

OCCUPATIONS CODE

TITLE 3. HEALTH PROFESSIONS

SUBTITLE D. DENTISTRY

CHAPTER 263. LICENSE DENIAL AND DISCIPLINARY PROCEEDINGS

Sec. 263.0001. DEFINITION. In this chapter, "license" means a license, certificate, registration, permit, or other authorization that is issued under this subtitle.

Added by Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 27, eff. September 1, 2017.

Sec. 263.001. GROUNDS FOR REFUSAL TO ISSUE LICENSE; APPLICATION OF OPEN MEETINGS LAW. (a) The board may refuse to issue a license to an applicant under this subtitle 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.

(b) The board's deliberations with regard to an application for a license under this subtitle are exempt from Chapter 551, Government Code.

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.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 28, eff. September 1, 2017.

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. 263.0025. SUBMISSION TO MENTAL OR PHYSICAL EVALUATION.

(a) In enforcing Section 263.001(a)(3) or Section 263.002(a)(1), (7), or (11), the board or an authorized agent of the board, on probable cause, as determined by the board or agent, may request an applicant for or holder of a license to submit to a mental or physical evaluation by a physician or other health care professional designated by the board.

(b) If the applicant or license holder refuses to submit to the evaluation under Subsection (a), the board shall issue an order requiring the applicant or license holder to show cause why the applicant or license holder will not submit to the evaluation. The board shall schedule a hearing on the order not later than the 30th day after the date notice is served on the applicant or license holder. The board shall notify the applicant or license holder of

the order and hearing by personal service or certified mail, return receipt requested.

(c) At the hearing, the applicant or license holder and the applicant's or license holder's attorney are entitled to present testimony or other evidence to show why the applicant or license holder should not be required to submit to the evaluation. The applicant or license holder has the burden of proof to show why the applicant or license holder should not be required to submit to the evaluation.

(d) After the hearing, the board by order shall require the applicant or license holder to submit to the evaluation not later than the 60th day after the date of the order or withdraw the request for an evaluation, as applicable.

Added by Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 29, eff. September 1, 2017.

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 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.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 30, eff. September 1, 2017.

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 263.007 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.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 31, eff. September 1, 2017.

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 require that:

(1) not later than the 180th day after the date the board's official investigation of a complaint is commenced, the board schedule an informal settlement conference unless good cause is shown by the board for not scheduling the conference by that date;

(2) the board give notice to the license holder of the time and place of the conference not later than the 45th day before the date the conference is held;

(3) the complainant and the license holder be provided an opportunity to be heard;

(4) the board's legal counsel or a representative of the attorney general be present to advise the board or the board's staff; and

(5) a member of the board's staff be at the conference to present the facts the staff reasonably believes the board could prove at a hearing by competent evidence or qualified witnesses.

(c) The license holder is entitled at the conference to:

(1) reply to the staff's presentation; and

(2) present the facts the license holder reasonably believes the license holder could prove at a hearing by competent evidence or qualified witnesses.

(d) After ample time is given for the presentations, the informal settlement conference panel shall recommend that the investigation be closed or make a recommendation regarding the disposition of the case in the absence of a hearing under applicable law concerning contested cases.

(e) The board shall prioritize scheduling an informal settlement conference in accordance with Subsection (b)(1) to resolve a complaint against a license holder who has previously been the subject of disciplinary action by the board.

(f) A notice under Subsection (b)(2) must be accompanied by a written statement of the nature of the allegations and the information the board intends to use at the informal settlement conference. If the board does not provide the statement or information at that time, the license holder may use that failure as grounds for rescheduling the conference. If the complaint includes an allegation that the license holder has violated the standard of care in the practice of dentistry or dental hygiene, the notice must include a copy of the report by the expert reviewer. 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.

(g) The board by rule shall define circumstances constituting good cause for purposes of Subsection (b)(1), including:

(1) an expert reviewer's delinquency in reviewing and



submitting a report to the board under Section 255.0067;

(2) a temporary suspension of the license holder's license under Section 263.004; or

(3) the filing of a contested case against the license holder with the State Office of Administrative Hearings.

(h) The board by rule shall define circumstances constituting good cause to grant a request by a license holder for a continuance of the informal settlement conference.

(i) Information presented by the board or board staff in an informal settlement conference is confidential and not subject to disclosure under Chapter 552, Government Code.

(j) On request by the license holder under review, the board shall make a recording of the informal settlement conference proceeding. 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 proceeding.

(k) The board shall provide a copy of the recording to the license holder on the license holder's request.

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

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 32, eff. September 1, 2017.

Sec. 263.0071. DENTAL REVIEW COMMITTEE. (a) The dental review committee consists of nine members appointed by the governor as follows:

- (1) six dentist members;
- (2) two dental hygienist members; and
- (3) one registered dental assistant member.

(b) Members of the committee serve staggered six-year terms, with the terms of three members expiring on February 1 of each odd-numbered year.

(c) If a vacancy occurs during a member's term, the governor shall appoint a replacement to fill the unexpired term.

(d) A member of the committee is entitled to receive a per diem for actual duty in the same manner provided for board members.

(e) A member of the committee is subject to law and the rules of the board, including Sections 252.003, 252.007, and 252.010, as if the committee member were a member of the board, except that a committee member is not subject to Chapter 572, Government Code. The training program a committee member must complete under Section 252.010 must be an abbreviated version of the program under that section that is limited to training relevant to serving on a committee.

Added by Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 33, eff. September 1, 2017.

Sec. 263.0072. INFORMAL SETTLEMENT CONFERENCE PANEL.

(a) The board shall appoint members of the board and the dental review committee to serve, on a rotating basis, as panelists on an informal settlement conference panel for purposes of this section.

(b) In an informal settlement conference under Section 263.007, the board shall appoint at least two panelists to determine whether an informal disposition is appropriate. At least one of the panelists must be a dentist.

(c) The board by rule shall require that at least one panelist be physically present at the informal settlement conference and may authorize another panelist to appear by video conference.

(d) Notwithstanding Subsection (b), an informal settlement conference may be conducted by one panelist if the license holder who is the subject of the complaint waives the requirement that at least two panelists conduct the conference. If the license holder waives that requirement, the panelist may be a dentist, a dental hygienist, or a member who represents the public.

(e) Notwithstanding Subsections (b) and (d), an informal settlement conference conducted under Section 263.007 to show compliance with an order or remedial plan of the board may be conducted by one panelist.

Added by Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 33, eff. September 1, 2017.

Sec. 263.0073. ROLES AND RESPONSIBILITIES OF PARTICIPANTS

IN INFORMAL SETTLEMENT CONFERENCE. (a) At an informal settlement conference under Section 263.007, the panel shall make recommendations for the disposition of the complaint or allegation. The panel may request the assistance of a board employee at any time.

(b) Board employees shall present a summary of the allegations against the license holder and of the facts pertaining to the allegation that the employees reasonably believe may be proven by competent evidence at a formal hearing.

(c) An attorney for the board shall act as counsel to the panel and shall be present during the informal settlement conference and the panel's deliberations to advise the panel on legal issues that arise during the proceeding. The attorney may ask questions of participants in the conference to clarify any statement made by the participant. The attorney shall provide to the panel a historical perspective on comparable cases that have appeared before the board, keep the proceedings focused on the case being discussed, and ensure that the board's employees and the license holder have an opportunity to present information related to the case. During the panel's deliberations, the attorney may be present only to advise the panel on legal issues and to provide information on comparable cases that have appeared before the board.

(d) The panel and board employees shall provide an opportunity for the license holder and the license holder's authorized representative to reply to the board employees' presentation and to present oral and written statements and facts that the license holder and representative reasonably believe could be proven by competent evidence at a formal hearing.

(e) An employee of the board who participated in the presentation of the allegation or information gathered in the investigation of the complaint, the license holder, the license holder's authorized representative, the complainant, the witnesses, and members of the public may not be present during the deliberations of the panel. Only the members of the panel and the attorney serving as counsel to the panel may be present during the deliberations.

(f) During the deliberations, the panel may not reconsider an expert panel's determinations that are included in a final written report issued under Section 255.0067.

(g) The panel shall recommend the dismissal of the complaint or allegations or, if the panel determines that the license holder has violated a statute or board rule, may recommend board action and terms for an informal settlement of the case.

(h) The panel's recommendations under Subsection (g) must be made in writing and presented to the license holder and the license holder's authorized representative. The license holder may accept the proposed settlement within the time established by the panel at the informal settlement conference. If the license holder rejects the proposed settlement or does not act within the required time, the board may proceed with the filing of a formal complaint with the State Office of Administrative Hearings.

Added by Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 33, eff. September 1, 2017.

Sec. 263.0074. DISMISSAL OF BASELESS COMPLAINT. If, during the 180-day period prescribed by Section 263.007(b)(1), the board determines that the complaint is a baseless or unfounded complaint, the board shall dismiss the complaint and include a statement in the records of the complaint that the reason for the dismissal is because the complaint was baseless or unfounded. The board shall adopt rules that establish criteria for determining that a complaint is baseless or unfounded.

Added by Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 33, eff. September 1, 2017.

Sec. 263.0076. INFORMAL SETTLEMENT CONFERENCE NOTICE REGARDING CERTAIN COMPLAINTS. If an informal settlement conference is not scheduled for a complaint before the 180-day period prescribed by Section 263.007(b)(1), the board shall provide notice to all parties to the complaint. The notice must include an explanation of the reason why the informal settlement conference has not been scheduled. The notice under this section is not required if the notice would jeopardize an investigation.

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

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 34, eff. September 1, 2017.

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 issue a subpoena or a subpoena duces tecum to compel the attendance of a witness 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. The board may administer oaths and take testimony regarding any matter within the board's jurisdiction.

(a-1) The board may delegate the authority granted under Subsection (a) to the executive director or the secretary of the board.

(a-2) A subpoena issued at the request of board staff may be served by certified mail or personally by the board's investigators.

(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.

(d) The board shall pay, for photocopies subpoenaed at the request of the board's staff, a reasonable fee in an amount not to exceed the amount the board may charge for copies of the board's records.

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.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 35, eff. September 1, 2017.

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.