



GOVERNOR GREG ABBOTT

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Texas State Board of Dental Examiners

From: Erin Bennett, Director
Regulatory Compliance Division, Office of the Governor

Date: November 2, 2022

Subject: Proposed Title 22 Texas Administrative Code Sections 101.2, 101.3, 103.2, and 103.3 (RCD Rule Review #2022-010)

I. Syllabus

The Texas State Board of Dental Examiners (“board”) proposed amended 22 TAC §§101.2, 101.3, 103.2, and 103.3, which clarify that the clinical examinations required for the licensure of dentists and dental hygienists must use live patients or hands-on simulations.¹ The board submitted the proposed rules to the Regulatory Compliance Division (“division”) for review on September 30, 2022.² The division invited public comments on the proposed rules for a period ending October 28, 2022, and received no comments. Based on the following analysis, the division has determined that the proposed rules are consistent with state policy, and, thus, proposed amended §§101.2, 101.3, 103.2, and 103.3 are approved by the division and may be finally adopted and implemented.

II. Analysis

The proposed amendments to §§101.2, 101.3, 103.2, and 103.3 originated with the board’s licensing committee.³ The committee developed the proposed rules to clarify the existing board interpretation that its clinical licensing examinations must include a hands-on component.⁴ According to the board, this interpretation furthers its mission to protect the public health and

¹ 47 Tex. Reg. 6377-6382 (2022) (to be codified at 22 TAC §§101.2, 101.3, 103.2, and 103.3) (proposed Sept. 30, 2022) (Tex. State Bd. Dental Exam’rs).

² Rule Submission Memorandum from the Texas State Board of Dental Examiners (Sept. 30, 2022) (22 TAC §§101.2, 101.3, 103.2, and 103.3) (on file with the Regulatory Compliance Division of the Office of the Governor).

³ Texas State Board of Dental Examiners, *Video Recording of August 11, 2022, Committee Meetings*, <https://www.youtube.com/watch?v=FGfZu1TjM1k> (Aug. 11, 2022), at 2:39:00.

⁴ Rule Submission Memorandum from the Texas State Board of Dental Examiners (Sept. 30, 2022) (22 TAC §§101.2, 101.3, 103.2, and 103.3), at 2.

safety and helps ensure that applicants for licensure are competent and qualified to treat Texas patients.⁵ The board subsequently approved the rules for proposal, and they were published in the September 30, 2022, issue of the *Texas Register*.⁶ The board acknowledges that requiring live patients or hands-on simulations during clinical licensing examinations may provide applicants with fewer options or result in higher prices for examination.⁷ Therefore, the board identified the proposed rules as affecting market competition pursuant to Section 57.105(d), Texas Occupations Code, and submitted them to the division for review.⁸

A. The division finds that proposed amended §§101.2 and 103.2 are consistent with state policy.

Section 254.001, Texas Occupations Code, grants the board broad authority to adopt rules to ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety, including rules governing the examination of applicants for a license to practice dentistry. Further, Sections 256.003 and 256.055, Texas Occupations Code, instruct the board to provide for the examination of applicants for dental and dental hygienist licenses, respectively, while also directing the board to contract with one or more independent or regional testing services for any required clinical examinations. The board has exercised this authority to require passage of a clinical examination for licensure under current §§101.2 and 103.2, and it now seeks to clarify that these “clinical” examinations must use live patients or hands-on simulations.⁹

Section 256.003(b) requires the examination of an applicant for a dental license to consist of subjects and operations relating to dentistry, including anesthesia, operative dentistry, oral surgery, orthodontia, periodontia, prosthetic dentistry, and other subjects regularly taught in reputable dental schools. And, Section 256.055(b) requires the examination for dental hygienist applicants to consist of subjects and operations relating to dentistry and dental hygiene, including x-ray, dental hygiene treatment planning, dental materials, and other subjects regularly taught in reputable schools of dentistry and dental hygiene. Given that many of these test subjects involve physical interaction with and operation on patients as part of the regular practice of dentistry and dental hygiene, the board discussed the necessity for licensure applicants to demonstrate hands-on competency, including sufficient hand-eye coordination, during the clinical examination and before being licensed to operate on the general public.¹⁰ Because live patients may not always be readily available, the board sought flexibility by allowing applicants to complete a hands-on

⁵ *Id.* at 2-3; Texas State Board of Dental Examiners, *Video Recording of August 11, 2022, Committee Meetings*, <https://www.youtube.com/watch?v=FGfZu1TjM1k> (Aug. 11, 2022), at 2:40:05.

⁶ Texas State Board of Dental Examiners, *Video Recording of August 12, 2022, Board Meeting*, <https://www.youtube.com/watch?v=xmnOGE337G8> (Aug. 12, 2022), at 2:44:10.

⁷ Rule Submission Memorandum from the Texas State Board of Dental Examiners (Sept. 30, 2022) (22 TAC §§101.2, 101.3, 103.2, and 103.3), at 3.

⁸ *Id.*

⁹ *Id.* at 2.

¹⁰ Texas State Board of Dental Examiners, *Video Recording of August 11, 2022, Committee Meetings*, <https://www.youtube.com/watch?v=FGfZu1TjM1k> (Aug. 11, 2022), at 2:40:10 and 2:50:10.

simulation during the clinical examination, which may include operation on a manikin or completing a virtual procedure, in lieu of operating on a live patient.¹¹ Ultimately, given the board's broad statutory authority to establish guidelines for the examinations required for licensure and the hands-on skills typically required for the safe practice of dentistry and dental hygiene, the proposed amendments to §§101.2 and 103.2 are consistent with state policy.

Proposed amended §§101.2(c) and 103.2(b) also update the names of the acceptable regional examining boards and expand the time period during which examination results will be accepted by the board from five to seven years. Because these proposed amendments merely reflect the accurate names of the examining boards and create more flexibility for applicants, they actually reduce barriers to licensure and pose no negative effect on market competition.

B. The division also finds that proposed amended §§101.3 and 103.3 are consistent with state policy.

Section 256.101(a)(2), Texas Occupations Code, directs the board to issue dental and dental hygiene licenses to certain out-of-state applicants if, among other requirements, the applicant is licensed in good standing as a dentist or dental hygienist in another state that has licensing requirements "substantially equivalent" to Texas requirements for licensure. Therefore, the board proposed amendments to §§101.3(a)(2) and 103.3(a)(1) to mirror the proposed amendments to §§101.2 and 103.2 by requiring individuals applying for licensure by credentials to have successfully completed a live patient or hands-on simulation clinical examination by another state or regional examining board. In discussing the licensure requirements of other jurisdictions, the board noted that an overwhelming majority of states already use live patients or manikins during examinations, likely making any barriers to licensure imposed by the proposed rule changes minimal.¹² Given that the proposed amendments are intended to enhance public health and safety by ensuring hands-on competency in the practice of dentistry and dental hygiene, and because they are substantially equivalent to the clinical examination requirements also being proposed for in-state applicants, the proposed amendments to §§101.3 and 103.3 are a reasonable exercise of the authority granted by statute and are consistent with state policy.

III. Determination

Based on the above analysis, proposed amended §§101.2, 101.3, 103.2, and 103.3 are approved by the division and may proceed to final adoption and implementation.

¹¹ *Id.* at 2:40:53.

¹² *Id.* at 2:51:52.