

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §107.400, concerning collection and reporting of enforcement and licensing data. The proposed amendment requires a yearly report to the Board instead of a quarterly report because a yearly report will provide a better snapshot of the data. The proposed amendment also updates the rule to reflect that the Board no longer issues administrative citations, but rather administrative penalties.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this proposed rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the proposed rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

Comments on the proposed rule may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposed rule.

Legal counsel for the Board has reviewed the proposed rule and has found it to be within the Board's authority to adopt.

<rule>

§107.400. Collection and Reporting of Enforcement and Licensing Data.

(a) All information related to an investigation is confidential, except that the agency shall provide information on a yearly [~~quarterly~~] basis to the Board and the Anesthesia Committee of the Board, and to legislative offices upon request. This information shall consist of de-identified, case specific data reflecting information about jurisdictional, filed complaints involving sedation/anesthesia that were resolved during the reporting period, including, at a minimum, the following data points:

(1) Source of initial complaint -- public, other agency, self-report of death, self-report of hospitalization, or initiated by the Board.

(2) Information about licensee:

(A) Whether respondent is Medicaid provider;

(B) Respondent's highest sedation/anesthesia permit level;

(C) Whether respondent holds portability privileges; and

(D) Respondent's self-reported practice area.

(3) Information about patient:

(A) Patient ASA, as identified in respondent's dental records and/or determined by Dental Review Panel;

(B) Patient age -- 13 and under, between 13 and 18, between 19 and 75, and over 75;

(C) Location of the treatment investigated by the agency -- dental office, hospital, ASC, office of other practitioner;

(D) Level of sedation/anesthesia administered -- Local, Nitrous, I, II, III, IV (determined by Dental Review Panel);

(E) Sedation/anesthesia administrator -- respondent, other dentist, MD, CRNA (determined by Dental Review Panel); and

(F) Whether treatment investigated by the agency was paid by Medicaid.

(4) Information about investigation:

(A) Allegation categories identified in preliminary investigation;

(B) Disposition of official investigation -- Dismissed by Enforcement, Dismissed by Legal -- No Violation, Dismissed by Board Vote, Closed by Administrative Penalty [~~Citation~~]/Remedial Plan/Disciplinary Action; and

(C) If disposition is public action (Administrative Penalty [~~Citation~~], Remedial Plan, or Disciplinary Action), the violations identified in the public action resolving the official investigation.

(b) In addition, the agency shall publish on its website aggregate data related to the preceding fiscal year for each type of license it issues. This aggregate data shall include, at a minimum, the following data points related to the preceding fiscal year:

(1) Number of licensees at the end of the fiscal year;

(2) Average number of days to issue a license;

(3) Total number of complaints against licensees received by the agency;

(4) Total number of jurisdictional complaints against licensees filed by the agency;

(5) The resolution of all cases resolved in the fiscal year:

(A) Nonjurisdictional;

(B) Jurisdictional, Not Filed;

(C) Dismissed by Agency;

(D) Dismissed by Board Vote;

(E) Closed by Administrative Penalty [~~Citation~~];

(F) Closed by Remedial Plan;

(G) Warning;

(H) Reprimand;

(I) Probation;

(J) Suspension; and

(K) Revocation.

(6) For all jurisdictional, filed complaints resolved in the fiscal year, the allegation category of the complaints, as defined in §107.104;

(7) Number of cases that at the end of the fiscal year, have been filed with the agency for longer than one year;

(8) Average administrative penalty [~~assessed through administrative citations~~] issued in the fiscal year;

(9) Average administrative fine assessed through disciplinary actions taken in the fiscal year;

(10) Number of cases heard at Informal Settlement Conferences in the fiscal year;

(11) Number of cases resolved following Informal Settlement Conference, without referral to SOAH, in the fiscal year;

(12) Number of cases referred to SOAH in the fiscal year;

(13) Number of cases referred to SOAH and resolved following mediation, in the fiscal year;

(14) Number of cases returned to the Board for disposition on a default basis following referral to SOAH;

(15) Number of cases returned to the Board for consideration of a Proposal for Decision following a contested case hearing at SOAH;

(16) Number of cases resolved in the fiscal year that were appealed to District Court;

(17) Average number of days to investigate a complaint from complaint received to investigation completed, for all complaints received; and

(18) Average number of days to resolve a complaint from complaint received to final order issued, for all complaints received.

(c) In addition, the agency shall publish on its website aggregate data related to the preceding fiscal year that addresses adverse outcomes and complaints involving anesthesia. This aggregate data shall include, at a minimum, the following data points related to the preceding fiscal year:

(1) Number of jurisdictional, filed complaints involving mortality and morbidity. Morbidity is defined as life-threatening complications following a dental procedure or treatment;

(2) Total number of jurisdictional complaints against dentists related to the standard of care in anesthesia, by level of sedation/anesthesia permit held by the dentist, that were filed by the Board in the preceding fiscal year; and

(3) For all anesthesia-related jurisdictional, filed complaints identified in (2) above, the level of sedation/anesthesia permit held by the dentist, the anesthesia-related complication identified in the Board's investigation (if any), and the resolution of each complaint:

(A) Nonjurisdictional

(B) Jurisdictional, Not Filed;

(C) Dismissed by Agency;

(D) Dismissed by Board Vote;

(E) Closed by Administrative Penalty [~~Citation~~];

(F) Closed by Remedial Plan;

(G) Warning;

(H) Reprimand;

- (I) Probation;
- (J) Suspension; or
- (K) Revocation.