



DENTAL PRACTICE ACT

TEXAS OCCUPATIONS CODE AND
STATUTES REGULATING THE
PRACTICE OF DENTISTRY
As Amended September 2013

TITLE 1. GENERAL PROVISIONS

CHAPTER 1. GENERAL PROVISIONS

Sec. 1.001	Purpose of Code	1
Sec. 1.002	Construction of Code.....	1
Sec. 1.003	Reference in Law to Statute Revised by Code	1

TITLE 2. GENERAL PROVISIONS RELATING TO LICENSING

CHAPTER 53. CONSEQUENCES OF CRIMINAL CONVICTIONS

Subchapter A. General Provisions

Sec. 53.001	Applicability of Certain Definitions	1
Sec. 53.002	Applicability of Chapter	1

Subchapter B. Ineligibility for Licensure

Sec. 53.021	Authority to Revoke, Suspend, or Deny License	2
Sec. 53.0211	Licensing of Certain Applications with Prior Criminal Convictions	3
Sec. 53.022	Factors in Determining Whether Conviction Relates to Occupation	4
Sec. 53.023	Additional Factors of Licensing Authority to Consider	4
Sec. 53.024	Proceedings Governed by Administrative Procedure Act	5
Sec. 53.025	Guidelines	5

Subchapter C. Notice and Review of Suspension, Revocation, or Denial of License

Sec. 53.051	Notice	5
Sec. 53.052	Judicial Review	6

Subchapter D. Preliminary Evaluation of License Eligibility

Sec. 53.101	Definitions	6
Sec. 53.102	Request for Criminal History Evaluation Letter	6

Sec. 53.103	Authority to Investigate	6
Sec. 53.104	Determination of Eligibility; Letter	7
Sec. 53.105	Fees	7

CHAPTER 54. EXAMINATION OF RELIGIOUS HOLY DAY

Sec. 54.001	Definitions	7
Sec. 54.002	Examination Schedule on Religious Holy Day	7
Sec. 54.003	Examination Accommodations for Person with Dyslexia	8

CHAPTER 55. RENEWAL OF LICENSE WHILE ON MILITARY DUTY

Sec. 55.001	Definition	8
Sec. 55.002	Exemption from Penalty for Failure to Renew License	8
Sec. 55.003	Extension of Certain Deadlines for Active Duty Military Personnel	9
Sec. 55.004	Alternative License Procedure for Military Spouse	9
Sec. 55.005	Expedited License Procedure for Military Spouses	9
Sec. 55.005	Apprenticeship Requirements for Applicant with Military Experience	10
Sec. 55.006	Renewal of Expedited License Issued to Military Spouse	10
Sec. 55.007	License Eligibility Requirements for Applicants with Military Experience	10

CHAPTER 56. ACTION AGAINST RECIPIENTS OF STUDENT FINANCIAL ASSISTANCE

Sec. 56.001	Definitions	10
Sec. 56.002	Applicability	11
Sec. 56.003	Authority to Take Action in Event of Default or Breach	11
Sec. 56.004	Rebuttable Presumption	11
Sec. 56.005	Rescission of Action	12
Sec. 56.006	Reinstatement of Action	12

CHAPTER 57. REQUIREMENTS FOR LICENSING AGENCIES

Sec. 57.001	Definitions	12
Sec. 57.002	Requirements for Governing Board Membership	12

CHAPTER 58. USE OF GENETIC INFORMATION

Subchapter A. General Provisions

Sec. 58.001	Definitions	13
-------------	-------------------	----

Subchapter B. Use and Retention of Genetic Information

Sec. 58.051	Certain Uses of Genetic Information Prohibited	14
Sec. 58.052	Destruction of Sample Material; Exceptions	14

Subchapter C. Disclosure of Genetic Information; Confidentiality; Exceptions

Sec. 58.101	Disclosure of Test Results to Individual Tested	14
Sec. 58.102	Confidentiality of Genetic Information	15

Sec. 58.103	Exceptions to Confidentiality	15
Sec. 58.104	Authorized Disclosure	15
Sec. 58.105	Civil Penalty	16

CHAPTER 59. INFORMATION RELATING TO LICENSING

Sec. 59.001	Confidentiality of Social Security Number	16
-------------	-------------------------------------------------	----

TITLE 3. HEALTH PROFESSIONS

CHAPTER 101. HEALTH PROFESSIONS COUNCIL

Subchapter A. Health Professions Council

Sec. 101.001.	Health Professions Counsel	16
Sec. 101.002.	Composition of Council	16
Sec. 101.003	Officers	17
Sec. 101.004.	Compensation of Members	17
Sec. 101.005	Council Staff	17
Sec. 101.006	Budget	17
Sec. 101.007	Duties of Council	17

Subchapter B. Telephone Complaint System

Sec. 101.051	Telephone Complaint System	17
Sec. 101.0515.	Applicability of Subchapter	18
Sec. 101.052	Telephone Listing	18
Sec. 101.053	Confidentiality	18

Subchapter C. Training Program

Sec. 101.101	Training Program System	18
Sec. 101.102	Program Requirements	18

Subchapter D. Reporting Requirements

Sec. 101.151	Annual Report	19
--------------	---------------------	----

Subchapter E. Grounds for License Revocation or Denial

Sec. 101.201	False, Misleading, or Deceptive Advertising	19
Sec. 101.202	(Language Transferred to Section 101.351)	
Sec. 101.203	Overcharging or Overtreating	20
Sec. 101.204	Remedies	20

Subchapter F. Enforcement

Sec. 101.251	Civil Penalty	20
Sec. 101.252	Injunction	21

Sec. 101.253	Remedies Not Exclusive	21
--------------	------------------------------	----

Subchapter G. Office of Patient Protection

Sec. 101.301	General Provisions	21
Sec. 101.302	Executive Committee; Director	21
Sec. 101.303	Administrative Attachment to Council; Reimbursement	22
Sec. 101.304	Public Information Provided by Office; Standard Complaint Form	22
Sec. 101.305	Powers and Duties of Office	22
Sec. 101.306	Monitoring of Agencies	23
Sec. 101.307	Funding of Office	23

Subchapter H. Billing

Sec. 101.351	Failure to Provide Billing Information	23
Sec. 101.352	Billing Policies and Information; Physicians	24

CHAPTER 102. SOLICITATION OF PATIENTS

Subchapter A. General Provisions

Sec. 102.001	Soliciting Patients; Offense	25
Sec. 102.002	Rebuttal Presumptive	25
Sec. 102.003	Federal Law; Construction	25
Sec. 102.004	Applicability of Advertising	26
Sec. 102.005	Applicability of Certain Entities	26
Sec. 102.006	Failure to Disclose; Offense	26
Sec. 102.007	Applicability	27
Sec. 102.008	Disciplinary Action	29
Sec. 102.009	Injunction	29
Sec. 102.010	Civil Penalties	29
Sec. 102.011	Suit of Injunctive Relief or Assessment of Civil Penalty	29

Subchapter B. Healing Arts

Sec. 102.051	Soliciting Patients; Offense	30
Sec. 102.52	Applicability to Physicians	30
Sec. 102.053	Exception for Certain Advertising	30
Sec. 102.054	Accessibility and Use of Witness Testimony	30

CHAPTER 104. HEALING ART PRACTITIONERS

Sec. 104.001	Short Title	31
Sec. 104.002	Healing Art	31
Sec. 104.003	Required Identification	31
Sec. 104.004	Other Persons Using Title "Doctor"	32
Sec. 104.005	Enforcement	32
Sec. 104.006	Applicability to Established Church	32
Sec. 104.007	Penalties	32

CHAPTER 105. UNPROFESSIONAL CONDUCT BY HEALTH CARE PROVIDER

Sec. 105.001 Definition33
Sec. 105.002 Unprofessional Conduct33

CHAPTER 106. GENERAL REGULATORY AUTHORITY REGARDING HEALTH CARE PRACTITIONER'S USE OF INTERNET'

Sec. 106.001 Effect of Internet Activity34

TITLE 3. HEALTH PROFESSIONS

CHAPTER 251. GENERAL PROVISIONS RELATING TO THE PRACTICE OF DENTISTRY

Sec. 251.001 Short Title34
Sec. 251.002 Definitions35
Sec. 251.003 Practice of Dentistry 35
Sec. 251.004 Exemption from Practice of Dentistry36
Sec. 251.005 Application of Sunset Act38

CHAPTER 252. STATE BOARD OF DENTAL EXAMINERS

Sec. 252.001. Board Membership39
Sec. 252.002 Member Eligibility39
Sec. 252.003 Membership and Employee Restrictions40
Sec. 252.004 Terms of Office40
Sec. 252.005 Privileges of Office40
Sec. 252.006 Officers40
Sec. 252.007 Grounds for Removal41
Sec. 252.008 Per Diem; Reimbursement41
Sec. 252.009 Meetings41
Sec. 252.010 Board Member Training42
Sec. 252.011 Oath of Office42

CHAPTER 253. EXECUTIVE DIRECTOR AND PERSONNEL

Sec. 253.001 Executive Director42
Sec. 253.002 (Section Repealed)
Sec. 253.003 Personnel43
Sec. 253.004 Division of Responsibilities43
Sec. 253.005 Qualifications and Standards of Conduct Information43
Sec. 253.006 Career Ladder Program; Performance Evaluations43
Sec. 253.007 Equal Opportunity Policy; Report44

CHAPTER 254. BOARD POWERS AND DUTIES

Sec. 254.001 General Rulemaking Authority44
Sec. 254.0011 Rules Relating to Control of Dental Practice44
Sec. 254.002 Rules Regarding Advertising and Competitive Bidding45

Sec. 254.003	Rules Regarding Infection Control	45
Sec. 254.004	Fees	45
Sec. 254.005	Signature and Seal on License Required	46
Sec. 254.006	Board Records and Confidentiality of Records	46
Sec. 254.007	Records Regarding Persons Authorized to Practice	46
Sec. 254.008	Civil Liability	47
Sec. 254.009	Assistance of Prosecutor	47
Sec. 254.010	Monitoring of License Holder	47
Sec. 254.011	Agreement with Health and Human Services Commission	47
Sec. 254.012	Inclusion of Medicaid-related Information in Annual Financial Report	48
Sec. 254.013	Peace Officers	48
Sec. 254.014	Use of Alternative Rulemaking and Dispute Resolution Procedures	48
Sec. 254.015	Use of Technology	49
Sec. 254.016	Information Provided to License Holders	49
Sec. 254.017	Poison Control Center Information	49
Sec. 254.018	Testimony	49
Sec. 254.019	Definitions	50

CHAPTER 255. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

Sec. 255.001	Public Interest Information	51
Sec. 255.002	Complaints	51
Sec. 255.003	Assistance with Complaint	51
Sec. 255.004	Records of Complaints	51
Sec. 255.005	Notification of Investigation Status	52
Sec. 255.006	General Rules Regarding Complaint Investigation and Disposition	52
Sec. 255.0065	Composition of Expert Panels	53
Sec. 255.0066	Determination of Competency	53
Sec. 255.0067	Reports; Procedures for Expert Review	54
Sec. 255.007	Notice to Board Concerning Complaints	54
Sec. 255.008	Public Participation	54

CHAPTER 256. LICENSING OF DENTISTS AND DENTAL HYGIENISTS

Subchapter A. Issuance of License to Practice Dentistry

Sec. 256.001	License Required	55
Sec. 256.002	Minimum Qualifications of Dental Applicant	55
Sec. 256.003	Examination	55
Sec. 256.004	(Section Repealed)	
Sec. 256.005	Examination Results	56
Sec. 256.006	Reexamination	56

Subchapter B. Issue of License to Dental Hygienist

Sec. 256.051	Definition	57
Sec. 256.052	License Required	57
Sec. 256.053	Eligibility for License	57
Sec. 256.0531	Alternative Dental Hygiene Training Programs	57
Sec. 256.054	Application for Examination	59

Sec. 256.055	License Examination	59
Sec. 256.056	Examination Results	60
Sec. 256.057	Reexamination	60
Sec. 256.058	Issuance of License	60

Subchapter C. General License Provisions

Sec. 256.101	Issuance of License to Certain Out-of-State Applicants	60
Sec. 256.1013	Provisional License	61
Sec. 256.1015	Temporary License	62
Sec. 256.1016	Temporary License for Charitable Purpose	62
Sec. 256.102	Retired Status	63
Sec. 256.103	Display of Annual Registration Certificate	64
Sec. 256.104	Duplicate License	64
Sec. 256.105	Notification of Change of Information	64
Sec. 256.106	Delegated Authority to Issue Licenses	65

CHAPTER 257. LICENSE RENEWAL

Sec. 257.001	License Expiration	65
Sec. 257.002	License Renewal	65
Sec. 257.003	(Section Repealed)	
Sec. 257.004	Cardiopulmonary Resuscitation Requirements	66
Sec. 257.005	Continuing Education for Dentist and Dental Hygienist	66

CHAPTER 258. PRACTICE BY DENTIST

Subchapter A. Delegation by Dentist

Sec. 258.001	Impermissible Delegations	67
Sec. 258.002	Delegation to Dental Assistant	68
Sec. 258.003	Responsibility of Delegating Dentist	68

Subchapter B. General Practice Provisions

Sec. 258.051	Dentist Records	68
Sec. 258.0511	Access to Dental Records	69
Sec. 258.052	Case Histories and Physical Evaluations	69
Sec. 258.053	Use of Certain Drugs	69
Sec. 258.054	Use of X-Ray Equipment	70
Sec. 258.055	Practice of Dentistry on Certain Children	70

Subchapter C. Dental Privilege

Sec. 258.101	Definitions	70
Sec. 258.102	Scope of Privilege	71
Sec. 258.103	Holder of Privilege	71
Sec. 258.104	Consent to Disclosure of Privileged Information	71
Sec. 258.105	Exception to Privilege for Certain Proceedings	72
Sec. 258.106	Exception to Privilege for Certain Disclosures by Dentist	72

Sec. 258.107	Exception to Privilege for Certain Legislative Inquiries	73
Sec. 258.108	Limit on Disclosure	73
Sec. 258.109	Request for Dental Record; Timing; Exception	73

Subchapter D. Enteral Administration of Anesthesia

Sec. 258.151	Definition	74
Sec. 258.152	Applicability	74
Sec. 258.153	Rules	74
Sec. 258.154	Compliance with Anesthesia Rules	75
Sec. 258.155	Annual Permit	75
Sec. 258.156	Inspections	75
Sec. 258.157	Requests for Inspection and Advisory Opinion	75

CHAPTER 259. PROHIBITED OR RESTRICTED COMMERCIAL OR PROFESSIONAL ACTIVITIES.

Sec. 259.001	False Statements to Patients	76
Sec. 259.002	Notification of Qualifications	76
Sec. 259.003	Use of Trade Name	76
Sec. 259.004	Duties of Dentist in Certain Employment or Contractual Arrangements	76
Sec. 259.005	Authorized Advertising Restrictions	77
Sec. 259.006	Unlawful Advertising in General	77
Sec. 259.007	Unlawful Advertising; Out-of-State Provider	78
Sec. 259.008	Unprofessional Conduct	78

CHAPTER 260. OPERATION OF CERTAIN DENTAL PRACTICES

Sec. 260.001	Employment by Estate of Dentist or Person Acting for Mentally Incompetent Dentist	79
Sec. 260.002	Employment by Certain Nonprofit Health Organization	79
Sec. 260.003	Employment by Organizations Serving Underserved Populations	80
Sec. 260.004	Employment by Governmental Entity	80

CHAPTER 261. CONFIDENTIALITY AND IMMUNITY OF DENTAL PEER REVIEW COMMITTEE

Subchapter A. General Provisions

Sec. 261.001	Definitions	80
--------------	-------------------	----

Subchapter B. Confidentiality and Disclosure of Information

Sec. 261.051	Confidentiality of Proceedings	81
Sec. 261.052	Disclosure of Information	81
Sec. 261.053	Disclosure to Affected Dentist	81
Sec. 261.054	Committee’s Evidentiary Privilege	81
Sec. 261.055	Compliance With Board Subpoenas	82

Subchapter C. Civil Liability

Sec. 261.101	Committee Immunity from Suit	82
Sec. 261.102	Committee Participants’ Immunity From Suit	83

Sec. 261.103	Immunity from Suit	83
Sec. 261.104	Counterclaim for Frivolous Suit	83

CHAPTER 262. REGULATION OF DENTAL HYGIENISTS

Subchapter A. General Provisions

Sec. 262.001	Definitions	83
Sec. 262.002	Practice of Dental Hygiene	84
Sec. 262.003	Exemptions	84

Subchapter B. Dental Hygiene Advisory Committee

Sec. 262.051	Dental Hygiene Advisory Committee	84
Sec. 262.052	Advisory Committee Membership	84
Sec. 262.053	Membership Restrictions	85
Sec. 262.054	Terms	85
Sec. 262.055	Presiding Officer	85
Sec. 262.0555	Grounds for Removal	85
Sec. 252.056	Per Diem; Reimbursement	85
Sec. 252.057	(Section Repealed)	

Subchapter C. Powers and Duties of Board Relating to Dental Hygienists

Sec. 262.101	Board Powers and Duties	86
Sec. 262.102	Rulemaking Authority of Board	86
Sec. 262.1025	Authority of Advisory Committee to Recommend Rules; Adoption of Board	86
Sec. 262.103	Notice of Meetings	86

Subchapter D. Practice by License Holder

Sec. 262.151	Delegation by Dentist	87
Sec. 262.1515	Delegation of Duties to Dental Hygienist Practicing in Certain Facilities	88
Sec. 262.152	Performance of Delegated Duties	88

Subchapter E. Prohibited Practices; Civil Liability; Penalties

Sec. 262.201	Prohibited Practice	89
Sec. 262.202	Civil Liability	89
Sec. 262.203	(Section Repealed)	

CHAPTER 263. LICENSE DENIAL AND DISCIPLINARY PROCEEDINGS

Sec. 263.001	Grounds for Refusal to Issue License	89
Sec. 263.002	Grounds for Disciplinary Action in General	90
Sec. 263.003	Hearing	91
Sec. 263.004	Temporary Suspension in Emergency	91
Sec. 263.005	Probation	91
Sec. 263.006	Suspension or Revocation Required for Certain Drug Offenses	92
Sec. 263.0065	Delegation of Certain Complaint Dispositions	92

Sec. 263.007	Informal Proceeding	93
Sec. 263.0075	Informal Settlement Conference; Restitution	93
Sec. 263.0076	Informal Settlement Conference Notice	94
Sec. 263.0077	Remedial Plan	94
Sec. 263.008	Subpoenas	95
Sec. 263.009	Appeal	95

CHAPTER 264. PENALTIES AND ENFORCEMENT PROVISIONS

Subchapter A. Administrative Penalty

Sec. 264.001	Imposition of Penalty	95
Sec. 264.002	Amount of Penalty	95
Sec. 264.003	Report and Notice of Violation and Penalty	96
Sec. 264.004	Penalty to be Paid or Hearing Requested	96
Sec. 264.005	Hearing	96
Sec. 264.006	Decision by Board	97
Sec. 264.007	Options Following Decision; Pay or Appeal	97
Sec. 264.008	Collection of Penalty	97
Sec. 264.009	Determination by Court	98
Sec. 264.010	Remittance of Penalty and Interest	98
Sec. 264.011	Informal Assessment of Administrative Penalty	98
Sec. 264.0115	Alternative Informal Assessment of Administrative Penalty	98
Sec. 264.012	Administrative Procedure	99

Subchapter B. Injunction; Cease and Desist Order

Sec. 264.051	Injunction	99
Sec. 264.052	Representation of State	99
Sec. 264.0525	Cease and Desist Order	99
Sec. 264.0526	Emergency Cease and Desist Order	100
Sec. 264.0527	Appeal of Cease and Desist Order	101
Sec. 264.053	Remedies Cumulative	101

Subchapter C. Civil Penalty

Sec. 264.101	Civil Penalty	101
Sec. 264.102	Collection of Civil Penalty	101

Subchapter D. Criminal Penalty

Sec. 264.151	Criminal Penalties	101
Sec. 264.152	Criminal Penalty; Dental Records Access	102

CHAPTER 265. REGULATION OF DENTAL ASSISTANTS

Sec. 265.0001.	Definitions	102
Sec. 265.001	Registration	102
Sec. 265.002	Supervision, Direction, and Responsibility	103
Sec. 265.003	Permitted Duties	103

Sec. 265.004	Pit and Fissure Sealant Certificate	104
Sec. 265.005	X-Ray Certificate	104
Sec. 265.006	Coronal Polishing Certificate	106
Sec. 265.007	Continuing Education for Certificate Holders	106

CHAPTER 266. REGULATION OF DENTAL LABORATORIES

Subchapter A. General Provisions

Sec. 266.001	Definitions	106
Sec. 266.002	Exemptions	107

Subchapter B. Dental Laboratory Certification Council

Sec. 266.051	Appointment of Council; Membership	107
Sec. 266.052	Member Eligibility	107
Sec. 266.053	Terms	108
Sec. 266.054	President	108
Sec. 266.055	Per Diem	108
Sec. 266.056	Meetings	108
Sec. 266.057	Civil Liability	108

Subchapter C. Powers and Duties of Council and Board

Sec. 266.101	Council Powers and Duties	109
Sec. 266.102	Board Powers and Duties	109

Subchapter D. Certification, Registration, and Renewal

Sec. 266.151	Registration	110
Sec. 266.152	Certified Dental Technician	110
Sec. 266.153	Application for Registration	110
Sec. 266.154	Registration Renewal	111
Sec. 266.155	Initial Registration Certificate Fee	111

Subchapter E. Practice by Registration Holder.

Sec. 266.201	Prescription Required	112
Sec. 266.202	Reliance on Prescription	112
Sec. 266.203	Transportation of Dental Material Permitted	113

Subchapter F. Disciplinary Actions

Sec. 266.251	Grounds for Disciplinary Action	113
Sec. 266.252	Procedures for Disciplinary Action	113

Subchapter G. Prohibited Practices, Enforcement, and Penalties

Sec. 266.301	Dental Prosthetic Appliance	113
Sec. 266.302	Injunction	114

Sec. 266.303 Criminal Penalties114

CHAPTER 267. LICENSING FACULTY MEMBERS OF DENTAL OR DENTAL HYGIENE SCHOOLS

Sec. 267.001 License Required114
Sec. 267.002 Exemptions114
Sec. 267.003 Qualifications for License115
Sec. 267.004 License Renewal115
Sec. 267.005 License Expiration116
Sec. 267.006 Practice of Dentistry or Dental Hygiene Prohibited116

CHAPTER 1. GENERAL PROVISIONS

Sec. 1.001. PURPOSE OF CODE.

- (a) This code is enacted as a part of the state's continuing statutory revision program, begun by the Texas Legislative Council in 1963 as directed by the legislature in the law codified as Section 323.007, Government Code. The program contemplates a topic-by-topic revision of the state's general and permanent statute law without substantive change.
- (b) Consistent with the objectives of the statutory revision program, the purpose of this code is to make the law encompassed by this code more accessible and understandable by:
 - (1) rearranging the statutes into a more logical order;
 - (2) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;
 - (3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and
 - (4) restating the law in modern American English to the greatest extent possible.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 1.002. CONSTRUCTION OF CODE.

Chapter 311, Government Code (Code Construction Act), applies to the construction of each provision in this code except as otherwise expressly provided by this code.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 1.003. REFERENCE IN LAW TO STATUTE REVISED BY CODE.

A reference in a law to a statute or a part of a statute revised by this code is considered to be a reference to the part of this code that revises that statute or part of that statute.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

CHAPTER 53. CONSEQUENCES OF CRIMINAL CONVICTION SUBCHAPTER A. GENERAL PROVISIONS

Sec. 53.001. APPLICABILITY OF CERTAIN DEFINITIONS.

The definitions provided by Chapter 2001, Government Code, apply to this chapter.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 53.002. APPLICABILITY OF CHAPTER.

This chapter does not apply to:

- (1) the Supreme Court of Texas, a person licensed under the court's authority on behalf of the judicial department of government, or an applicant for a license issued under the court's authority on behalf of the judicial department of government;
- (2) a person licensed or an applicant for a license under Chapter 1701;

- (3) an applicant for certification as emergency medical services personnel under Chapter 773, Health and Safety Code; or
- (4) a person who:
 - (A) is licensed by the Texas Medical Board, the Texas State Board of Pharmacy, the State Board of Dental Examiners, or the State Board of Veterinary Medical Examiners; and
 - (B) has been convicted of a felony under Chapter 481 or 483 or Section 485.033, Health and Safety Code.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1149 (H.B. 2845), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 754 (H.B. 1402), Sec. 1, eff. September 1, 2011.]

SUBCHAPTER B. INELIGIBILITY FOR LICENSE

Sec. 53.021. AUTHORITY TO REVOKE, SUSPEND, OR DENY LICENSE.

- (a) A licensing authority may suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination on the grounds that the person has been convicted of:
 - (1) an offense that directly relates to the duties and responsibilities of the licensed occupation;
 - (2) an offense that does not directly relate to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date the person applies for the license;
 - (3) an offense listed in Section 3g, Article 42.12, Code of Criminal Procedure; or
 - (4) a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure.
 - (a-1) Subsection (a) does not apply to a person who has been convicted only of an offense punishable as a Class C misdemeanor unless:
 - (1) the person is an applicant for or the holder of a license that authorizes the person to possess a firearm; and
 - (2) the offense for which the person was convicted is a misdemeanor crime of domestic violence as that term is defined by 18 U.S.C. Section 921.
- (b) A license holder's license shall be revoked on the license holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.
- (c) Except as provided by Subsections (d) and (e), notwithstanding any other law, a licensing authority may not consider a person to have been convicted of an offense for purposes of this section if, regardless of the statutory authorization:
 - (1) the person entered a plea of guilty or nolo contendere;
 - (2) the judge deferred further proceedings without entering an adjudication of guilt and placed the person under the supervision of the court or an officer under the supervision of the court; and
 - (3) at the end of the period of supervision, the judge dismissed the proceedings and discharged the person.
- (d) A licensing authority may consider a person to have been convicted of an offense for purposes of this section regardless of whether the proceedings were dismissed and the person was discharged as described by Subsection (c) if:

- (1) the person was charged with:
 - (A) any offense described by Article 62.001(5), Code of Criminal Procedure; or
 - (B) an offense other than an offense described by Paragraph (A) if:
 - (i) the person has not completed the period of supervision or the person completed the period of supervision less than five years before the date the person applied for the license; or
 - (ii) a conviction for the offense would make the person ineligible for the license by operation of law; and
- (2) after consideration of the factors described by Sections 53.022 and 53.023(a), the licensing authority determines that:
 - (A) the person may pose a continued threat to public safety; or
 - (B) employment of the person in the licensed occupation would create a situation in which the person has an opportunity to repeat the prohibited conduct.
- (e) Subsection (c) does not apply if the person is an applicant for or the holder of a license that authorizes the person to provide:
 - (1) law enforcement or public health, education, or safety services; or
 - (2) financial services in an industry regulated by a person listed in Section 411.081(i)(19), Government Code.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 616 (H.B. 963), Sec. 3, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1148 (H.B. 2808), Sec. 1, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 938 (H.B. 1659), Sec. 2, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1265 (H.B. 798), Sec. 1, eff. September 1, 2013.]

Sec. 53.0211. LICENSING OF CERTAIN APPLICANTS WITH PRIOR CRIMINAL CONVICTIONS.

- (a) This section does not apply to an applicant for a license that would allow the applicant to provide:
 - (1) law enforcement services;
 - (2) public health, education, or safety services; or
 - (3) financial services in an industry regulated by the securities commissioner, the banking commissioner, the savings and mortgage lending commissioner, the consumer credit commissioner, or the credit union commissioner.
- (b) Notwithstanding any law other than Subsection (a) and unless the applicant has been convicted of an offense described by Section 53.021(a), a licensing authority shall issue to an otherwise qualified applicant who has been convicted of an offense:
 - (1) the license for which the applicant applied; or
 - (2) a provisional license described by Subsection (c).
- (c) A licensing authority may issue a provisional license for a term of six months to an applicant who has been convicted of an offense.
- (d) The licensing authority shall revoke a provisional license if the provisional license holder:
 - (1) commits a new offense;
 - (2) commits an act or omission that causes the person's community supervision, mandatory supervision, or parole to be revoked, if applicable; or

- (3) violates the law or rules governing the practice of the occupation for which the provisional license is issued.
- (e) The licensing authority shall issue the license for which the applicant originally applied to a provisional license holder on the expiration of the provisional license term if the provisional license holder does not engage in conduct described by Subsection (d).
- (f) If the licensing authority revokes a provisional license under Subsection (d), the provisional license holder is disqualified from receiving the license for which the applicant originally applied.
- (g) An applicant who is on community supervision, mandatory supervision, or parole and who is issued a provisional license under this section shall provide to the licensing authority the name and contact information of the probation or parole department to which the person reports. The licensing authority shall notify the probation or parole department that a provisional license has been issued. The probation or parole department shall notify the licensing authority if the person's community supervision, mandatory supervision, or parole supervision is revoked during the term of the provisional license.

[Added by Acts 2009, 81st Leg., R.S., Ch. 616 (H.B. 963), Sec. 4, eff. June 19, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1182 (H.B. 3453), Sec. 13, eff. September 1, 2011.]

Sec. 53.022. FACTORS IN DETERMINING WHETHER CONVICTION RELATES TO OCCUPATION.

In determining whether a criminal conviction directly relates to an occupation, the licensing authority shall consider:

- (1) the nature and seriousness of the crime;
- (2) the relationship of the crime to the purposes for requiring a license to engage in the occupation;
- (3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and
- (4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 53.023. ADDITIONAL FACTORS FOR LICENSING AUTHORITY TO CONSIDER.

- (a) In determining the fitness to perform the duties and discharge the responsibilities of the licensed occupation of a person who has been convicted of a crime, the licensing authority shall consider, in addition to the factors listed in Section 53.022:
 - (1) the extent and nature of the person's past criminal activity;
 - (2) the age of the person when the crime was committed;
 - (3) the amount of time that has elapsed since the person's last criminal activity;
 - (4) the conduct and work activity of the person before and after the criminal activity;
 - (5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and
 - (6) other evidence of the person's fitness, including letters of recommendation from:

- (A) prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;
 - (B) the sheriff or chief of police in the community where the person resides; and
 - (C) any other person in contact with the convicted person.
- (b) The applicant has the responsibility, to the extent possible, to obtain and provide to the licensing authority the recommendations of the prosecution, law enforcement, and correctional authorities as required by Subsection (a)(6).
- (c) In addition to fulfilling the requirements of Subsection (b), the applicant shall furnish proof in the form required by the licensing authority that the applicant has:
- (1) maintained a record of steady employment;
 - (2) supported the applicant's dependents;
 - (3) maintained a record of good conduct; and
 - (4) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 53.024. PROCEEDINGS GOVERNED BY ADMINISTRATIVE PROCEDURE ACT.

A proceeding before a licensing authority to establish factors required to be considered under this subchapter is governed by Chapter 2001, Government Code.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 53.025. GUIDELINES.

- (a) Each licensing authority shall issue guidelines relating to the practice of the licensing authority under this chapter. The guidelines must state the reasons a particular crime is considered to relate to a particular license and any other criterion that affects the decisions of the licensing authority.
- (b) A state licensing authority that issues guidelines under this section shall file the guidelines with the secretary of state for publication in the Texas Register.
- (c) A local or county licensing authority that issues guidelines under this section shall post the guidelines at the courthouse for the county in which the licensing authority is located or publish the guidelines in a newspaper having countywide circulation in that county.
- (d) Amendments to the guidelines, if any, shall be issued annually.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

**SUBCHAPTER C.
NOTICE AND REVIEW OF SUSPENSION, REVOCATION, OR DENIAL OF LICENSE**

Sec. 53.051. NOTICE.

A licensing authority that suspends or revokes a license or denies a person a license or the opportunity to be examined for a license because of the person's prior conviction of a crime and the relationship of the crime to the license shall notify the person in writing of:

- (1) the reason for the suspension, revocation, denial, or disqualification;
- (2) the review procedure provided by Section 53.052; and

- (3) the earliest date the person may appeal the action of the licensing authority.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 53.052. JUDICIAL REVIEW.

- (a) A person whose license has been suspended or revoked or who has been denied a license or the opportunity to take an examination under Section 53.021 and who has exhausted the person's administrative appeals may file an action in the district court in the county in which the licensing authority is located for review of the evidence presented to the licensing authority and the decision of the licensing authority.
- (b) The petition for an action under Subsection (a) must be filed not later than the 30th day after the date the licensing authority's decision is final and appealable.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

SUBCHAPTER D. PRELIMINARY EVALUATION OF LICENSE ELIGIBILITY

Sec. 53.101. DEFINITIONS.

In this subchapter:

- (1) "License" means a license, certificate, registration, permit, or other authorization that:
 - (A) is issued by a licensing authority; and
 - (B) a person must obtain to practice or engage in a particular business, occupation, or profession.
- (2) "Licensing authority" means a department, commission, board, office, or other agency of the state that issues a license.

[Added by Acts 2009, 81st Leg., R.S., Ch. 616 (H.B. 963), Sec. 1, eff. June 19, 2009.]

Sec. 53.102. REQUEST FOR CRIMINAL HISTORY EVALUATION LETTER.

- (a) A person may request a licensing authority to issue a criminal history evaluation letter regarding the person's eligibility for a license issued by that authority if the person:
 - (1) is enrolled or planning to enroll in an educational program that prepares a person for an initial license or is planning to take an examination for an initial license; and
 - (2) has reason to believe that the person is ineligible for the license due to a conviction or deferred adjudication for a felony or misdemeanor offense.
- (b) The request must state the basis for the person's potential ineligibility.

[Added by Acts 2009, 81st Leg., R.S., Ch. 616 (H.B. 963), Sec. 1, eff. June 19, 2009.]

Sec. 53.103. AUTHORITY TO INVESTIGATE.

A licensing authority has the same powers to investigate a request submitted under this subchapter and the requestor's eligibility that the authority has to investigate a person applying for a license.

[Added by Acts 2009, 81st Leg., R.S., Ch. 616 (H.B. 963), Sec. 1, eff. June 19, 2009.]

Sec. 53.104. DETERMINATION OF ELIGIBILITY; LETTER.

- (a) If a licensing authority determines that a ground for ineligibility does not exist, the authority shall notify the requestor in writing of the authority's determination on each ground of potential ineligibility.
- (b) If a licensing authority determines that the requestor is ineligible for a license, the licensing authority shall issue a letter setting out each basis for potential ineligibility and the authority's determination as to eligibility. In the absence of new evidence known to but not disclosed by the requestor or not reasonably available to the licensing authority at the time the letter is issued, the authority's ruling on the request determines the requestor's eligibility with respect to the grounds for potential ineligibility set out in the letter.
- (c) A licensing authority must provide notice under Subsection (a) or issue a letter under Subsection (b) not later than the 90th day after the date the authority receives the request.

[Added by Acts 2009, 81st Leg., R.S., Ch. 616 (H.B. 963), Sec. 1, eff. June 19, 2009.]

Sec. 53.105. FEES.

A licensing authority may charge a person requesting an evaluation under this subchapter a fee adopted by the authority. Fees adopted by a licensing authority under this subchapter must be in an amount sufficient to cover the cost of administering this subchapter.

[Added by Acts 2009, 81st Leg., R.S., Ch. 616 (H.B. 963), Sec. 1, eff. June 19, 2009.]

**CHAPTER 54.
EXAMINATION ON RELIGIOUS HOLY DAY; EXAMINATION ACCOMMODATIONS
FOR PERSON WITH DYSLEXIA**

Sec. 54.001. DEFINITIONS.

In this chapter:

- (1) "Religious holy day" means a day on which the tenets of a religious organization prohibit the organization's members from participating in secular activities.
- (2) "Religious organization" means an organization that qualifies under Section 11.20, Tax Code.
- (3) "State agency" means an agency in the executive, legislative, or judicial branch of state government that administers an examination for licensing or other regulatory purposes.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 54.002. EXAMINATION SCHEDULED ON RELIGIOUS HOLY DAY.

- (a) Each state agency shall adopt a procedure to permit an examinee who wishes to observe a religious holy day on which the person's religious beliefs prevent the person from taking an examination to take an examination scheduled to be administered by the agency on that religious holy day on an alternate date.
- (b) Each state agency shall adopt rules as necessary to implement this section.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 54.003. EXAMINATION ACCOMMODATIONS FOR PERSON WITH DYSLEXIA.

- (a) In this section, "dyslexia" has the meaning assigned by Section 51.970, Education Code.
- (b) For each licensing examination administered by a state agency, the agency shall provide reasonable examination accommodations to an examinee diagnosed as having dyslexia.
- (c) Each state agency shall adopt rules necessary to implement this section, including rules to establish the eligibility criteria an examinee must meet for accommodation under this section.

[Added by Acts 2011, 82nd Leg., R.S., Ch. 418 (S.B. 867), Sec. 2, eff. September 1, 2011.]

**CHAPTER 55.
LICENSING OF MILITARY SERVICE MEMBERS, MILITARY VETERANS,
AND MILITARY SPOUSES**

Sec. 55.001. DEFINITIONS.

In this chapter:

- (1) "License" means a license, certificate, registration, permit, or other form of authorization required by law or a state agency rule that must be obtained by an individual to engage in a particular business.
- (1-a) "Military service member" means a person who is currently serving in the armed forces of the United States, in a reserve component of the armed forces of the United States, including the National Guard, or in the state military service of any state.
- (1-b) "Military spouse" means a person who is married to a military service member who is currently on active duty.
- (1-c) "Military veteran" means a person who has served in the army, navy, air force, marine corps, or coast guard of the United States, or in an auxiliary service of one of those branches of the armed forces.
- (2) "State agency" means a department, board, bureau, commission, committee, division, office, council, or agency of the state.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 66 (S.B. 162), Sec. 2, eff. May 18, 2013.]

Sec. 55.002. EXEMPTION FROM PENALTY FOR FAILURE TO RENEW LICENSE.

A state agency that issues a license shall adopt rules to exempt an individual who holds a license issued by the agency from any increased fee or other penalty imposed by the agency for failing to renew the license in a timely manner if the individual establishes to the satisfaction of the agency that the individual failed to renew the license in a timely manner because the individual was on active duty in the United States armed forces serving outside this state.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 55.003. EXTENSION OF CERTAIN DEADLINES FOR ACTIVE DUTY MILITARY PERSONNEL.

A person who holds a license, is a member of the state military forces or a reserve component of the armed forces of the United States, and is ordered to active duty by proper authority is entitled to an additional amount of time, equal to the total number of years or parts of years that the person serves on active duty, to complete:

- (1) any continuing education requirements; and
- (2) any other requirement related to the renewal of the person's license.

[Added by Acts 2005, 79th Leg., Ch. 675 (S.B. 143), Sec. 1, eff. June 17, 2005.]

Sec. 55.004. ALTERNATIVE LICENSE PROCEDURE FOR MILITARY SPOUSE.

- (a) A state agency that issues a license shall adopt rules for the issuance of the license to an applicant who is the spouse of a person serving on active duty as a member of the armed forces of the United States and:
 - (1) holds a current license issued by another state that has licensing requirements that are substantially equivalent to the requirements for the license; or
 - (2) within the five years preceding the application date held the license in this state that expired while the applicant lived in another state for at least six months.
- (b) Rules adopted under this section must include provisions to allow alternative demonstrations of competency to meet the requirements for obtaining the license.
- (c) The executive director of a state agency may issue a license by endorsement in the same manner as the Texas Commission of Licensing and Regulation under Section 51.404 to an applicant described by Subsection (a).

[Added by Acts 2011, 82nd Leg., R.S., Ch. 930 (S.B. 1733), Sec. 2, eff. June 17, 2011.

Text of section as added by Acts 2013, 83rd Leg., R.S., Ch. 66 (S.B. 162), Sec. 3

For text of section as added by Acts 2013, 83rd Leg., R.S., Ch. 348 (H.B. 2254), Sec. 2, see other Sec. 55.005.]

Sec. 55.005. EXPEDITED LICENSE PROCEDURE FOR MILITARY SPOUSES.

- (a) A state agency that issues a license shall, as soon as practicable after a military spouse files an application for a license:
 - (1) process the application; and
 - (2) issue a license to a qualified military spouse applicant who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the licensing requirements in this state.
- (b) A license issued under this section may not be a provisional license and must confer the same rights, privileges, and responsibilities as a license not issued under this section.

[Added by Acts 2013, 83rd Leg., R.S., Ch. 66 (S.B. 162), Sec. 3, eff. May 18, 2013.

Text of section as added by Acts 2013, 83rd Leg., R.S., Ch. 348 (H.B. 2254), Sec. 2

For text of section as added by Acts 2013, 83rd Leg., R.S., Ch. 66 (S.B. 162), Sec. 3, see other Sec. 55.005.]

Sec. 55.005. APPRENTICESHIP REQUIREMENTS FOR APPLICANT WITH MILITARY EXPERIENCE.

- (a) Notwithstanding any other law, if an apprenticeship is required for an occupational license issued by a state agency, the state agency shall credit verified military service, training, or education that is relevant to the occupation toward the apprenticeship requirements for the license.
- (b) The state agency shall adopt rules necessary to implement this section.

[Added by Acts 2013, 83rd Leg., R.S., Ch. 348 (H.B. 2254), Sec. 2, eff. June 14, 2013.]

Sec. 55.006. RENEWAL OF EXPEDITED LICENSE ISSUED TO MILITARY SPOUSE.

- (a) As soon as practicable after a state agency issues a license under Section 55.005, the state agency shall determine the requirements for the license holder to renew the license.
- (b) The state agency shall notify the license holder of the requirements for renewing the license in writing or by electronic means.
- (c) A license issued under Section 55.005 has the term established by law or state agency rule, or a term of 12 months from the date the license is issued, whichever term is longer.

[Added by Acts 2013, 83rd Leg., R.S., Ch. 66 (S.B. 162), Sec. 3, eff. May 18, 2013.]

Sec. 55.007. LICENSE ELIGIBILITY REQUIREMENTS FOR APPLICANTS WITH MILITARY EXPERIENCE.

- (a) Notwithstanding any other law, a state agency that issues a license shall, with respect to an applicant who is a military service member or military veteran, credit verified military service, training, or education toward the licensing requirements, other than an examination requirement, for a license issued by the state agency.
- (b) The state agency shall adopt rules necessary to implement this section.
- (c) Rules adopted under this section may not apply to an applicant who:
 - (1) holds a restricted license issued by another jurisdiction; or
 - (2) has an unacceptable criminal history according to the law applicable to the state agency.

[Added by Acts 2013, 83rd Leg., R.S., Ch. 66 (S.B. 162), Sec. 3, eff. May 18, 2013.]

**CHAPTER 56.
ACTION AGAINST RECIPIENTS OF STUDENT FINANCIAL ASSISTANCE**

Sec. 56.001. DEFINITIONS.

In this chapter:

- (1) "Administering entity" means a governmental entity that administers a student loan, student loan repayment, or scholarship program.
- (2) "License" means a license, certificate, registration, permit, or other authorization that:
 - (A) is issued by a licensing authority; and
 - (B) a person must obtain to practice or engage in a particular business, occupation, or profession.

- (3) "Licensing authority" means a department, commission, board, office, or other agency of the state that issues a license.
- (4) "Scholarship contract" means an agreement by this state, an agency of this state, or the United States to make a grant to a person to support the person while attending a public or private institution of higher education or other postsecondary educational establishment in exchange for the person's agreement to perform a service obligation.
- (5) "Student loan" means a loan made to a person to support the person while attending a public or private institution of higher education or other postsecondary educational establishment that is:
 - (A) owed to this state, an agency of this state, or the United States; or
 - (B) guaranteed by this state, an agency of this state, or the United States.
- (6) "Student loan repayment contract" means an agreement by this state, an agency of this state, or the United States to repay all or part of a person's student loan in exchange for the person's agreement to perform a service obligation.

[Added by Acts 2001, 77th Leg., ch. 512, Sec. 1, eff. June 11, 2001.]

Sec. 56.002. APPLICABILITY.

This chapter applies only to the following licensing authorities:

- (1) Texas Board of Chiropractic Examiners;
- (2) State Board of Dental Examiners;
- (3) Texas State Board of Podiatric Medical Examiners; and
- (4) Texas State Board of Medical Examiners.

[Added by Acts 2001, 77th Leg., ch. 512, Sec. 1, eff. June 11, 2001.]

Sec. 56.003. AUTHORITY TO TAKE ACTION IN EVENT OF DEFAULT OR BREACH.

On receipt of information from an administering entity that a person has defaulted on a student loan or has breached a student loan repayment contract or scholarship contract by failing to perform the person's service obligation under the contract, a licensing authority may:

- (1) deny the person's application for a license or license renewal;
- (2) suspend the person's license; or
- (3) take other disciplinary action against the person.

[Added by Acts 2001, 77th Leg., ch. 512, Sec. 1, eff. June 11, 2001.]

Sec. 56.004. REBUTTABLE PRESUMPTION.

A determination by an administering entity that a person has defaulted on a student loan or has breached a student loan repayment contract or scholarship contract by failing to perform the person's service obligation under the contract creates a rebuttable presumption that the person has committed the default or breach.

[Added by Acts 2001, 77th Leg., ch. 512, Sec. 1, eff. June 11, 2001.]

Sec. 56.005. RESCISSION OF ACTION.

A licensing authority may rescind any action taken under Section 56.003 on the receipt of information from an administering entity that the person against whom the action was taken has:

- (1) entered into an agreement with the administering entity to:
 - (A) repay the student loan;
 - (B) perform the service obligation; or
 - (C) pay any damages required by the student loan repayment contract or scholarship contract; or
- (2) taken other action resulting in the person no longer being in default on the student loan or in breach of the student loan repayment contract or scholarship contract.

[Added by Acts 2001, 77th Leg., ch. 512, Sec. 1, eff. June 11, 2001.]

Sec. 56.006. REINSTATEMENT OF ACTION.

A licensing authority may reinstate any action taken under Section 56.003 and may take other disciplinary action on the receipt of information from an administering entity that the person against whom the action was taken has:

- (1) defaulted on or breached an agreement under Section 56.005(1); or
- (2) otherwise defaulted on the student loan or breached the student loan repayment contract or scholarship contract.

[Added by Acts 2001, 77th Leg., ch. 512, Sec. 1, eff. June 11, 2001.]

CHAPTER 57. REQUIREMENTS FOR LICENSING AGENCIES

Sec. 57.001. DEFINITIONS.

In this chapter:

- (1) "License" means a license, certificate, registration, permit, or other form of authorization required by law or a state agency rule that must be obtained by an individual to engage in a particular business, occupation, or profession.
- (2) "State agency" means a department, board, bureau, commission, committee, division, office, council, or agency of the state.

[Added by Acts 2001, 77th Leg., ch. 1092, Sec. 1, eff. Sept. 1, 2001.]

Sec. 57.002. REQUIREMENTS FOR GOVERNING BOARD MEMBERSHIP.

A person may not be required to be a member of a private trade association as a precondition to serving as a member of the governing board of a state agency that issues a license or otherwise regulates a business, occupation, or profession.

[Added by Acts 2001, 77th Leg., ch. 1092, Sec. 1, eff. Sept. 1, 2001.]

CHAPTER 58. USE OF GENETIC INFORMATION
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 58.001. DEFINITIONS.

In this chapter:

- (1) 'DNA' means deoxyribonucleic acid.
- (2) 'Family health history' means a history taken by a physician or genetic professional to ascertain genetic or medical information about an individual's family.
- (3) 'Genetic characteristic' means a scientifically or medically identifiable genetic or chromosomal variation, composition, or alteration that:
 - (A) is scientifically or medically believed to:
 - (i) predispose an individual to a disease, disorder, or syndrome; or
 - (ii) be associated with a statistically significant increased risk of developing a disease, disorder, or syndrome; and
 - (B) may or may not be associated with any symptom of an ongoing disease, disorder, or syndrome affecting an individual on the date the genetic information is obtained regarding the individual.
- (4) 'Genetic information' means information that is:
 - (A) obtained from or based on a scientific or medical determination of the presence or absence in an individual of a genetic characteristic; or
 - (B) derived from the results of a genetic test performed on, or a family health history obtained from, an individual.
- (5) 'Genetic test' means a presymptomatic laboratory test of an individual's genes, gene products, or chromosomes that:
 - (A) analyzes the individual's DNA, RNA, proteins, or chromosomes; and
 - (B) is performed to identify any genetic variation, composition, or alteration that is associated with the individual's having a statistically increased risk of:
 - (i) developing a clinically recognized disease, disorder, or syndrome; or
 - (ii) being a carrier of a clinically recognized disease, disorder, or syndrome.

The term does not include a blood test, cholesterol test, urine test, or other physical test used for a purpose other than determining a genetic or chromosomal variation, composition, or alteration in a specific individual.

- (6) 'Licensing authority' means a state agency or political subdivision that issues an occupational license.
- (7) 'Occupational license' means a license, certificate, registration, permit, or other form of authorization required by law or rule that must be obtained by an individual to engage in a particular business or occupation.
- (8) 'Political subdivision' means a municipality, county, or special district or authority. The term includes a school district.
- (9) 'RNA' means ribonucleic acid.
- (10) 'State agency' means a department, board, bureau, commission, committee, division, office, council, or agency in the executive or judicial branch of state government.

[Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.001(a), eff. Sept. 1, 2003.]

SUBCHAPTER B. USE AND RETENTION OF GENETIC INFORMATION

Sec. 58.051. CERTAIN USES OF GENETIC INFORMATION PROHIBITED.

A licensing authority may not deny an application for an occupational license, suspend, revoke, or refuse to renew an occupational license, or take any other disciplinary action against a license holder based on the refusal of the license applicant or license holder to:

- (1) submit to a genetic test;
- (2) submit a family health history;
- (3) disclose whether the applicant or holder has submitted to a genetic test; or
- (4) disclose the results of any genetic test to which the applicant or holder has submitted.

[Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.001(a), eff. Sept. 1, 2003.]

Sec. 58.052. DESTRUCTION OF SAMPLE MATERIAL; EXCEPTIONS.

A sample of genetic material obtained from an individual for a genetic test shall be destroyed promptly after the purpose for which the sample was obtained is accomplished unless:

- (1) the sample is retained under a court order;
- (2) the individual authorizes retention of the sample for medical treatment or scientific research;
- (3) the sample was obtained for research that is cleared by an institutional review board and retention of the sample is:
 - (A) under a requirement the institutional review board imposes on a specific research project; or
 - (B) authorized by the research participant with institutional review board approval under federal law; or
- (4) the sample was obtained for a screening test established by the Texas Department of Health under Section 33.011, Health and Safety Code, and performed by that department or a laboratory approved by that department.

[Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.001(a), eff. Sept. 1, 2003.]

SUBCHAPTER C.

DISCLOSURE OF GENETIC INFORMATION; CONFIDENTIALITY; EXCEPTIONS

Sec. 58.101. DISCLOSURE OF TEST RESULTS TO INDIVIDUAL TESTED.

An individual who submits to a genetic test has the right to know the results of the test. On written request by the individual, the entity that performed the test shall disclose the test results to:

- (1) the individual; or
- (2) a physician designated by the individual.

[Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.001(a), eff. Sept. 1, 2003.]

Sec. 58.102. CONFIDENTIALITY OF GENETIC INFORMATION.

- (a) Except as provided by Section 58.103, genetic information is confidential and privileged regardless of the source of the information.
- (b) A person who holds genetic information about an individual may not disclose or be compelled to disclose, by subpoena or otherwise, that information unless the disclosure is specifically authorized as provided by Section 58.104.
- (c) This section applies to a redisclosure of genetic information by a secondary recipient of the information after disclosure of the information by an initial recipient.

[Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.001(a), eff. Sept. 1, 2003.]

Sec. 58.103. EXCEPTIONS TO CONFIDENTIALITY.

- (a) Subject to Subchapter G, Chapter 411, Government Code, genetic information may be disclosed without an authorization under Section 58.104 if the disclosure is:
 - (1) authorized under a state or federal criminal law relating to:
 - (A) the identification of individuals; or
 - (B) a criminal or juvenile proceeding, an inquest, or a child fatality review by a multidisciplinary child-abuse team;
 - (2) required under a specific order of a state or federal court;
 - (3) for the purpose of establishing paternity as authorized under a state or federal law;
 - (4) made to provide genetic information relating to a decedent and the disclosure is made to the blood relatives of the decedent for medical diagnosis; or
 - (5) made to identify a decedent.
- (b) Genetic information may be disclosed without an authorization under Section 58.104 if:
 - (1) the disclosure is for information from a research study in which the procedure for obtaining informed written consent and the use of the information is governed by national standards for protecting participants involved in research projects, including guidelines issued under 21 C.F.R. Part 50 and 45 C.F.R. Part 46;
 - (2) the information does not identify a specific individual; and
 - (3) the information is provided to the Texas Department of Health to comply with Chapter 87, Health and Safety Code.

[Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.001(a), eff. Sept. 1, 2003.]

Sec. 58.104. AUTHORIZED DISCLOSURE.

An individual or the legal representative of an individual may authorize disclosure of genetic information relating to the individual by a written authorization that includes:

- (1) a description of the information to be disclosed;
- (2) the name of the person to whom the disclosure is made; and
- (3) the purpose for the disclosure.

[Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.001(a), eff. Sept. 1, 2003.]

Sec. 58.105. CIVIL PENALTY.

- (a) A person who discloses genetic information in violation of Sections 58.102-58.104 is liable for a civil penalty not to exceed \$10,000.
- (b) The attorney general may bring an action in the name of the state to recover a civil penalty under this section, plus reasonable attorney's fees and court costs.

[Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 15.002, eff. September 1, 2005.]

CHAPTER 59. INFORMATION RELATING TO LICENSING

Sec. 59.001. CONFIDENTIALITY OF SOCIAL SECURITY NUMBER.

The social security number of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by a licensing agency to practice in a specific occupation or profession that is provided to the licensing agency is confidential and not subject to disclosure under Chapter 552, Government Code.

[Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.001(a), eff. Sept. 1, 2001. Renumbered from Occupations Code Sec. 56.001 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(112), eff. Sept. 1, 2003. Renumbered from Occupations Code, Section 58.001 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(68), eff. September 1, 2005]

**CHAPTER 101. HEALTH PROFESSIONS COUNCIL
SUBCHAPTER A. HEALTH PROFESSIONS COUNCIL**

Sec. 101.001. HEALTH PROFESSIONS COUNCIL.

In this chapter, "council" means the Health Professions Council.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 101.002. COMPOSITION OF COUNCIL.

The council consists of 14 members, with one member appointed by each of the following:

- (1) the Texas Board of Chiropractic Examiners;
- (2) the State Board of Dental Examiners;
- (3) the Texas Optometry Board;
- (4) the Texas State Board of Pharmacy;
- (5) the Texas State Board of Podiatric Medical Examiners;
- (6) the State Board of Veterinary Medical Examiners;
- (7) the Texas Medical Board;
- (8) the Texas Board of Nursing;
- (9) the Texas State Board of Examiners of Psychologists;
- (10) the Texas Funeral Service Commission;
- (11) the entity that regulates the practice of physical therapy;
- (12) the entity that regulates the practice of occupational therapy;
- (13) the health licensing division of the Department of State Health Services; and
- (14) the governor's office.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 682, Sec. 1.01, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 553, Sec. 2.013, eff. Feb. 1, 2004.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 31, eff. September 1, 2007.]

Sec. 101.003. OFFICERS.

The council shall elect from the council's members a presiding officer and assistant presiding officer to conduct the business of the council.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 101.004. COMPENSATION OF MEMBERS.

A member of the council is not entitled to receive compensation or a per diem for the member's service on the council.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 101.005. COUNCIL STAFF.

The council may employ staff or designate staff for the council from the employees of the regulatory agencies listed in Section 101.002 as necessary for the council to carry out the council's duties.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 101.006. BUDGET.

The council shall adopt an annual budget that is funded by a prorated assessment paid by the regulatory agencies listed in Section 101.002.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 101.007. DUTIES OF COUNCIL.

The council shall:

- (1) administer the functions provided by this chapter; and
- (2) provide a means for the regulatory agencies represented on the council to coordinate administrative and regulatory efforts.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

**SUBCHAPTER B.
TELEPHONE COMPLAINT SYSTEM**

Sec. 101.051. TELEPHONE COMPLAINT SYSTEM.

The council shall establish and operate a toll-free telephone complaint system to provide assistance and referral services for persons making a complaint relating to a health profession regulated by the state.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 101.0515. APPLICABILITY OF SUBCHAPTER.

This subchapter does not apply to the Texas Funeral Service Commission.

[Added by Acts 2001, 77th Leg., ch. 682, Sec. 1.02, eff. Sept. 1, 2001.]

Sec. 101.052. TELEPHONE LISTING.

A state agency that regulates a health profession shall list the toll-free telephone number of the complaint system with the agency's regular telephone number.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 101.053. CONFIDENTIALITY.

A complaint, adverse report, or other information regarding the content of a complaint in the possession of the council or its employee or agent relating to a person initiating a complaint or the license holder who is the subject of the complaint is privileged and confidential and is not subject to discovery, subpoena, or other means of legal compulsion for release to anyone other than:

- (1) a council employee or agent involved in collecting complaint information;
- (2) the specific council member agency or board responsible for regulating the health profession in which the person who is the subject of the complaint is a license holder; or
- (3) an employee or agent of the member agency or board who is involved in the discipline of license holders.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

SUBCHAPTER C. TRAINING PROGRAM

Sec. 101.101. TRAINING PROGRAM.

- (a) The council shall establish a training program for the governing bodies of state agencies that regulate health professions.
- (b) Before a member of a governing body may assume the member's duties and before the member may be confirmed by the senate, the member must complete at least one course of the training program established under this section.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 101.102. PROGRAM REQUIREMENTS.

The training program must provide information to a participant regarding:

- (1) the enabling legislation that created the governing body to which the member is appointed;
- (2) the programs operated by the state agency governed by the governing body;

- (3) the role and functions of that state agency;
- (4) the rules of that state agency with an emphasis on the rules that relate to disciplinary and investigatory authority;
- (5) the current budget for that state agency;
- (6) the results of the most recent formal audit of that state agency;
- (7) the requirements of the:
 - (A) open meetings law, Chapter 551, Government Code;
 - (B) open records law, Chapter 552, Government Code; and
 - (C) administrative procedure law, Chapter 2001, Government Code;
- (8) the requirements of the conflict of interest laws and other laws relating to public officials; and
- (9) any applicable ethics policies adopted by that state agency or the Texas Ethics Commission.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

SUBCHAPTER D. REPORTING REQUIREMENTS

Sec. 101.151. ANNUAL REPORT.

- (a) The council shall prepare an annual report that includes:
 - (1) a statistical compilation of enforcement actions taken by a regulatory agency listed in Section 101.002;
 - (2) recommendations for statutory changes to improve the regulation of the health care professions; and
 - (3) other relevant information and recommendations determined necessary by the council.
- (b) The council shall send the report to the governor, the lieutenant governor, and the speaker of the house of representatives not later than February 1 of each year.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

SUBCHAPTER E. GROUNDS FOR LICENSE REVOCATION OR DENIAL

Sec. 101.201. FALSE, MISLEADING, OR DECEPTIVE ADVERTISING.

- (a) A person may not use advertising that is false, misleading, deceptive, or not readily subject to verification.
- (b) False, misleading, or deceptive advertising or advertising not readily subject to verification includes advertising that:
 - (1) makes a material misrepresentation of fact or omits a fact necessary to make the statement as a whole not materially misleading;
 - (2) makes a representation likely to create an unjustified expectation about the results of a health care service or procedure;
 - (3) compares a health care professional's services with another health care professional's services unless the comparison can be factually substantiated;
 - (4) contains a testimonial;
 - (5) causes confusion or misunderstanding as to the credentials, education, or licensing of a health care professional;

- (6) represents that health care insurance deductibles or copayments may be waived or are not applicable to health care services to be provided if the deductibles or copayments are required;
- (7) represents that the benefits of a health benefit plan will be accepted as full payment when deductibles or copayments are required;
- (8) makes a representation that is designed to take advantage of the fears or emotions of a particularly susceptible type of patient; or
- (9) represents in the use of a professional name a title or professional identification that is expressly or commonly reserved to or used by another profession or professional.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 101.203. OVERCHARGING OR OVERTREATING.

A health care professional may not violate Section 311.0025, Health and Safety Code.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.011(a), eff. Sept. 1, 2001.]

Sec. 101.204. REMEDIES.

- (a) A violation of this subchapter is subject to action by the appropriate health licensing agency as a ground for revocation or denial of a license.
 - (b) A violation of Section 101.201 is grounds for action under Section 17.47, 17.58, 17.60, or 17.61, Business & Commerce Code, by the consumer protection division of the office of the attorney general.
 - (c) A violation of Section 101.201 does not create a private cause of action, including an action for breach of warranty or for an implied contract or warranty for good and workmanlike service.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

SUBCHAPTER F. ENFORCEMENT

Sec. 101.251. CIVIL PENALTY.

- (a) A person who violates this chapter is liable to the state for a civil penalty in an amount not to exceed \$1,000 for each violation. Each day a violation occurs constitutes a separate violation.
- (b) The attorney general may initiate an action under this section by filing suit in a district court in Travis County or in the county in which the violation occurred.
- (c) The attorney general may recover reasonable expenses incurred in obtaining a civil penalty under this section, including court costs, reasonable attorney's fees, reasonable investigative costs, witness fees, and deposition expenses.
- (d) A civil penalty recovered under this section shall be deposited in the state treasury.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 101.252. INJUNCTION.

- (a) The attorney general or the appropriate health licensing agency may bring an action for an injunction to stop a violation or threatened violation of this chapter.
- (b) The attorney general or health licensing agency may recover reasonable expenses incurred in obtaining an injunction under this section, including court costs, reasonable attorney's fees, reasonable investigative costs, witness fees, and deposition expenses.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 101.253. REMEDIES NOT EXCLUSIVE.

The remedies provided by this chapter are in addition to any other remedy provided by law, including rules.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

SUBCHAPTER G. OFFICE OF PATIENT PROTECTION

Sec. 101.301. GENERAL PROVISIONS.

- (a) In this subchapter:
 - (1) "Consumers as a class" means five or more individuals whose complaints are of the same or similar regulatory and factual circumstances and issues.
 - (2) "Licensing agency" means a health occupation regulatory agency that is a member of the council.
 - (3) "Office" means the office of patient protection.
- (b) The council shall establish an office of patient protection within the council to represent the interests of consumers in matters before licensing agencies.

[Added by Acts 2003, 78th Leg., ch. 305, Sec. 1, eff. Sept. 1, 2003.]

Sec. 101.302. EXECUTIVE COMMITTEE; DIRECTOR.

- (a) The governor shall appoint an executive committee consisting of at least three members who are public members of the governing bodies of licensing agencies. The executive committee shall appoint a director for the office. The director shall be responsible for administering the provisions of this subchapter.
- (b) The director may not be:
 - (1) a health care professional licensed or certified by a licensing agency;
 - (2) financially involved with the provision of health care or with an entity that provides health care, including an entity regulated by a licensing agency;
 - (3) an officer, employee, or paid consultant of a trade association for a profession that is regulated by a licensing agency;
 - (4) an officer, employee, or paid consultant of a trade association for an entity regulated by the Texas Department of Insurance; or

- (5) required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation related to a person or organization subject to regulation by a licensing agency.

[Added by Acts 2003, 78th Leg., ch. 305, Sec. 1, eff. Sept. 1, 2003.]

Sec. 101.303. ADMINISTRATIVE ATTACHMENT TO COUNCIL; REIMBURSEMENT.

The office is located in the council but may not interfere with the other duties of the council. The office shall reimburse the council from fees received by the office under Section 101.307 for administrative costs incurred by the council in providing administrative support for the office.

[Added by Acts 2003, 78th Leg., ch. 305, Sec. 1, eff. Sept. 1, 2003.]

Sec. 101.304. PUBLIC INFORMATION PROVIDED BY OFFICE; STANDARD COMPLAINT FORM.

- (a) The office shall provide to the public information about the complaint process at each licensing agency.
- (b) The office shall conduct a public awareness campaign to increase awareness of the telephone complaint system under Subchapter B.
- (c) Through the use of the Internet and other information and communications media, the office shall provide information to the public in easily understood language regarding the complaint procedures and sanctions processes used by the licensing agencies.
- (d) The office, in cooperation with the licensing agencies, shall adopt a standard complaint form that may be used by a member of the public to file a complaint with a licensing agency. Each licensing agency shall accept the form adopted under this section in addition to any other form required by the agency.

[Added by Acts 2003, 78th Leg., ch. 305, Sec. 1, eff. Sept. 1, 2003.]

Sec. 101.305. POWERS AND DUTIES OF OFFICE.

- (a) The office shall:
 - (1) establish, in consultation with and on the approval of the council, protocols for interaction with licensing agencies;
 - (2) serve as the ombudsman for consumer complaints at the licensing agencies on the request of an individual consumer;
 - (3) assist consumers in obtaining information about the status of complaints; and
 - (4) review the Internet websites of licensing agencies and make recommendations to the agencies on making public information, including information relating to disciplinary actions, understandable to and easily accessible by the public.
- (b) The office may:
 - (1) appear at or present information or testimony to a licensing agency on behalf of consumers as a class; and

- (2) appeal the decisions of licensing agencies to the governing body of the appropriate licensing agency on behalf of consumers as a class but not for individual complainants.
- (c) The office may not appeal an individual complainant's case before any agency.
- (d) The office is entitled to access to:
 - (1) complaints received by a licensing agency, unless the access would jeopardize an ongoing investigation; and
 - (2) the public records of a licensing agency and the records of a licensing agency that are filed with the State Office of Administrative Hearings.
- (e) The confidentiality requirements that apply to the records of a licensing agency and the sanctions for disclosure of confidential information apply to the office and to information obtained by the office under Subsection (d).

[Added by Acts 2003, 78th Leg., ch. 305, Sec. 1, eff. Sept. 1, 2003.]

Sec. 101.306. MONITORING OF AGENCIES.

- (a) The office shall review and evaluate rules proposed for adoption by the licensing agencies and changes made to the statutes that govern the operation of the agencies and the professions regulated by the agencies.
- (b) The office may report to the legislature and recommend to licensing agencies changes in agency rules that, in the office's judgment, would positively affect the interests of consumers.
- (c) The office shall recommend changes to the statutes described by Subsection (a) to the Sunset Advisory Commission during the commission's review of the relevant licensing agency.

[Added by Acts 2003, 78th Leg., ch. 305, Sec. 1, eff. Sept. 1, 2003.]

Sec. 101.307. FUNDING OF OFFICE.

- (a) To provide funding sufficient for the office to exercise the powers and duties prescribed by this subchapter:
 - (1) the initial licensing or registration fee charged by each licensing agency is increased by \$5; and
 - (2) the renewal fee charged by each licensing agency is increased by \$1 for each year for which the license or registration is renewed.
- (b) The fee increases authorized under this section shall be collected in the same manner as the assessment under Section 101.006. The council may spend the fees collected under this section only to fund the activities of the office under this subchapter.

[Added by Acts 2003, 78th Leg., ch. 305, Sec. 1, eff. Sept. 1, 2003.]

SUBCHAPTER H. BILLING

Sec. 101.351. FAILURE TO PROVIDE BILLING INFORMATION.

On the written request of a patient, a health care professional shall provide, in plain language, a written explanation of the charges for professional services previously made on a bill or statement for the patient. This section does not apply to a physician subject to Section 101.352.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Transferred from Occupations Code, Section 101.202 and amended by Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 6, eff. September 1, 2007.]

Sec. 101.352. BILLING POLICIES AND INFORMATION; PHYSICIANS.

- (a) A physician shall develop, implement, and enforce written policies for the billing of health care services and supplies. The policies must address:
 - (1) any discounting of charges for health care services or supplies provided to an uninsured patient that is not covered by a patient's third-party payor, subject to Chapter 552, Insurance Code;
 - (2) any discounting of charges for health care services or supplies provided to an indigent patient who qualifies for services or supplies based on a sliding fee scale or a written charity care policy established by the physician;
 - (3) whether interest will be applied to any billed health care service or supply not covered by a third-party payor and the rate of any interest charged; and
 - (4) the procedure for handling complaints relating to billed charges for health care services or supplies.
- (b) Each physician who maintains a waiting area shall post a clear and conspicuous notice of the availability of the policies required by Subsection (a) in the waiting area and in any registration, admission, or business office in which patients are reasonably expected to seek service.
- (c) On the request of a patient who is seeking services that are to be provided on an out-of-network basis or who does not have coverage under a government program, health insurance policy, or health maintenance organization evidence of coverage, a physician shall provide an estimate of the charges for any health care services or supplies. The estimate must be provided not later than the 10th business day after the date of the request. A physician must advise the consumer that:
 - (1) the request for an estimate of charges may result in a delay in the scheduling and provision of the services;
 - (2) the actual charges for the services or supplies will vary based on the patient's medical condition and other factors associated with performance of the services;
 - (3) the actual charges for the services or supplies may differ from the amount to be paid by the patient or the patient's third-party payor; and
 - (4) the patient may be personally liable for payment for the services or supplies depending on the patient's health benefit plan coverage.
- (d) For services provided in an emergency department of a hospital or as a result of an emergent direct admission, the physician shall provide the estimate of charges required by Subsection (c) not later than the 10th business day after the request or before discharging the patient from the emergency department or hospital, whichever is later, as appropriate.
- (e) A physician shall provide a patient with an itemized statement of the charges for professional services or supplies not later than the 10th business day after the date on which the statement is requested if the patient requests the statement not later than the first anniversary of the date on which the health care services or supplies were provided.
- (f) If a patient requests more than two copies of the statement, a physician may charge a reasonable fee for the third and subsequent copies provided. The Texas Medical Board shall by rule set the permissible fee a physician may charge for copying, processing, and delivering a copy of the statement.

- (g) On the request of a patient, a physician shall provide, in plain language, a written explanation of the charges for services or supplies previously made on a bill or statement for the patient.
- (h) If a patient overpays a physician, the physician must refund the amount of the overpayment not later than the 30th day after the date the physician determines that an overpayment has been made. This subsection does not apply to an overpayment subject to Section 1301.132 or 843.350, Insurance Code.
- (i) In this section, "physician" means a person licensed to practice in this state.

[Added by Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 6, eff. September 1, 2007.]

CHAPTER 102. SOLICITATION OF PATIENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 102.001. SOLICITING PATIENTS; OFFENSE.

- (a) A person commits an offense if the person knowingly offers to pay or agrees to accept, directly or indirectly, overtly or covertly any remuneration in cash or in kind to or from another for securing or soliciting a patient or patronage for or from a person licensed, certified, or registered by a state health care regulatory agency.
- (b) Except as provided by Subsection (c), an offense under this section is a Class A misdemeanor.
- (c) An offense under this section is a felony of the third degree if it is shown on the trial of the offense that the person:
 - (1) has previously been convicted of an offense under this section; or
 - (2) was employed by a federal, state, or local government at the time of the offense.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 102.002. REBUTTABLE PRESUMPTION.

It is a rebuttable presumption that a person violated Section 102.001 if:

- (1) the person refers or accepts a referral of a patient to an inpatient mental health facility or chemical dependency treatment facility;
- (2) before the patient is discharged or furloughed from the facility, the person pays the referring person or accepts payment from the facility for outpatient services to be provided by the referring person after the patient is discharged or furloughed from the facility; and
- (3) the referring person does not provide the outpatient services for which payment was made and does not return to the facility the payment received for those services.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 102.003. FEDERAL LAW; CONSTRUCTION.

Section 102.001 permits any payment, business arrangement, or payment practice permitted by 42 U.S.C. Section 1320a-7b(b) or any regulation adopted under that law.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 102.004. APPLICABILITY TO ADVERTISING.

Section 102.001 does not prohibit advertising, unless the advertising is:

- (1) false, misleading, or deceptive; or
- (2) not readily subject to verification, if the advertising claims professional superiority or the performance of a professional service in a superior manner.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 102.005. APPLICABILITY TO CERTAIN ENTITIES.

Section 102.001 does not apply to:

- (1) a licensed insurer;
- (2) a governmental entity, including:
 - (A) an intergovernmental risk pool established under Chapter 172, Local Government Code; and
 - (B) a system as defined by Section 1601.003, Insurance Code;
- (3) a group hospital service corporation;
- (4) a health maintenance organization that reimburses, provides, offers to provide, or administers hospital, medical, dental, or other health-related benefits under a health benefits plan for which it is the payor; or
- (5) a health care collaborative certified under Chapter 848, Insurance Code.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.542, eff. Sept. 1, 2003.]

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 4.05, eff. September 28, 2011.]

Sec. 102.006. FAILURE TO DISCLOSE; OFFENSE.

(a) A person commits an offense if:

- (1) the person, in a manner otherwise permitted under Section 102.001, accepts remuneration to secure or solicit a patient or patronage for a person licensed, certified, or registered by a state health care regulatory agency; and
- (2) does not, at the time of initial contact and at the time of referral, disclose to the patient:
 - (A) the person's affiliation, if any, with the person for whom the patient is secured or solicited; and
 - (B) that the person will receive, directly or indirectly, remuneration for securing or soliciting the patient.

(b) Except as provided by Subsection (c), an offense under this section is a Class A misdemeanor.

(c) An offense under this section is a felony of the third degree if it is shown on the trial of the offense that the person:

- (1) has previously been convicted of an offense under this section; or

- (2) was employed by a federal, state, or local government at the time of the offense.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 102.007. APPLICABILITY.

(a) This subchapter does not apply to a health care information service that:

- (1) provides its services to a consumer only by telephone communication on request initiated by the consumer and without charge to the consumer;
- (2) provides information about health care providers to enable consumer selection of health care provider services without any direct influence by a health care provider on actual consumer selection of those services;
- (3) in response to each consumer inquiry, on a nondiscriminatory basis, provides information identifying health care providers who substantially meet the consumer's detailed criteria based on consumer responses to standard questions designed to elicit a consumer's criteria for a health care provider, including criteria concerning location of the practice, practice specialties, costs and payment policies, acceptance of insurance coverage, general background and practice experience, and various personal characteristics;
- (4) does not attempt through its standard questions for solicitation of consumer criteria or through any other means to lead a consumer to select or consider selection of a particular health care provider for health care provider services;
- (5) identifies to a consumer:
 - (A) all health care providers substantially meeting the consumer's stated criteria who are located within the zip code area in which the consumer elects to obtain services from a health care provider; or
 - (B) all health care providers substantially meeting the consumer's stated criteria who are located in zip code areas in the closest proximity to the elected zip code area if no health care provider substantially meeting the consumer's criteria is located within that zip code area;
- (6) discloses to each consumer the relationship between the health care information service and health care providers participating in its services;
- (7) does not provide or represent itself as providing diagnostic or counseling services or assessment of illness or injury and does not make any promise of cure or guarantee of treatment;
- (8) does not provide or arrange for transportation of a consumer to or from the location of a health care provider;
- (9) does not limit the scope of or direct its advertising or other marketing of its services to a particular health care provider specialty, to a particular segment of the population, or to persons suffering from a particular illness, condition, or infirmity;
- (10) charges to and collects a fee from a health care provider participating in its services that is set in advance, is consistent with the fair market value for those information services, and is not based on the potential value of a patient to a health care provider or on the value of or a percentage of the value of a professional service provided by the health care provider;

- (11) does not limit participation by a health care provider in its services to a particular health care specialty or to a particular service provided by a health care provider;
- (12) does not limit participation by a health care provider in its services for a reason other than:
 - (A) failure to have a current license without limitation to practice in this state;
 - (B) failure to maintain professional liability insurance while participating in the service;
 - (C) significant dissatisfaction of consumers of the health care information service that is documented and can be proved;
 - (D) a decision by a peer review committee that the health care provider has failed to meet prescribed standards or has not acted in a professional or ethical manner; or
 - (E) termination of the contract between the health care provider and the health care information service by either party under the terms of the contract;
- (13) maintains a customer service department to handle complaints and answer questions for consumers;
- (14) maintains a customer follow-up system to monitor consumer satisfaction; and
- (15) does not use, maintain, distribute, or provide for any purpose any information that will identify a particular consumer, such as a name, address, or telephone number, obtained from a consumer seeking its services other than for the purposes of:
 - (A) providing the information to the health care provider with whom an appointment is made;
 - (B) performing administrative functions necessary to operate the health care information service;
 - (C) providing directly to a consumer, at the request of that consumer on that consumer's initial contact with the health care information service, information relating to health-related support groups or providers of health-care-related services or equipment within the area of interest requested by the consumer; or
 - (D) conducting analytical research on data obtained through provision of services and preparing statistical reports that generally analyze that data but do not in any manner identify one or more specific consumers.

(b) In this section:

- (1) "Health care information service" means a person who provides information to a consumer regarding health care providers that can enable the consumer to select one or more health care providers to furnish health care services.
- (2) "Health care provider" means a person licensed, certified, or registered by a state health care regulatory agency other than:
 - (A) a mental health facility as defined by Section 571.003, Health and Safety Code; or
 - (B) a treatment facility as defined by Section 464.001, Health and Safety Code.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 102.008. DISCIPLINARY ACTION.

A violation of Section 102.001 or 102.006 is grounds for disciplinary action by the regulatory agency that issued a license, certification, or registration to the person who committed the violation.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 102.009. INJUNCTION.

- (a) The attorney general or the appropriate district or county attorney, in the name of the state, may institute and conduct an action in a district court of Travis County or of a county in which any part of the violation occurs for an injunction or other process against a person who is violating this subchapter.
- (b) The district court may grant any prohibitory or mandatory relief warranted by the facts, including a temporary restraining order, temporary injunction, or permanent injunction.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 102.010. CIVIL PENALTIES.

- (a) A person who violates this subchapter is subject to a civil penalty of not more than \$10,000 for each day of violation and each act of violation. In determining the amount of the civil penalty, the court shall consider:
 - (1) the person's previous violations;
 - (2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
 - (3) whether the health and safety of the public was threatened by the violation;
 - (4) the demonstrated good faith of the person; and
 - (5) the amount necessary to deter future violations.
- (b) The attorney general or the appropriate district or county attorney, in the name of the state, may institute and conduct an action authorized by this section in a district court of Travis County or of a county in which any part of the violation occurs.
- (c) A penalty collected under this section by the attorney general shall be deposited to the credit of the general revenue fund. A penalty collected under this section by a district or county attorney shall be deposited to the credit of the general fund of the county in which the suit was heard.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 102.011. SUIT FOR INJUNCTIVE RELIEF OR ASSESSMENT OF CIVIL PENALTY.

- (a) The party bringing a suit under this subchapter may:
 - (1) combine a suit to assess and recover civil penalties with a suit for injunctive relief; or
 - (2) file a suit to assess and recover civil penalties independently of a suit for injunctive relief.

- (b) The party bringing the suit may recover reasonable expenses incurred in obtaining civil penalties, injunctive relief, or both, including investigation costs, court costs, reasonable attorney's fees, witness fees, and deposition expenses.
- (c) The civil penalty and injunction authorized by this subchapter are in addition to any other civil, administrative, or criminal action provided by law.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

SUBCHAPTER B. HEALING ARTS

Sec. 102.051. SOLICITING PATIENTS; OFFENSE.

- (a) A person commits an offense if the person:
 - (1) practices the art of healing with or without the use of medicine; and
 - (2) employs or agrees to employ, pays or promises to pay, or rewards or promises to reward another for soliciting or securing a patient or patronage.
- (b) A person commits an offense if the person accepts or agrees to accept anything of value for soliciting or securing a patient or patronage for a person who practices the art of healing with or without the use of medicine.
- (c) An offense under this section is a misdemeanor punishable by a fine of not less than \$100 or more than \$200. Each violation of this section is a separate offense.
- (d) For purposes of this section, a person who practices the art of healing includes a masseur and an optometrist.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 102.052. APPLICABILITY TO PHYSICIANS.

This subchapter does not apply to a practitioner of medicine subject to regulation under Subtitle B.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 102.053. EXCEPTION FOR CERTAIN ADVERTISING.

Section 102.051 does not prohibit:

- (1) placement in a newspaper of an advertisement of the person's profession, business, or place of business; or
- (2) advertisement by handbill and payment for services in distributing the handbill.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 102.054. ACCESSIBILITY AND USE OF WITNESS TESTIMONY.

- (a) A person is not exempt from giving testimony in a proceeding to enforce Section 102.051.
- (b) The testimony a person gives in a proceeding to enforce Section 102.051 may not be used against that person in any criminal action or proceeding. A criminal action or proceeding may not be brought against a person because of the testimony given by that person in a proceeding to enforce Section 102.051.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

**SUBTITLE A. PROVISIONS APPLYING TO HEALTH PROFESSIONS GENERALLY
CHAPTER 104. HEALING ART PRACTITIONERS**

Sec. 104.001. SHORT TITLE.

This chapter may be cited as the Healing Art Identification Act.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 104.002. HEALING ART.

The healing art includes any system, treatment, operation, diagnosis, prescription, or practice to ascertain, cure, relieve, adjust, or correct a human disease, injury, or unhealthy or abnormal physical or mental condition.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 104.003. REQUIRED IDENTIFICATION.

- (a) A person subject to this section who uses the person's name on a written or printed professional identification, including a sign, pamphlet, stationery, or letterhead, or who uses the person's signature as a professional identification shall designate as required by this section the healing art the person is licensed to practice.
- (b) A person who is licensed by the Texas State Board of Medical Examiners and holds a doctor of medicine degree shall use:
 - (1) physician or surgeon, M.D.;
 - (2) doctor, M.D.; or
 - (3) doctor of medicine, M.D.
- (c) A person who is licensed by the Texas State Board of Medical Examiners and holds a doctor of osteopathy degree shall use:
 - (1) physician or surgeon, D.O.;
 - (2) osteopathic physician or surgeon;
 - (3) doctor, D.O.;
 - (4) doctor of osteopathy;
 - (5) doctor of osteopathic medicine;
 - (6) osteopath; or
 - (7) D.O.
- (d) A person who is licensed by the State Board of Dental Examiners shall use:
 - (1) dentist;
 - (2) doctor, D.D.S.;
 - (3) doctor of dental surgery;
 - (4) D.D.S.; or
 - (5) doctor of dental medicine, D.M.D.
- (e) A person who is licensed by the Texas Board of Chiropractic Examiners shall use:
 - (1) chiropractor;
 - (2) doctor, D.C.;
 - (3) doctor of chiropractic; or
 - (4) D.C.
- (f) A person who is licensed by the Texas Optometry Board shall use:
 - (1) optometrist;

- (2) doctor, optometrist;
- (3) doctor of optometry; or
- (4) O.D.

(g) A person who is licensed by the Texas State Board of Podiatric Medical Examiners shall use:

- (1) chiropodist;
- (2) doctor, D.S.C.;
- (3) doctor of surgical chiropody;
- (4) D.S.C.;
- (5) podiatrist;
- (6) doctor, D.P.M.;
- (7) doctor of podiatric medicine; or
- (8) D.P.M.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 104.004. OTHER PERSONS USING TITLE "DOCTOR".

In using the title "doctor" as a trade or professional asset or on any manner of professional identification, including a sign, pamphlet, stationery, or letterhead, or as a part of a signature, a person other than a person described by Section 104.003 shall designate the authority under which the title is used or the college or honorary degree that gives rise to the use of the title.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 104.005. ENFORCEMENT.

- (a) On the request of a healing art licensing board listed in Section 104.003, the district or county attorney shall file and prosecute appropriate judicial proceedings in the name of the state against a person who violates Section 104.003.
- (b) The district or county attorney shall file the proceeding in the district court of the county in which the violation occurs.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 104.006. APPLICABILITY TO ESTABLISHED CHURCH.

This chapter does not affect the use of the principles or teachings of an established church in ministering, without the use of any drug or material remedy, to the sick or suffering by prayer if:

- (1) sanitary and quarantine laws are complied with; and
- (2) the person ministering or offering to minister does not maintain an office, other than to exercise the principles or teachings of the church of which the person is a bona fide member.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 104.007. PENALTIES.

- (a) A person who violates this chapter commits an offense. An offense under this section is a misdemeanor punishable by:

- (1) on conviction of a first offense, a fine of \$100;
- (2) on conviction of a second offense, a fine of \$500; and
- (3) on conviction of a third offense:
 - (A) a fine of \$1,000; or
 - (B) revocation of the person's license to practice the healing art.
- (b) On conviction of the person, the district court shall notify the licensing board that issued the license.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

CHAPTER 105. UNPROFESSIONAL CONDUCT BY HEALTH CARE PROVIDER

Sec. 105.001. DEFINITION.

In this chapter, "health care provider" means a person who furnishes services under a license, certificate, registration, or other authority issued by this state or another state to diagnose, prevent, alleviate, or cure a human illness or injury.

[Added by Acts 2001, 77th Leg., ch. 1033, Sec. 4, eff. Sept. 1, 2001.]

Sec. 105.002. UNPROFESSIONAL CONDUCT.

- (a) A health care provider commits unprofessional conduct if the health care provider, in connection with the provider's professional activities:
 - (1) knowingly presents or causes to be presented a false or fraudulent claim for the payment of a loss under an insurance policy;
 - (2) knowingly prepares, makes, or subscribes to any writing, with intent to present or use the writing, or to allow it to be presented or used, in support of a false or fraudulent claim under an insurance policy; or
 - (3) knowingly directs or requires a patient to obtain health care goods or services from a niche hospital in which the health care provider or an immediate family member of the provider has a financial interest, unless the provider:
 - (A) discloses to the patient, in writing, that the provider or the provider's family member has a financial interest in the niche hospital; and
 - (B) informs the patient that the patient has the option of using an alternative health care facility.
- (b) In addition to other provisions of civil or criminal law, commission of unprofessional conduct under Subsection (a) constitutes cause for the revocation or suspension of a provider's license, permit, registration, certificate, or other authority or other disciplinary action.
- (c) Subsection (a)(3) does not apply to a financial interest in publicly available shares of a registered investment company, such as a mutual fund, that owns publicly traded equity securities or debt obligations issued by a niche hospital or an entity that owns the niche hospital.
- (d) In this section:
 - (1) "Diagnosis-related group" means the classification system mandated by Medicare regulations for reimbursement purposes that groups patients according to principal diagnosis, presence of a surgical procedure, age, presence or absence of significant complications, and other relevant criteria.

- (2) "Niche hospital" means a hospital that:
- (A) classifies at least two-thirds of the hospital's Medicare patients or, if data is available, all patients:
 - (i) in not more than two major diagnosis-related groups; or
 - (ii) in surgical diagnosis-related groups;
 - (B) specializes in one or more of the following areas:
 - (i) cardiac;
 - (ii) orthopedics;
 - (iii) surgery; or
 - (iv) women's health; and
 - (C) is not:
 - (i) a public hospital;
 - (ii) a hospital for which the majority of inpatient claims are for major diagnosis-related groups relating to rehabilitation, psychiatry, alcohol and drug treatment, or children or newborns; or
 - (iii) a hospital with fewer than 10 claims per bed per year.

[Added by Acts 2001, 77th Leg., ch. 1033, Sec. 4, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 836 (S.B. 872), Sec. 1, eff. September 1, 2005.]

**CHAPTER 106.
GENERAL REGULATORY AUTHORITY REGARDING HEALTH CARE
PRACTITIONERS' USE OF INTERNET**

Sec. 106.001. EFFECT OF INTERNET ACTIVITY.

(a) In this section:

- (1) "Licensing authority" means a department, commission, board, office, or other agency of the state or a political subdivision of the state that regulates activities and persons under this title.
 - (2) "Internet" has the meaning assigned by Section 2002.001, Government Code.
- (b) The fact that an activity occurs through the use of the Internet does not affect a licensing authority's power to regulate an activity or person that would otherwise be regulated under this title.

[Added by Acts 2001, 77th Leg., ch. 286, Sec. 1, eff. May. 23, 2001. Renumbered from Occupations Code Sec. 105.001 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(113), eff. Sept. 1, 2003.]

**SUBTITLE D. DENTISTRY
CHAPTER 251. GENERAL PROVISIONS RELATING TO PRACTICE OF DENTISTRY**

Sec. 251.001. SHORT TITLE.

This subtitle may be cited as the Dental Practice Act.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 251.002. DEFINITIONS.

In this subtitle:

- (1) "Board" means the State Board of Dental Examiners.
- (2) "Executive director" means the executive director of the board.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 251.003. PRACTICE OF DENTISTRY.

(a) For purposes of this subtitle, a person practices dentistry if the person:

- (1) represents to the public that the person is a dentist or dental surgeon or uses or permits to be used for the person or another person the title of "Doctor," "Dr.," "Doctor of Dental Surgery," "D.D.S.," "Doctor of Dental Medicine," "D.M.D.," or another description, including the use of the terms "denturist" or "denturism," that, directly or indirectly, represents that the person is able to:
 - (A) diagnose, treat, or remove stains or concretions from human teeth; or
 - (B) provide surgical and adjunctive treatment for a disease, pain, injury, deficiency, deformity, or physical condition of the human teeth, oral cavity, alveolar process, gums, jaws, or directly related and adjacent masticatory structures;
- (2) performs or offers to perform by any means the:
 - (A) cleaning of human teeth;
 - (B) removal of stains, concretions, or deposits from teeth in the human mouth; or
 - (C) diagnosis, treatment, operation, or prescription for a disease, pain, injury, deficiency, deformity, or physical condition of the human teeth, oral cavity, alveolar process, gums, or jaws;
- (3) prescribes, makes, or causes to be made or offers to prescribe, make, or cause to be made by any means an impression of any portion of the human mouth, teeth, gums, or jaws:
 - (A) to diagnose, prescribe, or treat, or aid in the diagnosis, prescription, or treatment, of a physical condition of the human mouth, teeth, gums, or jaws; or
 - (B) to construct or aid in the construction of a dental appliance, denture, dental bridge, false teeth, dental plate of false teeth, or another substitute for human teeth;
- (4) 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;
- (5) fits, adjusts, repairs, or substitutes or offers to fit, adjust, repair, or substitute in the human mouth or directly related and adjacent masticatory structures a dental appliance, structure, prosthesis, or denture;
- (6) aids in the fitting, adjusting, repairing, or substituting or causes to be fitted, adjusted, repaired, or substituted in the human mouth or directly related and adjacent masticatory structures a dental appliance, structure, prosthesis, or denture;

- (7) without a written prescription or work order signed by a dentist legally practicing dentistry in this state or in the jurisdiction in which the dentist maintains the dentist's office:
 - (A) makes, processes, reproduces, repairs, or relines a full or partial denture, fixed or removable dental bridge or appliance, dental plate of false teeth, artificial dental restoration, or a substitute or corrective device or appliance for the human teeth, gums, jaws, mouth, alveolar process, or any part for another; or
 - (B) offers, undertakes, aids, abets, or causes another person to engage in an activity described by Paragraph (A);
 - (8) directly or indirectly offers, undertakes, or causes another to perform for any person an act, service, or part of an act or service in the practice of dentistry, including:
 - (A) inducing, administering, prescribing, or dispensing anesthesia or an anesthetic drug, medicine, or an agent in any way related to the practice of dentistry;
 - (B) permitting or allowing another to use the person's license or certificate to practice dentistry in this state; or
 - (C) aiding or abetting the practice of dentistry by a person not licensed by the board to practice dentistry;
 - (9) controls, influences, attempts to control or influence, or otherwise interferes with the exercise of a dentist's independent professional judgment regarding the diagnosis or treatment of a dental disease, disorder, or physical condition; or
 - (10) represents that the person is a denturist or uses another title that is intended to convey to the public that the services offered by the person are included within the practice of dentistry.
- (b) The practice of dentistry under Subsection (a)(9) does not:
- (1) require an entity to pay for services that are not provided for in an agreement; or
 - (2) exempt a dentist who is a member of a hospital staff from following hospital bylaws, medical staff bylaws, or established policies approved by the governing board and the medical and dental staff of the hospital.
- (c) In this subtitle, the practice of the dental specialty of oral and maxillofacial surgery includes the diagnosis of and the surgical and adjunctive treatment of diseases, injuries, and defects involving the functional and aesthetic aspects of the hard and soft tissues of the oral and maxillofacial region.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 251.004. EXEMPTION FROM PRACTICE OF DENTISTRY.

- (a) A person does not practice dentistry as provided by Section 251.003 if the person is:
- (1) a faculty member of a reputable dental or dental hygiene school in which the member performs services for the sole benefit of the school;
 - (2) a student of a reputable dental school who performs the student's operations without pay, except for actual cost of materials, in the presence of and under the direct personal supervision of a demonstrator or teacher who is a faculty member of a reputable dental school;
 - (3) a person:

- (A) who performs laboratory work only on inert matter; and
- (B) who does not solicit or obtain work by any means from a person who is not a licensed dentist engaged in the practice of dentistry and does not act as the agent or solicitor of, and does not have any interest in, a dental office or practice or the receipts of a dental office or practice;
- (4) a physician licensed in this state who does not represent that the person is practicing dentistry, including a physician who extracts teeth or applies pain relief in the regular practice of the physician's profession;
- (5) a dental hygienist:
 - (A) who is authorized to practice dental hygiene in this state; and
 - (B) who practices dental hygiene in strict conformity with the state law regulating the practice of dental hygiene;
- (6) a person who is a member of an established church and practices healing by prayer only;
- (7) an employee of a licensed dentist in this state who makes dental x-rays in the dental office under the supervision of the dentist;
- (8) a Dental Health Service Corporation chartered under Section A(1), Article 2.01, Texas Non-Profit Corporation Act (Article 1396-2.01, Vernon's Texas Civil Statutes);
- (9) a dental intern or dental resident as defined and regulated by board rules;
- (10) a student:
 - (A) who is in a dental hygiene program accredited by the Commission on Dental Accreditation of the American Dental Association and operated at an accredited institution of higher education;
 - (B) who practices dental hygiene without pay under the general supervision of a dentist and under the supervision of a demonstrator or teacher who is a faculty member of the program:
 - (i) in a clinic operated for the sole benefit of the program's institution of higher education; or
 - (ii) in a clinic operated by a government or nonprofit organization that serves underserved populations as determined by board rule; and
 - (C) who practices in strict conformity with state law regulating the practice of dental hygiene;
- (11) a dental assistant who performs duties permitted under Chapter 265, in strict conformity with state law;
- (12) a dentist or dental hygienist licensed by another state or a foreign country who performs a clinical procedure only as a demonstration for professional and technical education purposes, if the dentist or dental hygienist first obtains from the board a temporary license for that purpose;
- (13) a dental hygienist who is a faculty member of a dental or dental hygiene school while practicing dental hygiene:
 - (A) under the supervision of a dentist licensed in this state or of a teacher or demonstrator who is a dentist faculty member of the school; and
 - (B) in strict conformity with state law regulating the practice of dental hygiene;
- (14) a dentist who is in a remedial training program sponsored by the Commission on Dental Accreditation of the American Dental Association at an accredited dental or dental hygiene school;

- (15) a dental hygienist who is in a remedial training program sponsored by the Commission on Dental Accreditation of the American Dental Association at an accredited dental or dental hygiene school and who acts in strict conformity with state law regulating the practice of dental hygiene, except that supervision may be provided by a demonstrator or teacher who is a dentist member of the program;
 - (16) a dentist who is not licensed in this state and who is taking the dental clinical examination offered in this state by an examining body designated by the board;
 - (17) a dental hygienist who is not licensed in this state and who is taking the dental hygiene clinical examination offered in this state by an examining body designated by the board if participation is in strict conformity with state law regulating the practice of dental hygiene, except that supervision may be provided by a dentist whose services are secured by the examining body;
 - (18) a dentist whose license is in retired status or who is licensed in another state and is attending a continuing education clinical program offered at a dental or dental hygiene school accredited by the Commission on Dental Accreditation of the American Dental Association; or
 - (19) a dental hygienist whose dental hygienist license is in retired status or who is licensed in another state and is attending a continuing education clinical program offered at a dental or dental hygiene school accredited by the Commission on Dental Accreditation of the American Dental Association if tasks are performed in strict conformity with state law regulating the practice of dental hygiene, except that supervision may be provided by a dentist member of the program.
- (b) A person's activities described by Subsections (a)(14), (15), and (18) are considered not to be the practice of dentistry only to the extent the person is participating in the specified program.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.071(a), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 810 (S.B. 610), Sec. 1, eff. September 1, 2005.]

Sec. 251.005. APPLICATION OF SUNSET ACT.

The State Board of Dental Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished September 1, 2017.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 17, Sec. 1, eff. Sept. 1, 2003; Acts 2001, 77th Leg., ch. 1481, Sec. 1.02, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 17, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 3.06, eff. June 17, 2011.]

CHAPTER 252. STATE BOARD OF DENTAL EXAMINERS

Sec. 252.001. BOARD MEMBERSHIP.

- (a) The State Board of Dental Examiners consists of 15 members appointed by the governor with the advice and consent of the senate as follows:
 - (1) eight reputable dentist members who reside in this state and have been actively engaged in the practice of dentistry for at least the five years preceding appointment;
 - (2) two reputable dental hygienist members who reside in this state and have been actively engaged in the practice of dental hygiene for at least the five years preceding appointment; and
 - (3) five members who represent the public.
- (b) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.
- (c) In making an appointment under this section, the governor shall attempt to appoint members of different minority groups, including females, African Americans, Hispanic Americans, Native Americans, and Asian Americans.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 17, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1170, Sec. 8.01, eff. Sept. 1, 2003.]

Sec. 252.002. MEMBER ELIGIBILITY.

- (a) A person is not eligible for appointment as a member if:
 - (1) the person's license to practice dentistry or dental hygiene has been revoked by the board for a violation of a statute of this state relating to the practice of dentistry or dental hygiene and the revocation is not overturned by final order of a court; or
 - (2) the person is an adverse party in civil litigation against the board.
- (b) A person is not eligible for appointment as a dentist or dental hygienist member of the board if the person has a financial interest in any dental, dental hygiene, or medical school.
- (c) A person is not eligible for appointment as a dental hygienist member of the board if the person is licensed to practice dentistry in this state.
- (d) A person is not eligible for appointment as a public member of the board if the person or the person's spouse:
 - (1) is registered, certified, or licensed by an occupational regulatory agency in the field of health care;
 - (2) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the board;
 - (3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving money from the board;
 - (4) uses or receives a substantial amount of tangible goods, services, or money from the board, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses; or
 - (5) is employed by a board member.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 17, Sec. 3, eff. Sept. 1, 2003.]

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 772 (S.B. 887), Sec. 1, eff. September 1, 2009.]

Sec. 252.003. MEMBERSHIP AND EMPLOYEE RESTRICTIONS.

- (a) In this section, "Texas trade association" means a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.
- (b) An officer, employee, or paid consultant of a Texas trade association in the field of health care may not be a member or employee of the board who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for B9 of the position classification salary schedule.
- (c) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of health care may not be a board member and may not be a board employee who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for B9 of the position classification salary schedule.
- (d) A person may not serve as a member of the board or act as general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.072(a), eff. Sept. 1, 2001.]

Sec. 252.004. TERMS OF OFFICE.

- (a) Members of the board serve staggered six-year terms. The terms of one-third of the members expire February 1 of each odd-numbered year.
- (b) A member may not serve more than two consecutive full terms. The completion of the unexpired portion of a term does not constitute service for a full term for purposes of this subsection.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 772 (S.B. 887), Sec. 2, eff. September 1, 2009.]

Sec. 252.005. PRIVILEGES OF OFFICE.

Members of the board have full and identical privileges, except that only dentist members may participate in the decision to pass or fail an applicant for a license to practice dentistry during the clinical portion of the board examinations.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 252.006. OFFICERS.

- (a) The board shall elect a secretary from its members to serve for a one-year term.

- (b) The governor shall designate a member of the board as the presiding officer of the board to serve in that capacity at the will of the governor. The presiding officer must be a dentist.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 17, Sec. 4, eff. Sept. 1, 2003.]

Sec. 252.007. GROUNDS FOR REMOVAL.

- (a) It is a ground for removal from the board that a member:
 - (1) does not have at the time of appointment the qualifications required by Sections 252.001 and 252.002;
 - (2) does not maintain during the service on the board the qualifications required by Sections 252.001 and 252.002;
 - (3) is ineligible for membership under Section 252.003;
 - (4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or
 - (5) is absent from more than half of the regularly scheduled board meetings the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.
- (b) The validity of an action of the board is not affected by the fact that the action is taken when a ground for removal of a board member exists.
- (c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 17, Sec. 5, eff. Sept. 1, 2003.]

Sec. 252.008. PER DIEM; REIMBURSEMENT.

- (a) Each board member is entitled to a per diem set by legislative appropriation for each day the member engages in board business.
- (b) A board member may receive reimbursement for travel expenses, including expenses for meals and lodging, incurred in performing an official duty as prescribed by the General Appropriations Act.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 252.009. MEETINGS.

The board shall hold meetings at least twice a year at times and places the board determines are most convenient for applicants for examination.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1249, Sec. 1, eff. Sept. 1, 2001.]

Sec. 252.010. BOARD MEMBER TRAINING.

- (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.
- (b) The training program must provide the person with information regarding:
 - (1) this subtitle;
 - (2) the programs operated by the board;
 - (3) the role and functions of the board;
 - (4) the rules of the board, with an emphasis on the rules that relate to disciplinary and investigatory authority;
 - (5) the current budget for the board;
 - (6) the results of the most recent formal audit of the board;
 - (7) the requirements of:
 - (A) the open meetings law, Chapter 551, Government Code;
 - (B) the public information law, Chapter 552, Government Code;
 - (C) the administrative procedure law, Chapter 2001, Government Code; and
 - (D) other laws relating to public officials, including conflict of interest laws; and
 - (8) any applicable ethics policies adopted by the board or the Texas Ethics Commission.
- (c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 17, Sec. 6, eff. Sept. 1, 2003.]

Sec. 252.011. OATH OF OFFICE.

Before assuming the duties of office, each board member shall file with the secretary of state a copy of the constitutional oath of office taken by the member.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

**CHAPTER 253.
EXECUTIVE DIRECTOR AND PERSONNEL**

Sec. 253.001. EXECUTIVE DIRECTOR.

- (a) The board may employ an executive director to assist the board in performing its duties.
- (b) The board shall set the executive director's salary.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 253.002. [Section Repealed].

Sec. 253.003. PERSONNEL.

- (a) The executive director, with the board's consent, may employ an assistant executive director to perform the executive director's duties when the executive director is absent or unable to act.
- (b) The board may employ:
 - (1) committees, clerks, advisors, consultants, dentists, hygienists, or examiners to assist the board in performing its duties; and
 - (2) other persons determined necessary:
 - (A) to assist the local prosecuting officers of a county in the enforcement of state laws prohibiting the unlawful practice of dentistry; and
 - (B) to carry out other purposes for which funds are appropriated.
- (c) The board shall employ other employees as needed to assist the executive director in performing the executive director's duties and in carrying out the purposes of this subtitle.
- (d) A person assisting a local prosecuting officer under this section is subject to the direction and control of the prosecuting officer. This subsection does not change the authority granted by law to the prosecuting officer.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.073(a), eff. Sept. 1, 2001.]

Sec. 253.004. DIVISION OF RESPONSIBILITIES.

The board shall develop and implement policies that clearly define the responsibilities of the board and the staff of the board.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 253.005. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION.

The board shall provide, as often as necessary, to its members and employees information regarding:

- (1) qualifications for office or employment under this subtitle; and
- (2) responsibilities under applicable laws relating to standards of conduct for state officers or employees.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 253.006. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS.

- (a) The executive director or the executive director's designee shall develop an intra-agency career ladder program. The program must require the intra-agency postings of all nonentry level positions concurrently with any public posting.
- (b) The executive director or the executive director's designee shall develop a system of annual performance evaluations. All merit pay for board employees must be based on the system established under this subsection.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 253.007. EQUAL OPPORTUNITY POLICY; REPORT.

- (a) The executive director or the executive director's designee shall prepare and maintain a written policy statement to ensure implementation of an equal employment opportunity program under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:
- (1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel that are in compliance with requirements of Chapter 21, Labor Code;
 - (2) a comprehensive analysis of the board workforce that meets federal and state guidelines;
 - (3) procedures by which a determination can be made of significant underuse in the board workforce of all persons for whom federal or state guidelines encourage a more equitable balance; and
 - (4) reasonable methods to appropriately address those areas of significant underuse.
- (b) A policy statement prepared under Subsection (a) must:
- (1) cover an annual period;
 - (2) be updated annually;
 - (3) be reviewed by the Commission on Human Rights for compliance with Subsection (a)(1); and
 - (4) be filed with the governor.
- (c) The governor shall deliver a biennial report to the legislature based on the information received under Subsection (b). The report may be made separately or as a part of other biennial reports made to the legislature.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

CHAPTER 254. BOARD POWERS AND DUTIES

Sec. 254.001. GENERAL RULEMAKING AUTHORITY.

- (a) The board may adopt and enforce rules necessary to:
- (1) perform its duties; and
 - (2) ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.
- (b) The board may adopt rules governing:
- (1) the board's proceedings; and
 - (2) the examination of applicants for a license to practice dentistry.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 254.0011. RULES RELATING TO CONTROL OF DENTAL PRACTICE.

- (a) The board may 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 allow a person who is not a dentist to influence or interfere with the exercise of the dentist's independent professional judgment.
- (b) Rules adopted by the board under this subtitle may not preclude a dentist's right to contract with a management service organization. Rules affecting contracts for provision of

management services apply the same to dentists contracting with management service organizations and to dentists otherwise contracting for management services.

[Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.074(a), eff. Sept. 1, 2001.]

Sec. 254.002. RULES REGARDING ADVERTISING AND COMPETITIVE BIDDING.

- (a) Except as provided by Section 259.005, the board may not adopt rules restricting advertising or competitive bidding except to prohibit false, misleading, and deceptive practices by the license holder.
- (b) The board may adopt and enforce reasonable restrictions to regulate advertising relating to the practice of dentistry by a person engaged in the practice of dentistry as provided by Section 259.005.
- (c) The board may not include in the board's rules to prohibit false, misleading, or deceptive advertising under Subsection (a) a rule that:
 - (1) restricts the use of any advertising medium;
 - (2) restricts a person's personal appearance or use of the person's voice in an advertisement;
 - (3) relates to the size or duration of a person's advertisement; or
 - (4) restricts the person's advertisement under a trade name, except the board may require that a trade name advertisement include the name of each dental owner of the practice.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 254.003. RULES REGARDING INFECTION CONTROL.

The board shall investigate infection control in the dental profession and may adopt and enforce rules to control the spread of infection in the practice of dentistry as necessary to protect the public health and safety.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 254.004. FEES.

- (a) The board shall establish reasonable and necessary fees so that the fees, in the aggregate, produce sufficient revenue to cover the cost of administering this subtitle.
- (b) The amount of the dental application fee and dentist annual renewal fee is the amount set by the board under Subsection (a) and an additional charge of \$200. Of each fee increase collected under this subsection, \$50 shall be deposited to the credit of the foundation school fund and \$150 shall be deposited to the credit of the general revenue fund.
- (c) The board shall collect an additional \$55 surcharge for each of the following fees:
 - (1) the fee for the issuance of a dental license; and
 - (2) the fee for the renewal of a dental license.
- (d) The board shall deposit each surcharge collected to the credit of the dental public assurance account. The dental public assurance account is an account in the general revenue fund that shall be appropriated only to the board to pay for the board's enforcement program, including an expert panel.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.075(a), eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 709 (H.B. 3201), Sec. 1, eff. September 1, 2013.]

Sec. 254.005. SIGNATURE AND SEAL ON LICENSE REQUIRED.

A license issued to a dentist must be signed by each board member and imprinted with the board's seal.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 254.006. BOARD RECORDS AND CONFIDENTIALITY OF RECORDS.

- (a) Except as provided by this section, the investigation files and other records of the board are public records and open to inspection at reasonable times.
- (b) 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.
- (c) The exception from public disclosure of investigation files and records provided by this section does not apply to the disclosure of a disciplinary action of the board, including:
 - (1) the revocation or suspension of a license;
 - (2) the imposition of a fine on a license holder;
 - (3) the placement on probation with conditions of a license holder whose license has been suspended;
 - (4) the reprimand of a license holder; or
 - (5) the issuance of a warning letter to a license holder.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.076(a), eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 709 (H.B. 3201), Sec. 2, eff. January 1, 2014.]

Sec. 254.007. RECORDS REGARDING PERSONS AUTHORIZED TO PRACTICE.

- (a) The board shall keep records of the name, permanent address, and place of business of each person authorized under this subtitle to practice dentistry, dental hygiene, or another profession or business under the board's jurisdiction as provided by law.
- (b) The board shall collect annually from each licensed dentist the dentist's name, age, practice locations, hours worked each week, weeks worked each year, and number and type of auxiliaries employed.
- (c) The information collected under Subsection (b) shall be compiled in report form by practice composition and by county reflecting the overall full-time equivalency tabulations as defined by the federal Department of Health and Human Services.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.076(b), eff. Sept. 1, 2001.]

Sec. 254.008. CIVIL LIABILITY.

- (a) In the absence of fraud, conspiracy, or malice, a member of the board, a full-time or part-time employee of the board, a person who contracts with the board, a witness called to testify by the board, or a consultant or hearing officer appointed by the board is not liable or subject to suit in a civil action for any damage caused by the person for an investigation, report, recommendation, statement, evaluation, finding, order, or award made in the performance of the person's official duties.
- (b) The purpose of this section is to protect the persons designated by Subsection (a) from being harassed and threatened with legal action while performing official duties.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.077(a), eff. Sept. 1, 2001.]

Sec. 254.009. ASSISTANCE OF PROSECUTOR.

- (a) The board shall aid in the enforcement of state law regulating the practice of dentistry.
- (b) A board member may present to a prosecuting officer a complaint relating to a violation of state law regulating the practice of dentistry.
- (c) The board and its members, officers, counsel, and agents may assist the prosecuting officer in the trial of a case involving an alleged violation of state law.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 254.010. MONITORING OF LICENSE HOLDER.

- (a) The board by rule shall develop a system to monitor a license holder's compliance with this subtitle.
- (b) Rules adopted under this section must include procedures to:
 - (1) monitor for compliance a license holder who is ordered by the board to perform a certain act; and
 - (2) identify and monitor each license holder who represents a risk to the public.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 254.011. AGREEMENT WITH HEALTH AND HUMAN SERVICES COMMISSION.

The board shall enter into an agreement with the Health and Human Services Commission to improve coordination on issues relating to the state Medicaid program. The agreement must require each agency to:

- (1) refer to the other agency, as appropriate, cases involving fraud, abuse, or insufficient quality of care under the state Medicaid program;
- (2) maintain a log of cases referred to the other agency;
- (3) share information with the other agency, subject to confidentiality requirements, including investigative reports on cases within the jurisdiction of both agencies; and
- (4) collaborate with the other agency in the investigation of cases and the initiation of appropriate disciplinary action whenever possible.

[Added by Acts 2003, 78th Leg., ch. 17, Sec. 8, eff. Sept. 1, 2003.]

Sec. 254.012. INCLUSION OF MEDICAID-RELATED INFORMATION IN ANNUAL FINANCIAL REPORT.

The board shall include in the annual financial report required by Section 2101.011, Government Code, information on all cases handled by the board during the preceding fiscal year involving fraud, abuse, or insufficient quality of care under the state Medicaid program, including:

- (1) the number of cases handled;
- (2) an explanation of the legal basis and reason for each case;
- (3) the action taken in each case; and
- (4) for each case the board closed without taking action, an explanation of the reason the case was closed without action.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 17, Sec. 9, eff. Sept. 1, 2003.]

Sec. 254.013. PEACE OFFICERS.

- (a) The board may commission as a peace officer to enforce this subtitle an employee who has been certified as qualified to be a peace officer by the Texas Commission on Law Enforcement.
- (b) An employee commissioned as a peace officer under this subtitle has the powers, privileges, and immunities of a peace officer while carrying out duties as a peace officer under this subtitle.

[Added by Acts 2003, 78th Leg., ch. 474, Sec. 2, eff. June 20, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 93 (S.B. 686), Sec. 2.56, eff. May 18, 2013.]

Sec. 254.014. USE OF ALTERNATIVE RULEMAKING AND DISPUTE RESOLUTION PROCEDURES.

- (a) The board shall develop and implement a policy to encourage the use of:
 - (1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and
 - (2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.
- (b) The board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.
- (c) The board shall designate a trained person to:
 - (1) coordinate the implementation of the policy adopted under Subsection (a);
 - (2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and
 - (3) collect data concerning the effectiveness of those procedures, as implemented by the board.

[Added by Acts 2003, 78th Leg., ch. 17, Sec. 10, eff. Sept. 1, 2003.]

Sec. 254.015. USE OF TECHNOLOGY.

The board shall develop and implement a policy requiring the executive director and board employees to research and propose appropriate technological solutions to improve the board's ability to perform its functions. The technological solutions must:

- (1) ensure that the public is able to easily find information about the board on the Internet;
- (2) ensure that persons who want to use the board's services are able to:
 - (A) interact with the board through the Internet; and
 - (B) access any service that can be provided effectively through the Internet; and
- (3) be cost-effective and developed through the board's planning processes.

[Added by Acts 2003, 78th Leg., ch. 17, Sec. 10, eff. Sept. 1, 2003.

Renumbered from Occupations Code, Section 254.013 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(70), eff. September 1, 2005.]

Sec. 254.016. INFORMATION PROVIDED TO LICENSE HOLDERS.

At least once each biennium, the board shall provide to license holders information on:

- (1) prescribing and dispensing pain medications, with particular emphasis on Schedule II and Schedule III controlled substances;
- (2) abusive and addictive behavior of certain persons who use prescription pain medications;
- (3) common diversion strategies employed by certain persons who use prescription pain medications, including fraudulent prescription patterns; and
- (4) the appropriate use of pain medications and the differences between addiction, pseudo-addiction, tolerance, and physical dependence.

[Added by Acts 2003, 78th Leg., ch. 1163, Sec. 3, eff. Sept. 1, 2003.

Renumbered from Occupations Code, Section 254.013 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(71), eff. September 1, 2005.]

Sec. 254.017. POISON CONTROL CENTER INFORMATION.

The board shall provide to license holders information regarding the services provided by poison control centers.

[Added by Acts 2003, 78th Leg., ch. 1163, Sec. 3, eff. Sept. 1, 2003.

Renumbered from Occupations Code, Section 254.014 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(72), eff. September 1, 2005.]

Sec. 254.018. TESTIMONY.

A member of the board may not express an oral or written opinion or serve as an expert witness in a civil action that is:

- (1) related to an administrative matter within the board's jurisdiction;
- (2) brought against or for a person licensed or registered under this subtitle; and

- (3) for the injury to or death of a patient or for a violation of the standard of care or the commission of malpractice.

[Added by Acts 2007, 80th Leg., R.S., Ch. 1119 (H.B. 3876), Sec. 3, eff. September 1, 2007.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 709 (H.B. 3201), Sec. 3, eff. January 1, 2014.]

Sec. 254.019. DEFINITIONS.

(a) In this section:

- (1) "Dental service agreement" means an agreement between a dental service organization and a dentist under which the dental service organization will:
 - (A) provide services related to the nonclinical business aspects of a dental practice, including arranging or providing financing, performing billing or payroll tasks, processing patient insurance claims, scheduling or otherwise interacting with patients, and performing other administrative tasks;
 - (B) supervise or manage the employees or contractors of the dentist; or
 - (C) employ or otherwise contract with a dentist in the dentist's capacity as a dentist.
- (2) "Dental service organization" means an entity that:
 - (A) is owned wholly or partly by a person who is or is not a dentist; and
 - (B) under a dental service agreement, provides or offers to provide services to a dentist or employs or otherwise contracts with a dentist in the dentist's capacity as a dentist.

(b) The board shall collect the following information from dentists licensed by the board in conjunction with the issuance and renewal of each dental license:

- (1) the number and type of dentists employed by the license holder, if any;
- (2) the name under which the license holder provides dental services and each location at which those services are provided by that license holder;
- (3) whether the license holder is a participating provider under the Medicaid program operated under Chapter 32, Human Resources Code, or the child health plan program operated under Chapter 62, Health and Safety Code;
- (4) whether the license holder is employed by or contracts with a dental service organization and, if so, the name and address of the dental service organization;
- (5) whether the license holder owns all or part of a dental service organization and, if so, the name and address of the dental service organization and of each dental office at which the dental service organization provides services to patients;
- (6) whether the license holder is a party to a dental service agreement and, if so, the name and address of the dental service organization that provides services under the agreement; and
- (7) if the license holder owns all or part of a dental service organization, whether that practice is a party to a dental service agreement and, if so, the name and address of the dental service organization that provides services under the agreement.

(c) If requested by the board, a dental service organization shall provide to the board the address of the locations where the organization provides dental services in this state and the name of each dentist providing dental services at each location.

- (d) The board shall provide an option for the electronic submission of the information required under this section.
- (e) Not later than November 1 of each even-numbered year, the board shall provide a report to the legislature on the information collected under this section and on the board's use of the information in the exercise of the board's statutory authority to regulate the practice of dentistry.

[Added by Acts 2013, 83rd Leg., R.S., Ch. 709 (H.B. 3201), Sec. 4, eff. September 1, 2013.]

**CHAPTER 255.
PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES**

Sec. 255.001. PUBLIC INTEREST INFORMATION.

- (a) The board shall prepare information of public interest describing the functions of the board and procedures by which complaints are filed with and resolved by the board.
- (b) The board shall make the information available to the public and appropriate state agencies.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 255.002. COMPLAINTS.

- (a) The board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board. The board may provide for that notice:
 - (1) on each registration form, application, brochure, or written contract for services of a person regulated under this subtitle;
 - (2) on a sign prominently displayed in the place of business of each person regulated under this subtitle; or
 - (3) in a bill for service provided by a person regulated under this subtitle.
- (b) The board shall list with its regular telephone number any toll-free telephone number established under other state law that may be called to present a complaint about a health professional.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 255.003. ASSISTANCE WITH COMPLAINT.

The board shall provide reasonable assistance to a person who wishes to file a complaint with the board.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 255.004. RECORDS OF COMPLAINTS.

- (a) The board shall maintain a file on each written complaint filed with the board.
- (b) The file must include:
 - (1) the name of the person who filed the complaint;
 - (2) the date the complaint was received by the board;

- (3) the subject matter of the complaint;
 - (4) the name of each person contacted in relation to the complaint;
 - (5) a summary of the results of the review or investigation of the complaint; and
 - (6) an explanation of the reason the file was closed, if the board closed the file without taking action other than to investigate the complaint
- (c) The board shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the board's policies and procedures relating to complaint investigation and resolution.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 17, Sec. 11, eff. Sept. 1, 2003.]

Sec. 255.005. NOTIFICATION OF INVESTIGATION STATUS.

If a written complaint is filed with the board that the board has authority to resolve, the board, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 17, Sec. 11, eff. Sept. 1, 2003.]

Sec. 255.006. GENERAL RULES REGARDING COMPLAINT INVESTIGATION AND DISPOSITION.

- (a) A complaint received under this chapter must be filed with and reviewed by the board to determine jurisdiction. If the board has jurisdiction, the board shall complete a preliminary investigation of the complaint not later than the 60th day after the date of receiving the complaint. The board shall first determine whether the license holder constitutes a continuing threat to the public welfare. On completion of the preliminary investigation, the board shall determine whether to officially proceed on the complaint. If the board fails to complete the preliminary investigation in the time required by this subsection, the board's official investigation of the complaint is considered to commence on that date.
- (b) The board may not consider a complaint that is filed with the board after the fourth anniversary of the date:
 - (1) the act that is the basis of the complaint occurred; or
 - (2) the complainant discovered, or in the exercise of reasonable diligence should have discovered, the occurrence of the act that is the basis of the complaint.
- (c) The board by rule shall:
 - (1) adopt a form to standardize information concerning complaints filed with the board; and
 - (2) prescribe information to be provided to a person when the person files a complaint with the board.
- (d) The board shall adopt rules concerning the investigation of a complaint filed with the board. The rules adopted under this subsection must:
 - (1) distinguish between categories of complaints;
 - (2) ensure that a complaint is not dismissed without appropriate consideration;

- (3) require that the board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the dismissed complaint;
 - (4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint;
 - (5) require that investigators used by the board be state employees; and
 - (6) establish procedures by which a board employee may dismiss a complaint if the investigation does not reveal a violation.
- (d-1) Procedures established under Subsection (d)(6) must:
- (1) ensure that the decision to dismiss a complaint is made with the appropriate level of review and necessary expertise and experience; and
 - (2) require the dismissal of a complaint to be reported to the board at a public meeting of the board.
- (d-2) Repealed by Acts 2005, 79th Leg., Ch. 810, Sec. 10, eff. September 1, 2005.
- (e) The board shall:
- (1) dispose of each complaint in a timely manner; and
 - (2) establish a schedule for conducting each phase of a complaint that is under the control of the board.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 17, Sec. 12, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 810 (S.B. 610), Sec. 2, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 810 (S.B. 610), Sec. 10, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 709 (H.B. 3201), Sec. 5, eff. January 1, 2014.]

Sec. 255.0065. COMPOSITION OF EXPERT PANELS.

- (a) The board by rule shall provide for expert panels appointed by the board to assist with complaints and investigations relating to professional competency by acting as expert dentist and dental hygienist reviewers.
- (b) Each member of the expert dentist panel must be licensed to practice dentistry in this state. Each member of the expert dental hygienist panel must be licensed to practice dental hygiene in this state.
- (c) The rules adopted under this section must include provisions governing the composition of the panel, qualifications for membership on the panel, length of time a member may serve on the panel, grounds for removal from the panel, the avoidance of conflicts of interest, including situations in which the affected license holder and the panel member live or work in the same geographical area or are competitors, and the duties to be performed by the panel.
- (d) The board's rules governing grounds for removal from the panel must include providing for the removal of a panel member who is repeatedly delinquent in reviewing complaints and in submitting reports to the board.

[Added by Acts 2013, 83rd Leg., R.S., Ch. 709 (H.B. 3201), Sec. 6, eff. January 1, 2014.]

Sec. 255.0066. DETERMINATION OF COMPETENCY.

- (a) If the preliminary investigation under Section 255.006(a) indicates that an act by a license holder falls below an acceptable standard of care, the complaint shall be reviewed by an

expert panel authorized under Section 255.0065 consisting of license holders who practice in the same specialty as the license holder who is the subject of the complaint or in another specialty that is similar to the license holder's specialty.

- (b) The expert panel shall report in writing the panel's determinations based on the review of the complaint under Subsection (a). The report must specify the standard of care that applies to the facts that are the basis of the complaint and the clinical basis for the panel's determinations, including any reliance on peer-reviewed journals, studies, or reports.

[Added by Acts 2013, 83rd Leg., R.S., Ch. 709 (H.B. 3201), Sec. 6, eff. January 1, 2014.]

Sec. 255.0067. REPORTS; PROCEDURES FOR EXPERT REVIEW.

- (a) A license holder on an expert panel authorized by Section 255.0065 who is initially selected to review a complaint shall:
 - (1) determine whether the license holder who is the subject of the complaint has violated the standard of care applicable to the circumstances; and
 - (2) issue a preliminary written report of that determination.
- (b) A second expert reviewer shall review the first expert reviewer's preliminary report and other information associated with the complaint. If the second reviewer agrees with the first reviewer, the first reviewer shall issue a final written report on the matter.
- (c) If the second expert reviewer does not agree with the conclusions of the first expert reviewer, a third expert reviewer shall review the preliminary report and information and decide between the conclusions reached by the first two reviewers. The final written report shall be issued by the third reviewer or the reviewer with whom the third reviewer concurs.
- (d) In reviewing a complaint, the expert reviewers assigned to examine the complaint may consult and communicate with each other about the complaint in formulating their opinions and reports.

[Added by Acts 2013, 83rd Leg., R.S., Ch. 709 (H.B. 3201), Sec. 6, eff. January 1, 2014.]

Sec. 255.007. NOTICE TO BOARD CONCERNING COMPLAINTS.

- (a) The executive director shall notify the board of a complaint that is unresolved after the second anniversary of the date the complaint is filed.
- (b) The executive director shall explain to the board the reasons that the complaint has not been resolved. The executive director shall periodically provide the notice and explanation required by this section at regularly scheduled board meetings.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 255.008. PUBLIC PARTICIPATION.

- (a) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the board's jurisdiction, except to the extent the communication would be ex parte under any law.
- (b) The board shall prepare and maintain a written plan that describes how a person who does not speak English may be provided reasonable access to the board's programs.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.078(a), eff. Sept. 1, 2001.]

CHAPTER 256. LICENSING OF DENTISTS AND DENTAL HYGIENISTS
SUBCHAPTER A. ISSUANCE OF LICENSE TO PRACTICE DENTISTRY

Sec. 256.001. LICENSE REQUIRED.

A person may not practice or offer to practice dentistry or dental surgery or represent that the person practices dentistry unless the person holds a license issued by the board.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 256.002. MINIMUM QUALIFICATIONS OF DENTAL APPLICANT.

- (a) An applicant for a license to practice dentistry must:
 - (1) be at least 21 years of age;
 - (2) be of good moral character; and
 - (3) present proof of:
 - (A) graduation from a dental school accredited by the Commission on Dental Accreditation of the American Dental Association; or
 - (B) graduation from a dental school that is not accredited by the commission and successful completion of training in an American Dental Association approved specialty in an education program accredited by the commission that consists of at least two years of training as specified by the Council on Dental Education.
- (b) The board shall grant a dental license to an applicant who:
 - (1) meets the qualifications of this section;
 - (2) pays an application fee set by the board; and
 - (3) satisfactorily passes the examination required by the board.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.079(a), eff. Sept. 1, 2001.]

Sec. 256.003. EXAMINATION.

- (a) The board shall provide for the examination of an applicant for a dental license.
- (b) The examination must consist of subjects and operations relating to dentistry, including:
 - (1) anatomy;
 - (2) physiology;
 - (3) anaesthesia;
 - (4) biochemistry;
 - (5) dental materials;
 - (6) diagnosis;
 - (7) treatment planning;
 - (8) ethics;
 - (9) jurisprudence;
 - (10) hygiene;
 - (11) pharmacology;
 - (12) operative dentistry;
 - (13) oral surgery;
 - (14) orthodontia;
 - (15) periodontia;

- (16) prosthetic dentistry;
 - (17) pathology;
 - (18) microbiology; and
 - (19) any other subject regularly taught in reputable dental schools that the board may require.
- (c) The board shall contract with one or more independent or regional testing services for any required clinical examination. If the board uses one or more regional testing services, the board may contract for or otherwise use licensed dentists to provide assistance to the regional testing service or services.
 - (d) The board shall have the written portion of the board's jurisprudence examination validated by an independent testing professional.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1249, Sec. 2, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 14.079(b), eff. Sept. 1, 2001.]

Sec. 256.004. [Section Repealed].

Sec. 256.005. EXAMINATION RESULTS.

- (a) The board shall notify each examinee of the results of the examination not later than the 30th day after the date the examination is administered. If an examination is graded or reviewed by a national testing service, the board shall notify examinees of the results of the examination not later than the 14th day after the date the board receives the results from the testing service.
- (b) If the notice of the examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the board shall notify the examinee of the reason for the delay before the 90th day.
- (c) If requested in writing by a person who fails the examination, the board shall provide to the person an analysis of the person's performance on the examination as prescribed by board rule.
- (d) If the board contracts with an independent or regional testing service, this section does not apply. The contract with the testing service must provide for the notification of results as provided by Subsection (a).

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.079(c), eff. Sept. 1, 2001.]

Sec. 256.006. REEXAMINATION.

- (a) The board by rule shall establish the conditions under which and the number of times an applicant may retake an examination.
- (b) The board may require an applicant who fails the examination to meet additional education requirements.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

SUBCHAPTER B. ISSUANCE OF LICENSE TO DENTAL HYGIENIST

Sec. 256.051. DEFINITION.

In this chapter, "dental hygienist" means a person who practices dental hygiene under a license issued under this chapter.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 256.052. LICENSE REQUIRED.

A person may not practice or offer to practice dental hygiene in this state unless the person is licensed under this chapter.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 256.053. ELIGIBILITY FOR LICENSE.

- (a) An applicant for a license to practice dental hygiene in this state must be:
- (1) at least 18 years of age;
 - (2) of good moral character;
 - (3) a graduate of an accredited high school or hold a certificate of high school equivalency; and
 - (4) a graduate of a recognized school of dentistry or dental hygiene accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the board or an alternative dental hygiene training program.
- (b) A school of dentistry or dental hygiene described by Subsection (a)(4) must include at least two full academic years of instruction or its equivalent at the postsecondary level.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.080(a), eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1470, Sec. 3.01, eff. Sept. 1, 2001.]

Sec. 256.0531. ALTERNATIVE DENTAL HYGIENE TRAINING PROGRAMS.

- (a) It is the intent of the legislature that programs approved by the board under this section provide hygiene training that is substantially equivalent to training provided under traditional programs.
- (b) An alternative dental hygiene training program must meet the following requirements:
- (1) the program must be determined to be eligible for accreditation by the Commission on Dental Accreditation of the American Dental Association before students can enroll in the program;
 - (2) the program must require hygiene students to complete four semesters of didactic education from a school of dentistry, dental hygiene school, or other educational institution approved by the board;
 - (3) didactic education shall be provided by instruction in the classroom or by distance learning, remote coursework, or similar modes of instruction offered by an institution accredited by the Commission on Dental Accreditation of the American Dental Association;

- (4) didactic education shall include instruction in anatomy, pharmacology, x-ray, ethics, jurisprudence, hygiene, and any other subject regularly taught in reputable schools of dentistry and dental hygiene that the board may require;
- (5) the program must require hygiene students to complete not less than 1,000 hours of clinical training under the direct supervision of a dentist qualified under Subsection (d) or a dental hygienist qualified under Subsection (f) during a 12-month period. Students must satisfactorily complete 75 full-mouth prophylaxes and demonstrate the ability to accurately record the location and extent of dental restorations, chart mobility, furcations, gingival recession, keratinized gingiva, and pocket depth on six aspects of each tooth; and
- (6) clinical training may occur simultaneously with didactic education.
- (c) Prior to commencing training, a hygiene student must have completed no less than two years of full-time employment in a position involving clinical duties with dental patients.
- (d) To be qualified to train a hygiene student under this section, a dentist must:
 - (1) be licensed in Texas and have practiced in Texas for at least five years;
 - (2) have completed a certification or calibration course approved by the board for purposes of this section;
 - (3) meet recertification requirements at intervals of no more than three years;
 - (4) also practice in a dental office located outside a standard metropolitan statistical area, as defined by the United States Census Bureau, or practice in an area that the Texas Department of Health has determined is underserved or an area that has been designated by the United States as having a shortage of dental professionals; and
 - (5) have posted a notice visible to patients stating: "This practice has been approved as an alternative dental hygiene training program. Students in the program may be performing services."
- (e) A hygiene student who completes the requirements of a program under this section must satisfactorily pass the examination required for all hygiene license applicants under this chapter.
- (f) A dental hygienist may train hygiene students under this section if:
 - (1) the dental hygienist is employed by a dentist who provides training under this section and the hygienist works under the direct supervision of the dentist in the same office as the dentist;
 - (2) the dental hygienist has practiced full-time dental hygiene for the five years immediately preceding the time the training is provided; and
 - (3) the dental hygienist has completed a certification or calibration course approved by the board and meets recertification requirements at intervals of no more than five years.
- (g) A dentist who supervises a dental hygienist trained under this section has the same liability for acts performed by the hygienist as if the hygienist were trained in a different manner.
- (h) The board shall adopt an alternative dental hygiene training program no later than January 1, 2002.
- (i) The board shall appoint an advisory committee to advise the board in developing the alternative dental hygiene training program. The advisory committee consists of the following members appointed by the board:
 - (1) two dental hygienists nominated by a statewide association of dental hygienists;
 - (2) two dentists nominated by a statewide association of dentists;

- (3) two dental educators nominated by the State Board of Dental Examiners; and
 - (4) two dental hygienist educators nominated by the Dental Hygiene Advisory Committee to the State Board of Dental Examiners.
- (j) In developing the program, the advisory committee shall consider the standards adopted by the Commission on Dental Accreditation.
 - (k) A student in an alternative dental hygiene training program is not considered to be practicing dentistry as described by Section 251.003.
 - (l) The board shall adopt rules requiring the dentist to give written notice to patients, where applicable, that services will be performed by a student in an alternative dental hygiene training program, and requiring the dentist or the dentist's staff to give oral notice to patients, where applicable, at the time the patient's hygiene appointment is made or confirmed, that services will be performed by a student in an alternative dental hygiene training program.
 - (m) The board may adopt rules necessary to implement this section. The board shall adopt a rule requiring notification to dental hygiene students that accreditation of the alternative dental hygiene training program is a requirement for obtaining a license under this chapter.

[Added by Acts 2001, 77th Leg., ch. 1470, Sec. 3.02, eff. Sept. 1, 2001.]

Sec. 256.054. APPLICATION FOR EXAMINATION.

To take the examination under Section 256.055, an applicant for a license must:

- (1) submit an application on a form prescribed by the board;
- (2) pay the application fee set by the board;
- (3) attach to the application:
 - (A) proof of current certification in cardiopulmonary resuscitation approved by the American Heart Association or American Red Cross; or
 - (B) if the applicant is not physically able to comply with the certification requirements of Paragraph (A), a written statement describing the person's physical incapacity executed by a licensed physician or an instructor in cardiopulmonary resuscitation approved by the American Heart Association or American Red Cross; and
- (4) provide any other information the board requires to determine the applicant's qualifications.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.081(a), eff. Sept. 1, 2001.]

Sec. 256.055. LICENSE EXAMINATION.

- (a) The board shall provide for the examination of an applicant for a dental hygienist license.
- (b) The examination must include subjects and operations relating to dentistry and dental hygiene, including:
 - (1) anatomy;
 - (2) pharmacology;
 - (3) x-ray;
 - (4) ethics;
 - (5) jurisprudence;

- (6) hygiene;
 - (7) dental hygiene treatment planning;
 - (8) dental materials;
 - (9) physiology;
 - (10) pathology;
 - (11) microbiology; and
 - (12) any other subject regularly taught in reputable schools of dentistry and dental hygiene that the board may require.
- (c) The board shall contract with one or more independent or regional testing services for any required clinical examination. If the board uses one or more regional testing services, the board may contract for or otherwise use licensed dental hygienists to provide assistance to the regional testing service or services.
- (d) The board shall have the written portion of the board's jurisprudence examination validated by an independent testing professional.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1249, Sec. 3, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 14.081(b), eff. Sept. 1, 2001.]

Sec. 256.056. EXAMINATION RESULTS.

- (a) The board shall notify each examinee of the results of the examination within a reasonable time after the date of the examination.
- (b) If the board contracts with an independent or regional testing service, the contract with the service must provide for the notification of results.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.081(c), eff. Sept. 1, 2001.]

Sec. 256.057. REEXAMINATION.

- (a) The board by rule shall establish the conditions under which and the number of times an applicant may retake an examination.
- (b) The board may require an applicant who fails the examination to meet additional education requirements set by the board.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 256.058. ISSUANCE OF LICENSE.

The board shall issue a license to practice dental hygiene to an applicant who has passed all phases of the examination.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

SUBCHAPTER C. GENERAL LICENSE PROVISIONS

Sec. 256.101. ISSUANCE OF LICENSE TO CERTAIN OUT-OF-STATE APPLICANTS.

- (a) The board shall issue a license to practice dentistry to a reputable dentist or a license to practice dental hygiene to a reputable dental hygienist who:

- (1) pays the fee set by the board;
 - (2) is licensed in good standing as a dentist or dental hygienist in another state that has licensing requirements substantially equivalent to the requirements of this subtitle;
 - (3) has not been the subject of a final disciplinary action and is not the subject of a pending disciplinary action in any jurisdiction in which the dentist or dental hygienist is or has been licensed;
 - (4) has graduated from a dental or dental hygiene school accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the board under board rule;
 - (5) has passed a national or other examination relating to dentistry or dental hygiene and recognized by the board;
 - (6) has passed the board's jurisprudence examination;
 - (7) has submitted documentation of current cardiopulmonary resuscitation certification;
 - (8) has practiced dentistry or dental hygiene:
 - (A) for at least the three years preceding the date of application for a license under this section; or
 - (B) as a dental educator at a dental school or dental hygiene school accredited by the Commission on Dental Accreditation of the American Dental Association for at least the five years preceding the date of application for a license under this section;
 - (9) has been endorsed by the board of dentistry in the jurisdiction in which the applicant practices at the time of application; and
 - (10) meets any additional criteria established by board rule.
- (a-1) The board by rule shall specify the circumstances under which the board may waive the requirement under Subsection (a)(8) that an applicant for a license under this section has been continuously engaged in the practice of dentistry or dental hygiene during the period required by that subsection if the applicant has engaged in the practice of dentistry or dental hygiene for a cumulative total of at least three years before the date of application for a license under this section.
- (b) If the board does not complete the processing of an application under this section before the 181st day after the date all documentation and examination results required by this section have been received, the board shall issue a license to the applicant.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1249, Sec. 4, 5, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 17, Sec. 13, eff. Sept. 1, 2003.]

Sec. 256.1013. PROVISIONAL LICENSE.

- (a) The board may issue a provisional license to an applicant currently licensed in another jurisdiction who seeks a license in this state and who:
- (1) has been licensed in good standing as a dentist or dental hygienist for at least two years in another jurisdiction that has licensing requirements substantially equivalent to the requirements of this subtitle;
 - (2) is a graduate of a recognized school of dentistry or dental hygiene accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the board;
 - (3) has passed a national or other examination recognized by the board relating to the practice of dentistry or dental hygiene, as appropriate; and

- (4) is sponsored by a person who holds an appropriate license under this subtitle and with whom the provisional license holder will practice during the time the person holds a provisional license.
- (b) The board may waive the requirement of Subsection (a)(4) for an applicant if the board determines that compliance with that subdivision would be a hardship to the applicant.
- (c) A provisional license is valid until the date the board approves or denies the provisional license holder's application for a license. The board shall issue a license under this subtitle to the provisional license holder if:
 - (1) the provisional license holder is eligible to be licensed under Section 256.101; or
 - (2) the provisional license holder passes the part of the examination under Section 256.003 or 256.055 that relates to the applicant's knowledge and understanding of the laws and rules relating to the practice of dentistry or dental hygiene, as appropriate, in this state and:
 - (A) the board verifies that the provisional license holder meets the academic and experience requirements for a license under this subtitle; and
 - (B) the provisional license holder satisfies any other licensing requirements under this subtitle.
- (d) The board must approve or deny a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The board may extend the 180-day period if the results of an examination have not been received by the board before the end of that period.
- (e) The board may establish a fee for provisional licenses in an amount reasonable and necessary to cover the cost of issuing the license.

[Added by Acts 2003, 78th Leg., ch. 17, Sec. 14, eff. Sept. 1, 2003.]

Sec. 256.1015. TEMPORARY LICENSE.

- (a) The board, upon payment by the applicant of a fee set by the board, shall grant a temporary license to practice dentistry to any reputable dentist or a temporary license to practice dental hygiene to any reputable dental hygienist who:
 - (1) meets all requirements of Section 256.101 except those of Subsection (a)(8); and
 - (2) is employed by a nonprofit corporation that accepts Medicaid reimbursement.
- (b) A license granted under this section expires immediately when a licensee fails to meet the requirements of this section.

[Added by Acts 2001, 77th Leg., ch. 1470, Sec. 5.01, eff. Sept. 1, 2001.]

Sec. 256.1016. TEMPORARY LICENSE FOR CHARITABLE PURPOSE.

- (a) In this section, "voluntary charity care" has the meaning assigned by board rule under Section 256.102.
- (b) The board shall grant a temporary license for a dentist whose practice consists only of voluntary charity care to a reputable dentist who meets the requirements of Sections 256.101(a)(3), (4), and (5) and who:

- (1) ceased practicing dentistry in another state that the board has determined has licensing requirements that are substantially similar to the requirements of this state not more than two years before the date the dentist applies for a license under this section and was licensed in good standing at the time the dentist ceased practicing dentistry; or
 - (2) is currently licensed in another state that the board has determined has licensing requirements that are substantially similar to the requirements of this state.
- (c) A dentist issued a license under this section shall:
- (1) confine the dentist's practice to voluntary charity care;
 - (2) practice only in a geographic area specified by the license; and
 - (3) practice only for the period specified by the license.
- (d) The board shall adopt rules as necessary to implement this section.
- (e) The board shall take disciplinary action against a dentist licensed under this section for a violation of this subtitle or board rules in the same manner as against a dentist licensed under Subchapter A.

[Added by Acts 2013, 83rd Leg., R.S., Ch. 306 (H.B. 1491), Sec. 1, eff. June 14, 2013.]

Sec. 256.102. RETIRED STATUS.

- (a) The board by rule may allow a license holder to place the person's license on retired status. A license holder must apply to the board for retired status, on a form prescribed by the board, before the expiration date of the person's license.
- (b) In determining whether to grant retired status, the board shall consider the age, years of practice, and the status of the license holder at the time of the application.
- (c) A license holder on retired status:
 - (1) is not required to pay license renewal fees; and
 - (2) except as provided by Subsection (f), may not perform any activity regulated under this subtitle.
- (d) To reinstate a license placed on retired status, the license holder must submit a written request for reinstatement to the board. The board may return the license to active status and issue a renewal license if the license holder complies with any education or other requirement established by board rule and pays the renewal fee in effect at the time of the requested reinstatement.
- (e) The board may charge a reasonable administrative fee to cover the cost of research and the preparation of documentation for the board's consideration of a request for reinstatement of a license on retired status.
- (f) A dentist on retired status may perform an activity regulated under this subtitle if the dentist's practice consists only of voluntary charity care, as defined by board rule. The board's rules under this subsection must prescribe the scope of practice permitted for the retired dentist, the retired dentist's authority to prescribe and administer drugs, and any continuing education requirements applicable to the retired dentist.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 810 (S.B. 610), Sec. 3, eff. September 1, 2005.]

Sec. 256.103. DISPLAY OF ANNUAL REGISTRATION CERTIFICATE.

- (a) A licensed dentist or dental hygienist shall display the person's current registration certificate in each office in which the person provides dental services. If the dentist or dental hygienist provides dental services at more than one location, the person may display a duplicate of the original registration certificate obtained from the board on payment of a duplicate certificate fee set by the board.
- (b) A licensed dentist may not operate on a patient's mouth or treat lesions of the mouth or teeth unless the dentist displays the dentist's registration certificate.
- (c) A person may practice without displaying the person's current registration certificate as required by Subsection (a) for not more than 30 days after the date the person receives from the board written confirmation that the person's original license was issued.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.083(a), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 810 (S.B. 610), Sec. 4, eff. September 1, 2005.]

Sec. 256.104. DUPLICATE LICENSE.

- (a) The board may issue a duplicate license to a person whose license is lost or destroyed if the person:
 - (1) pays a reasonable fee; and
 - (2) presents to the board an application for a duplicate license, including an affidavit explaining the loss or destruction and stating that the person is the same person originally granted the license.
- (b) If board records do not show that the person was previously licensed, the board may refuse to issue a duplicate license.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 256.105. NOTIFICATION OF CHANGE OF INFORMATION.

- (a) Each dentist, dental hygienist, and owner or manager of a dental laboratory licensed or registered with the board shall timely notify the board of:
 - (1) any change of address of the person's place of business;
 - (2) any change of employers for the dentist or dental hygienist and any change of owners or managers for the dental laboratory; and
 - (3) any change of the person's mailing address.
- (b) Notification under Subsection (a) is timely if the board receives the notice not later than the 60th day after the date the change occurs.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1249, Sec. 6, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 772 (S.B. 887), Sec. 3, eff. September 1, 2009.]

Sec. 256.106. DELEGATED AUTHORITY TO ISSUE LICENSES.

The board may delegate authority to board employees to issue licenses under this subtitle to applicants who clearly meet all licensing requirements. If the board employees determine that the applicant does not clearly meet all licensing requirements, the application shall be returned to the board. A license issued under this section does not require formal board approval.

[Added by Acts 2013, 83rd Leg., R.S., Ch. 709 (H.B. 3201), Sec. 7, eff. January 1, 2014.]

CHAPTER 257. LICENSE RENEWAL

Sec. 257.001. LICENSE EXPIRATION.

- (a) The board by rule may adopt a system under which licenses expire on various dates during the year.
- (b) Dates of license suspension and reinstatement after failure to pay the license fee shall be adjusted accordingly.
- (c) For the year in which the expiration date is changed, license fees payable on or before March 1 shall be prorated on a monthly basis so that each license holder pays only that portion of the fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license fee is payable.
- (d) An initial license issued under this subtitle expires on the 30th day after the date the license is issued if the holder of the license fails to pay the required license fee on or before that date.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 772 (S.B. 887), Sec. 4, eff. September 1, 2009.]

Sec. 257.002. LICENSE RENEWAL.

- (a) A person required to hold a license as a practitioner under this subtitle who fails or refuses to apply for renewal of a license and pay the required fee on or before the specified date of each calendar year is:
 - (1) suspended from practice; and
 - (2) subject to the penalties imposed by law on any person unlawfully engaging in a practice regulated under this subtitle.
- (b) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the board before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed.
- (c) A person whose license has been expired for 90 days or less may renew the license by paying to the board a renewal fee that is equal to 1-1/2 times the normally required renewal fee.
- (c-1) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying to the board a renewal fee that is equal to two times the normally required renewal fee.
- (d) Except as provided by Subsection (d-1) or (d-2), a person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by

complying with the requirements and procedures, including the examination requirements, for obtaining an original license.

- (d-1) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without reexamination. The person must pay to the board a fee that is equal to two times the normally required renewal fee for the license.
- (d-2) The board may renew the license of a person whose license has been expired for one year or more without requiring the person to comply with the requirements and procedures for an original license if the person places the person's renewed license on retired status and confines the person's practice solely to voluntary charity care under Section 256.102(f).
- (e) Not later than the 30th day before the date a person's license is scheduled to expire, the board shall send written notice of the impending expiration to the person at the person's last known address according to the board's records.
- (f) The requirements prescribed by this section relating to the payment of annual license fees and penalties for the failure to timely renew a license do not apply to license holders who are on active duty with the armed forces of the United States and are not engaged in private or civilian practice.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.084(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 17, Sec. 15, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 456 (H.B. 643), Sec. 1, eff. September 1, 2007.]

Sec. 257.003. [Section Repealed].

Sec. 257.004. CARDIOPULMONARY RESUSCITATION REQUIREMENTS.

- (a) A person holding a dental or dental hygienist license must submit at the time the person applies for renewal of the license:
 - (1) a written statement executed by the person stating that the person has successfully completed a current program or course in cardiopulmonary resuscitation that includes a demonstration of skills and a written evaluation; or
 - (2) if the person is not physically able to comply with the requirements of Subdivision (1), a written statement describing the person's physical incapacity executed by a licensed physician.
- (b) Repealed by Acts 2003, 78th Leg., ch. 17, Sec. 28, eff. Sept. 1, 2003.
- (c) A dentist or dental hygienist licensed by the board who resides in a country other than the United States on the renewal date of the person's license and has not practiced dentistry or dental hygiene in the United States during the year preceding the renewal date is exempt from the requirements of Subsection (a) if the person submits proof of foreign residence with the person's renewal application.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1249, Sec. 7, eff. Jan. 1, 2002; Acts 2003, 78th Leg., ch. 17, Sec. 16, 28, eff. Sept. 1, 2003.]

Sec. 257.005. CONTINUING EDUCATION FOR DENTIST AND DENTAL HYGIENIST.

- (a) The board shall develop a mandatory continuing education program for licensed dentists and dental hygienists. The board by rule shall require a license holder to complete at least

12 hours of continuing education for each annual registration period to renew the license for a subsequent annual period.

- (b) The board may:
 - (1) assess the continuing education needs of license holders; and
 - (2) require license holders to attend continuing education courses specified by the board.
- (c) The board by rule shall:
 - (1) identify the key factors required for competent performance of professional duties under this subtitle;
 - (2) develop a process to evaluate and approve continuing education courses; and
 - (3) develop a process to assess a license holder's participation and performance in continuing education courses to evaluate the overall effectiveness of the program.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.079(d), eff. Sept. 1, 2001]

CHAPTER 258. PRACTICE BY DENTIST

SUBCHAPTER A. DELEGATION BY DENTIST

Sec. 258.001. IMPERMISSIBLE DELEGATIONS.

A dentist may not delegate:

- (1) an act to an individual who, by board order, is prohibited from performing the act;
- (2) any of the following acts to a person not licensed as a dentist or dental hygienist:
 - (A) the removal of calculus, deposits, or accretions from the natural and restored surfaces of exposed human teeth and restorations in the human mouth;
 - (B) root planing or the smoothing and polishing of roughened root surfaces or exposed human teeth; or
 - (C) any other act the delegation of which is prohibited by board rule;
- (3) any of the following acts to a person not licensed as a dentist:
 - (A) comprehensive examination or diagnosis and treatment planning;
 - (B) a surgical or cutting procedure on hard or soft tissue;
 - (C) the prescription of a drug, medication, or work authorization;
 - (D) the taking of an impression for a final restoration, appliance, or prosthesis;
 - (E) the making of an intraoral occlusal adjustment;
 - (F) direct pulp capping, pulpotomy, or any other endodontic procedure;
 - (G) the final placement and intraoral adjustment of a fixed or removable appliance; or
 - (H) the placement of any final restoration; or
- (4) the authority to an individual to administer a local anesthetic agent, inhalation sedative agent, parenteral sedative agent, or general anesthetic agent if the individual is not licensed as:
 - (A) a dentist with a permit issued by the board for the procedure being performed, if a permit is required;

- (B) a certified registered nurse anesthetist licensed by the Texas Board of Nursing, only if the delegating dentist holds a permit issued by the board for the procedure being performed, if a permit is required; or
- (C) a physician anesthesiologist licensed by the Texas Medical Board.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 37, eff. September 1, 2007.]

Sec. 258.002. DELEGATION TO DENTAL ASSISTANT.

- (a) A licensed dentist may delegate to a qualified and trained dental assistant acting under the dentist's general or direct supervision any dental act that a reasonable and prudent dentist would find is within the scope of sound dental judgment to delegate if:
 - (1) in the opinion of the delegating dentist, the act:
 - (A) can be properly and safely performed by the person to whom the dental act is delegated; and
 - (B) is performed in a customary manner and is not in violation of this subtitle or any other statute;
 - (2) the person to whom the dental act is delegated does not represent to the public that the person is authorized to practice dentistry; and
 - (3) the person to whom the dental act is delegated holds the appropriate certificate, if a certificate is required to perform the act.
- (b) Repealed by Acts 2009, 81st Leg., R.S., Ch. 476, Sec. 8(1), eff. September 1, 2009.
- (c) The board by rule shall establish guidelines regarding the types of dental acts that may be properly or safely delegated by a dentist, including a determination of which delegated dental acts, if any, require competency testing before a person may perform the act.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1470, Sec. 4.01, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1144, Sec. 1, eff. June 20, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 476 (S.B. 455), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 476 (S.B. 455), Sec. 8(1), eff. September 1, 2009.]

Sec. 258.003. RESPONSIBILITY OF DELEGATING DENTIST.

A delegating dentist is responsible for a dental act performed by the person to whom the dentist delegates the act.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

**CHAPTER 258. PRACTICE BY DENTIST
SUBCHAPTER B. GENERAL PRACTICE PROVISIONS**

Sec. 258.051. DENTIST RECORDS.

- (a) The records of a diagnosis made and treatment performed for and on a dental patient are the property of the dentist performing the dental service.

- (b) A dentist's records may not be sold, pledged as collateral, or transferred to any person other than the patient unless the transfer is made in compliance with Subchapter C and board rules.
- (c) This section does not prevent the voluntary submission of records to an insurance company to determine benefits when consent for the disclosure has been granted under Section 258.104.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.086(a), eff. Sept. 1, 2001.]

Sec. 258.0511. ACCESS TO DENTAL RECORDS.

- (a) An owner, shareholder, partner, or executive officer of a clinic or other entity that provides dental services for the public shall designate a license holder as the dental custodian of records to provide records to the board or a dentist who has provided dental treatment and to comply with other law regulating dental patient records.
- (b) On demand, the dental custodian of records shall give access to the board and produce for the board all records or other evidence related to the investigation or prosecution of an alleged violation of this subtitle or another law regulating the practice of dentistry in this state.
- (c) The board shall adopt rules regarding the designation and duties of a dental custodian of records.
- (d) Section 264.101 applies to a violation of this section.

[Added by Acts 2007, 80th Leg., R.S., Ch. 1119 (H.B. 3876), Sec. 1, eff. September 1, 2007.]

Sec. 258.052. CASE HISTORIES AND PHYSICAL EVALUATIONS.

- (a) A dentist may take a complete case history and perform a complete physical evaluation that may be used to admit a patient to a hospital for the practice of dentistry if the activity is necessary in the exercise of due care in the practice of dentistry.
- (b) A dentist is not automatically entitled to membership on a hospital's medical staff or to exercise clinical privileges at a hospital solely because the dentist is licensed in this state or because the dentist is authorized to take a case history and perform a physical evaluation.
- (c) A dentist may not be denied membership on a hospital's medical staff or the right to the exercise of clinical privileges at a hospital solely because the person is a dentist rather than a physician.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 258.053. USE OF CERTAIN DRUGS.

- (a) In this section, "narcotic drugs," "dangerous drugs," and "controlled substances" have the meanings defined or recognized by federal law or the law of this state.
- (b) A dentist may not:
 - (1) prescribe, provide, obtain, order, administer, possess, dispense, give, or deliver to or for any person a narcotic drug, dangerous drug, or controlled substance:
 - (A) that is not necessary or required; or

- (B) the use or possession of which would promote addiction to the drug or substance; or
- (2) aid, abet, or cause another person to engage in an action described by Subdivision (1).

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 258.054. USE OF X-RAY EQUIPMENT.

- (a) A dentist may authorize a qualified person to perform beam calibration and characterization, quality assurance, instrument specification, acceptance testing, shielding design, or protection analysis on radiation-emitting equipment or radiopharmaceuticals for a procedure that involves the diagnosis or treatment of disease or another dental condition in humans.
- (b) A dentist's authorization and the performance of authorized activities by a qualified person does not constitute the practice of medical physics under Chapter 602.
- (c) A dentist may not authorize a dental assistant to make a dental x-ray unless the dental assistant holds an x-ray certificate issued under Section 265.005.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Amended by:

Acts 2005, 79th Leg., Ch. 810 (S.B. 610), Sec. 5, eff. September 1, 2005.]

Sec. 258.055. PRACTICE OF DENTISTRY ON CERTAIN CHILDREN.

- (a) The parent or guardian of a child younger than 18 years of age may be present in the treatment room during the child's dental treatment or procedure, unless the dentist determines in the dentist's professional judgment that the presence of the parent or guardian in the treatment room is likely to have an adverse effect on the treatment or the child.
- (b) In this section, "parent or guardian" includes a person authorized by law to consent for the medical or dental treatment of a child younger than 18 years of age.

[Added by Acts 2013, 83rd Leg., R.S., Ch. 709 (H.B. 3201), Sec. 8, eff. January 1, 2014.]

**CHAPTER 258. PRACTICE BY DENTIST
SUBCHAPTER C. DENTAL PRIVILEGE**

Sec. 258.101. DEFINITIONS.

In this subchapter:

- (1) "Dental record" means dental information about a patient:
 - (A) created or maintained by a dentist; and
 - (B) relating to the history or treatment of the patient.
- (2) "Dentist" means a person licensed to practice dentistry.
- (3) "Patient" means a person who consults with a dentist to receive dental care.
- (4) "Privilege" means the confidentiality privilege created by this subchapter.

[Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.086(b), eff. Sept. 1, 2001.]

Sec. 258.102. SCOPE OF PRIVILEGE.

- (a) The following information is privileged and may not be disclosed except as provided by this subchapter:
 - (1) a communication between a dentist and a patient that relates to a professional service provided by the dentist; and
 - (2) a dental record.
- (b) The privilege described by this section applies regardless of when the patient received the professional service from the dentist.

[Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.086(b), eff. Sept. 1, 2001.]

Sec. 258.103. HOLDER OF PRIVILEGE.

- (a) The patient is the holder of the privilege.
- (b) The following persons may claim the privilege on the patient's behalf:
 - (1) a person authorized to act on the patient's behalf;
 - (2) a dentist acting on the patient's behalf; and
 - (3) an agent or employee of a person listed in Subdivision (1) or (2).
- (c) A person's authority to claim the privilege is presumed in the absence of evidence to the contrary.

[Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.086(b), eff. Sept. 1, 2001.]

Sec. 258.104. CONSENT TO DISCLOSURE OF PRIVILEGED INFORMATION.

- (a) A person may disclose privileged information if the patient consents to the disclosure as provided in this section.
- (b) Consent for the release of privileged information must be in writing and be signed by:
 - (1) the patient;
 - (2) a parent or legal guardian of the patient, if the patient is a minor;
 - (3) a legal guardian of the patient, if the patient has been adjudicated incompetent to manage the patient's personal affairs;
 - (4) an attorney ad litem appointed for the patient, as authorized by:
 - (A) Chapter 107, Family Code;
 - (B) Subtitle B, Title 6, Health and Safety Code;
 - (C) Subtitle C, Title 7, Health and Safety Code;
 - (D) Subtitle D, Title 7, Health and Safety Code;
 - (E) Subtitle E, Title 7, Health and Safety Code;
 - (F) Chapter V, Texas Probate Code; or
 - (G) any other law; or
 - (5) a personal representative of the patient, if the patient is deceased.
- (c) The consent required under this section must specify:
 - (1) the information covered by the release;
 - (2) the person to whom the information is to be released; and
 - (3) the purpose for the release.
- (d) A person may withdraw consent granted under this section by notifying in writing the person who maintains the information. Withdrawal of consent does not affect information disclosed before the written notice of the withdrawal is delivered.

[Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.086(b), eff. Sept. 1, 2001.]

Sec. 258.105. EXCEPTION TO PRIVILEGE FOR CERTAIN PROCEEDINGS.

- (a) The privilege does not apply in a court or administrative proceeding if the proceeding is:
 - (1) 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; or
 - (2) to collect on a claim for dental services rendered to the patient.
- (b) The privilege does not apply to the disclosure of a dental record:
 - (1) to the board in a disciplinary investigation or proceeding against a dentist conducted under this subtitle; or
 - (2) in a criminal investigation or proceeding against a dentist in which the board is participating or assisting by providing a record obtained from the dentist.
- (c) The board may not reveal the identity of a patient whose dental record is disclosed under Subsection (b).
- (d) Privileged information is discoverable in a criminal prosecution if:
 - (1) the patient is a victim, witness, or defendant; and
 - (2) the court in which the prosecution is pending rules, after an in camera review, that the information is relevant for discovery purposes.
- (e) Privileged information is admissible in a criminal prosecution if:
 - (1) the patient is a victim, witness, or defendant; and
 - (2) the court in which the prosecution is pending rules, after an in camera review, that the information is relevant.
- (f) The privilege does not apply to a grand jury subpoena.

[Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.086(b), eff. Sept. 1, 2001.]

Sec. 258.106. EXCEPTION TO PRIVILEGE FOR CERTAIN DISCLOSURES BY DENTIST.

- (a) The privilege does not apply to the disclosure of information by a dentist to:
 - (1) a governmental agency, if:
 - (A) the disclosure is required by another law; and
 - (B) the agency agrees to keep confidential the identity of a patient whose dental record is disclosed;
 - (2) medical or law enforcement personnel, if the dentist determines that it is more likely than not that the following will occur:
 - (A) imminent physical injury to the patient, the dentist, or others; or
 - (B) immediate mental or emotional injury to the patient;
 - (3) a person in relation to a management or financial audit, program evaluation, or research, if the person agrees to keep confidential the identity of a patient whose dental record is disclosed;
 - (4) a person involved in the payment or collection of fees for services rendered by a dentist, if necessary; or
 - (5) another dentist, or a person under the direction of the dentist, who participates in the diagnosis, evaluation, or treatment of the patient.
- (b) A person who receives information under Subsection (a)(3) may not disclose a patient's identity in writing.

- (c) A record reflecting a charge or specific service provided may be disclosed only when necessary in the collection of fees for a service provided by a dentist, professional association, or other entity qualified to provide or arrange for a service.

[Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.086(b), eff. Sept. 1, 2001.]

Sec. 258.107. EXCEPTION TO PRIVILEGE FOR CERTAIN LEGISLATIVE INQUIRIES.

A state hospital or state school may disclose a dental record if:

- (1) the state hospital or state school created the record;
- (2) an inquiry authorized by the legislature requests the information; and
- (3) the entity receiving the record agrees not to disclose a patient's identity.

[Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.086(b), eff. Sept. 1, 2001.]

Sec. 258.108. LIMIT ON DISCLOSURE.

A person who receives privileged information may disclose the information to another person only to the extent consistent with the purpose for which the information was obtained.

[Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.086(b), eff. Sept. 1, 2001.]

Sec. 258.109. REQUEST FOR DENTAL RECORD: TIMING; EXCEPTION.

- (a) If disclosure of a dental record is authorized under this subchapter, a dentist shall disclose the dental record within a reasonable period after it is requested but not later than:
- (1) the 30th day after the date on which it is requested from the dentist; or
 - (2) a date ordered by a court.
- (b) A dentist may refuse to disclose the requested record if the dentist determines that providing the information would be harmful to the physical, mental, or emotional health of the patient, except that requests from the board may not be refused. If the dentist determines that disclosing the record would be harmful, the dentist shall notify the person requesting the record and explain why the information would be harmful. The person requesting the record may challenge in court the dentist's refusal to disclose the record. If the court finds that the dentist made the refusal in bad faith, the court may order the disclosure of the record and award costs and attorney's fees incurred by the person to obtain the information.
- (c) In disclosing a dental record under this section, a dentist shall redact privileged information about another person.
- (d) A dentist may charge a reasonable fee for providing a dental record under this section. For purposes of this subsection, a fee established under Section 241.154, Health and Safety Code, is a reasonable fee.

[Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.086(b), eff. Sept. 1, 2001.]

CHAPTER 258. PRACTICE BY DENTIST
SUBCHAPTER D. ENTERAL ADMINISTRATION OF ANESTHESIA

Sec. 258.151. DEFINITION.

In this subchapter, "enteral" means any technique of administering anesthesia in which the anesthetic is absorbed through the gastrointestinal tract or oral mucosa. Examples of enterally administering anesthesia include administering an anesthetic orally, rectally, sublingually, or intranasally.

[Added by Acts 2001, 77th Leg., ch. 349, Sec. 1, eff. Sept. 1, 2001.]

Sec. 258.152. APPLICABILITY.

Rules adopted by the board under this subchapter do not apply to:

- (1) the regional injection of an anesthetic to reduce or eliminate sensation, especially pain, in one part of the body; or
- (2) the administration of anxiolytics and analgesics that are not being used in conjunction with the administration of nitrous oxide and that are administered in doses that do not have the probability of placing the dental patient at risk for loss of the dental patient's life-preserving protective reflexes.

[Added by Acts 2001, 77th Leg., ch. 349, Sec. 1, eff. Sept. 1, 2001.]

Sec. 258.153. RULES.

- (a) The board shall establish by rule the minimum standards for the enteral administration of anesthesia by a dentist.
- (b) The rules must be designed to protect the health, safety, and welfare of the public and must include requirements relating to:
 - (1) the methods used to enterally administer an anesthetic and the anesthetic agents that may be used;
 - (2) dental patient evaluation, diagnosis, counseling, and preparation;
 - (3) dental patient monitoring to be performed and equipment to be used during a procedure and during postprocedure monitoring;
 - (4) emergency procedures, drugs, and equipment, including education, training, and certification of personnel, as appropriate, and including protocols for transfers to a hospital;
 - (5) the documentation necessary to demonstrate compliance with this subchapter; and
 - (6) the period in which protocols or procedures covered by rules of the board shall be reviewed, updated, or amended.

[Added by Acts 2001, 77th Leg., ch. 349, Sec. 1, eff. Sept. 1, 2001.]

Sec. 258.154. COMPLIANCE WITH ANESTHESIA RULES.

- (a) On and after August 31, 2002, a dentist who practices dentistry in this state and who enterally administers anesthesia or performs a procedure for which anesthesia is enterally administered shall comply with the rules adopted under this subchapter.
- (b) The board may require a dentist to submit and comply with a corrective action plan to remedy or address any current or potential deficiencies with the dentist's enteral administration of anesthesia in accordance with this subtitle or rules of the board.

[Added by Acts 2001, 77th Leg., ch. 349, Sec. 1, eff. Sept. 1, 2001.]

Sec. 258.155. ANNUAL PERMIT.

- (a) Not later than September 1, 2002, the board shall require each dentist who enterally administers anesthesia or performs a procedure for which anesthesia is enterally administered to annually obtain a permit from the board by completing a form prescribed by the board. The board shall set and impose a fee for the permit in an amount designed to recover the costs of regulating a permit holder under this subchapter.
- (b) The board shall coordinate the times at which a permit must be renewed with the times at which a dentist's license must be renewed under Chapter 257 so that the times of registration, payment, notice, and imposition of penalties for late payment are similar and provide a minimum of administrative burden to the board and to dentists.

[Added by Acts 2001, 77th Leg., ch. 349, Sec. 1, eff. Sept. 1, 2001.]

Sec. 258.156. INSPECTIONS.

- (a) The board may conduct inspections to enforce this subchapter, including inspections of an office site and of documents of a dentist's practice that relate to the enteral administration of anesthesia. The board may contract with another state agency or qualified person to conduct these inspections.
- (b) Unless it would jeopardize an ongoing investigation, the board shall provide at least five business days' notice before conducting an on-site inspection under this section.
- (c) This section does not require the board to make an on-site inspection of a dentist's office.

[Added by Acts 2001, 77th Leg., ch. 349, Sec. 1, eff. Sept. 1, 2001.]

Sec. 258.157. REQUESTS FOR INSPECTION AND ADVISORY OPINION.

- (a) The board may consider a request by a dentist for an on-site inspection. The board may, in its discretion and on payment of a fee in an amount established by the board, conduct the inspection and issue an advisory opinion.
- (b) An advisory opinion issued by the board under this section is not binding on the board, and the board, except as provided by Subsection (c), may take any action under this subtitle in relation to the situation addressed by the advisory opinion that the board considers appropriate.
- (c) A dentist who requests and relies on an advisory opinion of the board may use the opinion as mitigating evidence in an action or proceeding to impose an administrative or civil penalty under this subtitle. The board or court, as appropriate, shall take proof of reliance

on an advisory opinion into consideration and mitigate the imposition of administrative or civil penalties accordingly.

[Added by Acts 2001, 77th Leg., ch. 349, Sec. 1, eff. Sept. 1, 2001.]

CHAPTER 259. PROHIBITED OR RESTRICTED COMMERCIAL OR PROFESSIONAL ACTIVITIES

Sec. 259.001. FALSE STATEMENTS TO PATIENTS.

A dentist may not, in the practice of dentistry, make a misrepresentation or a false or misleading statement to a patient or prospective patient.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 259.002. NOTIFICATION OF QUALIFICATIONS.

Each dental office shall post at or near the entrance of the office the name of, each degree received by, and each school attended by each dentist practicing in the office.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 259.003. USE OF TRADE NAME.

- (a) A person may use a corporation, company, association, or trade name, provided that each patient shall be given the name of the treating dentist, in writing, either before or after each office visit.
- (b) An advertisement under a corporation, company, association, or trade name must include prominently the name of at least one dentist practicing under the name.
- (c) A person using a business or trade name described by Subsection (b) shall file with the board a list of each dentist who practices under that name and a list of each trade name used if that name is different from the name described by Subsection (b).
- (d) If information provided under Subsection (c) changes, the person must file updated information with the board not later than the 30th day after the date of the change.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.087(a), eff. Sept. 1, 2001.]

Sec. 259.004. DUTIES OF DENTIST IN CERTAIN EMPLOYMENT OR CONTRACTUAL ARRANGEMENTS.

- (a) A person providing dental services under an agreement that allows another person to control or influence any aspect of the delivery of dental services, including a business or professional aspect, shall report to the board on request and in accordance with board rules:
 - (1) information concerning the agreement;
 - (2) the manner in which patients are billed;
 - (3) the manner in which the dental service provider is paid and any information provided to patients concerning payment agreements; and

- (4) information concerning the service provider agreement provided to shareholders of organizations contracting with a dental service provider.
- (b) A person who practices dentistry and has another dentist practicing with or under the person is responsible for all professional acts performed under the name of the person, regardless of whether the dentist has an ownership interest or an employment or contractual relationship. This section does not affect an individual license holder's responsibilities and rights under this subtitle.
- (c) A statute relating to the practice of dentistry in this state may not be construed to prohibit a licensed dentist from maintaining more than one office in this state if the dentist:
 - (1) assumes full legal responsibility and liability for the dental services provided in each office; and
 - (2) complies with the requirements prescribed by board rules.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 259.005. AUTHORIZED ADVERTISING RESTRICTIONS.

Board rules adopted under Section 254.002 to regulate advertising may include restrictions that prohibit communications to the public that:

- (1) are false, misleading, or deceptive;
- (2) state an opinion regarding the quality of dental services;
- (3) appeal to an individual's anxiety in an excessive or unfair way;
- (4) intimidate or exert undue pressure or undue influence over a prospective patient;
- (5) create unjustified expectations concerning the potential result of a dental treatment;
- (6) refer to benefits or other attributes of dental procedures or products that involve significant risks without including realistic assessments of the safety and efficacy of those procedures or products;
- (7) contain statistical data, representations, or other information that is not susceptible to reasonable verification by the public;
- (8) refer to a fee for dental services without disclosing that additional fees may be involved in individual cases, if the possibility of additional fees may be reasonably predicted;
- (9) offer a discount for dental services without disclosing the total fee to which the discount will apply; or
- (10) fail to make truthful disclosure of the source and authorship of any message published under a dentist's byline.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 259.006. UNLAWFUL ADVERTISING IN GENERAL.

- (a) A person may not engage in false, misleading, or deceptive advertising in connection with the practice of dentistry.
- (b) A person regulated by the board may not engage in advertising that does not comply with the reasonable restrictions adopted by the board under Section 259.005.
- (c) For the first violation of the board's advertising restrictions, a person may not be prosecuted under this subtitle before the 31st day after the date the person has been given

notice by certified or registered mail, return receipt requested, of the alleged violation. The notice must:

- (1) include a copy of the applicable portions of this subtitle and all board rules relating to advertising;
 - (2) describe the alleged unlawful advertising;
 - (3) identify the board restriction violated; and
 - (4) include a statement informing the person that the person has 30 days from the date of the notice to cure the violation.
- (d) A person may be prosecuted if the violation is not cured within the prescribed time.
- (e) Subsection (c) does not apply to a subsequent violation of the board's advertising restrictions.
- (f) This section does not authorize the board to discipline a dentist for an act of an advertising agent that results in a communication to the public that violates the restrictions adopted by the board under Section 259.005 if the advertisement does not specify the name of the dentist or the name under which the dentist practices unless:
- (1) the advertising agent is owned or controlled by the dentist;
 - (2) the dentist provided to the advertising agent for distribution to the public any information that does not comply with the board's restrictions; or
 - (3) the content of the advertising is determined by the dentist.
- (g) The board may bring an action in district court to enjoin an advertising agent from using any advertisement, marketing scheme, or practice that violates the restrictions adopted by the board under Section 259.005. Notwithstanding any other provision of this subtitle, an injunction under this section is the board's sole remedy against an advertising or marketing agent for a violation of this section.
- (h) The remedies provided in this section are in addition to the procedures and remedies provided for in Subchapter E, Chapter 17, Business & Commerce Code.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 259.007. UNLAWFUL ADVERTISING: OUT-OF-STATE PROVIDER.

A person who is not domiciled and located in this state and subject to the laws of this state may not advertise or cause or permit to be advertised, published, directly or indirectly, printed, or circulated in this state a notice, statement, or offer of any service, drug, or fee relating to the practice of dentistry, unless the advertising conspicuously discloses that the person is not licensed to practice dentistry in this state.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 259.008. UNPROFESSIONAL CONDUCT.

A person may not directly or indirectly engage in unprofessional conduct relating to dentistry, including:

- (1) obtaining or attempting to collect a fee by fraud or misrepresentation;
- (2) orally soliciting dental business if the solicitation is:
 - (A) directed to an individual or a group of less than five individuals; and
 - (B) made for the primary purpose of attracting the individual or the group to a particular dental practice;
- (3) employing, directly or indirectly, or permitting an unlicensed person to perform dental services on a person, except as authorized by law;

- (4) claiming or circulating a statement of:
 - (A) professional superiority; or
 - (B) performance of professional services in a superior manner;
- (5) forging, altering, or changing a legal document relating to the practice of dentistry, including a diploma, license, registration certificate, or transcript;
- (6) being a party to or benefiting from the forgery, alteration, or changing of a legal document relating to the practice of dentistry;
- (7) making a false statement or misusing a legal document relating to the practice of dentistry;
- (8) accepting employment as a dentist under a false, misleading, or deceptive referral scheme;
- (9) advertising the performance of dental work without pain or discomfort to the patient; or
- (10) advertising a prediction of future satisfaction or success of a dental service.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.088(a), eff. Sept. 1, 2001.]

CHAPTER 260. OPERATION OF CERTAIN DENTAL PRACTICES

Sec. 260.001. EMPLOYMENT BY ESTATE OF DENTIST OR PERSON ACTING FOR MENTALLY INCOMPETENT DENTIST.

- (a) This subtitle does not prevent a person who is the administrator or executor of the estate of a dentist or a person who is legally authorized to act for a dentist adjudicated to be mentally incompetent from employing a licensed dentist to:
 - (1) carry on the deceased or mentally incompetent dentist's practice for a reasonable period, as determined by the board; or
 - (2) conclude the affairs of the practice, including the sale of any assets.
- (b) This subtitle does not prevent a licensed dentist from working for a person described by Subsection (a) during the administration of the estate or the period of incompetency.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 260.002. EMPLOYMENT BY CERTAIN NONPROFIT HEALTH ORGANIZATIONS.

- (a) The board shall, on a form and under rules adopted by the board, approve and certify a health organization to contract with or employ dentists licensed by the board if the organization, in its application to the board, presents satisfactory proof to the board that the organization:
 - (1) is a nonprofit corporation under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) and Section 501(c)(3), Internal Revenue Code of 1986 (26 U.S.C. Section 501); and
 - (2) is organized and operated as:
 - (A) a migrant, community, or homeless health center under 42 U.S.C. Section 254b or 254c; or
 - (B) a federally qualified health center under 42 U.S.C. Section 1396d(l)(2)(B).

- (b) A dentist providing dental services under Subsection (a) shall provide those services free of charge or at a reduced fee equal to the patient's ability to pay in strict compliance with 42 U.S.C. Section 254b or 254c.
- (c) The board may refuse to approve or certify a health organization that applies to the board under this section if the board determines that the nonprofit corporation is established, organized, or operated in violation of or with the intent to circumvent this section.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 260.003. EMPLOYMENT BY ORGANIZATIONS SERVING UNDERSERVED POPULATIONS.

A dentist licensed by the board may be employed by or contract with an organization if:

- (1) the organization is a nonprofit corporation under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) and Section 501(c)(3), Internal Revenue Code of 1986 (26 U.S.C. Section 501); and
- (2) the organization is:
 - (A) approved by the board as an organization that provides services to underserved populations for no fee or a reduced fee; or
 - (B) a clinic that provides dental services primarily to individuals who have acquired immune deficiency syndrome or the human immunodeficiency virus.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 260.004. EMPLOYMENT BY GOVERNMENTAL ENTITY.

A dentist licensed by the board may be employed by or contract with a governmental entity that provides dental services under federal or state law.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

**CHAPTER 261. CONFIDENTIALITY AND IMMUNITY OF
DENTAL PEER REVIEW COMMITTEE
SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 261.001. DEFINITIONS.

In this chapter:

- (1) "Dental association" means an organization that is composed of members who are dentists and incorporated under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) or exempt from the payment of federal income taxes under Section 501(a) of the Internal Revenue Code of 1986 as an organization described by Section 501(c) of the Internal Revenue Code of 1986.
- (2) "Dental peer review committee" means a peer review, judicial, or grievance committee of a dental association authorized to evaluate the quality of dental services or the competence of dentists. The term includes a member, employee, assistant, investigator, attorney, or other agent serving the committee.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

SUBCHAPTER B. CONFIDENTIALITY AND DISCLOSURE OF INFORMATION

Sec. 261.051. CONFIDENTIALITY OF PROCEEDINGS.

- (a) Except as otherwise provided by this chapter:
 - (1) a dental peer review committee's proceedings and records are confidential; and
 - (2) communications made to a dental peer review committee are privileged.
- (b) If a court makes a preliminary finding that the proceedings or records of or the communications made to a dental peer review committee are relevant to an anticompetitive action or an action brought under federal civil rights provisions (42 U.S.C. Section 1983), the proceedings, records, or communications are not confidential to the extent they are relevant to the action.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 261.052. DISCLOSURE OF INFORMATION.

Communications made to a dental peer review committee and the records and proceedings of the committee may be disclosed to:

- (1) another dental peer review committee;
- (2) an appropriate state or federal agency;
- (3) a national accreditation body; or
- (4) the registration or licensing entity in any state.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 261.053. DISCLOSURE TO AFFECTED DENTIST.

- (a) Disclosure to the affected dentist of confidential peer review committee information pertinent to the matter under review does not waive the confidentiality provisions of this chapter.
- (b) If a dental peer review committee takes action that may result in censure or a license suspension, restriction, limitation, or revocation by the board or in the denial of membership or privileges in a health care entity, the committee shall give the affected dentist:
 - (1) a written copy of the recommendation of the committee; and
 - (2) a copy of the final decision, including a statement of the basis for the decision.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 261.054. COMMITTEE'S EVIDENTIARY PRIVILEGE.

- (a) Unless disclosure is required or authorized by law, records or determinations of or communications to a dental peer review committee are not subject to subpoena or

discovery and are not admissible as evidence in a civil judicial or administrative proceeding unless the committee executes in writing a waiver of the confidentiality privilege.

- (b) The evidentiary privilege created by this chapter may be invoked by any person in any civil judicial or administrative proceeding unless the person has secured a waiver of the privilege executed in writing by the presiding officer, assistant presiding officer, or secretary of the affected dental peer review committee.
- (c) If a dental peer review committee or a person participating in peer review named as a defendant in a civil action filed as a result of participation in peer review may use otherwise confidential information in the person's defense or in a claim or suit under Section 261.104, the plaintiff in the proceeding may disclose the records or determinations of a peer review committee or communications made to a peer review committee in rebuttal to information supplied by the defendant.
- (d) A person seeking access to privileged information must plead and prove waiver of the privilege.
- (e) A member, employee, or agent of a dental peer review committee who provides access to privileged communications or records in cooperation with a law enforcement authority in a criminal investigation is not considered to have waived a privilege established under this chapter.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 261.055. COMPLIANCE WITH BOARD SUBPOENAS.

- (a) A person, including the governing body and medical staff of a health care entity, shall comply with a subpoena for a document or information issued by the board as authorized by law.
- (b) The disclosure of a document or information under a board subpoena does not constitute a waiver of the privilege established under this chapter.
- (c) Failure to comply with a board subpoena constitutes grounds for disciplinary action against the facility or individual by the appropriate licensing board.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

SUBCHAPTER C. CIVIL LIABILITY

Sec. 261.101. COMMITTEE IMMUNITY FROM SUIT.

- (a) In the absence of fraud, conspiracy, or malice, a dental peer review committee is not subject to a suit for damages arising from investigating a disagreement or complaint, holding a hearing to determine facts, or making an evaluation, recommendation, decision, or award involving a dentist who is a member of a dental association or another dentist, a dental patient, or a third party requesting the committee's services.
- (b) The purpose of this section is to protect a dental peer review committee from being harassed and threatened with legal action in performing official duties.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 261.102. COMMITTEE PARTICIPANTS' IMMUNITY FROM SUIT.

A cause of action does not accrue against a member, agent, or employee of a dental peer review committee for an act, statement, determination, or recommendation made or an act reported, without malice, in the course of peer review under this chapter.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 261.103. IMMUNITY FROM SUIT.

A person is immune from civil liability if:

- (1) the person reports or furnishes information to a dental peer review committee or the board in good faith;
- (2) the person:
 - (A) is a member, employee, or agent of the board, of a dental peer review committee, or of a dental organization committee or a dental organization who takes an action or makes a recommendation within the scope of the functions of a peer review program; and
 - (B) acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to the person; or
- (3) the person, including a health care entity or dental peer review committee, without malice participates in a dental peer review activity or furnishes a record, information, or assistance to a dental peer review committee or the board.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 261.104. COUNTERCLAIM FOR FRIVOLOUS SUIT.

A dental peer review committee, a person participating in peer review, or any other person named as a defendant in a civil action filed as a result of participation in peer review may file a counterclaim in a pending action or may prove a cause of action in a subsequent suit to recover defense costs, including court costs, attorney's fees, and damages incurred as a result of the civil action, if the plaintiff's original suit is determined:

- (1) to be frivolous; or
- (2) to have been brought in bad faith.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

**CHAPTER 262. REGULATION OF DENTAL HYGIENISTS
SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 262.001. DEFINITIONS.

In this chapter:

- (1) "Advisory committee" means the Dental Hygiene Advisory Committee.
- (2) "Dental hygienist" means a person who practices dental hygiene under a license issued by the board under Chapter 256.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 262.002. PRACTICE OF DENTAL HYGIENE.

- (a) A person practices dental hygiene if the person:
- (1) removes accumulated matter, tartar, deposits, accretions, or stains, other than mottled enamel stains, from the natural and restored surface of exposed human teeth and restorations in the human mouth;
 - (2) smoothes roughened root surfaces;
 - (3) polishes exposed human teeth, restorations in the human mouth, or roughened root surfaces;
 - (4) topically applies drugs to the surface tissues of the human mouth or the exposed surface of human teeth;
 - (5) makes dental x-rays; and
 - (6) performs any other service, task, or procedure prescribed by board rule.
- (b) A person legally practicing dental hygiene does not violate state law regulating the practice of dentistry.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 262.003. EXEMPTIONS.

This chapter does not apply to:

- (1) a licensed dentist practicing dentistry in this state, except as provided by Subchapter D;
- (2) a physician authorized to practice medicine in this state; or
- (3) an employee of a licensed dentist who makes dental x-rays in the office of and under the supervision of a dentist practicing dentistry in this state.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

SUBCHAPTER B. DENTAL HYGIENE ADVISORY COMMITTEE

Sec. 262.051. DENTAL HYGIENE ADVISORY COMMITTEE.

The advisory committee shall advise the board on matters relating to dental hygiene.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 262.052. ADVISORY COMMITTEE MEMBERSHIP.

The advisory committee consists of six members as follows:

- (1) three dental hygienist members appointed by the governor;
- (2) one dentist member appointed by the board; and
- (3) two members who represent the public appointed by the governor.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 262.053. MEMBERSHIP RESTRICTIONS.

- (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.
- (b) A person may not be a member of the advisory committee if:
 - (1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care;
 - (2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care; or
 - (3) the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the advisory committee.
- (c) A person is not eligible for appointment as a member of the advisory committee if the person is a member of the board.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 17, Sec. 17, eff. Sept. 1, 2003.]

Sec. 262.054. TERMS.

- (a) Members of the advisory committee serve staggered six-year terms with the terms of one-third of the members expiring on February 1 of each odd-numbered year.
- (b) A member may not serve more than two consecutive full terms. The completion of the unexpired portion of a term does not constitute service for a full term for purposes of this subsection.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1249, Sec. 8, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 772 (S.B. 887), Sec. 5, eff. September 1, 2009.]

Sec. 262.055. PRESIDING OFFICER.

The advisory committee shall elect a presiding officer from its members to serve a one-year term.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 262.0555. GROUNDS FOR REMOVAL.

- (a) It is a ground for removal from the advisory committee that a member:
 - (1) does not have at the time of taking office the qualifications required by Section 262.052;
 - (2) does not maintain during service on the advisory committee the qualifications required by Section 262.052;
 - (3) is ineligible for membership under Section 262.053;
 - (4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

- (5) is absent from more than half of the regularly scheduled advisory committee meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the advisory committee.
- (b) The validity of an action of the advisory committee is not affected by the fact that it is taken when a ground for removal of an advisory committee member exists.
- (c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the advisory committee of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the advisory committee, who shall then notify the governor and the attorney general that a potential ground for removal exists.

[Added by Acts 2003, 78th Leg., ch. 17, Sec. 18, eff. Sept. 1, 2003.]

Sec. 262.056. PER DIEM; REIMBURSEMENT.

- (a) An advisory committee member is entitled to the per diem set by the General Appropriations Act for each day the member engages in committee business.
- (b) An advisory committee member may receive reimbursement for travel expenses, including expenses for meals and lodging.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.089(a), eff. Sept. 1, 2001.]

Sec. 262.057. [Section Repealed].

**SUBCHAPTER C.
POWERS AND DUTIES OF BOARD RELATING TO DENTAL HYGIENISTS**

Sec. 262.101. BOARD POWERS AND DUTIES.

The board shall:

- (1) administer this chapter; and
- (2) regulate all matters concerning dental hygienists and the practice of dental hygiene.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 262.102. RULEMAKING AUTHORITY OF BOARD.

- (a) The board shall adopt and enforce rules that are necessary and advisable to carry out the purposes of and to enforce this chapter, including rules relating to professional conduct for dental hygienists.
- (b) As necessary to protect public health and safety, the board may adopt and enforce a rule to establish the number of dental hygienists a dentist may employ.
- (c) The board may not adopt a rule relating to the practice of dental hygiene before the 31st day after the date the proposed rule is submitted to the advisory committee for review and comment.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 262.1025. AUTHORITY OF ADVISORY COMMITTEE TO RECOMMEND RULES; ADOPTION BY BOARD.

- (a) The advisory committee may make a recommendation to the board relating to the regulation of the practice of dental hygiene. A recommendation under this subsection may include a proposed rule in a form suitable for publication in the Texas Register.
- (b) The board may:
 - (1) adopt a rule in accordance with the recommendation; or
 - (2) reject the recommendation.
- (c) If the board fails to take action on the recommendation before the 91st day after the date the recommendation is submitted to the board, the board shall adopt a rule in accordance with the recommendation.
- (d) Except as provided by Subsection (e), Section 262.102(c) applies to the adoption of a rule under this section.
- (e) If the recommendation includes a proposed rule, the board is not required to comply with Section 262.102(c) before adopting the proposed rule.

[Added by Acts 2003, 78th Leg., ch. 17, Sec. 19, eff. Sept. 1, 2003.]

Sec. 262.103. NOTICE OF MEETINGS.

To ensure that the advisory committee properly exercises its advisory powers, the board shall provide the advisory committee with timely notice of each board meeting and a copy of the minutes of each meeting.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

SUBCHAPTER D. PRACTICE BY LICENSE HOLDER

Sec. 262.151. DELEGATION OF DUTIES BY DENTIST.

- (a) A licensed dentist may delegate orally or in writing a service, task, or procedure to a dental hygienist who is under the supervision and responsibility of the dentist, if:
 - (1) the dental hygienist is licensed to perform the service, task, or procedure;
 - (2) the supervising dentist examines the patient:
 - (A) at the time the service, task, or procedure is performed by the dental hygienist; or
 - (B) during the 12 calendar months preceding the date of performance of the service, task, or procedure by the dental hygienist; and
 - (3) the dental hygienist does not:
 - (A) diagnose a dental disease or ailment;
 - (B) prescribe a treatment or a regimen;
 - (C) prescribe, order, or dispense medication; or
 - (D) perform any procedure that is irreversible or involves the intentional cutting of soft or hard tissue by any means.

- (b) A licensed dentist may delegate to a dental hygienist any act that a dentist may delegate to a dental assistant.
- (c) A dentist is not required to be on the premises when the dental hygienist performs a delegated act.
- (d) This chapter does not prevent a dentist from authorizing a dental hygienist employed by the dentist to:
 - (1) instruct and educate a patient in proper oral hygiene; or
 - (2) provide to a patient a medication ordered by the dentist.
- (e) This chapter does not prevent a dental hygienist from incidentally removing cementum during root planing.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 262.1515. DELEGATION OF DUTIES TO DENTAL HYGIENIST PRACTICING IN CERTAIN FACILITIES.

- (a) A licensed dentist may delegate a service, task, or procedure, pursuant to this section, to a dental hygienist, without complying with Section 262.151(a)(2) if:
 - (1) the dental hygienist has at least two years' experience in the practice of dental hygiene; and
 - (2) the service, task, or procedure is performed in one of the following locations:
 - (A) a nursing facility as defined in Section 242.301, Health and Safety Code;
 - (B) a school-based health center established under Subchapter B, Chapter 38, Education Code; or
 - (C) a community health center as defined by Section 136.002, Human Resources Code.
- (b) The patient must be referred to a licensed dentist after the completion of a service, task, or procedure performed under Subsection (a).
- (c) A dental hygienist may only perform delegated tasks or procedures with respect to a patient for six months unless the patient has been examined by a dentist in compliance with Section 262.151(a)(2).
- (d) A dental hygienist may not perform any service, task, or procedure under this section without the express authorization of a dentist.
- (e) The facility under Subsection (a)(2) shall note each delegated service, task, or procedure performed by the dental hygienist under this section in the patient's medical records.

[Added by Acts 2001, 77th Leg., ch. 1470, Sec. 4.02, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 15.0045, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 270 (S.B. 97), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 270 (S.B. 97), Sec. 2, eff. September 1, 2009.]

Sec. 262.152. PERFORMANCE OF DELEGATED DUTIES.

Except as provided by Section 262.1515, a dental hygienist shall practice dental hygiene:

- (1) in the dental office of a supervising dentist licensed by the board; or
- (2) in an alternate setting, including a nursing home, the patient's home, a school, a hospital, a state institution, a public health clinic, or another institution, under the supervision of a supervising dentist.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.091(a), eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 270 (S.B. 97), Sec. 3, eff. September 1, 2009.]

SUBCHAPTER E. PROHIBITED PRACTICES; CIVIL LIABILITY; PENALTIES

Sec. 262.201. PROHIBITED PRACTICE.

A dental hygienist may not practice or offer to practice dental hygiene under a name other than the name appearing on the person's license.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 262.202. CIVIL LIABILITY.

A dental hygienist who administers to a person cardiopulmonary resuscitation or other emergency care in an emergency situation is not liable to the person for damages unless the emergency care is performed in a wilfully or wantonly negligent manner.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 262.203. [Section Repealed].

CHAPTER 263. LICENSE DENIAL AND DISCIPLINARY PROCEEDINGS

Sec. 263.001. GROUNDS FOR REFUSAL TO ISSUE LICENSE.

The board may refuse to issue a license by examination to a dental or dental hygiene applicant if the person:

- (1) presents to the board fraudulent or false evidence of the person's qualification for examination or license;
- (2) is guilty of any illegality, fraud, or deception during the examination or the process to secure a license;
- (3) is habitually intoxicated or is addicted to drugs;
- (4) commits a dishonest or illegal practice in or connected to dentistry or dental hygiene;
- (5) is convicted of a felony under a federal law or law of this state; or
- (6) is found to have violated a law of this state relating to the practice of dentistry within the 12 months preceding the date the person filed an application for a license to practice dentistry or dental hygiene.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.092(a), eff. Sept. 1, 2001.]

Sec. 263.002. GROUNDS FOR DISCIPLINARY ACTION IN GENERAL.

- (a) The board, after notice and hearing, may reprimand a person who holds a license issued under this subtitle, issue a warning letter to a person licensed under this subtitle, impose a fine on a person licensed under this subtitle, impose an administrative penalty under Subchapter A, Chapter 264, on a person who holds a license under this subtitle, place on probation with conditions a person whose license has been suspended, or revoke or suspend a person's license issued under this subtitle if the person:
- (1) is adjudged under the law to be insane;
 - (2) is convicted of a misdemeanor involving fraud or a felony under federal law or the law of any state;
 - (3) practices dentistry or dental hygiene in a manner that constitutes dishonorable conduct;
 - (4) fails to treat a patient according to the standard of care in the practice of dentistry or dental hygiene;
 - (5) engages in deception or misrepresentation in soliciting or obtaining patronage;
 - (6) obtains a license by fraud or misrepresentation;
 - (7) is addicted to or habitually intemperate in the use of alcoholic beverages or drugs or has improperly obtained, possessed, used, or distributed habit-forming drugs or narcotics;
 - (8) holds a dental license and employs, permits, or has employed or permitted a person not licensed to practice dentistry to practice dentistry in an office of the dentist that is under the dentist's control or management;
 - (9) fails to use proper diligence in the person's practice or fails to safeguard the person's patients against avoidable infections;
 - (10) violates or refuses to comply with a law relating to the regulation of dentists or dental hygienists;
 - (11) is physically or mentally incapable of practicing in a manner that is safe for the person's dental patients;
 - (12) is negligent in performing dental services and that negligence causes injury or damage to a dental patient;
 - (13) holds a license or certificate to practice dentistry or dental hygiene in another state and that state, based on an act by the person that is the same as an act described in this section:
 - (A) reprimands the person;
 - (B) suspends or revokes the person's license or certificate or places the person on probation; or
 - (C) imposes another restriction on the person's practice; or
 - (14) knowingly provides or agrees to provide dental care in a manner that violates a federal or state law that:
 - (A) regulates a plan to provide, arrange for, pay for, or reimburse any part of the cost of dental care services; or
 - (B) regulates the business of insurance.
- (b) If a person holds a license to practice dentistry or dental hygiene, the board may reprimand or impose a fine on the person, issue a warning letter to the person, place the person's license on probation, or suspend or revoke the person's license under Subsection (a)(10) only if a majority of the board determines that the person has committed an act described by Subsection (a)(10).

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.092(b), eff. Sept. 1, 2001.]

Sec. 263.003. HEARING.

A person is entitled to a hearing under Chapter 2001, Government Code, if the board proposes to:

- (1) refuse to issue a license by examination to the person;
- (2) reprimand or impose a fine on the person;
- (3) place the person on probation after the person's license has been suspended; or
- (4) suspend or revoke the license of the person.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.092(c), eff. Sept. 1, 2001.]

Sec. 263.004. TEMPORARY SUSPENSION IN EMERGENCY.

- (a) If the board or an executive committee of the board determines from the evidence or information presented that the continued practice by a person licensed under this subtitle, or the continued performance by a person licensed under this subtitle of a procedure for which the person holds a permit issued by the board, would constitute a clear, imminent, or continuing threat to a person's physical health or well-being, the board or the executive committee shall temporarily suspend the person's license or permit, as applicable.
- (b) The board may not temporarily suspend a license or permit under this section without notice or hearing unless at the time of the temporary 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.
- (c) The State Office of Administrative Hearings shall hold a hearing not later than the 30th day after the date the license or permit is suspended unless the license or permit holder requests a continuance. The State Office of Administrative Hearings shall hold a second hearing on the suspension and on any other action to be taken against the license or permit holder not later than the 60th day after:
 - (1) the date the license or permit is temporarily suspended; or
 - (2) the date specified in the continuance requested by the license or permit holder.
- (d) If the State Office of Administrative Hearings does not hold a hearing within the time provided by Subsection (c), the suspended license or permit is automatically reinstated.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1249, Sec. 9, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 810 (S.B. 610), Sec. 6, eff. September 1, 2005.]

Sec. 263.005. PROBATION.

If a license suspension is probated, the board may require the license holder to:

- (1) report regularly to the board on matters that are the basis of the probation;
- (2) limit practice to the areas prescribed by the board; or

- (3) continue or review professional education until the license holder attains a degree of skill satisfactory to the board in the areas that are the basis of the probation.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 263.006. SUSPENSION OR REVOCATION REQUIRED FOR CERTAIN DRUG OFFENSES.

- (a) The board shall suspend a license holder's license issued under this subtitle on proof that the person has been:
 - (1) initially convicted of:
 - (A) a felony;
 - (B) a misdemeanor under Chapter 22, Penal Code, other than a misdemeanor punishable by fine only;
 - (C) a misdemeanor on conviction of which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure;
 - (D) a misdemeanor under Section 25.07, Penal Code; or
 - (E) a misdemeanor under Section 25.071, Penal Code; or
 - (2) subject to an initial finding by the trier of fact of guilt of a felony under:
 - (A) Chapter 481 or 483, Health and Safety Code;
 - (B) Section 485.033, Health and Safety Code; or
 - (C) the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.).
- (b) On final conviction for an offense described by Subsection (a), the board shall revoke the person's license.
- (c) The board may not reinstate or reissue a license suspended or revoked under this section unless an express determination is made that the reinstatement or reissuance of the license is in the best interests of the public and the person whose license was suspended or revoked. The board must base that determination on substantial evidence contained in an investigative report.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Amended by:

Acts 2005, 79th Leg., Ch. 810 (S.B. 610), Sec. 7, eff. September 1, 2005.]

Sec. 263.0065. DELEGATION OF CERTAIN COMPLAINT DISPOSITIONS.

- (a) The board may delegate to a committee of board employees the authority to dismiss or enter into an agreed settlement of a complaint that does not relate directly to patient care or that involves only administrative violations.
- (b) The disposition determined by the committee must be approved by the board at a public meeting.
- (c) A complaint delegated under this section shall be referred for informal proceedings under Section 263.0075 if:
 - (1) the committee of employees determines that the complaint should not be dismissed or settled;
 - (2) the committee is unable to reach an agreed settlement; or
 - (3) the affected license holder requests that the complaint be referred for informal proceedings.

[Added by Acts 2013, 83rd Leg., R.S., Ch. 709 (H.B. 3201), Sec. 9, eff. January 1, 2014.]

Sec. 263.007. INFORMAL PROCEEDING.

- (a) The board by rule shall adopt procedures governing:
 - (1) informal disposition of a contested case under Section 2001.056, Government Code; and
 - (2) an informal proceeding held in compliance with Section 2001.054, Government Code.
- (b) Rules adopted under this section must:
 - (1) provide the complainant, if applicable and permitted by law, an opportunity to be heard;
 - (2) provide the license holder an opportunity to be heard; and
 - (3) require the presence of a member of the board's legal staff, if the board has a legal staff, or, if the board does not have a legal staff, an attorney from the attorney general's office to advise the board or the board's employees.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 263.0075. INFORMAL SETTLEMENT CONFERENCE; RESTITUTION.

- (a) The board by rule shall establish procedures by which a panel of board employees may conduct an informal settlement conference to resolve a complaint against a person licensed under this subtitle.
- (b) Procedures established under this section must:
 - (1) permit involvement of a board member in an informal settlement conference conducted by a panel of board employees;
 - (2) ensure that the panel of board employees conducting the conference has the necessary expertise and experience;
 - (3) require the panel of board employees conducting the conference to use the standardized penalty schedule adopted by the board to determine the appropriate disciplinary action, if any, to recommend to the board;
 - (4) require a settlement of the complaint recommended by the panel of board employees to be approved by the board;
 - (5) permit the board to modify a recommended settlement of the complaint with the approval of the license holder; and
 - (6) permit the panel of board employees to refer the complaint to the State Office of Administrative Hearings for a formal hearing and require the panel to notify the board of the referral.
- (c) Subject to Subsection (d), the board may order a person licensed under this subtitle to pay restitution to a patient as provided in an agreement resulting from an informal settlement conference instead of or in addition to assessing an administrative penalty under Subchapter A, Chapter 264.
- (d) The amount of restitution ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the patient paid to the license holder for a service regulated by this subtitle. The board may not require payment of other damages or estimate harm in a restitution order.

[Added by Acts 2003, 78th Leg., ch. 17, Sec. 20, eff. Sept. 1, 2003.]

Sec. 263.0076. INFORMAL SETTLEMENT CONFERENCE NOTICE.

- (a) If an informal settlement conference will be held under Section 263.0075, notice of the time and place of the conference must be given to the license holder not later than the 45th day before the date the conference is held.
- (b) The notice required by Subsection (a) must be accompanied by a written statement of the specific allegations against the license holder and the information the board intends to use at the informal settlement conference. If the board does not provide the statement or information when the notice is provided, the license holder may use that failure as grounds for rescheduling the conference.
- (c) The license holder must provide to the board the license holder's rebuttal not later than the 15th day before the date of the conference in order for that information to be considered at the conference.
- (d) On request by a license holder under review, the board shall make a recording of the informal settlement conference. The recording is a part of the investigative file and may not be released to a third party unless authorized under this subtitle. The board may charge the license holder a fee to cover the cost of recording the conference. The board shall provide a copy of the recording to the license holder on the license holder's request.

[Added by Acts 2013, 83rd Leg., R.S., Ch. 709 (H.B. 3201), Sec. 9, eff. January 1, 2014.]

Sec. 263.0077. REMEDIAL PLAN.

- (a) The board may issue and establish the terms of a remedial plan to resolve the investigation of a complaint filed under this subtitle.
- (b) A remedial plan may not contain a provision that:
 - (1) revokes, suspends, limits, or restricts a person's license or other authorization to practice dentistry or dental hygiene; or
 - (2) assesses an administrative penalty against a person.
- (c) A remedial plan may not be imposed to resolve a complaint:
 - (1) concerning:
 - (A) a patient death;
 - (B) the commission of a felony; or
 - (C) a matter in which the license holder engaged in inappropriate sexual behavior or contact with a patient or became financially or personally involved with a patient in an inappropriate manner; or
 - (2) in which the appropriate resolution may involve a restriction on the manner in which a license holder practices dentistry or dental hygiene.
- (d) The board may not issue a remedial plan to resolve a complaint against a license holder if the license holder has previously entered into a remedial plan with the board for the resolution of a different complaint filed under this subtitle.
- (e) The board may assess a fee against a license holder participating in a remedial plan in an amount necessary to recover the costs of administering the plan.
- (f) A remedial plan is public information.
- (g) In civil litigation, a remedial plan is a settlement agreement under Rule 408, Texas Rules of Evidence.
- (h) The board shall adopt rules necessary to implement this section.

[Added by Acts 2013, 83rd Leg., R.S., Ch. 709 (H.B. 3201), Sec. 9, eff. January 1, 2014.]

Sec. 263.008. SUBPOENA.

- (a) The board may request and, if necessary, compel by subpoena the attendance of witnesses for examination under oath and the production for examination and copying of books, accounts, records, documents, and other evidence relevant to the investigation of an alleged violation of this chapter or another state law relating to the practice of dentistry.
- (b) The board may request the attorney general to file suit against a person who fails to comply with a subpoena issued by the board to enforce the subpoena. The suit must be filed in a Travis County district court.
- (c) The court on finding that good cause exists for the issuance of the subpoena shall order the person to comply with the subpoena.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.093(a), eff. Sept. 1, 2001.]

Sec. 263.009. APPEAL.

A person aggrieved by a decision of the board under this chapter is entitled to appeal as provided by Chapter 2001, Government Code.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

**CHAPTER 264. PENALTIES AND ENFORCEMENT PROVISIONS
SUBCHAPTER A. ADMINISTRATIVE PENALTY**

Sec. 264.001. IMPOSITION OF PENALTY.

The board may impose an administrative penalty on a person licensed or regulated under this subtitle who violates this subtitle or a rule or order adopted under this subtitle.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 264.002. AMOUNT OF PENALTY.

- (a) The amount of the administrative penalty may not exceed \$5,000 for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.
- (b) The executive director or a board subcommittee, of which, at least one member is a public member of the board, shall determine the amount of the penalty based on a standardized penalty schedule. The board by rule shall develop the schedule based on:
 - (1) the seriousness of the violation, including:
 - (A) the nature, circumstances, extent, and gravity of the violation; and
 - (B) the hazard or potential hazard created to the health, safety, or welfare of the public;
 - (2) the economic damage to property or the environment caused by the violation;
 - (3) the history of previous violations;
 - (4) the amount necessary to deter a future violation;
 - (5) efforts made to correct the violation; and

- (6) any other matter that justice may require.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 264.003. REPORT AND NOTICE OF VIOLATION AND PENALTY.

- (a) If the executive director or a board subcommittee determines that a violation has occurred, the executive director or board subcommittee may issue to the board a report stating:
 - (1) the facts on which the determination is based; and
 - (2) the recommendation of the executive director or the subcommittee on the imposition of the administrative penalty, including a recommendation on the amount of the penalty.
- (b) Not later than the 14th day after the date the report is approved by the board, the executive director shall give written notice of the report to the person on whom the penalty may be imposed. The notice may be given by certified mail. The notice must:
 - (1) include a notice of each alleged violation;
 - (2) state the amount of the recommended penalty; and
 - (3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 264.004. PENALTY TO BE PAID OR HEARING REQUESTED.

- (a) Not later than the 20th day after the date the person receives the notice, the person may:
 - (1) accept, in writing, the executive director's or subcommittee's determination and recommended administrative penalty; or
 - (2) make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both.
- (b) If the person accepts the determination and recommended penalty, the board by order shall approve the determination and impose the recommended penalty.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 264.005. HEARING.

- (a) If the person requests a hearing or fails to respond in a timely manner to the notice, the executive director shall set a hearing and give notice of the hearing to the person.
- (b) An administrative law judge of the State Office of Administrative Hearings shall hold the hearing.
- (c) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the board a proposal for decision as to the occurrence of the violation and the amount of any proposed administrative penalty.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 264.006. DECISION BY BOARD.

- (a) Based on the findings of fact, conclusions of law, and proposal for decision, the board by order may determine that:
 - (1) a violation occurred and impose an administrative penalty; or
 - (2) a violation did not occur.
- (b) The notice of the board's order given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 264.007. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.

- (a) Not later than the 30th day after the date the board's order becomes final, the person shall:
 - (1) pay the administrative penalty;
 - (2) pay the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both; or
 - (3) without paying the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.
- (b) Within the 30-day period, a person who acts under Subsection (a)(3) may:
 - (1) stay enforcement of the penalty by:
 - (A) paying the penalty to the court for placement in an escrow account; or
 - (B) giving to the court a supersedeas bond that is approved by the court and that is:
 - (i) for the amount of the penalty; and
 - (ii) effective until judicial review of the board's order is final; or
 - (2) request the court to stay enforcement of the penalty by:
 - (A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and
 - (B) giving a copy of the affidavit to the executive director by certified mail.
- (c) On receipt of a copy of an affidavit under Subsection (b)(2), the executive director may file with the court a contest to the affidavit not later than the fifth day after the date the copy is received.
- (d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 264.008. COLLECTION OF PENALTY.

If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the executive director may refer the matter to the attorney general for collection of the penalty.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 264.009. DETERMINATION BY COURT.

- (a) If the court sustains the determination that a violation has occurred after the court reviews the board's order imposing an administrative penalty, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced penalty.
- (b) If the court does not sustain the determination that a violation occurred, the court shall order that a penalty is not owed.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 264.010. REMITTANCE OF PENALTY AND INTEREST.

- (a) If after judicial review, the penalty is reduced or not upheld by the court, the court shall, after the judgment becomes final:
 - (1) order that the appropriate amount, plus accrued interest, be remitted to the person if the person paid the penalty; or
 - (2) order the release of the bond after the person pays the penalty imposed if the person posted a supersedeas bond.
- (b) The interest paid under Subsection (a)(1) is the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest is paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 264.011. INFORMAL ASSESSMENT OF ADMINISTRATIVE PENALTY.

This subchapter does not prevent the board from assessing an administrative penalty using an informal proceeding under Section 263.003.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 264.0115. ALTERNATIVE INFORMAL ASSESSMENT OF ADMINISTRATIVE PENALTY.

- (a) The board by rule may establish procedures for the alternative informal assessment of administrative penalties for violations of this subtitle that do not involve the provision of direct patient care by a person licensed or regulated under this subtitle.
- (b) A penalty assessed under this section may consist only of a monetary penalty that does not exceed \$1,000 for each violation. The total amount of penalties assessed against a person under this section may not exceed \$3,000 in a calendar year. If the board establishes penalties under this section, the board by rule shall adopt a standardized schedule of the penalties.
- (c) The assessment of a penalty under this section is not valid unless the person against whom the penalty is assessed receives a notice of violation that contains at a minimum:
 - (1) a clear statement of the violation, including a citation to the relevant section of this subtitle;
 - (2) the amount of the penalty assessed for each violation; and
 - (3) a statement that the person may either pay the penalty or appeal the penalty in writing.

- (d) If the board establishes penalties under this section, the board shall establish procedures for categorizing the penalties.
- (e) A person who is assessed an administrative penalty under this section is entitled to a hearing under Chapter 2001, Government Code.

[Added by Acts 2009, 81st Leg., R.S., Ch. 772 (S.B. 887), Sec. 6, eff. September 1, 2009.]

Sec. 264.012. ADMINISTRATIVE PROCEDURE.

A proceeding under this subchapter is subject to Chapter 2001, Government Code.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

SUBCHAPTER B. INJUNCTION; CEASE AND DESIST ORDER

Sec. 264.051. INJUNCTION.

- (a) The state shall file suit for injunction against a person who practices or intends to practice dentistry in violation of state law. The suit shall be filed in the county in which the defendant practices or intends to practice dentistry.
- (b) The state is not required to demonstrate that any person was injured by the alleged prohibited practice.
- (c) If the defendant is found to have been unlawfully practicing dentistry or to be about to provide services in a manner that is the unlawful practice of dentistry, the court shall permanently enjoin the defendant from practicing dentistry in violation of law.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 264.052. REPRESENTATION OF STATE.

The attorney general or the district attorney or county attorney of the county in which the unlawful acts occurred shall represent the state in a suit under Section 264.051.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 17, Sec. 22, eff. Sept. 1, 2003.]

Sec. 264.0525. CEASE AND DESIST ORDER.

- (a) The board may 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 required by this subtitle. The order must:
 - (1) be delivered by personal delivery or registered or certified mail, return receipt requested, to the person's last known address;
 - (2) state the acts or practices alleged to be an unauthorized activity; and
 - (3) state the effective date of the order, which may not be before the 21st day after the date the proposed order is delivered or mailed.
- (b) Unless the person against whom the proposed order is directed requests a hearing in writing before the effective date of the order, the order takes effect and is final and nonappealable as to that person.

- (c) A requested hearing on a proposed order shall be held not later than the 30th day after the date the board receives the written request for a hearing unless the parties agree to a later hearing date. A hearing under this subsection is subject to Chapter 2001, Government Code.
- (d) After the hearing, the board shall issue or decline to issue a cease and desist order. The proposed order may be modified as necessary to conform to the findings at the hearing. An order issued under this subsection:
 - (1) is immediately final for purposes of enforcement and appeal; and
 - (2) must require the person to immediately cease and desist from the unauthorized activity.
- (e) The board may release to the public a final cease and desist order issued under this section or information relating to the existence of the order if the board determines that the release would enhance the effective enforcement of the order or will serve the public interest.

[Added by Acts 2003, 78th Leg., ch. 17, Sec. 23, eff. Sept. 1, 2003.]

Sec. 264.0526. EMERGENCY CEASE AND DESIST ORDER.

- (a) The board may issue an emergency cease and desist order to a person if the board reasonably believes that:
 - (1) the person is engaging or is likely to engage in an activity without a license or registration certificate required by this subtitle; and
 - (2) the unauthorized activity constitutes a clear, imminent, or continuing threat to a person's physical health or well-being.
- (b) The order must:
 - (1) be delivered on issuance to the person affected by the order by personal delivery or registered or certified mail, return receipt requested, to the person's last known address;
 - (2) state the acts or practices alleged to be an unauthorized activity and require the person immediately to cease and desist from the unauthorized activity; and
 - (3) contain a notice that a request for hearing may be filed under this section.
- (c) Unless the person against whom the emergency order is directed requests a hearing in writing before the 11th day after the date it is served on the person, the emergency order is final and nonappealable as to that person. A request for a hearing must:
 - (1) be in writing and directed to the board; and
 - (2) state the grounds for the request to set aside or modify the order.
- (d) On receiving a request for a hearing, the board shall serve notice of the time and place of the hearing by personal delivery or registered or certified mail, return receipt requested. The hearing must be held not later than the 10th day after the date the board receives the request for a hearing unless the parties agree to a later hearing date. A hearing under this subsection is subject to Chapter 2001, Government Code.
- (e) After the hearing, the board shall affirm, modify, or set aside in whole or in part the emergency cease and desist order. An order affirming or modifying the emergency cease and desist order is immediately final for purposes of enforcement and appeal.
- (f) An order continues in effect unless the order is stayed by the board. The board may impose any condition before granting a stay of the order.
- (g) The board may release to the public a final cease and desist order issued under this section or information regarding the existence of the order if the board determines that the release would enhance the effective enforcement of the order or will serve the public interest.

[Added by Acts 2003, 78th Leg., ch. 17, Sec. 23, eff. Sept. 1, 2003.]

Sec. 264.0527. APPEAL OF CEASE AND DESIST ORDER.

- (a) A person affected by a cease and desist order issued, affirmed, or modified after a hearing may file a petition for judicial review.
- (b) A filed petition for judicial review does not stay or vacate the order unless the court, after hearing, specifically stays or vacates the order.

[Added by Acts 2003, 78th Leg., ch. 17, Sec. 23, eff. Sept. 1, 2003.]

Sec. 264.053. REMEDIES CUMULATIVE.

The remedies provided by this subchapter are in addition to criminal prosecution and cumulative of other remedies provided to prevent the unlawful practice of dentistry.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 17, Sec. 24, eff. Sept. 1, 2003.]

SUBCHAPTER C. CIVIL PENALTY

Sec. 264.101. CIVIL PENALTY.

- (a) A person who violates a provision of this subtitle is liable to the state for a civil penalty in an amount not to exceed \$5,000.
- (b) Each day a violation continues or occurs is a separate violation for the purpose of imposing the civil penalty.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 264.102. COLLECTION OF CIVIL PENALTY.

At the board's request, the attorney general or the district attorney or county attorney of the county in which the violation is alleged to have occurred shall file suit to collect the civil penalty.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

SUBCHAPTER D. CRIMINAL PENALTY

Sec. 264.151. CRIMINAL PENALTIES.

- (a) A person commits an offense if the person violates Section 256.001. An offense under this subsection is a felony of the third degree. Each day of a violation is a separate offense.
- (b) A person commits an offense if the person violates Section 256.052. An offense under this subsection is a Class A misdemeanor. If it is shown at the trial of an offense under this subsection that the defendant has previously been convicted of an offense for a violation of Section 256.052, the offense is a felony of the third degree.
- (c) A person commits an offense if the person violates Subchapter D, Chapter 262. An offense under this subsection is a Class A misdemeanor. Each day of a violation is a separate offense.

- (d) A person commits an offense if the person is a dentist or dental hygienist and violates an injunction or cease and desist order issued under Subchapter B. An offense under this subsection is a Class A misdemeanor. If it is shown at the trial of an offense under this subsection that the defendant was previously convicted of an offense for a violation of an injunction or cease and desist order issued under Subchapter B, the offense is a felony of the third degree. Each day of a violation is a separate offense.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 772 (S.B. 887), Sec. 7, eff. September 1, 2009.]

Sec. 264.152. CRIMINAL PENALTY: DENTAL RECORDS ACCESS.

- (a) A person commits an offense if the person violates Section 258.0511.
(b) Notwithstanding Section 264.151, an offense under this section is a Class B misdemeanor.
(c) If it is shown at the trial of an offense under this section that the defendant was previously convicted under this section, the offense is a Class A misdemeanor.

[Added by Acts 2007, 80th Leg., R.S., Ch. 1119 (H.B. 3876), Sec. 2, eff. September 1, 2007.]

CHAPTER 265. REGULATION OF DENTAL ASSISTANTS

Sec. 265.0001. DEFINITIONS.

In this chapter:

- (1) "Coronal polishing" means the removal of plaque and extrinsic stain from exposed natural and restored tooth surfaces using an appropriate rotary instrument with rubber cup or brush and polishing agent, including the use of a toothbrush.
- (2) "Interim treatment of a minor emergency dental condition" means treatment of a condition that:
- (A) arises unexpectedly;
 - (B) causes pain or discomfort to the patient;
 - (C) is considered reversible;
 - (D) does not require cutting hard or soft tissue; and
 - (E) in the opinion of the treating dentist, may be performed by a properly trained dental assistant.

[Added by Acts 2009, 81st Leg., R.S., Ch. 476 (S.B. 455), Sec. 2, eff. September 1, 2009.]

Sec. 265.001. REGISTRATION.

The board may adopt and enforce rules requiring the registration of dental assistants as necessary to protect the public health and safety.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 265.002. SUPERVISION, DIRECTION, AND RESPONSIBILITY.

- (a) In this subtitle, a dental assistant is under the direct supervision, direction, and responsibility of a dentist if the dentist:
 - (1) employs the dental assistant or is in charge of the dental assistant; and
 - (2) is physically present in the dental office when the dental assistant performs a delegated dental act.
- (b) For purposes of Subsection (a)(2), physical presence does not require that the supervising dentist be in the treatment room when the dental assistant performs the service as long as the dentist is in the dental office.
- (c) In this subtitle, a dental assistant is under the general supervision, direction, and responsibility of a dentist if the dentist:
 - (1) employs the dental assistant or is in charge of the dental assistant; and
 - (2) is responsible for supervising the services to be performed by the dental assistant.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 476 (S.B. 455), Sec. 3, eff. September 1, 2009.]

Sec. 265.003. PERMITTED DUTIES.

- (a) A dental assistant who is not professionally licensed may be employed by and work in the office of a licensed and practicing dentist and perform one or more delegated dental acts under:
 - (1) the direct supervision, direction, and responsibility of the dentist, including:
 - (A) the application of a pit and fissure sealant;
 - (B) coronal polishing, if the dental assistant holds a certificate under Section 265.006; and
 - (C) the application of fluoride varnish; or
 - (2) the general supervision, direction, and responsibility of the dentist, limited to:
 - (A) the making of dental x-rays in compliance with Section 265.005; and
 - (B) the provision of interim treatment of a minor emergency dental condition to an existing patient of the treating dentist.
- (a-1) A treating dentist who delegates the provision of interim treatment of a minor emergency dental condition to a dental assistant under Subsection (a)(2)(B) shall:
 - (1) delegate the procedure orally or in writing before the dental assistant performs the procedure;
 - (2) retain responsibility for the procedure; and
 - (3) schedule a follow-up appointment with the patient within a reasonable time.
- (b) A dental assistant who applies a pit and fissure sealant under Subsection (a) may cleanse the occlusal and smooth surfaces of the teeth immediately before and for the sole purpose of preparing the tooth area for the placement of the pit and fissure sealant or orthodontic bonding resin. A procedure performed by a dental assistant under this subsection may not be billed as a prophylaxis.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1470, Sec. 4.03, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1144, Sec. 2, eff. June 20, 2003.

Amended by:

Sec. 265.004. PIT AND FISSURE SEALANT CERTIFICATE.

- (a) The board shall issue a pit and fissure sealant certificate to a dental assistant who qualifies under this section.
- (b) To qualify for a certificate, an applicant must:
 - (1) have at least two years' experience as a dental assistant; and
 - (2) have successfully completed a minimum of eight hours of clinical and didactic education in pit and fissure sealants taken through an accredited dental hygiene program or a dental assisting program accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the board.
- (c) The educational program under Subsection (b) must include courses on:
 - (1) infection control;
 - (2) cardiopulmonary resuscitation;
 - (3) treatment of medical emergencies;
 - (4) microbiology;
 - (5) chemistry;
 - (6) dental anatomy;
 - (7) ethics related to pit and fissure sealant application;
 - (8) jurisprudence related to pit and fissure sealant application; and
 - (9) the correct application of sealants, including the actual clinical application of sealants.
- (d) Repealed by Acts 2009, 81st Leg., R.S., Ch. 476, Sec. 8(2), eff. September 1, 2009.
- (e) The board shall adopt rules as necessary to implement this section, including rules regarding renewal requirements for a certificate issued under this section.

[Added by Acts 2001, 77th Leg., ch. 1470, Sec. 4.04, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 810 (S.B. 610), Sec. 8, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 476 (S.B. 455), Sec. 5, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 476 (S.B. 455), Sec. 8(2), eff. September 1, 2009.]

Sec. 265.005. X-RAY CERTIFICATE.

- (a) A dental assistant may not make dental x-rays unless the dental assistant holds a certificate of registration issued by the board under this section.
- (b) To qualify for a certificate of registration, a dental assistant must pay a fee in an amount determined by the board and:
 - (1) pass an examination administered under this section on completion of a course covering:
 - (A) the procedure for making dental x-rays;
 - (B) jurisprudence; and
 - (C) infection control; or
 - (2) complete a course and pass an examination covering the subject described by Subdivision (1)(B) and be certified as a dental assistant by the Dental Assisting National Board if the board determines that the requirements for certification by that board are sufficient to protect the public.

- (c) The course and examination described by Subsection (b)(1) must be tailored to a dental assistant's responsibilities and role in a dental office.
- (d) A course and examination described by Subsection (b) may be offered through self-study, interactive computer courses, or lecture courses and may be offered through the Internet. The course and examination must comply with rules adopted under Subsection (f) and be approved by the board.
- (e) The board shall create an advisory committee consisting of dentists, dental assistants, and dental assistant educators to advise the board in adopting rules under Subsection (f).
- (f) The board by rule shall set:
 - (1) objectives for the examination and course under Subsection (b)(1); and
 - (2) procedures to ensure the examination's integrity.
- (g) The course and examination under Subsection (b)(1) shall comply with board rules. Any school or program accredited by the Commission on Dental Accreditation of the American Dental Association or any dental industry professional organization may offer a course and examination that complies with board rules.
- (h) The board, in consultation with the advisory committee, shall develop a program to ensure that courses and examinations developed or administered under this section comply with board rules.
- (i) A certificate of registration issued under this section must be renewed annually. Except as otherwise provided by this subsection, the board may not require a person who has successfully completed the course and examination required under Subsection (b) to complete an additional course or examination to renew the registration. The board may require a person to complete a new course and examination if the person fails to renew the person's certificate of registration before the second anniversary of the date the certificate expired.
- (j) Repealed by Acts 2009, 81st Leg., R.S., Ch. 476, Sec. 8(3), eff. September 1, 2009.
- (k) Repealed by Acts 2009, 81st Leg., R.S., Ch. 476, Sec. 8(3), eff. September 1, 2009.
- (l) A dental assistant who is hired as a dental assistant for the first time and who has not previously been issued a certificate under this section may make dental x-rays without complying with this section until the first anniversary of the date on which the dental assistant is hired.
- (m) A dental assistant who holds a certificate of registration issued under this section shall display the person's current certificate of registration in each office in which the person makes dental x-rays. If the person makes dental x-rays at more than one location, the person may display a duplicate of the original registration certificate obtained from the board on payment of a duplicate certificate fee set by the board.
- (n) A dental assistant who holds a certificate of registration issued under this section shall timely notify the board of:
 - (1) any change of address of the person's place of business;
 - (2) any change of employers; and
 - (3) any change of the person's mailing address.
- (o) An initial certificate of registration issued under this section expires on the 30th day after the date the certificate is issued if the holder of the certificate fails to pay the required certificate fee on or before that date.

[Added by Acts 2003, 78th Leg., ch. 17, Sec. 25, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 810 (S.B. 610), Sec. 9, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 476 (S.B. 455), Sec. 8(3), eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 772 (S.B. 887), Sec. 8, eff. September 1, 2009.]

Sec. 265.006. CORONAL POLISHING CERTIFICATE.

- (a) The board shall issue a coronal polishing certificate to a dental assistant who qualifies under this section.
- (b) To qualify for a coronal polishing certificate, an applicant must have at least two years' experience as a dental assistant and:
 - (1) have successfully completed at least eight hours of clinical and didactic education in coronal polishing taken through a dental assisting program accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the board that includes courses on:
 - (A) oral anatomy and tooth morphology relating to retention of plaque and stain;
 - (B) indications, contraindications, and complications of coronal polishing;
 - (C) principles of coronal polishing, including armamentarium, operator and patient positioning, technique, and polishing agents;
 - (D) infection control procedures;
 - (E) polishing coronal surfaces of teeth; and
 - (F) jurisprudence relating to coronal polishing; or
 - (2) present proof to the board that the assistant has:
 - (A) graduated from a dental assisting program accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the board that includes specific didactic course work and clinical training in coronal polishing; or
 - (B) received certification of completion of requirements specified by the Dental Assisting National Board and approved by the board.

[Added by Acts 2009, 81st Leg., R.S., Ch. 476 (S.B. 455), Sec. 6, eff. September 1, 2009.]

Sec. 265.007. CONTINUING EDUCATION FOR CERTIFICATE HOLDERS.

- (a) To renew a certificate issued under this chapter, a dental assistant must complete six hours of continuing education each year in areas covering dental assistant duties.
- (b) A dental assistant holding two or more certificates authorized by this chapter is required to complete 12 hours of continuing education each year to renew all of the certificates held by the assistant.
- (c) A dental assistant may fulfill continuing education requirements through board-approved self-study, interactive computer courses, or lecture courses.

[Added by Acts 2009, 81st Leg., R.S., Ch. 476 (S.B. 455), Sec. 7, eff. September 1, 2009.]

**CHAPTER 266. REGULATION OF DENTAL LABORATORIES
SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 266.001. DEFINITIONS.

In this chapter:

- (1) "Council" means the Dental Laboratory Certification Council.
- (2) "Dental laboratory" means a place in which a person performs or offers to perform a dental laboratory service.

- (3) "Dental laboratory service" means:
 - (A) the making, assembly, processing, production, repair, relining, or adjustment of a prosthetic or orthodontic dental appliance, a full or partial denture, a fixed or removable dental bridge, a dental plate of false teeth, an artificial restoration, or a substitute or corrective device for any part of the human teeth, gums, jaws, or alveolar process; or
 - (B) the fitting of a dental appliance, a denture, a bridge, a plate, false teeth, an artificial restoration, or a substitute or corrective device for the human teeth, gums, or jaws to or on a dental model, impression, or cast of any part of the human teeth, gums, jaws, or alveolar process.
- (4) "Dental technician" means a person who performs, offers to perform, or aids, abets, or causes another to perform or offer to perform a dental laboratory service.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 266.002. EXEMPTIONS.

This chapter does not apply to:

- (1) a student enrolled in a program of a school of dentistry;
- (2) a licensed dentist engaged in the practice of dentistry in this state who performs a dental laboratory service for compensation or an employee of the dentist or of the professional corporation or partnership in which the dentist is an officer, partner, or employee if the service is performed:
 - (A) for a patient of the dentist or of the professional corporation or partnership in which the dentist is an officer, partner, or employee; and
 - (B) on the premises in which the dentist practices dentistry; or
- (3) a manufacturer of materials or component parts, used in the fabrication of a dental prosthetic appliance and for sale or use by a dental laboratory, that are not directly fitted to a dental model or cast of the human teeth, gums, jaws, or alveolar process.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1240, Sec. 1, eff. Sept. 1, 2003.]

SUBCHAPTER B. DENTAL LABORATORY CERTIFICATION COUNCIL

Sec. 266.051. APPOINTMENT OF COUNCIL; MEMBERSHIP.

The Dental Laboratory Certification Council consists of three members appointed by the board.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 266.052. MEMBER ELIGIBILITY.

- (a) A person is eligible for appointment to the council if the person:
 - (1) is a dental technician who is certified as described by Section 266.152(a); and

- (2) is an owner, manager, or employee of a dental laboratory registered with the board.
- (b) A person is not eligible for appointment to the council if the person or the person's spouse is:
 - (1) licensed by the board to practice dentistry;
 - (2) a board employee; or
 - (3) an employee of a dentist licensed by the board.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 266.053. TERMS.

- (a) Council members serve two-year terms.
- (b) A member may not serve more than four terms.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 266.054. PRESIDENT.

The council shall elect from its members a presiding officer to serve a one-year term.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 266.055. PER DIEM.

A council member is entitled to the per diem set for members of state boards and commissions by the General Appropriations Act.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 266.056. MEETINGS.

The council:

- (1) shall meet at least once each year; and
- (2) may meet at other times at the call of the presiding officer of the council if the presiding officer of the board approves.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 266.057. CIVIL LIABILITY.

A member of the council is not liable in a civil action for an act performed in good faith while performing duties as a council member.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

SUBCHAPTER C. POWERS AND DUTIES OF COUNCIL AND BOARD

Sec. 266.101. COUNCIL POWERS AND DUTIES.

- (a) The council shall review each application for registration or renewal of registration to determine if the applicant meets the requirements of this chapter.
- (b) The council may:
 - (1) recommend to the board rules relating to dental laboratories; and
 - (2) perform additional duties as requested by the board.
- (c) The council may not exercise rulemaking authority.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 772 (S.B. 887), Sec. 9, eff. September 1, 2009.]

Sec. 266.102. BOARD POWERS AND DUTIES.

- (a) The board shall:
 - (1) not later than the 30th day after the date the board receives a recommended rule from the council, consider the rule under the process prescribed by Chapter 2001, Government Code; and
 - (2) provide to the council the board's reasons if the board amends or rejects the proposed rule.
- (b) The board may adopt rules regarding dental laboratories in only the following areas:
 - (1) processing registration applications;
 - (2) prescribing:
 - (A) requirements for registration;
 - (B) the form and content of registration applications and other forms required to administer this chapter;
 - (C) procedures for renewal of certificates of registration; and
 - (D) fees necessary to administer this chapter;
 - (3) monitoring records necessary to administer this chapter;
 - (4) establishing continuing education requirements for dental technicians employed by dental laboratories, including prescribing the content of continuing education courses; and
 - (5) regulating:
 - (A) infection control;
 - (B) shade-taking procedures authorized by a prescription from a licensed dentist;
 - (C) computer-imaging procedures for an oral cavity authorized by a prescription from a licensed dentist;
 - (D) referral of dental prescriptions to out-of-state laboratories to be filled; and
 - (E) the transportation and manufacture of dental prosthetic devices or other dental work performed by a dental laboratory located in another state or a foreign country for use in this state.
- (c) In prescribing the content of continuing education courses under Subsection (b)(4), the board shall require the course content to be at least as comprehensive as a course approved by a recognized board of certification for dental technology.

- (d) The board shall allow the council to review and comment on a proposed rule under Subsection (b) for 30 days following the date the rule is proposed by the board.
- (e) The board shall provide annually to each dentist licensed in this state a list of dental laboratories registered under this chapter. The list must include the expiration date of each laboratory's registration certificate.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1240, Sec. 2, eff. Sept. 1, 2003.]

SUBCHAPTER D. CERTIFICATION, REGISTRATION, AND RENEWAL REQUIREMENTS

Sec. 266.151. REGISTRATION REQUIRED.

- (a) In this section, "person" means an individual or a private legal entity, including a corporation, association, or partnership.
- (b) A person may not operate or offer to operate a dental laboratory or provide or offer to provide dental laboratory services unless the person holds a registration certificate issued under this chapter.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 266.152. CERTIFIED DENTAL TECHNICIAN.

- (a) A dental laboratory must have at least one dental technician working on the laboratory's premises who is certified by a recognized board of certification for dental technology.
- (b) A dental laboratory is exempt from Subsection (a) if the laboratory is:
 - (1) owned by a licensed dentist engaged in the practice of dentistry in this state or by a professional corporation or partnership in which that dentist is an officer, partner, or employee; and
 - (2) located on the premises within which the dentist practices dentistry.
- (c) The exemption under Subsection (b) does not apply to a dental laboratory if the laboratory employs three or more dental technicians.
- (d) The owner of a dental laboratory registered with the board on September 1, 1987, is exempt from Subsection (a) if:
 - (1) the registration of the laboratory has been renewed each year since that date, and all registration fees have been paid;
 - (2) the beneficial ownership of at least 51 percent of the laboratory has not been transferred; and
 - (3) the owner is employed on the laboratory's premises for not less than 30 hours each week.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.094(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1240, Sec. 3, eff. Sept. 1, 2003.]

Sec. 266.153. APPLICATION FOR REGISTRATION.

- (a) An owner or manager of a dental laboratory shall annually:

- (1) apply to the board for the registration of each dental laboratory doing business in this state to which the owner or manager is connected or in which the owner or manager has an interest; and
 - (2) pay the application fee set by the board.
- (b) The application must include:
 - (1) evidence satisfactory to the board that the dental laboratory meets the requirements prescribed by Section 266.152(a), if applicable; and
 - (2) any other information required by the board.
- (c) The board may issue a certificate of registration only to a dental laboratory that complies with the requirements of this section.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1240, Sec. 4, eff. Sept. 1, 2003.]

Sec. 266.154. REGISTRATION RENEWAL.

- (a) An applicant for renewal of a dental laboratory registration must provide evidence satisfactory to the board that at least one employee who works on the dental laboratory's premises:
 - (1) has completed at least 12 hours of continuing education during the previous registration period; or
 - (2) is certified as required by Section 266.152(a), if applicable.
- (b) An owner or manager of a dental laboratory may renew an unexpired registration certificate for a dental laboratory if the owner or manager:
 - (1) pays the required renewal fee to the board on or before the expiration date; and
 - (2) complies with any other renewal requirements.
- (c) If the owner or manager of a dental laboratory fails to renew the dental laboratory's registration and pay the annual renewal fee before the date the registration expires, the board shall suspend the registration certificate of the laboratory.
- (d) An owner or manager of a dental laboratory whose registration certificate has been expired for 90 days or less may renew the registration certificate if the person pays to the board the required renewal fee and a fee equal to one-half of the amount of the renewal fee. If the registration certificate has been expired for more than 90 days but less than one year, the owner or manager may renew the certificate by paying to the board all unpaid renewal fees and a fee equal to the amount of the initial registration fee.
- (e) An owner or manager of a dental laboratory may not renew a registration certificate that has been expired for one year or more. The owner or manager may obtain a new certificate by complying with the requirements for obtaining an original certificate.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.094(b), eff. Sept. 1, 2001.]

Sec. 266.155. INITIAL REGISTRATION CERTIFICATE FEE.

An initial registration certificate issued under this subchapter expires on the 30th day after the date the registration certificate is issued if the holder of the registration certificate fails to pay the required registration certificate fee on or before that date.

[Added by Acts 2009, 81st Leg., R.S., Ch. 772 (S.B. 887), Sec. 10, eff. September 1, 2009.]

SUBCHAPTER E. PRACTICE BY REGISTRATION HOLDER

Sec. 266.201. PRESCRIPTION REQUIRED.

- (a) A dentist who orders a dental laboratory service shall prepare and deliver to the dental laboratory a prescription or work order for the service to be performed.
- (b) The prescription or work order must contain:
 - (1) the signature and Texas dental license number of the dentist;
 - (2) the date the prescription or work order is signed;
 - (3) the patient's name; and
 - (4) a description of the dental laboratory service ordered.
- (c) A dentist shall keep a copy of each prescription or work order at the dentist's office in a separate file for two years for inspection by the board's officers, agents, or employees.
- (d) A dentist shall label as provided by board rule a removable dental prosthesis fabricated in this state by the dentist or by a person under a prescription or work order prepared by the dentist.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1240, Sec. 5, eff. Sept. 1, 2003.]

Sec. 266.202. RELIANCE ON PRESCRIPTION.

- (a) The owner, manager, or employee of a dental laboratory or a dental technician may not perform or aid or abet another person in performing a dental laboratory service unless:
 - (1) the service was ordered by and any resulting item will be delivered to:
 - (A) a dentist engaged in the practice of dentistry in this state or in a jurisdiction in which the dentist maintains a dental office and engages in the practice of dentistry; or
 - (B) an employee of the dentist, if the service is performed for and on behalf of the dentist; and
 - (2) the dental laboratory receives a prescription or work order for the service in accordance with Section 266.201.
- (b) If a dental laboratory receives a prescription or work order for dental laboratory services and refers the work to another laboratory, the referral must be accompanied by a written statement that the prescription or work order is on file with the original laboratory.
- (c) A dental laboratory owner or manager shall maintain on the premises of a dental laboratory as a part of the laboratory's records a record of each prescription or work order completed at the dental laboratory until the second anniversary of the date the prescription or work order is furnished. The owner or manager shall also maintain the record in an alphabetized file in a separate place.
- (d) The premises of a dental laboratory, the records of a dental laboratory or a dental technician employed by the dental laboratory pertaining to dental prescriptions or work orders, and records relating to the referral of work to a dental technician or the owner or manager of a dental laboratory shall be open and available for inspection by a member, officer, employee, investigator, or agent of the board during regular office hours.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 266.203. TRANSPORTATION OF DENTAL MATERIAL PERMITTED.

This chapter does not prohibit a person who is subject to and complies with this chapter from using the United States mail, a railway express agency, Western Union, or a messenger or common or contract carrier to handle, accept from, or transport or deliver to a dentist or dental laboratory an item in any form or state of completion on which a dental laboratory service will be or has been offered or ordered to be performed.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

SUBCHAPTER F. DISCIPLINARY ACTIONS

Sec. 266.251. GROUNDS FOR DISCIPLINARY ACTION.

- (a) The board may refuse to issue a registration certificate, may impose a fine on a person who holds a registration certificate, may suspend or revoke a person's registration certificate, or may probate any portion of the suspension if, after a hearing, the board determines that the applicant or certificate holder has:
 - (1) violated or aided another person in violating a law regulating the practice of dentistry; or
 - (2) required or allowed a person under the direction or control of the person to violate a law regulating the practice of dentistry.
- (b) In this section, an applicant for or holder of a registration certificate includes a person who has at least a 20 percent ownership interest in or is the general partner or managing partner in a dental laboratory that is registered under this chapter or for which an application for registration has been filed.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 266.252. PROCEDURES FOR DISCIPLINARY ACTION.

The board shall follow the procedures under Chapter 263 in a complaint or disciplinary action under this chapter.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

SUBCHAPTER G. PROHIBITED PRACTICES, ENFORCEMENT, AND PENALTIES

Sec. 266.301. DENTAL PROSTHETIC APPLIANCE.

- (a) In this section, "person" means an individual or a private legal entity, including a corporation, association, or partnership.
- (b) A person may not fill a prescription to prepare or repair a dental prosthetic appliance that is to be delivered to a dental patient by a licensed dentist unless the person is a dental laboratory or dental technician.
- (c) A dental laboratory that prepares or repairs a dental prosthetic appliance for a dentist shall provide to the dentist in writing at the time of the delivery the dental laboratory's assigned registration number and the expiration date of the dental laboratory's registration certificate.

- (d) A dentist may not knowingly prescribe, order, or receive a dental prosthetic appliance that is to be prepared or has been prepared by an unregistered dental laboratory.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 266.302. INJUNCTION.

The board may apply for a restraining order or injunction to enforce this chapter or a board rule adopted under this chapter.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Sec. 266.303. CRIMINAL PENALTIES.

- (a) A person commits an offense if the person:
 - (1) is a dentist and provides a dental laboratory service without being exempt under Section 266.002(2); or
 - (2) violates Section 266.151 or 266.301.
- (b) An offense for a violation of Section 266.151 or Section 266.301(b) is a felony of the third degree.
- (c) An offense for a violation of Section 266.301(c) is a Class C misdemeanor. If it is shown on the trial of an offense under this section that the defendant has previously been convicted for an offense for a violation of Section 266.301(c), the offense is a Class A misdemeanor.
- (d) An offense for a violation of Section 266.301(d) is a Class B misdemeanor. If it is shown on the trial of an offense under this section that the defendant has previously been convicted of an offense for a violation of Section 266.301(d), the offense is a Class A misdemeanor.
- (e) Each day of a violation is a separate offense.

[Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.]

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 772 (S.B. 887), Sec. 11, eff. September 1, 2009.]

CHAPTER 267.

LICENSING OF FACULTY MEMBERS OF DENTAL OR DENTAL HYGIENE SCHOOLS

Sec. 267.001. LICENSE REQUIRED.

- (a) A person may not serve as a faculty member of a dental school unless the person holds a dental school faculty member license issued under this chapter.
- (b) A person may not serve as a faculty member of a dental hygiene school unless the person holds a dental school faculty member license or dental hygiene school faculty member license issued under this chapter.
- (c) This section does not apply to a person who does not have direct patient contact.

[Added by Acts 2003, 78th Leg., ch. 17, Sec. 26, eff. March 1, 2004.]

Sec. 267.002. EXEMPTIONS.

- (a) A person is exempt from the requirements of Section 267.001(a) if the person is licensed to practice dentistry in this state.

- (b) A person is exempt from the requirements of Section 267.001(b) if the person is licensed to practice dentistry or dental hygiene in this state.

[Added by Acts 2003, 78th Leg., ch. 17, Sec. 26, eff. Sept. 1, 2003.]

Sec. 267.003. QUALIFICATIONS FOR LICENSE.

- (a) To qualify for a dental school faculty member license, a person must:
 - (1) file an application with the board that presents proof that the applicant holds:
 - (A) a degree from a dental school; and
 - (B) a full-time or part-time salaried faculty position at a dental school accredited by the Commission on Dental Accreditation of the American Dental Association;
 - (2) submit an endorsement of the application from the dean, department chair, or program director of the school described by Subdivision (1)(B);
 - (3) pay the application fee set by the board; and
 - (4) pass an examination covering jurisprudence administered by the board or by a testing service under an agreement with the board.
- (b) To qualify for a dental hygiene school faculty member license, a person must:
 - (1) file an application with the board that presents proof that the applicant holds:
 - (A) a degree from a dental hygiene school; and
 - (B) a full-time or part-time salaried faculty position at a dental hygiene school accredited by the Commission on Dental Accreditation of the American Dental Association;
 - (2) submit an endorsement of the application from the dean, department chair, or program director of the school described by Subdivision (1)(B);
 - (3) pay the application fee set by the board; and
 - (4) pass an examination covering jurisprudence administered by the board.
- (c) An applicant for a license under this chapter must:
 - (1) file an application for the license not later than the 30th day after the date the person begins employment with the dental or dental hygiene school; and
 - (2) pass the examination not later than the sixth month after the date the person begins employment with the school.
- (d) The board shall set the application fee in an amount sufficient to cover the cost of administering this chapter.
- (e) Notwithstanding Section 267.001, an applicant may have direct patient contact before the applicant passes the examination.

[Added by Acts 2003, 78th Leg., ch. 17, Sec. 26, eff. Sept. 1, 2003.]

Sec. 267.004. LICENSE RENEWAL.

A license issued under this chapter must be renewed annually.

[Added by Acts 2003, 78th Leg., ch. 17, Sec. 26, eff. Sept. 1, 2003.]

Sec. 267.005. LICENSE EXPIRATION.

- (a) A license issued under this chapter expires on the termination of the license holder's employment with the dental or dental hygiene school.
- (b) A license holder whose employment with a dental or dental hygiene school terminates and who is subsequently employed by the same or a different dental or dental hygiene school must comply with the requirements for obtaining an original license, except that the person is not required to retake the examination.

[Added by Acts 2003, 78th Leg., ch. 17, Sec. 26, eff. Sept. 1, 2003.]

Sec. 267.006. PRACTICE OF DENTISTRY OR DENTAL HYGIENE PROHIBITED.

A license issued under this chapter does not authorize the license holder to engage in the practice of dentistry or dental hygiene.

[Added by Acts 2003, 78th Leg., ch. 17, Sec. 26, eff. Sept. 1, 2003.]