



An Audit Report on

Licensing and Enforcement at the Texas State Board of Dental Examiners

Lisa R. Collier, CPA, CFE, CIDA
State Auditor

The Texas State Board of Dental Examiners (Board) overall had processes and controls in place to issue and renew licenses and investigate complaints in accordance with applicable requirements. However, the Board should strengthen its processes related to renewing certain licenses, granting waivers, reporting adverse actions, and developing written information technology policies and procedures.

• *Audit Objective* | p. 14

This audit was conducted in accordance with Texas Government Code Sections 321.013 and 321.0132.

MEDIUM

LICENSING ACTIVITIES

The Board complied with most applicable requirements in conducting its licensing activities. However, it should improve certain processes associated with license renewals and granting electronic prescription waivers.

[Chapter 1 | p. 4](#)

MEDIUM

ENFORCEMENT ACTIVITIES

The Board investigated complaints and took action on them in accordance with its requirements. However, the Board should strengthen its process for reporting certain adverse actions to a national repository as required.

[Chapter 2 | p. 9](#)

MEDIUM

INFORMATION TECHNOLOGY

The Board has not developed documented information technology policies and procedures, including security guidelines, which could help it consistently manage access to its automated systems.

[Chapter 3 | p. 12](#)

Note on Confidential Findings

To minimize security risks, auditors communicated details in a separate report to Board management about audit findings related to certain weaknesses in the Board's controls over access to certain information systems.

HIGH

Those findings were rated High, indicating substantial risk. Action is needed to address the noted concerns and reduce risks to a more desirable level.

Auditors made a recommendation in the confidential report to address the findings. The Board agreed with the recommendation.

That separate report references confidential information. Pursuant to Standard 9.61 of the U.S. Government Accountability Office's *Government Auditing Standards*, certain information was omitted from this report because that information was deemed to present potential risks related to public safety, security, or the disclosure of private or confidential data. Under the provisions of Texas Government Code, Section 552.139, the omitted information is also exempt from the requirements of the Texas Public Information Act.

Summary of Management's Response

Auditors made recommendations to address the issues identified during this audit, provided at the end of each chapter in this report. The Board agreed with the recommendations.

Ratings Definitions

Auditors used professional judgment and rated the audit findings identified in this report. The issue ratings identified for each chapter were determined based on the degree of risk or effect of the findings in relation to the audit objective(s).

PRIORITY: Issues identified present risks or effects that if not addressed could *critically affect* the audited entity's ability to effectively administer the program(s)/function(s) audited. Immediate action is required to address the noted concern(s) and reduce risks to the audited entity.

HIGH: Issues identified present risks or effects that if not addressed could *substantially affect* the audited entity's ability to effectively administer the program(s)/function(s) audited. Prompt action is essential to address the noted concern(s) and reduce risks to the audited entity.

MEDIUM: Issues identified present risks or effects that if not addressed could *moderately affect* the audited entity's ability to effectively administer the program(s)/function(s) audited. Action is needed to address the noted concern(s) and reduce risks to a more desirable level.

LOW: The audit identified strengths that support the audited entity's ability to administer the program(s)/function(s) audited or the issues identified do not present significant risks *or* effects that would negatively affect the audited entity's ability to effectively administer the program(s)/function(s) audited.

For more on the methodology for issue ratings, see *Report Ratings* in Appendix 1.



MEDIUM

Chapter 1 Licensing Activities

The Texas State Board of Dental Examiners (Board) had processes and controls to ensure that it complied with most applicable requirements in conducting its licensing activities. However, the Board should improve certain processes associated with license renewals and granting electronic prescription waivers.

The Board's licensing processes complied with most applicable requirements.

The Board verified that its license applicants met the requirements to obtain new licenses (see text box for a list of licensee types). The 30 applications tested had no significant deficiencies. For example, the applications tested contained documentation showing the applicant (1) had the required education, including passing a hands-on/live patient exam for dentist and dental hygienist applicants, and (2) passed a background check, which included the results of a National Practitioner Data Bank¹ query.

In addition, the Board overall had sufficient processes to verify that its licensees complied with applicable requirements for license renewals. For example, all 28 renewals tested contained the licensees' attestations that they had met the Board's continuing education requirements.

The Board's Licensees

The Board licenses the following professions:

- Dentists.
- Dental hygienists.
- Dental assistants.
- Dental laboratories.
- Mobile dental facilities.

Auditors testing of licensing activities covered the first three professions listed.

Source: The Board.

¹ The National Practitioner Data Bank query checks for reports of state licensure actions or medical malpractice payments.

The Board should improve two areas related to license renewals.

Dental Hygienist License Renewal. The Board requires both dentists and dental hygienists to pass an exam over the applicable statutes and Board rules every four years (the “jurisprudence assessment requirement”). In addition, anesthesia permit holders must pass an exam that covers anesthesia requirements every five years. The Board has a process in place to verify that the dentists and anesthesia permit holders have passed this exam in the required timeframe prior to the Board renewing a license/permit. However, the Board did not have a process in place for the dental hygienists renewing their biennial licenses. Not having a process in place to verify the date of the last exam for that group increases the risk of the Board renewing a license for a dental hygienist who is not in compliance with the requirement.

Late Fees. The Board requires licensees to renew their licenses before the license expiration date. For licensees who renew their licenses after the expiration date, Texas Occupations Code, Section 257.002, requires the Board to charge specific minimum late fees. However, the Board’s fee schedule does not comply with those statutory minimums. As a result, the Board should have collected approximately \$619,000 more in late fees² between September 2021 and May 2023.

The Board should strengthen its processes for granting and extending electronic prescription waivers.

The Board grants electronic prescription waivers that exempt dentists from the general statutory requirements to issue prescriptions electronically for certain controlled substances. The Board grants the waivers for one year if a dentist qualifies and submits a written statement with supporting documentation.

However, 5 of the 32 (15.6 percent) prescription waivers tested did not comply with Board rules. Specifically:

² The undercharged late fees were calculated based on data that the Board provided auditors on its collection of late fees. Auditors did not verify the completeness or accuracy of that data.

- Two waivers did not contain the necessary supporting documentation.
- Two waivers were granted without an expiration date entered in VERSA Regulation (VERSA), the Board’s regulatory system. Waivers that do not have an expiration date in VERSA will not go through the annual eligibility determination process.
- One waiver was granted without the necessary supporting documentation and also did not have an expiration date entered in VERSA.

The Board assigned end dates in VERSA to the three waivers without dates discussed above after auditors brought the issue to its attention.

The Board complied with anesthesia permit and continuing education requirements tested.

Anesthesia Permits. The Board ensured that all 40 approved anesthesia permits³ tested met applicable minimum eligibility requirements and were assessed fees correctly (see text box for information about anesthesia permits). The Board also performed all associated anesthesia inspections as required, and the inspection forms used include all significant requirements.

The Board’s Continuing Education Audits. The Board requires renewing licensees to attest that they met the Board’s continuing education requirements. The Board complied with Texas Administrative Code, Title 22, Section 104.6 (b), to randomly audit 5.0 percent of renewing licensees to verify compliance with the continuing education requirements. For the 26 continuing education audits tested by state auditors, the Board correctly assessed the appropriate result.

Anesthesia Permits

The Board requires licensees who administer anesthesia to obtain a permit to do so. Permits are available to qualifying dentists at various levels, which range from enabling the holder to administer nitrous oxide/oxygen inhalation sedation to enabling the holder to administer general anesthesia.

In addition, licensees who plan to administer anesthesia to either high-risk or pediatric patients must obtain an additional authorization.

The Board must conduct an inspection on permit holders who are authorized to administer more than minimal sedation within one year of the date on which the Board issued the permit.

Source: Texas Administrative Code, Title 22, Chapter 110.

³ Anesthesia permits include anesthesia and sedation permit applications, including changes in permit status.

Recommendations

The Board should:

- Develop a process to verify dental hygienists who are renewing their licenses comply with the jurisprudence assessment requirement.
- Update its fee schedule to comply with statutory requirements for late fees.
- Strengthen its processes for prescription waivers to ensure that all waivers have supporting documentation and that it enters an expiration date into VERSA.

Management's Response

Recommendation 1: The Board should develop a process to verify dental hygienists who are renewing their licenses comply with the jurisprudence assessment requirement.

Management agrees with this recommendation. As of August 28, 2023, TSBDE has implemented a rule within the agency database to ensure that the assessment has been completed within the required timeframe. This process aligns with the same process utilized to verify that dentists and anesthesia permit holders have completed the assessment in the required timeframe.

Responsible for Implementation: The Director of Licensing and General Counsel implemented this recommendation in August 2023.

Recommendation 2: The Board should update its fee schedule to comply with statutory requirements for late fees.

Management agrees with this recommendation. This process will require a database update. We will work with the agency database managers, Health Professions Council (HPC), to implement this change as soon as we update Board rule 102.1 and receive comptroller approval.

Responsible for Implementation: The General Counsel and Deputy Executive Director will update the fee schedule to comply with statutory requirements for late fees. Board's rule 102.1 will reflect the updated fee schedule through a proposed amendment at the Board's February 16, 2024 meeting, and adoption of the amendment is anticipated at the May 3, 2024 meeting.

Recommendation 3: The Board should strengthen its processes for prescription waivers to ensure that all waivers have supporting documentation and that it enters an expiration date into Versa.

Management agrees with this recommendation. TSBDE is working with the agency database managers (HPC) to create a process to verify this information is correctly entered.

Responsible for Implementation: The General Counsel has already begun implementing this update. At the November 3, 2023 board meeting, the Board proposed an amendment to rule 111.5, which pertains to electronic prescribing waivers. The proposed amendment removes the requirement that a dentist must submit a written statement and supporting documentation describing the circumstances necessitating a waiver, and instead requires a dentist to attest to the circumstances necessitating a waiver. The proposed amendment will make it less burdensome on the dentist when submitting a waiver request to the Board, and it will make the Board's waiver process more efficient. The proposed amendment is anticipated to be adopted at the February 16, 2024 Board meeting.

MEDIUM

Chapter 2 Enforcement Activities

The Board had processes and controls to investigate complaints it received and closed from September 2021 through May 2023. It also appropriately dismissed the complaints or assigned a disciplinary action in accordance with its requirements. However, the Board should strengthen its process for reporting certain adverse actions to a national repository as required.

The Board appropriately processed and investigated complaints.

When the Board receives a complaint, it determines whether probable cause exists to proceed to an investigation or dismiss the complaint based on certain criteria. If an investigation determines that a licensee violated statute(s) and/or Board rule(s), the Board may impose a disciplinary or non-disciplinary action (action) against the licensee (see text box for examples of those actions).

Of the 35 actions tested, the Board:

- Assigned all appropriate actions in accordance with the Board’s Disciplinary Action Matrix.
- Obtained review and approval from the appropriate personnel⁴, including its Dental Review Panel (Panel), whose members met all eligibility qualifications to serve on the Panel.
- Posted the actions to its website as required.

Disciplinary and Non-disciplinary Actions

The Board’s disciplinary actions can include:

- Administrative penalty.
- Warning.
- Reprimand.
- Probated suspension.
- Enforced suspension.
- Revocation.

Non-disciplinary actions may include a remedial plan.

Source: The Board’s Disciplinary Matrix.

⁴ In one instance, a Remedial Plan went through the proper channels of review; however, it was not presented to the Board for approval.

Of the 59 dismissed complaints tested:

- All had sufficient documentation to support the reason for dismissal.
- All but one were reviewed and approved by the appropriate personnel prior to dismissal.

In addition, the Board had processes to help ensure that it monitors license holders' compliance with disciplinary actions in accordance with applicable requirements.

The Board should strengthen its processes for reporting disciplinary actions to the National Practitioner Data Bank.

The Board had a process for reporting license holders with certain disciplinary actions to the National Practitioner Data Bank (NPDB) as required by the Code of Federal Regulations. However, it did not ensure that it reported this information consistently or within the required timeframes. Specifically, of the 11 complaints tested that resulted in a disciplinary action required to be reported, the Board did not report 2 (18.2 percent) of those actions to the NPDB. The two unreported disciplinary actions were a surrender of a license and a revocation of a license, respectively.

The Board reported the remaining 9 complaints between 3 days and 190 days late. The Code of Federal Regulations requires the information to be reported to the NPDB within 30 days following a disciplinary action. Not reporting adverse actions to the NPDB as required could result in putting patients at increased risk if they receive care from a provider with a history of adverse actions or malpractice.

National Practitioner Data Bank (NPDB)

The NPDB is a web-based repository of reports containing information on medical malpractice payments and certain adverse actions related to health care practitioners, providers, and suppliers. Established by Congress in 1986, it is a tool designed to help prevent practitioners from moving state to state without disclosure or discovery of previous damaging performance.

Source: The National Practitioner Data Bank website.

Recommendation

The Board should strengthen its processes to ensure that it complies with NPDB reporting requirements, including submitting all reportable disciplinary actions within 30 days as required.

Management's Response

Recommendation: The Board should strengthen its process to ensure that it complies with the NPDB reporting requirements; including submitting all reportable disciplinary actions within 30 days as required.

Management agrees with this recommendation and is in the process of implementing changes to strengthen the process for NPDB reporting.

Responsible for Implementation: The General Counsel is responsible for implementation, which should be completed by March 15, 2024. The employee responsible for reporting disciplinary actions to the NPDB left the agency, and a new employee was recently hired. The General Counsel will work closely with the new employee to ensure disciplinary actions are timely reported to the NPDB.

MEDIUM

Chapter 3 Information Technology

The Board does not have documented information technology (IT) policies and procedures, which could help it consistently manage access to its systems.

The Board should develop and document comprehensive information technology policies and procedures.

Texas Administrative Code, Title 1, Section 202.24, requires state agencies to develop and document policies to reduce information security risk to an acceptable level. However, the Board has not developed written information security guidelines, including guidance on managing access to its automated systems. Having documented policies and processes could help the Board ensure consistency in removing and/or restricting access to IT systems. For example, auditors identified some users who had access levels that exceeded what their job duties required. Auditors also identified former employees who still had access to VERSA. In all cases, the Board stated that it took steps to terminate the improper access after auditors brought the issues to its attention. Having comprehensive, documented guidelines could help provide guidance on what access is appropriate.

Recommendation

The Board should develop, document, and implement IT policies and procedures, including policies for appropriately removing and restricting user access to Board systems.

Management's Response

Recommendation: The Board should develop, document, and implement IT policies and procedures, including policies for appropriately removing and restricting user access to Board systems.

Management agrees with this recommendation. Although the IT division does not have a written policy, they do have a method to remove or restrict user access.

Responsible for Implementation: The Director of IT is responsible for implementation with an estimated completion date of May 30, 2024.



Appendix 1

Objective, Scope, and Methodology

Objective

The objective of this audit was to determine whether the Texas State Board of Dental Examiners (Board) has processes and related controls to help ensure that the Board complies with applicable requirements in conducting licensing and enforcement activities.

Scope

The audit scope included new and renewed licenses issued and complaints filed or resolved from September 1, 2021, through May 31, 2023.

The scope also included a review of significant internal control components related to licensing and enforcement activities.

The following members of the State Auditor's staff performed the audit:



- Gregory S. Adams, CPA, MPA, CGFM (Project Manager)
- Michelle Rodriguez, CFE (Assistant Project Manager)
- Rogelio De La Fuente Jr., CPA
- Jennifer Fries, MS
- Rachel Lynne Goldman, CPA, CISA, CFE
- David Hinojosa, CIA, CFE, CFI
- Douglas Jarnagan, MAcc
- David Johnson
- Peyton Rudd
- Ann E. Karnes, CPA (Quality Control Reviewer)
- Becky Beachy, CIA, CGAP (Audit Manager)

Methodology

We conducted this performance audit from April 2023 through December 2023 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. In addition, during the audit, matters not required to be reported in accordance with *Government Auditing Standards* were communicated to the Board's management for consideration.

Addressing the Audit Objectives

During the audit, we performed the following:

- Interviewed Board management and staff, as well as Health Professions Council staff, to gain an understanding of the processes and controls related to licensing and enforcement activities within the audit scope.
- Identified the relevant criteria:
 - *Department of Information Resources Security Control Standards Catalog, Version 2.0.*
 - Texas Occupations Code, Chapters 251 through 267 (Dental Practice Act).
 - Texas Administrative Code, Title 1, Part 202.
 - Texas Administrative Code, Title 22, Part 5.
 - Board policies and procedures.
- Tested samples of the Board's applications and licenses to determine if they were accurately entered, supported, reviewed, and processed in accordance with applicable requirements (see Figure 1 on the next page for sample information).
- Tested samples of the Board's dismissed complaints, non-disciplinary actions, and disciplinary actions to determine if they were accurately entered, supported, reviewed and approved by eligible professionals, and processed in accordance with applicable requirements.

- Tested samples related to the Board’s licensing activities related to continuing education audits, issuing anesthesia permits, and granting electronic prescription waivers to determine if they were processed in accordance with applicable requirements.
- Tested user access to the Board’s licensing and enforcement system, VERSA Regulation (VERSA); the Board’s shared drives; and the Board’s document storage system for investigation reports, Papervision.
- Tested certain input controls for VERSA.
- Reviewed and reconciled revenue collected for licensing fees between the Board’s financial system of record, the Uniform Statewide Accounting System, and VERSA.
- Reviewed the late fees charged and calculated the minimum fees required to be charged according to the Texas Occupations Code.

Figure 1 lists the populations and samples that auditors tested for this report.

Figure 1

Populations and Samples Selected for Testing ^a

Description	Population	Sample Size ^b
Electronic Prescription Waivers for Licensed Dentists	2,304	25 random and 8 risk-based
Dismissed Complaints	1,336	25 random and 34 risk-based
Disciplinary and Non-disciplinary Actions	385	26 random and 9 risk-based
New License Applications	11,800	25 random and 5 risk-based
License Renewals	52,345	25 random and 3 risk-based
Continuing Education Audits	2,486	25 random and 1 risk-based
Anesthesia Permit Transactions	1,785	32 random and 8 risk-based

^a The samples in this figure were not representative of the populations. The results, as reported, do not identify which items were randomly selected or selected based on risk factors; therefore, it would not be appropriate to project the test results to the populations.

^b All random samples selected were considered nonstatistical samples; the random sample design was used so the sample could be evaluated in the context of the population. The risk-based sample items were selected to ensure review of various factors such as coverage of certain license and complaint types.

Data Reliability and Completeness

Auditors determined that certain VERSA data populations were sufficiently reliable for purposes of this audit by (1) observing the Board staff extract requested data populations, (2) reviewing data queries and report parameters, (3) analyzing the populations, and (4) testing selected general controls over the information systems. Specifically, the following data sets from VERSA were reliable and used for this audit:

- New and renewed licenses issued.
- Continuing Education (CE) audits conducted.
- Anesthesia permits issued and associated inspections performed.
- Prescription waivers granted.
- Complaints filed and/or resolved.

Report Ratings

In determining the ratings of audit findings, auditors considered factors such as financial impact; potential failure to meet program/function objectives; noncompliance with state statute(s), rules, regulations, and other requirements or criteria; and the inadequacy of the design and/or operating effectiveness of internal controls. In addition, evidence of potential fraud, waste, or abuse; significant control environment issues; and little to no corrective action for issues previously identified could increase the ratings for audit findings. Auditors also identified and considered other factors when appropriate.



Copies of this report have been distributed to the following:

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The Honorable Dade Phelan, Speaker of the House, Joint Chair

The Honorable Joan Huffman, Senate Finance Committee

The Honorable Robert Nichols, Member, Texas Senate

The Honorable Greg Bonnen, House Appropriations Committee

The Honorable Morgan Meyer, House Ways and Means Committee

Office of the Governor

The Honorable Greg Abbott, Governor

Texas State Board of Dental Examiners

Members of Texas State Board of Dental Examiners

Ms. Casey Nichols, Executive Director



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