



# Ohio Legislative Service Commission

## Bill Analysis

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### H.B. 215

128th General Assembly  
(As Introduced)

**Reps.** Letson and Mecklenborg, Hagan, Luckie, Fende, Mallory, Gardner, Lehner, Garland, Boyd, Yuko, Snitchler, Huffman, Bacon, Winburn

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## BILL SUMMARY

- Modifies the process by which the State Dental Board investigates and disciplines dentists, dental hygienists, and dental x-ray machine operators.
- Requires the Board to appoint four supervisory investigative panels, each consisting of two Board members, and prohibits the panel members from participating in any additional deliberations the Board has on a case.
- Requires the Board to instead develop its own roster of at least ten referees or examiners to oversee disciplinary hearings and makes the referee's or examiner's name a public record.
- Requires the Board to adopt rules identifying criminal offenses that are substantially related to the practice of dentistry, dental hygiene, or any other profession the Board regulates for the purpose of the Board's responsibility to discipline dental professionals.
- Makes applicants for a license or certificate issued by the State Dental Board subject to the grounds for discipline extended to licensees or certificate holders under current law.
- Creates notification processes for the Board when a dentist or dental hygienist fails to renew a license or submit proper documentation regarding required continuing education, and eliminates provisions that require licenses to be automatically suspended for failure to renew.
- Makes current Board rules regarding safe practices subject to the Administrative Procedure Act.

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## CONTENT AND OPERATION

### State Dental Board investigations and disciplinary proceedings

Currently, the 13-member State Dental Board regulates and licenses or certifies, as applicable, dentists, dental hygienists, and dental x-ray machine operators. As a part of its duties in the regulation of these professions, the Board is required to investigate complaints and, if necessary, discipline a dental professional for a violation of the law governing these professionals (R.C. Chapter 4715.). The bill generally modifies the process by which the Board investigates and disciplines dentists, dental hygienists, and dental x-ray machine operators.

#### Complaints

(R.C. 4715.03(B)(6) and (D))

Currently, any person may report to the State Dental Board under oath any information the person has appearing to show a violation of any provision of the law governing dentists, dental hygienists, and dental x-ray machine operators. The bill permits the Board to dismiss a complaint upon concurrence of a majority of Board members.

#### Investigations

(R.C. 4715.03(B)(6) and (D), 4715.032, and 4715.034)

Currently, the State Dental Board is required to conduct investigations of any alleged violation of the law governing dentists, dental hygienists, and dental x-ray machine operators. The bill retains this general requirement, but requires the Board to appoint four, two-member panels to supervise all investigations on behalf of the Board; at least one panel member must be a dentist. The Board must randomly assign one, two-member panel to supervise each investigation. The bill permits the Board to terminate an investigation upon concurrence of a majority of Board members.

During an investigation, the supervisory investigative panel may meet with the individual who is the subject of an investigation at any time.

At the conclusion of an investigation, the panel must recommend, in writing, that the Board do one of the following: (1) pursue disciplinary action against the individual, (2) seek an injunction for unauthorized practice, (3) enter into a consent agreement with the individual being investigated, (4) refer the individual being investigated to the Board's quality intervention program (used to improve clinical or communication problems), or (5) terminate the investigation. The panel must also specify the reasons

for the recommendation. The bill allows the panel up to one year after the date the panel is assigned to the investigation to make a recommendation. However, if the investigation is specifically regarding the failure to practice in accordance with prevailing standards of care, the bill allows the panel up to two years to make a recommendation.

Once the panel makes a recommendation under this section, those panel members are prohibited from participating in any deliberations the Board has on the case.

#### **Subpoenas issued during an investigation**

(R.C. 4715.03(D) and 4715.033)

Current law permits the State Dental Board to issue subpoenas for the purposes of an investigation. The bill specifies that all subpoenas issued by the Board must be authorized by the supervisory investigative panel assigned to the investigation. Prior to issuing a subpoena, the panel must consult with the Attorney General's office to determine whether there is probable cause to believe that the complaint filed alleges a violation of the law governing dentists, dental hygienists, and dental x-ray machine operators and that the information sought pursuant to the subpoena is relevant to the alleged violation and material to the investigation. A subpoena issued by the Board must pertain to records that cover a reasonable period of time surrounding the alleged violation. If a person fails to comply with the Board's subpoena and the person is given reasonable notice of the failure, the bill permits the Board to move for an order compelling the production of persons or records pursuant to the Rules of Civil Procedure.

#### **Disciplinary options if reasonable grounds exist regarding an alleged violation**

(R.C. 4715.03(B)(2) through (4) and (D))

If after an investigation the State Dental Board determines that there are reasonable grounds to believe that a violation of the law governing dentists, dental hygienists, and dental x-ray machine operators has occurred, current law requires the Board to conduct a disciplinary hearing in accordance with the Administrative Procedure Act (R.C. Chapter 119.) or provide for the individual to participate in the Board's quality intervention program.

In accordance with the bill's provisions, the bill requires the Board to review the recommendations made by the supervisory investigative panel (see "**Investigations**, above) when determining if reasonable grounds exist. Then, if the Board determines reasonable grounds exist, in addition to (1) conducting a disciplinary hearing, and (2)

requiring participation in the quality intervention program, as permitted under current law, the bill permits the Board to (3) seek an injunction for unauthorized practice, or (4) enter into a consent agreement with the individual being investigated.

If the Board requires participation in the quality intervention program, seeks an injunction, or enters into a consent agreement, the bill requires the Board to do so upon concurrence of a majority of Board members.

### **Disciplinary hearing**

(R.C. 4715.03(D))

Currently, if the State Dental Board conducts a disciplinary hearing, the hearing must be conducted in accordance with the Administrative Procedure Act. The bill requires the hearing to also be conducted in accordance with the law governing the operations of the Board.<sup>1</sup>

### **Discovery**

(R.C. 119.07 (not in the bill), 4715.03(D), 4715.036, and 4715.0310)

Generally, the current Administrative Procedure Act requires an administrative entity to give notice, by registered mail, to a party of the opportunity for an administrative hearing. The bill requires the State Dental Board, if it issues such notice, to state in the notice that the individual is entitled to receive, on request and at no cost to the individual, one copy of each item the Board procures or creates in the course of its investigation of the individual at least 60 days prior to the hearing. These items may include, but are not limited to, the complaint or complaints filed with the Board; correspondence, reports, and statements of any kind; deposition transcripts; and patient dental records.

Current law also specifies that any Board proceedings relative to an investigation or the determination of whether there are reasonable grounds to believe that a violation has occurred are confidential and are not subject to discovery in any civil action. The bill exempts the discovery of information from the confidentiality required by current law. The bill further specifies that the notice to a party of the opportunity for an administrative hearing is a public record.

Notwithstanding scheduling of a hearing according to the Administrative Procedure Act, if the individual requests the investigative items, the hearing must be

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<sup>1</sup> If the two provisions of law are inconsistent, the law governing the State Dental Board's operations would prevail.

scheduled for a date that is at least 61 days after the Board provides the individual with the investigative materials.

### **Disciplinary hearing referees or examiners**

(R.C. 119.09 (not in the bill), 4715.037, 4715.038, and 4715.0310)

Generally, the current Administrative Procedure Act permits an administrative entity to appoint a referee or examiner, who is a lawyer, to conduct a disciplinary hearing. The referee or examiner must submit to the entity its findings of fact and conclusions of law and a recommendation of the action to be taken by the entity regarding a violation.

Notwithstanding the Administrative Procedure Act, the bill requires the Board to instead develop its own roster of at least ten referees or examiners. Concurrence of a majority of the Board's members is required to appoint a referee or examiner to the roster. Similar to the requirements of the Administrative Procedure Act, a referee or examiner appointed to the roster must be a lawyer, but must be classified as either an administrative law attorney examiner or administrative law attorney examiner administrator under the state job classification plan by the Director of Administrative Services.

The Board must then assign one referee or examiner from the roster to conduct each disciplinary hearing. Assignments must be made in the order the Board receives requests for hearings without regard to the experience or background of a particular referee or examiner, or the consideration of any factor other than whether the referee or examiner is available at the appropriate time. The bill specifies that the name of the hearing referee or examiner is a public record.

The bill requires a disciplinary hearing referee or examiner to hear and consider the oral and documented evidence introduced by the parties during the hearing. Not later than 30 days following the close of the hearing, the referee or examiner must issue, in writing, the referee's or examiner's proposed findings of fact and conclusions of law to the Board, as well as copies of the record of the hearing and all exhibits and documents presented by the parties at the hearing.

### **Oral arguments**

(R.C. 4715.039)

The bill requires the Board to allow the parties or their counsel an opportunity to present oral arguments on the proposed findings of fact and conclusions of law issued by the hearing referee or examiner.

### **Prior action**

(R.C. 4715.30(H))

The bill prohibits the Board from considering or raising, during a hearing, any disciplinary action the Board took on a prior occasion with respect to a person if the charges in the subsequent action relate to events or circumstances that occurred in the same time period and are of the same nature as the charges in the prior action.

### **Decision and appeals**

(R.C. 4715.039)

Not later than 60 days following the State Dental Board's receipt of the proposed findings of fact and conclusions of law issued by the hearing referee or examiner, or a date mutually agreed to by the Board and the individual subject of the hearing, the bill requires the Board to render a decision, in writing, and containing the findings of fact and conclusions of law. Copies of the Board's decision must be delivered personally or by certified mail. The Board's decision is to be considered final on the date personal delivery of the decision is made or the date the decision is mailed.

The bill specifies that an individual may appeal the Board's decision in accordance with the Administrative Procedure Act.

### **Disciplinary actions**

(R.C. 4715.03(B)(1) and 4715.30(C))

Under current law, the Board may take one or more of the following disciplinary actions, in accordance with the Administrative Procedure Act, if the Board determines that one or more grounds for discipline exist:

- (1) Censure the license or certificate holder;
- (2) Place the individual on probationary status for a period of time determined by the Board, and require the holder to (a) report regularly to the Board upon the matters which are the basis of probation, (b) limit practice to those areas specified by the Board, and (c) continue or renew professional education until a satisfactory degree of knowledge or clinical competency has been attained in specified areas;
- (3) Suspend the certificate or license;
- (4) Revoke the certificate or license.

The bill requires the Board to have concurrence of a majority of Board members to take any of these actions.

### **Criminal offenses that constitute grounds for disciplinary action**

(R.C. 4715.03(C)(3) and 4715.30(A)(4))

Under current law, a licensed or certified dentist, dental hygienist, or dental x-ray machine operator may be disciplined by the State Dental Board for one or more of several reasons including for a conviction of a misdemeanor committed in the course of practice or any felony. The bill instead specifies that the conviction of or plea of guilty to must be for any criminal offense identified by the Board in rules as a criminal offense that is substantially related to the practice of dentistry, dental hygiene, or any other profession the Board regulates.

For the purpose of this provision, the bill requires the Board to adopt rules identifying criminal offenses that are substantially related to the practice of dentistry, dental hygiene, or any other profession the Board regulates. The Board may identify a misdemeanor or felony as such an offense only if the nature of the misdemeanor or felony has a direct bearing on the fitness or ability of the individual to perform one or more of the duties or responsibilities necessarily related to the practice of dentistry, dental hygiene, or the other professions the Board regulates.

### **Applicants subject to grounds for disciplinary action**

(R.C. 4715.30(A) and (D))

The bill makes applicants for a license or certificate issued by the State Dental Board subject to the grounds for discipline that are extended to licensees or certificate holders under current law.

### **Notification for failure to renew a license**

(R.C. 4715.14 and 4715.24)

Currently, if a dentist or dental hygienist fails to renew the licensee's registration, the license is automatically suspended and may be reinstated by paying the biennial registration fee (\$245 for dentists, \$105 for dental hygienists) as well as a reinstatement fee (\$81 for dentists, \$31 for dental hygienists).

If a dentist or dental hygienist fails to renew the licensee's registration, the bill instead requires the Board to notify the dentist or dental hygienist of all of the following:

(1) That the Board has not received the required registration form and fee.

(2) That the license may be renewed until June 1st following the December 31st of the odd-numbered year in which the dentist or dental hygienist was scheduled to renew by the payment of the biennial registration fee and an additional fee of \$81 to cover the cost of late renewal.

(3) That unless the Board receives the form and fee before the relevant June 1st, the Board is permitted to initiate disciplinary action against the dentist or dental hygienist pursuant to the Administrative Procedure Act on or after the relevant June 1st.

(4) That a dentist or dental hygienist whose license has been suspended as a result of disciplinary action initiated as described in (3), above, may be reinstated by the payment of the biennial registration fee and an additional fee of \$200 to cover the cost of reinstatement.

### **Notification for failure to submit documentation regarding continuing education**

(R.C. 4715.141 and 4715.25)

Currently, the failure of a dentist or dental hygienist to submit proper evidence of completed continuing education credits constitutes failure to renew the licensee's registration.

If a dentist or dental hygienist fails to submit evidence of completed continuing education credits, the bill instead requires the Board to notify the dentist or dental hygienist of all of the following:

(1) That the Board has not received the affidavit or certification.

(2) That unless the Board receives the affidavit or certification before June 1st following the December 31st deadline for license renewal, the Board is permitted to initiate disciplinary action against the dentist or dental hygienist pursuant to the Administrative Procedure Act on or after the relevant June 1st.

### **State Dental Board rules regarding safe practice**

(R.C. 4715.03(C)(1) and (2))

Current law requires the State Dental Board to adopt rules regarding standards for the safe practice of dentistry and dental hygiene by qualified practitioners and to promote such practice through its policies and activities. The bill makes these rules

subject to the Administrative Procedure Act (i.e. requires the Board to give notice of its intent to adopt the rule and hold a public hearing).

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## **HISTORY**

ACTION	DATE
Introduced	06-09-09

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