



Ohio Legislative Service Commission

Bill Analysis

Lisa Musielewicz

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Reps. Letson and Mecklenborg, Hagan, Luckie, Fende, Mallory, Gardner, Lehner, Garland, Boyd, Yuko, Snitchler, Huffman, Bacon, Winburn, Amstutz, Batchelder, Beck, Belcher, Blair, Bolon, Book, Boose, Brown, Bubb, Burke, Combs, DeBose, DeGeeter, Derickson, Domenick, Dyer, Evans, Garrison, Gerberry, Goodwin, Hackett, Hall, Harris, Hite, Jordan, Lundy, McClain, McGregor, Newcomb, Oelslager, Patten, Ruhl, Sayre, Sears, Stebelton, Stewart, Uecker, Wagner, Zehringer

BILL SUMMARY

STATE DENTAL BOARD PROCESSES AND RULES

- Modifies the process by which the State Dental Board investigates and disciplines dentists, dental hygienists, and dental x-ray machine operators.
- Creates the supervisory investigative panel of the Board, consisting of the Board's secretary and vice-secretary, a position the bill creates, and prohibits the panel members from participating in any additional deliberations the Board has on a case.
- Requires the Board to appoint five referees or examiners to oversee disciplinary hearings and makes the referee's or examiner's name a public record.
- Makes applicants for a license or certificate issued by the Board subject to the grounds for discipline extended to licensees or certificate holders under current law.
- Permits, rather than requires, the Board to develop and implement the Quality Intervention Program and establishes time limits on participation and monitoring in the Program.
- 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 the adoption of Board rules regarding safe practices subject to the Administrative Procedure Act.

CONTINUING EDUCATION--DENTAL HYGIENISTS

- Increases to 24 (from 12) the number of continuing education hours a dental hygienist must complete every two years.

ADMINISTRATIVE ADJUDICATIONS--NOTICES OF APPEAL

- Requires a person who is appealing an order issued in an administrative adjudication merely to state, in the person's notice of appeal, that the order is not supported by reliable, probative, and substantial evidence and is not in accordance with law.
- Authorizes a person who is appealing an order issued in an administrative adjudication to set forth specific grounds for the person's appeal that go beyond the statement described above.
- Specifies that the notice of appeal a person files with the administrative agency or court may either be the original notice or a copy of the original.
- Specifies that the bill's changes to the provisions governing notices of appeal in administrative adjudications are procedural in nature and must be applied retrospectively to all administrative appeals filed prior to, on, or after the bill's effective date.

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CONTENT AND OPERATION

STATE DENTAL BOARD PROCESSES AND RULES

Investigations and disciplinary proceedings

Overview

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) and 4715.036)

Currently, any person may report to the State Dental Board under oath any information the person has that appears to show a violation of any provision of the law governing dentists, dental hygienists, and dental x-ray machine operators. The report, commonly referred to as a "complaint," is confidential under a provision in existing law. The provision specifies that proceedings of the Board relative to investigation of complaints and determinations of whether there are reasonable grounds to believe that a violation of the law governing dentists, dental hygienists, and dental x-ray machine operators has occurred are confidential and are not subject to discovery in any civil action. In the absence of bad faith, a person who submits a complaint to the Board is not liable for civil damages as a result of submitting the complaint or providing testimony.

The bill modifies the confidential nature of complaints. Under the bill, an applicant, license holder, or other individual who is notified by the Board of an opportunity for a hearing 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--including the complaint. Before providing copies of investigative items, however, the Board is required by the bill to determine whether they contain any personal identifying information¹ of an individual whose current or future employment within any dental profession, either as a dental professional regulated by the Board or in a position related to those professionals, could be adversely affected by disclosure of the information. If the Board determines that the investigative items contain such personal identifying information, the Board must redact the information from the copies of the items. The result is that an applicant, license holder, or other individual may obtain a copy of the complaint, with any personal identifying information redacted from the copy.

The bill also permits the Board to dismiss a complaint on concurrence of a majority of Board members.

Investigations

Overview

(R.C. 4715.03(D) and 4715.032)

Currently, the State Dental Board is required to conduct an investigation of any alleged violation of the law governing dentists, dental hygienists, and dental x-ray machine operators. The bill retains this general requirement, but creates a supervisory investigative panel to supervise all of the Board's investigations. The supervisory investigative panel is to consist solely of the Board's secretary and vice-secretary, a position the bill creates (see "**Board officers**," below).

Supervisory investigative panel's duties

(R.C. 4715.034 and 4715.035)

During an investigation, the bill permits the supervisory investigative panel to request a meeting with the individual who is the subject of an investigation.

¹ The bill defines "personal identifying information" largely consistent with the definition of this term in law governing the crime of identity fraud (R.C. 2913.49), although it specifies that it additionally includes the name of an individual who submits a complaint to the State Dental Board, the individual's job title, and the individual's job responsibilities (R.C. 4715.036). R.C. 2913.49 defines "personal identifying information" to include the following: the name, address, telephone number, driver's license, driver's license number, commercial driver's license, commercial driver's license number, state identification card, state identification card number, social security card, social security number, birth certificate, place of employment, employee identification number, mother's maiden name, demand deposit account number, savings account number, money market account number, mutual fund account number, other financial account number, personal identification number, password, or credit card number of a living or dead individual.

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 (if the Board develops this program--see "**Quality Intervention Program**," below), or (5) terminate the investigation. The panel must specify the reasons for the recommendation. The bill generally requires the panel to make its recommendation (1) not later than one year after the date the panel begins to supervise the investigation, or (2) if the investigation pertains to an alleged violation of the prohibition on providing or allowing dental hygienists, expanded dental function dental auxiliaries, or other practitioners of auxiliary dental occupations working under a certificate or license holder to provide dental care that departs from or fails to conform to accepted standards for the profession, not later than two years after the panel begins to supervise the investigation.

If the supervisory investigative panel is supervising an investigation of an individual who is also the subject of a criminal investigation and the panel suspends the investigation because it is asked to do so by the entity conducting the criminal investigation or determines that it is necessary to do so due to the criminal investigation, the time during which the investigation is suspended is not to be counted in determining the time within which the panel must make its recommendation.

If the panel recommends that an investigation be terminated, the bill permits the Board to do so, but only on the concurrence of a majority of Board members.

Once the panel makes a recommendation, the secretary and vice-secretary are prohibited by the bill from participating in any deliberations the Board has on the case.

Subpoenas

(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. Before a subpoena may be authorized, 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 dental professionals 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 to compel the production of records must pertain to records that cover a reasonable period of time surrounding the alleged violation. In addition, the bill generally requires that the subpoena state that the person being

subpoenaed has a reasonable period of time that is not less than three calendar days to comply with the subpoena. The only exception to this requirement is if the Board's executive director determines that the person being subpoenaed represents a clear and immediate danger to the public health and safety. In those instances, the subpoena must state that the person being subpoenaed is required to immediately comply with the subpoena.

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) to (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 dental professionals 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.

The bill requires the Board to review the recommendations made by the supervisory investigative panel (see "**Investigations**," above) when determining whether reasonable grounds exist. If the Board determines reasonable grounds exist, in addition to conducting a disciplinary hearing and requiring participation in the quality intervention program (as permitted under current law), the bill permits the Board to seek an injunction for unauthorized practice or 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 on concurrence of a majority of Board members.

Disciplinary hearings

Overview

(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.²

Discovery

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

Generally, the Administrative Procedure Act requires an administrative agency 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 a 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 the complaint or complaints filed with the Board (see "**Complaints**," above); correspondence, reports, and statements of any kind; deposition transcripts; and patient dental records.

Before providing copies of investigative items as described above, however, the bill requires the Board to determine whether the items contain any personal identifying information of an individual whose current or future employment within any dental profession, either as a dental professional regulated by the Board or in a position related to those professionals, could be adversely affected by disclosure of the information. If the Board determines that the investigative items contain such personal identifying information, the Board must redact the information from the copies of the items before they are provided.

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

² If the two provisions of law are inconsistent, the law governing the State Dental Board's operations would prevail.

Subpoenas to compel attendance and testimony

(R.C. 4715.036(C))

After the Board notifies an individual of an opportunity for a hearing and on request by either party,³ the bill requires the Board to issue a subpoena to do either or both of the following: (1) compel the attendance and testimony of witnesses at the hearing, or (2) order a person or government entity to produce books, records, papers, and other tangible items. The person or government entity subject to the subpoena must comply with the subpoena at least 30 days prior to the hearing.

Referees or examiners

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

Generally, the 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 appoint, by a concurrence of a majority of its members, five referees or examiners. Similar to the requirements of the Administrative Procedure Act, a referee or examiner appointed by the Board must be an attorney who has been admitted to the practice of law in Ohio. In making the appointments, the bill prohibits the Board from appointing an attorney who is a Board employee or represents the Board in any other manner.

The bill prohibits a referee or examiner from serving more than five consecutive one-year terms and prohibits the Board from refusing to reappoint a referee or examiner before the referee or examiner has served the maximum number of terms unless (1) the referee or examiner does not seek to serve the maximum number of terms, or (2) the Board, by a concurrence of a majority of its members, determines there is cause not to reappoint the referee or examiner.

The bill establishes a staggered number of terms that may be served by the initial referees or examiners as follows: (1) two of the initial appointees are to serve no more than eight consecutive one-year terms, (2) two other initial appointees are to serve no more than nine consecutive one-year terms, and (3) the remaining initial appointee is to serve no more than five consecutive one-year terms. All successor appointees are limited to the bill's maximum of five consecutive one-year terms.

³ An amendment may be necessary to clarify what is meant by "either party."

The Board must assign one referee or examiner 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 to the Board, in writing, the referee's or examiner's proposed findings of fact and conclusions of law, 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 actions

(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.

Decisions and appeals

(R.C. 4715.039)

Not later than 60 days following the 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 who is the subject of the hearing, the bill requires the Board to render a decision, in writing, that contains 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 license or certificate 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.

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 applicable under current law to licensees or certificate holders.

Quality Intervention Program

(R.C. 4715.031)

Currently, the State Dental Board is required to develop and implement the Quality Intervention Program as a disciplinary option for licensees violating certain laws governing the practice of dentistry. After an investigation, the Board may propose that a licensee participate in the program if it determines that the licensee's violation is due to a clinical or communication problem that could be improved by the program.

The bill permits, rather than requires, the Board to develop and implement the program and makes conforming changes. If the Board implements the program, the bill requires the Board to elect a coordinator from among the Board members who are dentists to administer the program. The bill also requires the Board, when selecting educational and assessment service providers for program participants, to select the providers by a concurrence of a majority of the members.

Duration of participation

Generally, current law requires the Board to refer a licensee who agrees to participate in the Quality Intervention Program to an education and assessment service provider. The provider is to recommend to the Board the services the licensee should receive under the program. If the Board approves the services, the licensee may begin participating in the program. The Board is required to monitor the licensee during participation in the program. The Board may monitor the licensee or take other appropriate action after the licensee successfully completes the program. If the licensee does not successfully complete the program, the Board is to commence disciplinary proceedings. Current law does not specify the duration in which a licensee is to participate in the program or the duration of time the Board may monitor the licensee after successfully completing the program.

The bill prohibits a licensee from being required to participate in the program beyond 30 days from the date the licensee enters into the agreement with the Board to participate in the program. The bill similarly prohibits the additional monitoring or other action taken by the Board from continuing beyond one year from the same date. Thus, the bill sets the duration of the participation in the program and any subsequent Board monitoring at one year from the date of the participation agreement.

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. The bill specifies that the license remains valid and in good standing during this grace period if the dentist or hygienist remains in compliance with all other applicable provisions of the law governing dentists.

(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 first day of June.

(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 continuing education documentation

(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 first day of June.

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, which requires the Board to give notice of a proposed rule and to hold a public hearing.

Board officers

(R.C. 4715.03(A) and 4715.06)

Current law requires the State Dental Board to elect a president and secretary. The bill requires the Board to also elect a vice-secretary and specifies that the secretary and vice-secretary are to be elected from the Board members who are dentists.⁴ As provided under current law with regard to the secretary, the bill requires that the vice-secretary be reimbursed for necessary expenses incurred in the discharge of official duties.

CONTINUING EDUCATION--DENTAL HYGIENISTS

Dental hygienist continuing education hours

(R.C. 4715.25(A); Section 3)

Currently, dental hygienists are required to complete 12 hours of continuing dental hygiene education every two years. The bill increases the number of continuing education hours required from 12 to 24. The bill exempts dental hygienists whose registration expires on December 31, 2009, from the increase in hours that must be completed, but the exemption applies only to the 2010-2011 registration period.

ADMINISTRATIVE ADJUDICATIONS--NOTICES OF APPEAL

Background

Under the Administrative Procedure Act, a party adversely affected by an order of an administrative agency is permitted to appeal that order, generally to a court of common pleas.⁵ To effectuate the appeal, the appellant must file a "notice of appeal" setting forth the grounds of the appeal. The notice of appeal must be filed with the agency that issued the order, and a copy of the notice must be filed with the relevant court. The court reviewing the appeal is required to determine whether the agency's

⁴ The bill specifies that its requirement for the secretary to be a dentist does not apply to the current secretary (Section 4).

⁵ The court is determined based on the agency that issued the order. Generally, an order revoking or suspending a license must be appealed to the common pleas court of the county in which the licensee's business is located. Some appeals however, such as those from orders of the State Medical Board, can be made only to the Franklin County Court of Common Pleas.

order is supported by reliable, probative, and substantial evidence and is in accordance with law.

Content of notices of appeal; filing of original or copy of notice

(R.C. 119.12)

The bill requires the notice of appeal an appellant files under the Administrative Procedure Act to merely state that the agency's order is not supported by reliable, probative, and substantial evidence and is not in accordance with law. The bill permits (but does not require) the appellant to set forth in the notice the specific grounds of the appellant's appeal beyond the statement described above.

The bill specifies that in filing the notice of appeal with the agency or court, the notice that the appellant files may be either the original notice or a copy of the original notice.

Nature of amendments and retroactivity

(R.C. 119.12)

The bill specifies that its amendments to the Administrative Procedure Act, described above, are procedural in nature and must be applied retrospectively to all administrative appeals filed prior to, on, or after the bill's effective date.

HISTORY

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