

OCCUPATIONS CODE

TITLE 3. HEALTH PROFESSIONS

SUBTITLE D. DENTISTRY

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. 255.0055. REQUIREMENTS FOR CERTAIN COMPLAINTS.

(a) In this section:

(1) "Anonymous complaint" means a complaint that lacks sufficient information to identify the source or the name of the person who filed the complaint.

(2) "Insurance agent" means a person licensed under Chapter 4054, Insurance Code.

(3) "Insurer" means an insurance company or other

entity authorized to engage in the business of insurance under Subtitle C, Title 6, Insurance Code.

(4) "Third-party administrator" means a person required to have a certificate of authority under Chapter 4151, Insurance Code.

(b) The board may not accept anonymous complaints.

(c) Notwithstanding any confidentiality requirements under Chapter 552, Government Code, or this subtitle, a complaint filed with the board by an insurance agent, insurer, pharmaceutical company, or third-party administrator against a license holder must include the name and address of the insurance agent, insurer, pharmaceutical company, or third-party administrator filing the complaint. Not later than the 15th day after the date the complaint is filed with the board, the board shall notify the license holder who is the subject of the complaint of the name and address of the insurance agent, insurer, pharmaceutical company, or third-party administrator who filed the complaint, unless the notice would jeopardize an investigation.

Added by Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 7, eff. September 1, 2017.

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 person regulated under this subtitle who is the subject of the complaint 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.

Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 8, eff. September 1, 2017.

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.