentists providing anesthesia will incentivize dentists to be prepared for anesthesia-related complications and train support staff accordingly.

Key Recommendations

- Authorize the board to conduct inspections for dentists administering parenteral anesthesia in office settings.
- Direct the board to revise rules to ensure dentists with one or more anesthesia permit and maintain related written emergency management plans.

Issue 4

Key Elements of the State Board of Dental Examiners' Licensing and Regulatory Functions Do Not Conform to Common Licensing Standards.

In reviewing the board's regulatory authority, Sunset staff found that certain licensing and enforcement processes do not match model standards or common practices observed through Sunset staff's experience reviewing regulatory agencies. Specifically, the board does not do enough to ensure licensees are free from disciplinary action in other states or have complied with past board orders before renewing their licenses. The board is also unable to require evaluations for licenses suspected of impairment due to substance abuse or mental illness, and cannot protect the confidentiality of licensees participating in assistance programs.

Key Recommendations

- Require the board to monitor licensees for adverse licensure actions in other states.
- Authorize the board to deny applications to renew a license if an applicant is noncompliant with a board order.
- Authorize the board to require evaluations of licensees suspected of being impaired and require confidentiality for information relating to the evaluation and participation in treatment programs.
- Direct the board to make data on the board's enforcement activity information publically available on its website.

Issue 5

A Continuing Need Exists for the State Board of Dental Examiners.

Regulating the practice of dentistry and supporting functions continues to support the state's interest in protecting the public. Alternative organizational structures, including the transfer of regulatory programs to other agencies, offer no substantiated benefit at this time. Continuing the board in its current form will provide an independent agency responsible for ensuring quality, safe dental care.

Key Recommendation

- Continue the State Board of Dental Examiners for 12 years.

Fiscal Implication Summary

Overall, recommendations in this report would result in a negative fiscal impact to the General Revenue Fund of approximately \$1,402,000 over the next five years. The impact comes from ending the occupational licensing programs for dental assistants, reducing the size of the board, and enhancing licensing and enforcement efforts.

Issue 1 — Decreasing the number of board members by six would result in a small annual savings of about \$13,000 to the General Revenue Fund resulting from decreased travel costs.

Issue 2 — The recommendation to deregulate dental assistants would have a negative impact to the General Revenue Fund of about \$1.46 million per year resulting from the loss of fee revenue collected from dental assistants in excess of the cost of regulation.

Issue 3 — Providing the authority for the board to inspect dental offices administering anesthesia would not have a significant fiscal impact to the state, though actual implementation would have costs associated with extra staff, travel, and equipment. These costs could be mitigated by an adjustment to existing anesthesia permitting fees.

Issue 4 — These recommendations would result in a small revenue gain of approximately \$45,000 annually, associated with the \$3 increase in licensing fees to cover the board's cost to query the National Practitioner Data Bank. This gain would result from applicants paying the fee who ultimately do not meet the standards for licensure and thus do not require of queries the data bank.

State Board of Dental Examiners

Fiscal Year	Loss to the General Revenue Fund	Change in the Number of FTEs From FY 2017
2018	\$1,402,000	-3
2019	\$1,402,000	-3
2020	\$1,402,000	-3
2021	\$1,402,000	-3
2022	\$1,402,000	-3

