



# Ohio Legislative Service Commission

Maggie Priestas

---

## Fiscal Note & Local Impact Statement

---

**Bill:** Sub. H.B. 215 of the 128th G.A.

**Date:** December 16, 2009

**Status:** As Reported by House Health

**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

### State Fiscal Highlights

- The Board may experience an increase in administrative costs to reimburse the vice-secretary for necessary expenses incurred in the discharge of official duties.
- The State Dental Board may experience a minimal increase in administrative costs to create the supervisory investigative panel.
- The Board may realize cost savings as a result of utilizing state employees as hearing examiners.
- The Board will likely incur additional minimal costs to provide the *entire* patient record or file free of charge to each individual charged with a violation.
- The Board may incur additional administrative costs for a board member to serve as the coordinator to administer the Quality Intervention Program.
- The Board may incur minimal costs to create and implement a notification process for licensees and certificate holders that do not renew a license or certificate prior to taking disciplinary action. These costs may be offset by a reduction in costs for not having to automatically suspend and then reinstate a license.
- The Board may incur a one-time minimal increase in costs to adopt rules.

### Local Fiscal Highlights

- No direct fiscal effect on political subdivisions.

---

## Detailed Fiscal Analysis

### 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.<sup>1</sup> 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. 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, have been admitted to the practice of law, and are classified as either administrative law attorney examiners or as administrative law attorney examiner administrators, to oversee all of the Board's disciplinary hearings and deliberations and sets term limits for these appointments. 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 \$10,000 with each of the hearing examiners, to be paid at a rate of \$75 per hour.

In accordance with the bill, the examiners or referees would be state employees that meet the minimal qualification of an administrative law attorney examiner or as an administrative law attorney examiner administrator. It is presumed that these employees would be unclassified and intermittent, and paid hourly for their services as

---

<sup>1</sup> This provision does not apply to the current secretary of the Board.

needed. The starting pay for administrative law attorney examiners and administrative law attorney examiner administrators is \$19.70 per hour and \$24.01 per hour respectively, plus additional benefits depending upon the number of hours worked. In FY 2008 and in FY 2009, the Board conducted three administrative hearings. At the lower pay rate than contracted examiners, this provision may result in a decrease in costs for the Board.

## **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 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 an increase in costs to provide the *entire* patient record or file free of charge to each individual as required by the bill.

## **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 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.

### **Various other investigatory and disciplinary changes**

Various other investigatory and disciplinary changes made by the bill include, allowing the Board to determine which criminal offenses are substantially related to any of the professions regulated by the Board and requiring the Board to adopt rules identifying those criminal offenses for purposes of disciplinary action, and requiring the investigatory panel to consult with the Office of the Attorney General to determine whether there is probable cause prior to issuing a subpoena.

The Board may experience a one-time minimal increase in administrative costs to adopt rules identifying criminal offenses that will be subject to disciplinary action. The Board currently utilizes the Office of the Attorney General for legal representation services and should not incur additional costs as a result of the requirement to consult with the Office prior to issuing a subpoena.