

OCCUPATIONS CODE
TITLE 3. HEALTH PROFESSIONS
SUBTITLE D. DENTISTRY
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.