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Texas State Board of Dental Examiners

NEWSLETTER

JUNE 1993

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From the President

James L. Bolton, D.D.S.

As many of you know by now, the TSBDE was sunsetted in the last hours of the 72nd Session of the Legislature, May 31, an unprecedented event in the almost 100 years of the Dental Board's existence.. As we began this *Newsletter* some weeks before, we had intended to cover in detail the changes to the Act that would go into effect, September, 1993. The delete key on our computers received a thorough work out in eliminating a considerable amount of narrative on these changes.

Our previous publication, Volume 5, March 1993, reported many of the Sunset recommendations, both general and specific that were being considered by the Legislature this session. We learned, however, on May 31 that because the House rejected the Conference Committee Report, a report resulting from differences in the House and Senate versions of the new act, the TSBDE would be automatically sunsetted effective September 1, 1993, pursuant to that provision in the Dental Practice Act, if action were not taken to reinstitute it.

From the hundreds of phone calls over the past week or more regarding this issue, we realize that much confusion exists about alternatives, the future of regulation, and authority of statutory provisions. Much of this *Newsletter* will be devoted to attempting to clarify legally and substantively what has occurred.

Under provisions of Chap. 325.017, TAC (Sunset Law), agencies which are sunsetted have one year to phase down, to transfer property and records, and cease operation by September 1, 1994. Whenever an agency is slated for sunset, typically its functions are delineated for transfer to other agencies, as appropriate, through legislation drafted in conjunction with the sunset action. Concomitantly, agency property and records are placed with either a particular agency or with the General Services Commission as a repository

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for storage and subsequent disposition.

When Chap. 325.017 references a phase down or phase out of the agency during the "grace year" after sunset, it is for the purpose of an orderly transfer of the functions identified by law to be transferred, such that those services to the public that are to be retained are not interrupted. **This is not the case with the TSBDE.**

In our case, the TSBDE's sunset in the final hours, it appears, was not contemplated such that functions of the agency as licensing and enforcement were not identified by legislative action for transfer or re-disposition. The authority of the agency continues, pursuant to Chap. 325.017, during the subsequent year, "legally." Since the functions are not authorized under the statute for transfer to any other entity, there is nothing to "phase out." Thus, on or after August 31, 1994, property and records would be moved to a proper repository, and the agency's functions would simply cease.

The effect of the sunset action, however, is felt immediately on the daily operations of the agency. Disciplinary actions become subject to delays through postponements/continuances filed by attorneys for respondents with the State Office of Administrative Hearings. Settlement Conference offers may be ignored by respondents attempting to run out the clock. The overall authority of the agency's enforcement ability begins to erode. The agency's ability to sanction those who are out of compliance with Board Orders also may erode quickly.

Whenever an act such as this occurs, staff quite naturally begin seeking employment elsewhere. The efforts in building a strong staff over the past couple of years give way to insecurity and uncertainty. Re-hiring and re-training staff are difficult and time-consuming, given the short-term nature of operations.

Students at dental and dental hygiene schools may

begin to assess their professional future in Texas where examination and licensure might become unavailable. Already, for this exam cycle, the agency is receiving requests for refunds of examination fees.

Dental laboratory registrations would cease. The state would be open for anyone to operate a laboratory without continuing education in infection control, without sanctions for operating illegally, or for practicing dentistry without a license. Inquiries are currently being made from denturists from other states and countries about setting up in Texas.

The Texas Dental Peer Assistance Program would cease operations without authority to receive, monitor, and assure compliance with Board Orders where substance abuse and mental impairment involve dentistry and dental hygiene. At the present time, the Program monitors under compliance with the Board approximately 200 such cases. Fines assessed that go to support the Texas Dental Peer Assistance Program will no longer be available for its operations.

No longer will certifications and registrations be provided under qualifications or examination for anesthesia/sedation permits, nitrous oxide monitoring, and radiology. Standards of care in dentistry will go unchecked by those who elect not to maintain quality levels of care.

At this writing, the dust continues to settle from the session. Under Art. 4543 b, V.T.C.S., the Board is abolished effective September 1, 1993, even though there is the phase out period mentioned above. While the authority continues during the phase out, the Board would require new appointment, it appears, if reinstated after September 1, 1993. The statute remains in place; it is the Board, the agency, that is sunseted. The only available alternative to re-institute the Board is through a special legislative session that can only be called by the Governor.

By the time this issue reaches you, given printing and distribution time, we will have had Board elections for officers. Our next issue is scheduled for late August, early September. By that time, we may have a better idea of the future and the resolution, if any, of this important matter.

Credentialing and Foreign/Non-Accredited Dentists

At the San Antonio Board Meeting during the TDA Annual Meeting, the Board adopted rules, following another opportunity for public testimony, to provide credentialing and licenses graduate of foreign

/non-accredited dental schools.

Since that meeting, the Board office has received approximately 60 applications for license by credentials and a comparable number from foreign dentists, in addition to earlier requests from foreign dentists.

In January, in anticipation of the credentials rule, the Board requested an Attorney General's Opinion on whether the Dental Practice Act provided proper authority. Following adoption of the rules, but prior to close of the legislative session on May 31, we received a notice from the Attorney General's Opinions Committee that it had elected to render no opinion because of a pending hearing by a dentist who had earlier asked the District Court to review the Board's authority in this area.

With the demise of the revisions in the Dental Practice Act that would have specifically delineated licensure by credentials, we are left with a set of rules. The Board intends to move forward under the assumption that it has authority under Art. 4545a, VTCS.

A committee will be appointed to review the applications at the Baylor Exam, Board Meeting. Following review and screening, applications and applicants will be brought before the Board for consideration.

In the case of foreign/non-accredited graduates, each person requesting to be licensed must file an application with the Board and comply with all requirements therein. Following a complete application, the applicant is required to successfully pass a qualifying exam at one of the three dental schools before taking the Board exam. Letters and requests continue to come in daily on this issue.

The current Dental Practice Act does not provide for either credentialing or foreign/non-accredited licensure for dental hygiene candidates.

Disciplinary Actions

Since the last *Newsletter*, the following actions have been ordered by the Board.

1. Allen Lee Atterson, D.D.S. #92-037-0930P
Complaint: Respondent failed to maintain minimum standard of care through adequate records and also dispensed scheduled drugs in a quantity that a reasonable and prudent dentist would not prescribe.
Discipline: License suspended three years, all probated; 40 hours C.E. in pharmacology within one year; will not dispense or maintain controlled substances

in office, and will undergo unannounced Board inspections of the office.

2. Joseph Bonola, D.D.S. #91-0729-340S
Complaint: Telephone ads imply specialization as defined by the ADA.
Discipline: Appear before Board Secretary at 1994 TDA meeting and present all ads showing compliance with requirements of the Board.

3. Jack H. Castle, D.D.S. #92-274-0326K-D
Complaint: Television ads regarding free orthodontic consult and radiographs creates a misleading and deceptive impression as to what constitutes free services.
Discipline: Reprimanded and directed to review all commercial ads to insure compliance.

4. George.H. Collins, D.D.S. #92-329-0415M
Complaint: Failed to cooperate with Board investigation in proper and timely manner.
Discipline: Ordered to comply with all requests both written and oral on Board investigations.

5. Eldridge F. Dorsey II, D.D.S. #92-224-0212K-D
Complaint: Respondent obtained less than \$800. in dental fees from Medicaid as a result of billing errors for services not rendered.
Discipline: Reprimanded and \$5000. fine to be paid in 30 days.

6. Leroy R. Freeman, D.D.S.: #'s90-431M-D, 91-1127-087L, & 91-0722-329S
Complaint: Failed to complete, timely, root canal therapy; failed to maintain adequate records of diagnosis and treatment and informed consent; and failed to record proper root canal information and obtain radiographs.
Discipline: Suspended for one year, all probated; 32 hours of CE within one year, and provide after CE random review of seven cases by Board meeting criteria for review.

7. Irby B. Hunter, D.D.S.: #92-447-0706M
Complaint: Failed to meet minimum standards through adequate records on three patients and failed through unsanitary office conditions.
Discipline: Suspended for one year; 24 hours CE; and agrees to abide by all laws and rules of the Board, along with any reporting requirements imposed.

8. Jordan H. Minyard, D.D.S.: #92-155-0107S
Complaint: Used sargenti paste during root canal treatment and failed to maintain proper records.
Discipline: Reprimanded; 15 hours CE; and terms of this order to run concurrently with #'s 90-251 & 90-

347.

9. Allen P. Schuster, D.D.S.: #91-0311-1711L-D
Complaint: Failed to maintain adequate records of local anesthetic agent, physical evaluation and physiological vital signs. Patient deemed to be uncooperative in treatment.
Discipline: 25 hours CE; comply with all laws and rules of the State and Board.

10. George R. Varner, D.D.S.: #92-418-0608M
Complaint: Failed to follow minimum standards of care in placing crowns with open margins.
Discipline: License suspended for two years, all probated; 40 hours of CE with two years of Order date.



Notes & Reminders .

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Following the exam cycle which concludes in August at Houston, the Board's next regularly-scheduled meeting will be in Austin on September 16th and 17th in conjunction with the Lone Star Dental Conference.

We are advised that DEA has increased registration certificate renewals from \$60. to \$210. annually.

The nitrous oxide monitoring exam will be given at the Houston Dental School on Thursday, August 26. Applications are due in the Board office by August 9. The next exam will be November 13 in Austin.

Over the next several months, periodic reports on the status of the Board's activities and future will be reported through this *Newsletter*. A good way to remain knowledgeable of these events is to subscribe if you have not done so. This renewal year, March, the cost was reduced to \$10.00. A subscription form is enclosed on the back for your convenience.

Texas State Board of Dental Examiners
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