

OCCUPATIONS CODE

TITLE 3. HEALTH PROFESSIONS

SUBTITLE D. DENTISTRY

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.