



TEXAS STATE BOARD OF DENTAL EXAMINERS

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June 28, 2016

Representative Larry Gonzales, Chairman
Texas Sunset Commission
Room E2.418
P.O. Box 2910
Austin, Texas 78768

RE: Texas State Board of Dental Examiners – Follow up to 6/23/16 testimony

Dear Representative Gonzales:

On behalf of the Texas State Board of Dental Examiners, I am writing to provide you with additional information for your review and consideration in follow up to the June 23, 2016 testimony. Attached you will find:

Attachment A- Issue 1: The Unusually Large Dental Board Inappropriately Focuses on Issues Unrelated to Its Public Safety Mission;

Attachment B- Issue 2: State Regulation of Dental Assistants Is Unnecessary to Ensure Public Protection and Is an Inefficient Use of Resources; and

Attachment C- Issue 3: The Board Lacks Key Enforcement Tools to Ensure Dentists Are Prepared to Respond to Increasing Anesthesia Concerns.

Thank you for your consideration and I look forward to discussing same with you in the near future.

Sincerely,

Kelly Parker
Executive Director

cc: Texas Sunset Commission Members
Ken Levine

ATTACHMENT A

ISSUE 1: The Unusually Large Dental Board Inappropriately Focuses on Issues Unrelated to Its Public Safety Mission.

Key Recommendation: 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.

Agency's Follow Up Response:

While the agency still believes the current size of the board is essential, if a reduction of the board is eminent, we would like to propose a compromised recommendation in addition to our original response and public testimony. The board could be comprised of 11 members, like the Texas Board of Pharmacy, all appointed by the Governor with the advice and consent of the Senate as follows:

- Six reputable dentist members;
- Two reputable dental hygiene members; and
- Three members who represent the public.

Additionally, in making an appointment to the board, we would like to encourage the Commission to specifically recommend that the Governor should consider appointment of dentist members from different practice areas in order to adequately represent the diversity in the dental community.

ATTACHMENT B

ISSUE 2: State Regulation of Dental Assistants Is Unnecessary to Ensure Public Protection and Is an Inefficient Use of Resources.

Key Recommendation: Discontinue the board's dental assistant certificate program.

Agency's Follow Up Response:

Because the agency believes regulation of dental assistants is essential to the protection of the public's health and safety but also recognizes the inefficiencies of the current dental assistant certificate program, the agency proposes the following revision of the statute:

The agency recommends revision of the statute to accomplish the following:

1. Create one unified dental assistant registration that requires:
 - a. Completion of a board-approved radiology course within the previous 12 months;
 - b. Completion of a board-approved infection control course within the previous 12 months;
 - c. Criminal background check;
 - d. Proof of current completion of BLS or CPR course for healthcare providers;
 - e. High school diploma or equivalent; and
 - f. Submission of application form, registration fee, and completion of board's jurisprudence examination.
2. Allow exceptions to registration for:
 - a. A dental assistant's first year of employment as a dental assistant to obtain on the job training; and
 - b. Interim treatment of a minor emergency dental condition under a dentist's general supervision.
3. Require registered dental assistants to complete at least 12 hours of continuing education each year.
4. Grandfather registered dental assistants who obtained their X-ray Certificate prior to September 1, 2017.
5. Require the board to adopt rules to address delegable duties and training or experience required to perform certain dental assistant tasks.

ATTACHMENT C

ISSUE 3: The board lacks key enforcement tools to ensure dentists are prepared to respond to increasing anesthesia concerns.

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 permits maintain related written emergency management plans.

Agency's Follow Up Response:

The agency agrees with the Sunset Commission staff recommendations. However, the agency wishes to clarify some of the information presented in testimony at the public hearing on June 23, 2016. Specifically, there was discussion of agency-compiled "data" on investigations involving the administration of anesthesia.

First, it is important to understand the limitations of this "data."

- The agency's enforcement database cannot report detailed investigative information. Specifically, the database cannot reliably isolate investigations that involve an allegation or issue related to anesthesia. As a result, the agency cannot produce reliable statistical data on investigations that involve an allegation or issue related to anesthesia.¹
- In light of this, the agency produced multiple reports containing general investigative information for Sunset Commission staff to analyze.
- Sunset Commission staff manually reviewed this investigative information and identified 100 investigations involving the administration of anesthesia. Of those 100 investigations, 41 involved patient mortality. Of those 41 investigations, possible violations were identified in 13 of the investigations.
 - The 13 investigations in which possible violations were identified relate to 11 incidents of patient mortality.
 - All investigations of patient mortality that identify possible violations are heard at an Informal Settlement Conference before a board member, even if the possible violation identified in the investigation is very minor (i.e., would go directly into the dismissal queue but for the patient mortality component of the investigation).
 - Of the 13 investigations identified, the board has taken disciplinary action on two of the investigations, three remain pending resolution, and eight were closed or recommended for closure by a board member at an Informal Settlement Conference.

¹ The agency is transitioning to a paperless office that will allow it to index and report more detail than it can with its current database. The agency expects the system to launch on September 1, 2016.

- In a *separate* effort to support anesthesia rulemaking by the board, agency staff manually searched investigative documents by keyword and studied reports written by its dental experts to manually create detailed summary documents of investigations involving the administration of anesthesia. This confidential investigative information was provided to board members for their review. Despite this limited release to board members, this information was referenced by members of the public in testimony at the hearing. This is a different set of information than that referenced in the Sunset Commission staff report.
- The agency looks forward to the coming months when its ability to report on information that has been collected and compiled in accordance with standard process controls will greatly increase.

Second, while the agency makes this confidential investigative information available to the members of the Sunset Commission pursuant to sections 325.019 and 552.008 of the Texas Gov't Code, the agency does not disseminate confidential information about its investigations publicly. To date the agency has not received an Open Records Request for the data/information at issue. If such a request is received, the agency will seek an Attorney General ruling related to whether or not it may or must be released to the public.

In addition to the Sunset Commission staff recommendations related to inspections and emergency management plans, the agency would support a legislative mandate that the agency compile and provide data to the public regarding its investigations.



STATE BOARD OF DENTAL EXAMINERS

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April 22, 2016

Mr. Ken Levine, Director
Sunset Advisory Commission
6th Floor, Robert E. Johnson Building
1501 N. Congress Avenue
Austin, Texas 7801

Dear Mr. Levine:

Thank you and your staff for the professional review of the Texas State Board of Dental Examiners (TSBDE). We especially appreciate the exhaustive efforts of Anne Allensworth, Joe Walraven and Julie Davis in providing a thorough review of our agency.

As the new Executive Director of the TSBDE, I intend to work with the Legislature throughout the Sunset process with the absolute goal of protecting the public by clarifying or expanding our agency's authority in certain areas and increasing the overall efficiency of the agency.

On behalf of the TSBDE, enclosed please find our response to the Sunset staff report. I look forward to discussing the recommendations and responses with the Sunset Commission in the near future.

Sincerely,

Kelly Parker
Executive Director

Response to the
Sunset Advisory Commission's Staff Report



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ISSUE 1: THE UNUSUALLY LARGE DENTAL BOARD INAPPROPRIATELY FOCUSES ON ISSUES UNRELATED TO ITS PUBLIC SAFETY MISSION.

RECOMMENDATION 1.1: 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.

The agency disagrees with this recommendation. Decreasing the size of the board by six members would diminish the effectiveness of the agency and its ability to protect the public. In addition, the proposed reorganization of the board would not allow adequate representation of the diversity of the highest level of professionals it regulates – dentists. Finally, the reduction of dentist board members would result in a doubling of the workload of the remaining board members. While the agency agrees that dental hygienists and members of the public should maintain representation on the Board, the agency is extremely concerned that only four of the proposed nine members would be dentists.

First, the agency relies heavily on the expertise and experience of its dentist board members to staff essential case resolution matters, including informal settlement conferences (ISCs), emergency suspension hearings, and mediations. Dentist board members also serve as examiners for the Western Regional Examining Board (WREB). Cutting the board's dentist members in half will hinder the agency's ability to resolve cases, act in emergency situations, participate in examinations of dentists, and further the protection of the public.

Further, the board and the agency benefit from having multiple general dentists and dentists with various specialty training represented on the board, as each brings distinct expertise and resources needed to ensure the broadest understanding of the practice the board regulates. This benefit is not limited to the policy-making context. The contributions to ISCs and mediations that are made by board members with specific training cannot be overstated. Many cases require the dentist board member have equivalent or similar advanced training in the appearing dentist's practice area in order to ensure a productive dialogue at ISC or mediation. Maintaining a relatively high number of dentists on the board is necessary to ensure staff has access to experts in the widely variant practices areas in dentistry.

Limiting the board to only four dentist members would also set unreasonable expectations of those few dentist members. The dental board members are volunteers who freely offer to take part in board matters while working full-time in their own dental practices. One current dentist board member reports dedicating fifty-eight days to board and WREB activities last year. A reduction in dentist membership would effectively double the workload of dentist board members. Currently, one of the eight dentist board members attends each ISC. Even with that support, the agency's ISCs are overbooked with licensees wanting to appear before a board member, and the agency needs to schedule more frequent ISCs to pursue case resolution.

A nine member dental board with only four dentists represented will not accomplish the goals of this agency or the goals Commission staff identified in its report. Instead, this recommendation would strip away the board's ability to adequately protect the public and oversee the population it was created to regulate over a century ago.¹

RECOMMENDATION 1.2: Allow the board's statutory advisory groups to expire and direct the board to establish clearer processes for stakeholder input in rule.

The agency takes no position on this recommendation. While the agency acknowledges that dental hygienists do have representation on the dental board, the Dental Hygiene Advisory Committee (DHAC) has been underutilized. The current DHAC members are engaged and eager to become more active. Unlike dental hygienists, dental laboratories have no representation on the board. The Dental Laboratory Certification Council (DLCC) serves as the official representation of dental laboratories in Texas before the board. Agency staff acknowledges that DLCC members have essential experience and knowledge that is beneficial to the board and its protection of the public. Agency staff also recognizes that the roles of DLCC members could be refined in statute or rule to allow staff to facilitate routine license and renewal matters.

If the Legislature allows the statutory committees to expire, the agency will work with stakeholder groups, including dental hygienists and dental laboratories when their expertise is needed.

RECOMMENDATION 1.3: Clarify the use and role of board members at informal settlement conferences.

The agency agrees in part with this recommendation. The agency supports the Commission staff's recommendation to clarify the use and role of board members at informal settlement conferences (ISCs). However, the agency disagrees with limiting the scope of consideration that a board member has at an ISC. The on-going nature of the investigations process requires some flexibility in settlement discussions. Licensees frequently introduce new information, dental records, and expert opinions at the ISC. In order to utilize the ISC for the settlement purposes for which it was designed, the board members must be permitted to consider new facts in making their recommendation.

The agency's dental director and staff hygienist could not provide the public or dental hygienist dental board members with the technical expertise necessary to support all the ISCs the agency needs to convene. Preparation for each day of ISCs requires hours of study of the cases being presented. The dental director and staff hygienist are not employed to serve in this capacity. The Dental Division is already understaffed and overworked, so additional duties would be extremely burdensome.

¹ Commission staff reviewed the Texas Board of Pharmacy during this review cycle as well. No recommendations were made to reduce the size of its 11 member board. The Texas Medical Board is a 19 member board.

Implementing this recommendation would significantly decrease the agency's ability to effectively resolve cases. If the agency is directed to utilize Dental Division staff to convene ISCs, the division would absolutely require additional professional staff.

Response to Fiscal Implication: The minimal fiscal benefit of reducing board member travel to ISCs would be outweighed by the cost of funding additional staff to support the ISCs that the board members previously attended.

ISSUE 2: STATE REGULATION OF DENTAL ASSISTANTS IS UNNECESSARY TO ENSURE PUBLIC PROTECTION AND IS AN INEFFICIENT USE OF RESOURCES.**RECOMMENDATION 2.1: Discontinue the board's dental assistant certificate programs.**

The agency agrees in part with this recommendation. The agency concurs that the current mechanisms in place to register, certify, and regulate dental assistants are cumbersome, mismanaged, and challenging. However, in order to protect the public, the agency should continue to register dental assistants. The deregulation of dental assistants would prohibit the agency from taking proactive steps to protect the public. Instead, the agency would be forced to take reactive action, sometimes when it may be too late or a situation could have been avoided. Specifically, the agency would urge the Commission to weigh the potential patient harm when services such as dental radiology, nitrous oxide monitoring, as well as pit and fissure procedures could be performed by an unregulated individual.

The agency encourages the Commission to consider alternative methods of regulating dental assistants instead of deregulation. The agency suggests the registration process be simple, consistent, cohesive with the statute and rules, including explicitly outlined delegated duties and excluded duties. The agency also encourages the Commission to consider revisions to the statute that will clarify and direct staff to treat dental assistants as registrants, rather than full licenses. The statute could specify that action against dental assistant registrants is limited to registering, denying, and revoking a dental assistant. This would reduce the administrative burden on the agency and board of taking disciplinary action against dental assistants and reduce barriers to occupational licensing. The Dental Assisting National Board (DANB) is not a suitable replacement for state regulation. The use of DANB will not guarantee public protection in Texas; not to mention it is costly and may be burdensome to obtain.

Response to Fiscal Implication: The agency is in dire need of additional full time employees, especially in the Licensing Division. The Licensing Division has the highest volume of work, has the highest turnover rate of employees because of its workload, and is the most underpaid division. The agency cannot risk losing three full time employees even if the Commission pursues deregulation of dental assistants. The agency would continue to use the employees in the Licensing Division, or possibly in Enforcement Division. In conclusion, the deregulation of dental assistants would also have a negative impact to the General Revenue Fund with a reduction of \$1.46 million per year.

ISSUE 3: THE BOARD LACKS KEY ENFORCEMENT TOOLS TO ENSURE DENTISTS ARE PREPARED TO RESPOND TO INCREASING ANESTHESIA CONCERNS.

RECOMMENDATION 3.1: Authorize the board to conduct inspections of dentists administering parenteral anesthesia in office settings.

The agency agrees with this recommendation. The agency suggests clarification on inspection authority. The agency strongly urges the Commission to consider the inspections to be provider-based rather than office-based and to clarify that the inspection authority is of the permit holder, regardless of the practice setting. The board's current anesthesia rules authorize the issuance of permits to licensee providers, not to facilities. Therefore, inspection of anesthesia permit-holders should follow the licensees who are permitted to administer anesthesia, not the location at which the anesthesia is administered.

RECOMMENDATION 3.2 – MANAGEMENT ACTION: Direct the board to revise rules to ensure dentists with one or more anesthesia permits maintain related written emergency plans.

The agency agrees with this recommendation for management action and has initiated its implementation.

Response to Fiscal Implication: The agency agrees that the implementation of inspections would have an undetermined cost. The agency would need at least five additional staff members to facilitate the permitting and inspection schedules, not including any staff inspectors or external contractors to actually conduct the inspections.

ISSUE 4: KEY ELEMENTS OF THE STATE BOARD OF DENTAL EXAMINERS' LICENSING AND REGULATORY FUNCTIONS DO NOT CONFORM TO COMMON LICENSING STANDARDS.

RECOMMENDATION 4.1: Require the board to monitor licensees for adverse licensure actions.

The agency agrees with this recommendation. The agency supports the recommendation to verify, on an ongoing basis, disciplinary actions through continuous query reports from the National Practitioner Databank for each initial and renewal applicant. As of January 1, 2016, the agency has required the provider to submit self-query reports from the National Practitioner Databank for initial licensure or permitting.

RECOMMENDATION 4.2: Authorize the board to deny application to renew a license if an applicant is not compliant with a board order.

The agency agrees with this recommendation.

RECOMMENDATION 4.3: 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.

The agency agrees with this recommendation. The agency supports the recommendation to require evaluations of licenses suspected of being impaired. The agency seeks clarification on the recommendations concerning the confidentiality of the information, as well as its general confidentiality statute at Tex. Occ. Code § 254.006.

RECOMMENDATION 4.4: Remove unnecessary qualifications required of applicants for licensure or registration.

The agency takes no position on this recommendation.

RECOMMENDATION 4.5 – MANAGEMENT ACTION: Direct the board to make data on the board's enforcement activity information publicly available on its website.

The agency agrees with this recommendation for management action and has initiated its implementation.

RECOMMENDATION 4.6: DIRECT THE BOARD TO STAGGER REGISTRATION AND CERTIFICATE RENEWALS.

The agency agrees with this recommendation. Adoption of this recommendation will increase efficiency of the limited staff and resources available in the Licensing Division.

ISSUE 5: A CONTINUING NEED EXISTS FOR THE STATE BOARD OF DENTAL EXAMINERS.**RECOMMENDATION 5.1: Continue the State Board of Dental Examiners for 12 years.**

The agency agrees with this recommendation. The agency should be continued as an independent agency for 12 years.

RECOMMENDATION 5.2: Update the standard Sunset across-the-board provision regarding conflicts of interest.

The agency agrees with this recommendation.

Response to Fiscal Implication: The agency disagrees with the statement that it will continue to annually collect approximately \$3.8 million in excess of the agency's costs. Deregulation of dental assistants, as recommended by the Commission's staff in recommendation 2.1, will significantly decrease the annual amount collect by the agency, by approximately \$1.46 million.