



# Ohio Legislative Service Commission

## Bill Analysis

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### Sub. H.B. 215

128th General Assembly  
(As Reported by H. Health)

**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.
- 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.
- 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 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.

- Increases to 24 (from 12) the number of continuing education hours a dental hygienist must complete every two years.
- Makes the adoption of 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 that appears 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 on concurrence of a majority of Board members.

### **Investigations**

(R.C. 4715.03(B)(5) and (D), 4715.032, 4715.034, and 4715.035)

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 creates a supervisory investigative panel to supervise all of the Board's investigations. The supervisory investigative panel is to consist of solely the Board's secretary and vice-secretary, a position the bill creates (see "**Board officers**," below). The bill permits the Board to terminate an investigation on concurrence of a majority of Board members.

During an investigation, the supervisory investigative panel may ask to meet with the individual who is the subject of an investigation.

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 also specify the reasons for the recommendation. The bill requires the panel to make its recommendation not later than one year after the date the panel begins to supervise the investigation. However, if the investigation is specifically regarding the failure to practice in accordance with accepted standards of professional care, the bill allows the panel up to two years to make a recommendation.

Once the panel makes a recommendation under this section, the secretary and vice-secretary 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. 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. 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.

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>

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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.

## **Discovery**

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

Generally, the 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 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 materials.

## **Disciplinary 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 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 adopted by the Director of Administrative Services.

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.

The Board must then 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 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 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.

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

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

Under current law, a dental professional 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 dental professional may be disciplined for a conviction of or plea of guilty to a criminal offense that is substantially related to the practice of dentistry, dental hygiene, or any other profession the Board regulates.

For purposes 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.

## **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 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 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 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 June 1st.

### **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.

## 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).

## 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.<sup>2</sup> Also, like the secretary under current law, the bill requires the vice-secretary to be reimbursed for necessary expenses incurred in the discharge of official duties.

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## HISTORY

ACTION	DATE
Introduced	06-09-09
Reported, H. Health	10-08-09

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<sup>2</sup> The bill specifies that the requirement that the secretary be a dentist does not apply to the current secretary (Section 4).

