



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.