



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: [Am. Sub. H.B. 215 of the 128th G.A.](#) **Date:** April 9, 2010

Status: As Passed by the House **Sponsor:** Rep. Letson

Local Impact Statement Procedure Required: No — No local cost

Contents: Modifies the law governing investigations and hearings conducted by the State Dental Board and makes changes to the requirements for appeal of an administrative adjudication

State Fiscal Highlights

- The State Dental Board may experience an increase in costs to comply with certain provisions of the bill as they relate to changes in the Board's investigation and hearing processes and license renewal procedures.

Local Fiscal Highlights

- No direct fiscal effect on political subdivisions.

Detailed Fiscal Analysis

State Dental Board investigatory and disciplinary changes

Vice-secretary of the State Dental Board

The bill creates the position of vice-secretary, requiring the Board to elect a secretary and vice-secretary from among its members who are dentists.¹ Current law provides for the secretary to be reimbursed for necessary expenses incurred in the discharge of official duties and the bill applies this provision to the vice-secretary as well. The only costs to the Board would be if the vice-secretary receives reimbursement above what the person already receives as a board member due to being elected to the newly created position.

Supervisory investigative panels

The bill requires the State Dental Board to create a supervisory investigative panel, consisting solely of the Board's secretary and vice-secretary, to oversee all investigations conducted by the Board. The panel is responsible for making recommendations pertaining to the disposition of each investigation within one year from the date of assignment or two years if the alleged violation involves a license or certificate holder providing, or allowing subordinate dental professionals to provide, dental care that does not meet accepted standards for the profession. The bill prohibits the investigatory panel members from participating in any deliberations of the case after a recommendation has been made.

According to the Executive Director of the Dental Board, investigation oversight is currently managed by a board member who spends about 20 hours a week performing this duty and is assisted by another board member, both of whom are paid an hourly rate to perform this function. The Board may experience a minimal increase in administrative costs to create and manage the panel.

Hearing examiners

The bill requires the Board to appoint five referees or examiners that are attorneys at law who have been admitted to the practice of law in this state who are not Board members and do not otherwise represent the Board. The bill specifies that appointments are for one year and sets term limits for appointees. The referees or examiners are to oversee all of the Board's disciplinary hearings and deliberations. The bill requires that the referees or examiners be assigned to hearings at random without regard to experience or background. Currently, the Board contracts with two hearing examiners for oversight of all disciplinary hearings and deliberations. At the beginning of each fiscal year, the Board enters into personal service contracts for up to \$5,000 with each of the hearing examiners, to be paid at a rate of \$75 per hour. To comply with this

¹ This provision does not apply to the current secretary of the Board.

provision of the bill, the Board will likely enter into contracts with three additional hearing examiners. The total costs paid by the Board for hearing examiners is unlikely to change; costs will be divided among the five appointees required under the bill instead of between the two hearing examiners currently under contract.

Discovery

Currently, board proceedings relative to an investigation or the determination of whether reasonable grounds exist to believe that a violation has occurred are confidential and not subject to discovery. The bill requires the Board, in compliance with the Administrative Procedure Act, to provide one copy of each item that the Board procures or creates in the course of an investigation of an individual, to the individual free of charge, if the Board has notified an individual of an opportunity for a hearing. These items may include, but are not limited to, complaints filed with the Board; correspondence, reports, and statements of any kind; deposition transcripts; and patient dental records. The bill further requires the Board to redact any personal identifying information that may be contained within such documents prior to disclosure.

The Board currently provides individuals who have been charged with a violation a copy of any information in the investigative file that specifically pertains to the charge against them. According to the Board's Executive Director, there are between 75 and 100 charges filed each year and each person who is charged with a violation is notified of an opportunity for a hearing. The Board will likely experience a minimal increase in costs to prepare documents by redacting personal information and to provide the *entire* patient record or file free of charge to each individual as required by the bill.

Subpoena authority

Current law permits the Board to issue subpoenas for the purposes of an investigation. The bill modifies the Board's subpoena authority by requiring all subpoenas to be authorized by the supervisory investigatory panel. Prior to authorizing a subpoena, the bill requires the panel to first consult with the Office of the Attorney General to determine whether there is probable cause to believe that the complaint filed alleges a violation of state law or administrative rules governing the practice of dentistry and that the information sought pursuant to the subpoena is relevant to the alleged violation and material to the investigation. The Board already utilizes the Office of the Attorney General for legal representation services, including reviewing each case to determine whether probable cause exists to proceed with an investigation. Therefore, this provision is not likely to create additional costs for the Office of the Attorney General or the Board.

Under current law, once a subpoena has been authorized and issued, the Board is required to notify the individual of an opportunity for a hearing prior to issuing an order. If a hearing is requested, the bill requires the Board, upon request by a party in the investigation, to issue a subpoena for the testimony of witnesses and the production of certain tangible items for purposes of the hearing. The Board currently issues such subpoenas and should not experience any increase in costs.

Quality Intervention Program

The bill permits, rather than requires as under current law, the Board to develop and implement the Quality Intervention Program. If the Board decides to develop and implement the program, the bill requires that the Board elect, from its members who are dentists, a coordinator to administer the program and requires that educational and assessment service providers for participants be selected by a concurrence of a majority of the Board's members. The bill also limits required participation in the program to 30 days, and limits additional monitoring or other action taken by the Board to a one-year period following the licensee's agreement to participate in the program. The Board may incur additional costs to have a board member serve as the coordinator and administrator of the program.

License renewal

The bill removes a provision requiring the automatic suspension of a licensee for failing to renew registration or submit evidence of completed continuing education credits and instead requires the Board to create a notification process whereby licensees would be notified and given a six-month grace period prior to any disciplinary action. During the grace period, licensees would be considered to be in good standing, provided the dentist or hygienist remains in compliance with all other applicable rules and provisions. Additionally, the bill increases the requirement of continuing education hours, from 12 to 24, which dental hygienists must complete and certify to the Board in order to apply for a renewal of registration.

The Board could incur additional costs with the creation and implementation of the notification process for licensees and certificate holders that do not renew a license or certificate prior to disciplinary action. However, these costs may be partially offset by a reduction in administrative costs for not having to automatically suspend and then reinstate a license. The Board may also incur additional administrative costs to insure compliance with the increased continuing education requirement among dental hygienists.

Appeal of an administrative adjudication order

Currently, an individual desiring to appeal an administrative adjudication order must file a notice of appeal with the agency that issued the order and the appropriate county court of common pleas that states the grounds of the individual's appeal. The bill modifies the requirement that the notice contain the specific grounds of appeal and instead requires only that the notice state that the agency's order is not supported by

reliable, probative, and substantial evidence and is not in accordance with the law. The bill states that this provision is to be applied retrospectively to all applicable appeals filed prior to, on, or after the bill's effective date. This provision modifies the content that an appellant must include in a notice of appeal and is therefore unlikely to affect costs for county courts of common pleas or state agencies that issue administrative adjudication orders.

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