

**SUBJECT:** Continuing the Texas State Board of Dental Examiners

**COMMITTEE:** Public Health — favorable, without amendment

**VOTE:** 9 ayes — Price, Sheffield, Arévalo, Coleman, Collier, Cortez, Guerra, Klick, Oliverson

0 nays

2 absent — Burkett, Zedler

**SENATE VOTE:** On final passage, April 11 — 31-0

**WITNESSES:** For —Marc Worob, Texas Academy of General Dentistry; Matt Roberts, Texas Dental Association; Brian Stone and Kelly Shy, Texas Society of Oral and Maxillofacial Surgeons; Charles Rader, Texas Society of Periodontists; David Reeves; (*Registered, but did not testify:* Steve Bresnen, Association of Dental Support Organizations; Mackenna Wehmeyer, Career Colleges and Schools of Texas; David Mintz, Texas Academy of General Dentistry; Brandy Loving, Texas Academy of Pediatric Dentistry; Amanda Richardson, Texas Dental Hygienists' Association; Jaime Capelo, Texas Periodontist Society, Texas Society of Dentist Anesthesiologists; Michelle Wittenburg, Texas Society of Anesthesiologists)

Against — None

On —Julie Davis and Sarah Kinkle, Sunset Advisory Commission; Kelly Parker, Texas State Board of Dental Examiners; Steve Austin

**BACKGROUND:** The Texas State Board of Dental Examiners (TSBDE) has regulated dental care in Texas since its creation in 1897. The board's mission is ensuring high quality and safe dental care.

**Functions.** TSBDE's responsibilities include:

- licensing dentists and dental hygienists;
- registering dental assistants, laboratories, and mobile dental facilities;
- enforcing the Dental Practice Act and board rules by investigating complaints against licensees and registrants and taking disciplinary action against violators;
- monitoring compliance of disciplined licensees and registrants; and
- providing a peer assistance program for licensees and registrants who are impaired.

**Governing structure.** TSBDE is governed by 15 governor-appointed members, including eight dentists, two dental hygienists, and five members who represent the public. Two statutorily created advisory committees, the Dental Hygiene Advisory Committee and the Dental Laboratory Certification Council, assist the board.

**Funding.** In fiscal 2015, the board had a budget of \$4.2 million, with 93 percent of its funding from general revenue and the remainder from appropriated receipts. Revenue from fees paid by dentists, dental hygienists, dental assistants, and other entities regulated by the board is deposited in the state's General Revenue Fund and covers the board's operating costs. In fiscal 2015, the board generated revenue of \$11.8 million, including about \$3 million from the professional fee paid by dentists directly to the General Revenue Fund and the Foundation School Fund. The Legislature discontinued the professional fee in 2015, but the board is still expected to bring in almost \$3.8 million more in operating fees in fiscal 2016 than budgeted to run the agency and pay for employee benefits, according to the Sunset Advisory Commission.

**Staffing.** The board had 58 authorized positions at the end of fiscal year 2015 and actually employed 55 individuals, the majority of whom work in the central office in Austin. Sixteen investigators and inspectors work in field offices across Texas.

**Expiration date.** Unless continued by the Legislature, TSBDE would be abolished on September 1, 2017.

DIGEST:

SB 313 would continue the Texas State Board of Dental Examiners (TSBDE) until September 1, 2029. The bill also would change TSBDE board composition and board training requirements, discontinue certain certificates for dental assistants, change dental assistant training requirements, eliminate an advisory committee and a council, regulate anesthesia by dentists, create an advisory committee for anesthesia-related deaths, and make other changes to procedures and licensing at TSBDE.

**Board composition.** The bill would change the composition of the board to 11 members from 15 and would terminate the terms of any TSBDE board members serving on September 1, 2017. Under the bill, the board would consist of six dentist members, three dental hygienist members, and two public members. In addition to existing prohibitions on board membership, the bill would prohibit a person from being a member of the board or a board employee employed in a bona fide executive, administrative, or professional capacity if:

- the person was an officer, employee, or paid consultant of a Texas trade association in the field of health care; or
- the person's spouse was an officer, manager, or paid consultant of a Texas trade association in the field of health care.

**Board training.** In addition to existing training requirements for board members, the bill would require the board training program to provide a member with information regarding the scope of and limitations on the board's rulemaking authority and the types of board rules, interpretations, and enforcement actions that could implicate federal antitrust law by limiting competition or impacting prices charged by those engaged in a profession or business regulated by the board. The bill would specify that these rules, interpretations, and enforcement actions would include those that:

- regulate the scope of practice of persons in a profession or business the board regulates;
- restrict advertising by those in a profession or business the board

- regulates;
- affect the price of goods or services provided by those in a profession or business the board regulates; and
  - restrict participation in a profession or business the board regulates.

The bill also would require training on disclosure of conflicts and other laws applicable to members of the board in performing their duties. The TSBDE executive director would be required to create and distribute a training manual that included the board's training information as specified by the bill. Board members would be required to sign a statement acknowledging receipt of the manual from the executive director.

**Complaints and out-of-state disciplinary actions.** The bill would prohibit TSBDE from accepting anonymous complaints, meaning complaints that lack sufficient information to identify the source or the name of the person who filed the complaint. If it did not violate the confidentiality requirements under the Texas Public Information Act, the bill would require a complaint filed by an insurance agent, insurance company or an insurer, pharmaceutical company, or third-party administrator to include the name and address of the person filing the complaint. Within 15 days of a complaint being filed, TSBDE would be required to notify the license holder who was the subject of the complaint with the identifying information of the person who filed the complaint, unless the notice would jeopardize an investigation.

The bill would allow the board to adopt rules and procedures to periodically review reports of disciplinary actions taken against a license holder by another state that would constitute grounds for TSBDE disciplinary action.

**Licensing and continuing education.** The bill would remove language requiring a dentist license applicant or dental hygienist applicant to be "of good moral character." The bill would specify that dentistry licenses would be valid for one or two years, as determined by TSBDE rule. The bill would allow TSBDE to refuse to renew a license if the license holder had violated a board order.

The bill would remove the existing requirement for dentists and dental hygienists to complete at least 12 hours of continuing education and would instead allow TSBDE to adopt rules to set the number of required continuing education hours. The bill would direct TSBDE to establish continuing education requirements for dental assistants, including a minimum number of hours to renew a registration.

**Anesthesia.** The bill would define the terms "high-risk patient" as a patient who had a level 3 or 4 classification according to the American Society of Anesthesiologists Physical Status Classification System and "pediatric patient" as a patient younger than 13 years old. The bill would authorize TSBDE by rule to establish minimum standards for anesthesia, rather than only enteral anesthesia. The rules would be related to different levels of permits held by a dentist and would require minimum components to be included in a preoperative checklist to be used before a patient received anesthesia. The checklist would be included in the patient's dental record.

The bill would prohibit dentists from administering anesthesia unless they had a relevant permit issued by TSBDE. The board would be required to issue permits for administering anesthesia in five categories:

- nitrous oxide;
- level 1: minimal sedation;
- level 2: moderate sedation (enteral administration);
- level 3: moderate sedation (parenteral administration); and
- level 4: deep sedation or general anesthesia.

The board could charge a fee for issuing the permit. In setting the qualifications for each permit, the bill would direct TSBDE to require those applying for a level 2, 3, or 4 permit to complete training on pre-procedural patient evaluation, the continuous monitoring of a patient's level of sedation during anesthesia, and the management of emergency situations. An applicant also would have to indicate whether the dentist provided or would provide anesthesia in more than one location.

The bill would require TSBDE to adopt rules to establish minimum emergency preparedness standards and requirements for administering anesthesia under a permit, as specified in the bill. A permit holder also would be required to establish emergency preparedness protocols that conformed with board rules and to have an emergency management plan specific to each practice setting where the permit holder would administer anesthesia.

The bill would require a permit holder, once every five years, to pass an online jurisprudence examination developed by TSBDE that would cover board rules and state law related to administering anesthesia. A level 2, 3, or 4 permit holder also would be required to obtain authorization from the board and demonstrate advanced didactic and clinical training to the board before administering anesthesia to a pediatric or high-risk patient. The board could set further limitations on administering anesthesia to a pediatric or high-risk patient. A permit holder who was administering level 4 anesthesia would be required to use capnography to monitor the patient while administering the anesthesia.

The bill would allow TSBDE to inspect a dentist who applied for or held an anesthesia permit and would require inspections for dentists who held a level 2, 3, or 4 permit. Dentists who administered anesthesia exclusively in a state-licensed hospital or ambulatory surgical center would be exempt. The board would be required to adopt a risk-based inspection policy that would take into consideration previous anesthesia-related disciplinary actions against a permit holder when determining whether an inspection was necessary. Inspections could be made without notice and would begin by September 1, 2022.

**Advisory committee for anesthesia-related deaths or incidents.** The bill would direct TSBDE to establish an advisory committee to analyze and report on data and associated trends concerning anesthesia-related deaths or incidents. The advisory committee would include a general dentist, a dentist anesthesiologist, an oral and maxillofacial surgeon, a pediatric dentist, a physician anesthesiologist, and a periodontist. A

member of TSBDE could not also be an advisory committee member. TSBDE could accept gifts and grants to fund the duties of the board and the advisory committee related to anesthesia-related deaths or incident analysis.

The bill would specify advisory committee member terms, requirements, and how the committee would function. Among these requirements, the bill would require TSBDE to post on its website any recommendations or findings from the advisory committee. The bill would allow TSBDE to provide the advisory committee with de-identified investigative files for review. Information pertaining to the investigation of an anesthesia-related death or incident would be confidential. The advisory committee could publish certain statistical studies and research reports. Advisory committee work product or information that was confidential would also be privileged, not subject to subpoena or discovery, and could be introduced into evidence against a patient, a member of the family of a patient, or a health care provider. The bill would give certain immunity to a member of the advisory committee, a person employed by TSBDE or a person advising, providing information, counsel, or services to the advisory committee.

The bill would make TSBDE's deliberations on license applications exempt from Texas' open meetings law.

**Mental health or physical evaluation for licensing.** The bill would allow TSBDE, with probable cause, to request a license applicant or license holder to submit to a mental or physical evaluation by a physician or other health care professional designated by the board. This evaluation would be used only in enforcing the board's grounds to refuse to issue a license or for disciplinary action. If the applicant or license holder did not submit to an evaluation, the bill would direct TSBDE to issue an order requiring the applicant or license holder to show cause why they would not submit. TSBDE would be required to schedule a hearing on the order within 30 days of serving notice to the applicant or license holder. At the hearing, the applicant or license holder would have the burden of proof to show why they should not be required to submit to the evaluation. After

the hearing, if the request for an evaluation was not withdrawn, the applicant or license holder would be required to submit to the evaluation within 60 days of the date of a TSBDE order.

The bill would prohibit board information, records, and proceedings related to a licensee or applicant's involvement in a peer assistance program or mental health evaluation from being disclosed under the Texas Public Information Act, except for certain information in the case of a disciplinary action.

**Informal settlement conferences.** The bill would direct TSBDE to adopt rules requiring an informal settlement conference to be scheduled within 180 days of beginning an official complaint investigation and would specify other requirements for informal settlement conferences. The bill would direct the governor to appoint nine members to a dental review committee that would serve with members of TSBDE on an informal settlement conference panel. The informal settlement conference panel would be required to make recommendations for the disposition of a complaint or allegation related to a license holder. An attorney for TSBDE would be required to act as legal counsel to the panel and would be present during the informal settlement conference and the panel's deliberations to advise the panel on legal issues that came up during the proceeding.

Under the bill, if TSBDE determined that a complaint was baseless or unfounded within 180 days of beginning the investigation, the board would dismiss the complaint. The board would be required to establish criteria for determining that a complaint was baseless or unfounded. If an informal settlement conference was not scheduled for a complaint before the 180-day period, the board would provide notice for all parties to the complaint and an explanation of why the conference had not been scheduled. The board would not be required to provide notice if it would jeopardize an investigation.

The bill would allow TSBDE to administer oaths and take testimony regarding any matter within the board's jurisdiction when determining



license denial and grounds for disciplinary action. The bill would specify that the board could issue a subpoena or subpoena duces tecum to compel a witness to appear for examination under oath or to compel the production of relevant evidence. TSBDE could delegate this authority to the executive director or the board secretary. The subpoena would have to be served by certified mail or personally by the board's investigators and the board would be required to pay for photocopies subpoenaed at the request of the board's staff.

**Regulation of dental assistants.** The bill would discontinue the pit and fissure sealant certificate for dental assistants and the coronal polishing certificate for dental assistants and require instead that dental assistants register with TSBDE.

TSBDE could adopt and enforce rules requiring a dental assistant to register with the board to perform other dental acts as necessary to protect the public health and safety. TSBDE would be required to maximize the efficient administration of dental assistant registrations by developing a system to track the number of registrations and by coordinating renewal dates.

The bill would require TSBDE to establish requirements for dental assistant registration, including requiring a dental assistant to:

- hold a high school diploma or the equivalent;
- complete an educational program approved by the board that included instruction on dental acts that required registration, basic life support, infection control, and jurisprudence;
- pass an examination approved or administered by the board; and
- meet any additional qualifications established by the board.

The bill would authorize the board to approve courses of instruction and examination provided by private entities to dental assistants and would direct the board to set and collect reasonable and necessary registration and renewal fees. The registration would be valid for two years and would be renewed by paying a fee and complying with any other board

requirements. If the board changed the registration expiration date, the bill would authorize the board to prorate registration fees on a monthly basis.

The bill would allow a licensed dentist to delegate to a qualified and trained dental assistant acting under the dentist's supervision if the assistant had registered as a dental assistant and the registration covered the act being delegated. The bill would specify that a delegating dentist would remain responsible for the dental acts of a registered or nonregistered dental assistant performing delegated dental acts. The bill would prohibit a delegated dental assistant from representing to the public that the assistant was authorized to practice dentistry or dental hygiene.

The bill would require a dental assistant to be registered before making a dental X-ray or monitoring the administration of nitrous oxide. The bill would prohibit a dental assistant from making a dental X-ray unless the assistant was registered with the board. The bill would allow an unregistered dental assistant to make dental X-rays for one year after being hired if the assistant had been hired in that position for the first time and had not previously been issued a registration.

**Repeals.** The bill would discontinue:

- the Dental Hygiene Advisory Committee; and
- the Dental Laboratory Certification Council.

**Record keeping.** The bill would require TSBDE by rule to establish conditions under which the board could appoint a person as the custodian of a dentist's billing or dental patient records. Regarding conditions for appointing a custodian, the board would be required to consider the death of a dentist, the mental or physical incapacitation of a dentist, and the abandonment of billing or dental patient records by a dentist.

**Dental laboratories.** Under the bill, a dental laboratory registration would be valid for a term of one or two years, as determined by TSBDE rule. The bill would require at least one employee who worked on the dental laboratory premises to have completed the minimum number of

continuing education hours as required by board rule and would remove the existing 12-hour requirement.

The bill would require TSBDE to adopt rules and fees affected by the bill by March 1, 2018. The governor would be required to appoint 11 members to TSBDE by December 1, 2017, including:

- two dentist members and one dental hygienist member with terms expiring February 1, 2019;
- two dentist members, one dental hygienist member, and one public member with terms expiring February 1, 2021; and
- two dentist members, one dental hygienist member, and one public member with terms expiring February 1, 2023.

TSBDE would be required to appoint members to the advisory committee on dental anesthesia and the governor would be required to appoint members to the dental review committee by December 1, 2017. The bill's provisions would apply to members of TSBDE appointed before, on, or after the bill's effective date.

TSBDE would be required to issue, starting September 1, 2018, a dental X-ray registration or a nitrous oxide monitoring registration to a dental assistant who held a current certificate issued by TSBDE before that date and who met relevant continuing education requirements. Nitrous oxide certificates and X-ray certificates issued under previous law would expire on September 1, 2019. The repeal of a law by the bill would not entitle a person to a refund if the fee was paid before the bill's effective date.

Provisions in the bill related to a complaint filed with TSBDE would apply only to an investigation or disposition of a complaint filed on or after March 1, 2018. A violation of a law that was repealed by the bill would be governed by the law in effect on the date of the violation.

Changes to anesthesia permits and anesthesia-related inspections under the bill would take effect on March 1, 2018. Certain provisions in the bill related to dental assistant delegation and registration would take effect on

September 1, 2018. Unless otherwise specified, the bill would take effect on September 1, 2017.

**SUPPORTERS  
SAY:**

SB 313 would reduce the size of the Texas State Board of Dental Examiners' (TSBDE's) membership to allow the board to better focus on its mission of ensuring high quality and safe dental care. The bill also would appropriately deregulate dental assistants, fill in regulatory gaps regarding dental anesthesia, increase avenues for stakeholder input, and make other changes to increase efficiency at the board. Structural changes to the membership and composition of the board in the bill are necessary to focus TSBDE on its public protection mission and help ensure the effectiveness of the agency.

The bill would not specify which types of dentists would be on the board to help avoid conflicts of interest between the board and those regulated by the board. The bill would align the composition of the board with the amount of technical expertise necessary to help focus the board on its core mission and make better use of staff resources.

The bill would appropriately deregulate two certificates for dental assistants and combine the other certificates into a board registration. Dental assistants pose little risk to public safety. Dental assistants can only perform reversible tasks under the delegated authority of the dentist, who remains responsible for patient care and safety. Dental assistants have a low volume of meaningful complaints related to standard of care and state regulation of assistants is not needed to protect public health. Board resources could be put to better use focusing on higher-risk agency responsibilities. Under the bill, dental assistants still could receive any needed credentials from national organizations and private market forces could provide any training or oversight needed by employers or the public.

The bill would fill in gaps in regulation of dental anesthesia to help keep patients safe while preventing government overreach. The Sunset staff report found that the board lacked key enforcement tools to ensure dentists were prepared to respond to increasing anesthesia concerns. The bill

would address the recent increase in serious patient harm and death related to dental anesthesia by requiring written emergency action plans for any dentist administering anesthesia. By allowing the board to conduct inspections of dentists administering anesthesia in office settings and requiring anesthesia training for dentists through permits, the bill would help improve public health and safety and would align Texas requirements with those in other states. The bill would not be overly prescriptive, avoiding the need for future legislation to fix overly burdensome statutory requirements.

The bill would increase avenues for stakeholder input and would remove the Dental Hygiene Advisory Committee and the Dental Laboratory Certification Council from statute. Removing these committees would give TSBDE more flexibility in convening more diverse groups of stakeholders to give input as needed.

The bill appropriately would not include a provision requiring licensees' prescribing patterns to be monitored or for dentists to review patients' prescribing history. Such a requirement would be unnecessary and could overly burden dentists.

The provision in the bill that allows the advisory committee on anesthesia-related deaths to receive funding or gifts mirrors existing statute related to state entities doing similar work and is specific to that committee, not the entire board.

The bill better enables TSBDE to protect public health and safety in dentistry by requiring evaluations for licensees suspected of impairment due to substance abuse or mental illness. The results of the evaluation would be confidential and would encourage licensee participation in treatment programs.

**OPPONENTS  
SAY:**

SB 313 should require at least one oral and maxillofacial surgeon and other specialists to be included as dentist members of TSBDE because they have different education and training from general dentists. The board composition should not be changed from 15 members and also

should include a dental assistant on the board.

The bill should not limit regulation of dental assistants. Dental assistants are properly regulated under current law and there are few complaints about their care because of the current level of regulation. Certificate programs result in a higher level of skill and better delivery of care by dental assistants. Unregistered dental assistants should be required to have training in radiology before being able to X-ray a patient under any circumstances. Allowing dental assistants to act without adequate education could expose patients or dental staff to unsafe levels of radiation. The bill also should maintain the dental assistant certification for coronal polishing and sealants because the techniques used for polishing and sealants have potential to harm both the patient and the dentist. To reduce the risk to patients, the bill should further limit when dentists could delegate a task to a dental assistant.

While the bill would increase anesthesia safety above current requirements, every dentist who holds a permit from TSBDE to perform levels 2, 3, or 4 sedation also should be required to employ a dental anesthesia assistant certified by the Dental Anesthesia Assistant National Certifying Examination or a similar national entity. This would improve public health and the quality of patient care. Dentists who provide anesthesia to level 3 or 4 patients also should be required to consult with a physician before providing the anesthesia, to conform with American Dental Association guidelines.

The bill should require the board to have guidelines specific to office-based anesthesia procedures versus those performed in a hospital or surgical center. The course requirements for anesthesia should be stricter than required by the bill because while patients should have access to pain relief, they should not have to risk their lives by undergoing anesthesia with an undertrained dentist. To ensure patient safety, TSBDE should inspect all dentists who perform high-risk anesthesia, not just those who were at a higher risk than other dentists. The board also should have the authority to issue cease-and-desist orders in cases of imminent danger to the public by a licensee.

The bill should implement the Sunset recommendation to require dentists to search the Prescription Monitoring Program and review a patient's prescription history before prescribing opioids, benzodiazepines, barbiturates, or carisoprodol.

The bill should not allow the advisory committee to accept outside funds or gifts to avoid conflicts of interest.

The bill should not require a mental evaluation for certain dentists. Requiring a mental health screening would single out those with a mental illness without protecting the public.

OTHER  
OPPONENTS  
SAY:

Instead of combining all dental assistant certificates into one registration, the bill should follow the model of the Oklahoma Board of Dentistry and list every available certificate with a "yes" or "no" if the individual holds more than one certificate. This would reduce the time and resources TSBDE would have to spend on issuing separate certificates while increasing transparency and better protecting patients.

The bill also should not require dentists to purchase a permit to administer anesthesia. This is government overreach and unnecessary regulation.

NOTES:

According to the Legislative Budget Board's fiscal note, the bill would have no impact on general revenue related funds through fiscal 2018-19. The estimate assumes that provisions of the bill related to deregulation and registration of certain dental assistants could result in an impact to general revenue beginning in fiscal 2018 but the overall estimate on revenue cannot be determined.