

PROGRESS REPORT: REGULATION  
OF THE DENTAL PROFESSION

LOUISIANA STATE BOARD OF DENTISTRY



PERFORMANCE AUDIT SERVICES  
ISSUED SEPTEMBER 9, 2020

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LOUISIANA LEGISLATIVE AUDITOR  
DARYL G. PURPERA, CPA, CFE

September 9, 2020

The Honorable Patrick Page Cortez,  
President of the Senate  
The Honorable Clay Schexnayder,  
Speaker of the House of Representatives

Dear Senator Cortez and Representative Schexnayder:

This report provides the results of our audit of the Louisiana State Board of Dentistry (LSBD). The purpose of this audit was to evaluate LSBD's progress in addressing issues identified in our October 2016 audit report on the regulation of the dental profession.

Overall, we found LSBD fully or partially implemented seven of the eight recommendations we made in our October 2016 report. However, we also found that the board needs to make more improvements in its monitoring and enforcement processes. In addition, we identified some risks associated with LSBD's underutilization of the National Practitioner Data Bank (NPDB) and the Prescription Monitoring Program (PMP) in its licensing, monitoring, and enforcement activities.

Specifically, we found that during fiscal years 2016 through 2018, LSBD inspected 1,441 (94.4%) of 1,527 active dental offices at least once as required by policy. This was an improvement from our October 2016 report, which found LSBD inspected 1,032 (64.5%) of 1,600 dental offices during fiscal years 2012 through 2014. We found as well that LSBD did not always ensure dentists submitted proof they had corrected violations within 30 days of an inspection for 213 (48.1%) of 443 inspections, as required by board policy.

In addition, while LSBD developed criteria to identify high-risk dental offices, it did not refer 15 (71.4%) of 21 high-risk offices to a Disciplinary Oversight Committee, as required by policy, to determine whether action was needed. LSBD also did not maintain a list of high-risk offices or data that indicated which offices had high-risk violations noted during an inspection. As a result, the board cannot effectively track high-risk offices for referral to a Disciplinary Oversight Committee to ensure public safety.

We found, too, that LSBD's electronic tracking system does not track all disciplinary actions taken by the board. As a result, Disciplinary Oversight Committee members may not have all the information they need to make disciplinary recommendations and may not be sanctioning dentists in a fair and equitable manner. LSBD did adopt a disciplinary matrix in

The Honorable Patrick Page Cortez,  
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December 2019, but it does not address all violations or include the full range of disciplinary actions available to the board.

LSBD also has not developed a process to require consistent use of the PMP to investigate complaints and monitor sanctioned licensees to ensure they are complying with consent decrees or board orders. We found that during fiscal years 2016 through 2019, LSBD did not use the PMP to investigate six (50%) of the 12 complaints it received related to illegal prescribing or practice by dentists and to monitor sanctioned licensees. We reviewed PMP data and identified two dentists who appeared to have prescribed medications in violation of the law or the restrictions imposed by LSBD.

In addition, during fiscal years 2016 through 2019, LSBD did not report all adverse actions against dentists or dental hygienists to the NPDB as required by federal regulations. We found the board did not report 16 (34%) of 47 actions against licensees to the NPDB at all and did not report the remaining 31 actions within 30 days. LSBD also does not query the NPDB prior to making license renewal decisions, so it may be making those decisions without disciplinary information on licensees from other states.

The report contains our findings, conclusions, and recommendations. I hope this report will benefit you in your legislative decision-making process.

We would like to express our appreciation to the Louisiana State Board of Dentistry for its assistance during this audit.

Respectfully submitted,



Daryl G. Purpera, CPA, CFE  
Legislative Auditor

# Louisiana Legislative Auditor

Daryl G. Purpera, CPA, CFE



## Progress Report: Regulation of the Dental Profession Louisiana State Board of Dentistry

September 2020

Audit Control # 40190024

### Introduction

We evaluated the Louisiana State Board of Dentistry's (LSBD) progress towards addressing issues identified in our October 2016 audit on its regulation of the dental profession.<sup>1</sup> LSBD is responsible for licensing dentists and dental hygienists, inspecting dental offices, and enforcing the Dental Practice Act<sup>2</sup> by investigating complaints against dentists and issuing sanctions for violations. As of March 2020, LSBD regulated a total of 2,556 dentists and 2,446 dental hygienists.

LSBD's **mission** is to *protect the public by regulating the professions of dentistry and dental hygiene in Louisiana in accordance with the Dental Practice Act.*

The **National Practitioner Data Bank (NPDB)** is a confidential information clearinghouse created by Congress with the primary goal of improving healthcare quality and protecting the public by preventing healthcare practitioners from moving state to state without disclosure of previous damaging or incompetent performance.

The **Prescription Monitoring Program (PMP)** database contains controlled substances and drugs dispensed in the state and can be used by licensing or regulatory agencies in their investigations and subsequent criminal and administrative proceedings in case of a breach of professional or occupational standards.

**Source:** U.S. Department of Health and Human Services; LA R.S. 40:1007

In our October 2016 report, we made eight recommendations to improve LSBD's regulatory processes, and LSBD disagreed with all of them. In this audit, we evaluated whether LSBD implemented the eight recommendations. In addition, we evaluated whether LSBD utilizes data in the National Practitioner Data Bank (NPDB) and the Prescription Monitoring Program (PMP) as appropriate in its licensing, monitoring, and enforcement activities because of risks we identified during audits of other healthcare regulatory and licensing boards (see text box at left).

State laws and regulations give LSBD the authority to issue and renew licenses, conduct inspections of dental offices, investigate complaints, and take enforcement actions against licensees who violate the Dental Practice Act. Exhibit 1 summarizes LSBD's responsibilities and the activities it conducts

to accomplish these responsibilities.

<sup>1</sup> The report can be found here:

[https://lla.la.gov/PublicReports.nsf/2D8A75926C8C51A2862580570053BD04/\\$FILE/0001165E.pdf](https://lla.la.gov/PublicReports.nsf/2D8A75926C8C51A2862580570053BD04/$FILE/0001165E.pdf)

<sup>2</sup> Louisiana Revised Statutes (R.S.) 37:751-798

<b>Exhibit 1 LSBD’s Regulatory Functions</b>	
<b>Function</b>	<b>Activities to Accomplish Functions</b>
<b>Licensing/ Permitting</b>	<ul style="list-style-type: none"> <li>• Review and approve applications for licensure</li> <li>• Establish minimum requirements relative to continuing education for relicensure</li> <li>• Conduct initial inspections and issue permits for portable and mobile dental clinics and office locations where sedation or anesthesia will be administered</li> </ul>
<b>Monitoring</b>	<ul style="list-style-type: none"> <li>• Inspect dental offices to ensure compliance with infection control guidelines, controlled dangerous substances inventory requirements, and requirements for sedation and anesthesia procedures</li> <li>• Investigate complaints and other allegations of violations</li> <li>• Query PMP data and audit trail information in the course of investigations, subsequent criminal and administrative proceedings, and to monitor dentists sanctioned for illegal or improper prescribing practices</li> </ul>
<b>Enforcement</b>	<ul style="list-style-type: none"> <li>• Conduct hearings on proceedings to revoke, limit, or suspend a license when licensees violate provisions of the Dental Practice Act</li> <li>• Report disciplinary actions taken against licensees to the NPDB as required by federal law</li> </ul>
<b>Source:</b> Prepared by legislative auditor’s staff using state and federal laws and information provided by LSBD.	

LSBD is comprised of 15 members, including 13 dentists, one dental hygienist, and one consumer member. In addition, LSBD has six employees to perform administrative functions and assist with licensing, monitoring, and enforcement responsibilities. LSBD is funded solely through fees, fines, and self-generated revenues. Between fiscal years 2016 and 2019, overall revenues decreased by 4.69%, from \$1.3 million to \$1.24 million, and overall expenses decreased by 12.2%, from \$1.1 million to \$960,553. LSBD’s largest source of revenue was licensing fees and its biggest expense was for salaries.

The objective of this audit was:

**To evaluate LSBD’s progress toward addressing issues identified in our October 2016 audit report on the regulation of the dental profession, as well as its use of the National Practitioner Data Bank (NPDB) and Prescription Monitoring Program (PMP) in its regulatory activities.**

Our results are summarized on the next page and discussed in detail throughout the remainder of the report. Appendix A contains LSBD’s response to this report, Appendix B details our scope and methodology, and Appendix C summarizes the findings and recommendations from our October 2016 performance audit and whether LSBD has implemented, partially implemented, or not implemented the recommendations.

## To evaluate LSBSD's progress toward addressing issues identified in our October 2016 audit report on the regulation of the dental profession, as well as its use of the National Practitioner Data Bank (NPDB) and Prescription Monitoring Program (PMP) in its regulatory activities

Overall, we found that while LSBSD fully or partially implemented seven of eight recommendations made in our October 2016 audit report,<sup>3</sup> additional improvement is needed in its monitoring and enforcement processes. In addition, we identified some risks associated with LSBSD's underutilization of the NPDB and the PMP in its licensing, monitoring, and enforcement activities. Specifically, we identified the following issues:

- **During fiscal years 2016 through 2018, LSBSD inspected 1,441 (94.4%) of 1,527 active dental offices at least once, as required by policy.** This is an improvement from our October 2016 audit, which found that LSBSD only inspected 1,032 (64.5%) of 1,600 dental offices during fiscal years 2012 through 2014. However, LSBSD did not always ensure that dentists submitted proof that violations were corrected within 30 days following inspection for 213 (48.1%) of 443 inspections with violations, as required by LSBSD policy.
- **While LSBSD developed criteria to identify high-risk dental offices, it did not refer 15 (71.4%) of 21 high-risk dental offices to a Disciplinary Oversight Committee, as required by policy, to determine whether disciplinary action was needed.** In addition, LSBSD does not maintain a list of high-risk offices or inspection data that indicates which offices had high-risk violations noted during an inspection. As a result, LSBSD cannot effectively track high-risk offices for referral to a Disciplinary Oversight Committee in order to ensure public safety.
- **LSBSD's electronic tracking system does not track all disciplinary actions taken by the Board. As a result, Disciplinary Oversight Committee members may not have all necessary information to make disciplinary recommendations and may not be sanctioning dentists in a fair and equitable manner.** In addition, while LSBSD adopted a disciplinary matrix in December 2019, this matrix does not address all violations or include the full range of disciplinary actions available to the Board.
- **LSBSD has not developed a process that requires the consistent use of the PMP to investigate complaints and monitor sanctioned licensees to ensure that they comply with the terms of their consent decrees or Board orders. We found that during fiscal years 2016 through 2019, LSBSD did not use the PMP to investigate six (50.0%) of the 12 complaints it received regarding illegal prescribing or practice by dentists or to monitor sanctioned licensees to**

<sup>3</sup> LSBSD did not implement the recommendation to re-inspect high-risk dental offices, which is discussed on page 7.

**ensure that they complied with the terms of their consent decrees or Board orders.** We reviewed PMP data and identified two licensees who appeared to have prescribed medications in violation of the law or the restrictions imposed by LSBSD.

- **During fiscal years 2016 through 2019, LSBSD did not report all adverse actions to the NPDB as required by federal regulations. We found that LSBSD did not report 16 (34.0%) of 47 actions against licensees to the NPDB at all and did not report the remaining 31 (66.0%) actions within 30 days.** In addition, LSBSD does not query the NPDB prior to renewing licenses, so it may be making decisions without important disciplinary information on licensees from other states.

Our findings, along with new recommendations to assist LSBSD in further strengthening its regulation of the dental profession, are discussed in more detail throughout the remainder of this report.

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**During fiscal years 2016 through 2018, LSBSD inspected 1,441 (94.4%) of 1,527 active dental offices at least once, as required by policy. This is an improvement from our October 2016 audit which found that LSBSD only inspected 1,032 (64.5%) of 1,600 dental offices during fiscal years 2012 through 2014. However, LSBSD did not always ensure that dentists submitted proof that violations were corrected within 30 days following inspection for 213 (48.1%) of 443 inspections with violations, as required by LSBSD policy.**

In accordance with state regulations,<sup>4</sup> LSBSD conducts announced inspections of dental offices to ensure that they are in compliance with Center for Disease Control (CDC) infection control guidelines; to ensure that offices with anesthesia permits meet the minimum requirements for facilities, personnel, and equipment; and to ensure that dentists qualified to dispense or administer controlled dangerous substances (CDS) comply with federal and state laws regarding recordkeeping. LSBSD will cite dental offices for inspection violations when they are not in compliance with requirements in these areas. In our October 2016 report, we found that LSBSD had not developed a consistent policy on how often inspections should be conducted and did not inspect 568 (35.5%) of 1,600 dental offices during fiscal years 2012 through 2014. We also found that LSBSD did not always notify dental offices of violations needing correction or require dentists to submit proof that violations were corrected. In our report, we recommended that LSBSD revise its policy to inspect dental offices frequently enough to identify dental offices that are not in compliance with the Dental Practice Act and LSBSD requirements, ensure that staff conduct inspections in accordance with the updated policy, and improve its inspection scheduling process to ensure that offices are inspected in an efficient manner. We also

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<sup>4</sup> 46 LAC T. 33 §320, §1204, §1511



recommended that LSBSD review inspections to ensure that staff properly notifies dental offices of inspection violations and request and receive all necessary proof of correction in accordance with policy.

**We reviewed inspection records and found that during LSBSD's July 2015 through July 2018 inspection cycle, it inspected 1,441(94.4%) of 1,527 active dental offices in accordance with the new policy.**<sup>5</sup> In response to our audit, LSBSD started using Google Maps to plan inspection routes in September 2015 and changed its policy in March 2017 to inspect dental offices every three years.

**According to LSBSD, it has a system to review inspections, notify offices of violations, and request proof of correction. However, it did not always ensure that dentists submitted proof that violations were corrected within 30 days for 213 (48.1%) of 443 inspections with violations, as required by LSBSD policy.** LSBSD policy states that staff will send a letter to notify dentists of violations identified during inspections and inform them that they must rectify the violations and send proof of correction to the Board within 30 days of the inspection. The letter also informs dentists that failure to address the violations within 30 days may result in disciplinary actions.<sup>6</sup>

After an inspection is conducted, the inspector enters the inspection data into a spreadsheet. When violations are noted and proof of correction is requested, the inspector enters the date(s) when the proof of correction is received into the inspection spreadsheet. However, LSBSD's inspection system does not alert the inspector when dentists do not send proof of correction or send it late. The system depends on the inspector manually tracking all violations to ensure proof of correction was received or to contact dentists when they miss the 30-day deadline.

We analyzed inspection records from fiscal years 2016 through 2019 and found that 443 (18.8%) of 2,356 inspections had violations and LSBSD's data did not indicate that proof of correction was received within 30 days for 213 (48.1%) of these inspections. The dates entered by the inspector in the inspection spreadsheet for these 213 inspections indicate that proof of corrective action was not received, was not noted as received, or was received late. This indicates that LSBSD's process may not be sufficient to ensure that offices with violations send proof of correction in a timely manner in accordance with policy. Some of these violations could pose a serious threat to public health so it is important that LSBSD ensure that proof of correction is received in a timely manner. For example, in one case the inspector noted that a dental office had not conducted spore testing<sup>7</sup> for two years and the dental office sent proof of correction 3.8 months late. In another case, LSBSD did not receive proof of correction from an office that was

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<sup>5</sup> However, according to LSBSD, this policy is "unfortunately worded" and it means to inspect every office during each three-year cycle, so it could be as much as six years between inspections. Since LSBSD's current three-year inspection cycle is in progress, we could not yet determine how many years dental offices went between inspections in the two cycles and whether LSBSD was in compliance with its policy of inspecting dental offices every three years.

<sup>6</sup> We requested violations letters for 30 inspections and LSBSD provided 29 letters and one email notification of violations.

<sup>7</sup> Spore testing monitors the sterilization process that is supposed to kill known highly-resistant bacteria.

missing emergency drugs or equipment until 12.1 months after the inspection where the violation was noted.

According to LSBOD policy, if dental offices do not rectify violations within 30 days, the Board may initiate disciplinary action. However, during fiscal years 2016 through 2019, LSBOD did not take any disciplinary actions against dental offices that did not send proof of correction within 30 days. LSBOD staff stated that they did not recall any cases where dental offices had requested additional time to submit proof of correction or where they had initiated disciplinary action due to dental offices not sending in proof of correction within 30 days.

**Recommendation 1:** LSBOD should ensure that dental offices submit proof of correction within 30 days and send noncompliant offices to a Disciplinary Oversight Committee as required by policy.

**Summary of Management's Response:** LSBOD agrees with this recommendation and stated that it approved the purchase of new licensing software that will assist in accomplishing this goal at its August 14, 2020 Board Meeting. See Appendix A for LSBOD's full response.

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**While LSBOD developed criteria to identify high-risk dental offices, it did not refer 15 (71.4%) of 21 high-risk dental offices to a Disciplinary Oversight Committee, as required by policy, to determine whether disciplinary action was needed.**

In our October 2016 report, we found that LSBOD did not categorize inspection violations based on severity and use this information to identify and re-inspect high-risk dental offices. In our report, we recommended that LSBOD categorize violations based on severity and identify and re-inspect high-risk dentists and offices to ensure violations were corrected.

**Although LSBOD developed criteria to identify high-risk dental offices, it did not consistently identify dental offices that met its high-risk criteria and refer them to a Disciplinary Oversight Committee<sup>8</sup> as required by its policy. We found that 15 (71.4%) of 21 offices met LSBOD's criteria for high-risk but were not reviewed by a Disciplinary Oversight Committee.** As we recommended in our October 2016 report, LSBOD defined criteria to categorize some violations by severity and number of occurrences in order to identify high-risk dental offices. According to LSBOD's categorization process, dental offices with one major violation or repeat minor violations on inspections are considered to be high-risk. LSBOD defines minor violations as continuing education, CDC infection control, and anesthesia violations. Examples include inspection violations such as failure to maintain or missing emergency drugs

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<sup>8</sup> These committees, comprised of three Board members selected by the executive director, advise the Board president, who determines whether the complaint is valid and should be settled, needs further review, or is invalid and should be dismissed. Settlements can include a letter of reprimand, a fine between \$500 and \$5,000, probation, reimbursement of investigative or legal costs, a consent decree, and/or a license suspension or revocation

or equipment, failure to appropriately disinfect clinical contact surfaces, failure to sterilize hand pieces between patients, and failure to display licenses and permits. According to LSBD, violations involving the improper use of emergency drugs would be considered major. In our October 2016 report, we recommended that LSBD re-inspect high-risk offices to ensure that violations were corrected; however LSBD does not require high-risk offices to be re-inspected. According to LSBD, it would only re-inspect offices if they were found to have unsanitary conditions, although such a requirement is not formally documented in its policies.

LSBD's policy during our audit scope does require that high-risk dental offices be referred to a Disciplinary Oversight Committee for review to determine whether disciplinary action is needed. We analyzed inspection data from fiscal years 2016 through 2019 and found that 15 (71.4%) of 21 offices that had repeat inspection violations and met LSBD's criteria for high-risk were not reviewed by a Disciplinary Oversight Committee, as required by LSBD policy. In addition, LSBD does not maintain a list of high-risk offices or inspection data that indicates which offices had high-risk violations noted during an inspection. As a result, LSBD cannot effectively track high-risk offices for referral to a Disciplinary Oversight Committee in order to ensure public safety.

Our analysis of inspection records also showed that during fiscal years 2016 through 2019, LSBD re-inspected four offices that were not high-risk, meaning these offices did not have repeat minor violations during successive inspections or any indication that the inspector had noted major violations or unsanitary conditions. This indicates that LSBD's system to identify and address high-risk offices may not be sufficient and the inspector may be re-inspecting offices that are not high-risk as per LSBD's criteria.

**Recommendation 2:** LSBD should formally define in policy which violations require staff to re-inspect dental offices to ensure they are corrected.

**Summary of Management's Response:** LSBD agrees with this recommendation and stated that it will draft a policy that defines which violations require staff to re-inspect dental offices to ensure the correction of violations. See Appendix A for LSBD's full response.

**Recommendation 3:** LSBD should refer high-risk dental offices to a Disciplinary Oversight Committee as required by policy to determine whether disciplinary action is needed.

**Summary of Management's Response:** LSBD agrees with this recommendation and stated that it approved the purchase of new licensing software that will assist in accomplishing this goal at its August 14, 2020 Board Meeting. See Appendix A for LSBD's full response.

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**LSBD’s electronic tracking system does not track all disciplinary actions taken by the Board. As a result, Disciplinary Oversight Committee members may not have all necessary information to make disciplinary recommendations and may not be sanctioning dentists in a fair and equitable manner. In addition, while LSBD adopted a disciplinary matrix in December 2019, this matrix does not address all violations or include the full range of disciplinary actions available to the Board.**

All allegations LSBD receives about dentists and hygienists for violations of the Dental Practice Act from the public, other dentists, other agencies, or internally from LSBD staff and Board members are reviewed by a Disciplinary Oversight Committee that recommends to the Board President the next course of action to be taken on the complaint, such as informal conference, formal investigation, or no action. The Board President takes the recommendations into account and makes a final decision on how to proceed.

In our October 2016 report, we found that LSBD did not track disciplinary cases and their outcomes in a comprehensive manner that Board members could reference when reviewing similar cases, and had not established a graduated and equitable system of sanctions that specifies the number or severity of violations that should trigger each level of sanction. As a result, LSBD disciplined dentists inconsistently for similar violations. We recommended that LSBD electronically track disciplinary actions so that Disciplinary Oversight Committee members can reference similar cases and to develop a disciplinary matrix. This matrix would include a graduated system of sanctions based on the number or severity of violations in order to provide assurances to the public and the dental profession that the Board disciplines licensees in a fair and equitable manner.

**LSBD’s electronic tracking system does not track all disciplinary actions taken by the Board; as a result, Disciplinary Oversight Committee members may not have all necessary information to make disciplinary recommendations.** In response to our recommendation, LSBD created an electronic tracking system to track disciplinary actions and provide a reference for Disciplinary Oversight Committee members reviewing similar cases. However, LSBD’s electronic tracking system does not track all disciplinary actions taken by the Board and cannot be searched by Disciplinary Oversight Committee members to reference similar cases from the past. We found that LSBD’s electronic tracking system consists of scanned consent decrees and Board orders that are saved in each dentist’s electronic folder. Some disciplinary actions, such as license revocations due to not renewing licenses in time, license surrenders or retirements during or due to investigations by the Board, and letters of concern or reprimand sent to licensees are not included in the electronic tracking system.

Although LSBD staff can run a report that provides limited information on the number of complaints by charge(s), case closure dates, and status, this report is not used by management or provided to Disciplinary Oversight Committee members. Instead, members are provided with a “fact sheet” containing historical and demographic information on the licensee under review as

well as the complaints received against the licensee and their disposition, and a short description of consent decrees and/or Board orders from past disciplinary actions taken by the Board against the licensee. These fact sheets only include the charge and final outcomes of previous complaints against the licensee with no details, and do not include a summary of actions taken against other licensees for similar violations. According to LSBD, Disciplinary Oversight Committee members depend on their knowledge and memory of past disciplinary actions for similar violations to make fair and equitable sanctioning decisions.

**LSBD adopted a disciplinary matrix in December 2019; however, this matrix does not address all violations or include the full range of disciplinary actions available to the Board in a graduated manner.** State law<sup>9</sup> gives LSBD the authority to take a range of disciplinary actions against licensees for different violations or offenses. However, LSBD's disciplinary matrix only addresses continuing education (CE) and inspection violations and does not include or categorize other violations of the Dental Practice Act in a graduated manner based on severity and number of occurrences. Such violations include prescribing, dispensing, or administering habit-forming or other legally controlled substances in other than a legal or legitimate manner; providing false testimony before the Board or any judicial proceeding; professional or dental incompetency; employing unlicensed persons to perform work that can only be done by licensed dentists or dental hygienists; violating any rule, regulation or order of the Board; etc.

State law also provides a range of disciplinary actions that the Board can take to discipline licensees who violate the Dental Practice Act such as revocation, suspension or restriction of licenses; fines; probation; reprimands; or admonishments. However, LSBD's matrix does not include graduated sanctions based on the severity of the violations, the number of offenses, or any aggravating or mitigating factors. LSBD's disciplinary matrix only includes assessing fines, reporting to the NPDB<sup>10</sup> in the case of major violations or second and subsequent CE or inspection violations, and suspending licenses for third and subsequent CE or inspection violations. The matrix also does not describe mitigating or aggravating factors that could affect the Board's action. For example, aggravating factors on the Texas State Board of Dental Examiners' matrix include harm to one or more patients, attempted concealment of the violation, prior history of similar violations, etc. Mitigating factors include self-reporting and voluntary admission of violation(s), implementation of remedial measures to correct or mitigate harm from the violation(s), prior community service and present value to the community, etc.

Because the disciplinary matrix lacks guidance on how to address violations based on the severity, number of occurrences, and aggravating or mitigating factors, the Board may be sanctioning cases inconsistently. For example, we identified four instances of disciplinary actions taken by the board during fiscal years 2016 through 2019 because dentists failed to report incidents of patients suffering an adverse reaction to anesthesia within ten days, as required by law.<sup>11</sup> In three of these four cases, LSBD sent the dentists a non-disciplinary letter of concern because the dentists reported the incidents three, six and 19 months after they occurred, while in the fourth case, LSBD had the dentist sign a consent decree and pay a \$1,000 fine for not

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<sup>9</sup> R.S. 37:776, 37:377, 37:780

<sup>10</sup> See page 14 for more information on the NPDB

<sup>11</sup> R.S. 37:793

reporting the incident until approximately three years later after settling a lawsuit regarding the incident.

While the sanctioning decisions taken by the Board in the examples above may have been appropriate based on the particulars of each case, providing guidance to Board members would ensure that sanctioning recommendations made by different Disciplinary Oversight Committee members are consistent, appropriate, and effective in sanctioning dentists and protecting the public. For example, a complete disciplinary matrix that defined all violations and sanctions in a graduated manner could distinguish between dentists who self-report adverse anesthesia incidents from those that are forced to report them due to lawsuits and prescribe different disciplinary actions based on this condition. Similarly, the Board could escalate sanctions against dentists based on the length of time between when the anesthesia incident occurred and when the dentist reported it; dentists who report sooner could be determined to have caused a less severe violation and therefore be sanctioned less severely than dentists who report later.

Since LSBD has the discretion to impose a wide range of sanctions, it is important that its process of making enforcement decisions is consistent and provides assurances to the public and its licensees that it disciplines licensees appropriately and in accordance with its mission to protect the public. In addition, since no two cases that the Board reviews are exactly alike and thus may not result in similar enforcement actions, it is important that the Disciplinary Oversight Committee's process for conducting reviews and making decisions is consistent. Without complete criteria for LSBD to follow when making enforcement decisions, the Board cannot ensure that its enforcement actions are consistent, appropriate, and effective.

Other licensing and regulatory boards in Louisiana and other states have developed graduated systems of sanctions that could guide LSBD in developing a more complete disciplinary matrix and provide assurance to the public and the dental profession that the Board disciplines licensees in a fair and equitable manner, such as the following:

- The Texas State Board of Dental Examiners developed a disciplinary matrix<sup>12</sup> to provide guidelines on common violations and appropriate disciplinary and non-disciplinary actions of the Board. It describes the public actions that the Board can take in order of escalation; aggravating and mitigating factors that can influence the Board's decisions; an administrative penalty schedule and fine ranges for first, second and third time offences; and describes first-, second-, and third-tier violations of all causes for disciplinary action against licensees and prescribes escalating sanctions for each tier.
- The Virginia Board of Medicine developed worksheets which score a number of offenses and respondent factors and help Board members in determining sanctioning outcomes. Some of the goals of the system are to make sanctioning decisions more predictable, provide an educational tool for new Board members, neutralize sanctioning inconsistencies, and reduce the influence of undesirable factors.

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<sup>12</sup> [http://tsbde.texas.gov/78i8ljhbj/2019\\_06\\_07\\_Matrix.pdf](http://tsbde.texas.gov/78i8ljhbj/2019_06_07_Matrix.pdf)

- The Louisiana Physical Therapy Board developed guidelines that provide a step-by-step process for (1) determining the grounds for disciplinary action, (2) the type or tier of infraction, and (3) the number of occurrences. This information is applied to the matrix to determine the applicable class of punitive and/or remedial actions. Board members also consider any aggravating or mitigating factors that could modify the applicable disciplinary actions.

According to LSBSD, the Executive Director sends new Board members an orientation memo (*see text box for excerpt*) and meets with them to provide orientation and guidance on their duties as Disciplinary Oversight Committee members. While the orientation memo describes the general philosophy behind LSBSD's disciplinary process, it does not provide specific guidance on how to address all possible violations of the Dental Practice Act and Board rules, all the disciplinary actions that the Board can take, and the aggravating and mitigating factors to take into consideration when making sanctioning decisions. Creating a complete matrix will assist Board members serving on Disciplinary Oversight Committees to make consistent and appropriate sanctioning decisions.

*Most often the result is that no action is taken and the matter is dropped. Typically, one instance of negligence does not give rise to Board discipline. We usually need to see a track record of negligent behavior before some discipline or remediation is undertaken. For instance, extracting the wrong tooth is negligence, but this can happen to the best dentist in the world. The best dentist in the world will have implant failures. Thus, we usually need to see more than one instance of negligence to take action against a dentist's license. However, in cases of gross negligence or where someone dies during sedation, the Board will usually take action even if there is no record of previous substandard care complaints.*

**–Excerpt from orientation memo from LSBSD Executive Director to new Board members, July 2017**

**Recommendation 4:** LSBSD should electronically track all disciplinary actions taken by the Board irrespective of whether the actions were public or not and provide Disciplinary Oversight Committee members information on not only the licensee under review, but also on how the Board has sanctioned similar cases in the past.

**Summary of Management's Response:** LSBSD agrees with this recommendation and stated that it approved the purchase of new licensing software that will assist in accomplishing this goal at its August 14, 2020 Board Meeting. See Appendix A for LSBSD's full response.

**Recommendation 5:** LSBSD should develop a complete disciplinary matrix that includes all violations of the Dental Practice Act and all disciplinary actions that the Board can take in a graduated manner and takes into account aggravating and mitigating factors.

**Summary of Management's Response:** LSBSD agrees with this recommendation and stated that LSBSD staff will urge the full Board to comply with this recommendation. See Appendix A for LSBSD's full response.

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**LSBD has not developed a process that requires the consistent use of the PMP to investigate complaints and monitor sanctioned licensees to ensure that they comply with the terms of their consent decrees or Board orders. We found that during fiscal years 2016 through 2019, LSBD did not use the PMP to investigate six (50.0%) of the 12 complaints it received regarding illegal prescribing or practice by dentists or to monitor sanctioned licensees to ensure that they complied with the terms of their consent decrees or Board orders.**

State law requires all prescribing healthcare professionals who obtain a controlled dangerous substance license from the Louisiana Board of Pharmacy (LABP) to be registered as a participant in the PMP.<sup>13</sup> LABP reviews this system for potential violations by licensees and sends its findings to the respective boards for action in correcting violations. In addition, professional licensing and regulatory agencies may use PMP information and audit trail information in the course of any investigation and subsequent criminal and administrative proceedings. Since dentists are authorized to prescribe, dispense, and administer CDS to patients, we evaluated LSBD's process to investigate complaints and monitor dentists sanctioned for illegal or improper prescribing or practice.

**During fiscal years 2016 through 2019, LSBD did not use the PMP to investigate six (50.0%) of the 12 complaints it received regarding illegal prescribing or practice by dentists.** According to LSBD, it uses the PMP to investigate dentists if it receives complaints about their prescribing practices. However, according to our review of PMP audit trail information we obtained from LABP, we found that LSBD did not consistently use the PMP to investigate all complaints regarding illegal prescribing or practices. In one case, the Board received a complaint regarding illegal practices and fined a dentist \$2,500 for allowing a hygienist to write a prescription and \$2,500 for not properly supervising staff; however, LSBD did not review the dentist's prescribing history in the PMP. While not necessarily indicative of illegal prescribing or practice, the PMP data shows that the dentist may have written 2,105 narcotic prescriptions during April 2015 through June 2019. While we reported issues with the PMP's completeness and accuracy in a 2018 audit of LABP,<sup>14</sup> LSBD should still use the PMP as a tool for investigating and monitoring the prescribing activity of licensees. The PMP would provide LSBD valuable evidence when investigating complaints regarding licensee's prescribing practices and assist LSBD in its mission to protect the public. According to LABP, LSBD's use of the PMP to ensure compliance with laws and/or restrictions would be a basic function of the Board and a valid use of the PMP.

**LSBD does not have a process to monitor sanctioned licensees to ensure that they comply with the terms of the consent decrees or Board orders.** When LSBD sanctions

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<sup>13</sup> R.S. 40:973

<sup>14</sup> The report can be found here:

[https://lla.la.gov/PublicReports.nsf/BEF55FA81E8CD40F8625826C007083E4/\\$FILE/000187F2.pdf](https://lla.la.gov/PublicReports.nsf/BEF55FA81E8CD40F8625826C007083E4/$FILE/000187F2.pdf)



dentists, it may require that dentists agree to conditions such as providing reports of regular infection control procedures, not treating certain patients, or forfeiting their Drug Enforcement Administration licenses and state controlled substances permits. However, LSBSD does not have a process to monitor licensees to ensure compliance with the terms of their sanctions. For example, in one case LSBSD stated that it does not monitor a dentist who was barred from treating minors, but the Board would revoke his license if it ever received information that the dentist worked on a minor, either from other dentists in the area or from a parent who was dissatisfied with the dentist's service. According to LSBSD, it does not need to monitor this licensee because the "fear of losing his license altogether would keep him from violating the consent decree because if he were seeing children we would eventually find out."

When LSBSD revokes dentists' prescribing privileges, LABP electronically notifies pharmacies around the state of these restrictions to help them avoid filling CDS prescriptions written by these dentists. However, according to LABP, although practitioners who lose their prescribing privileges are not supposed to prescribe controlled substances, nothing prevents them from doing so except their own conscience.

LSBSD does not maintain a list of licensees sanctioned for illegal or improper prescribing practices and has not developed a process for using the PMP to monitor licensees to ensure that they stop prescribing in an illegal or improper manner and meet the terms of their consent decrees. We reviewed the PMP prescription history of the four dentists sanctioned for prescribing habit forming or legally controlled substances in other than a legal or legitimate manner between fiscal years 2016 through 2019. In one of the four cases, LSBSD checked the PMP eight months after the consent decree was signed. In one case, it checked the PMP three months after the consent decree was signed and in two cases, LSBSD did not check the PMP after the dentists signed consent decrees. According to PMP data, one of these two dentists may have written an opioid prescription after surrendering his state and federal prescribing privileges.

**Recommendation 6:** LSBSD should develop a process to use the PMP to investigate all complaints regarding illegal prescribing practices.

**Summary of Management's Response:** LSBSD agrees with this recommendation and stated that it will review the PMP whenever illegal prescribing is alleged regardless of whether it is material. See Appendix A for LSBSD's full response.

**Recommendation 7:** LSBSD should develop a process to monitor all sanctioned licensees, including using the PMP to ensure dentists with prescription restrictions are not prescribing in an illegal or improper manner.

**Summary of Management's Response:** LSBSD agrees with this recommendation and stated that it approved the purchase of new licensing software that will assist in accomplishing this goal at its August 14, 2020 Board Meeting. See Appendix A for LSBSD's full response.

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**During fiscal years 2016 through 2019, LSBDD did not report all adverse actions to the NPDB as required by federal regulations. We found that LSBDD did not report 16 (34.0%) of 47 actions against licensees to the NPDB at all and did not report the remaining 31 (66.0%) actions within 30 days.**

Certain entities, including state healthcare licensing boards such as LSBDD, are required by federal law<sup>15</sup> to report adverse actions to the NPDB. These adverse actions include disciplinary actions taken as a result of a formal proceeding including revocation or suspension of a license, probation, limitations on the scope of practice, or rejecting an applicant. These actions would not show up on criminal background checks. According to the U.S. Department of Health and Human Services,<sup>16</sup> timely and consistent disclosure of adverse actions to the NPDB is important to ensure that disciplined licensees do not move from state to state without disclosure or discovery of previous damaging performance. State licensing and regulatory boards can also query the information in the NPDB and use it, in combination with information from other sources, when making decisions regarding licensure or conducting investigations into licensees.

**During fiscal years 2016 through 2019, we found that LSBDD did not report 16 (34.0%) of 47 adverse actions against licensees to the NPDB, and the remaining 31 (66.0%) actions were not reported within 30 days as required by federal regulations.** On average, adverse actions were reported 18 months after the actions were ratified by the Board and in one case, where the dentist was required to stop treating patients under the age of 13, the action was reported three years after the action was ratified by the Board. The nature of these cases included advertising or inspection violations, failure to obtain an office permit for the administration of general anesthesia, failure to report adverse anesthesia events to the Board within 10 days, illegally or improperly prescribing or dispensing CDS, fraud and providing unnecessary treatment, substandard care, failure to maintain proper CDS logs and inventory, and habitual indulgence in the use of drugs, narcotics, or intoxicating liquors.

**In addition, we found that the board privately disciplined 12 dentists in the resolution of 16 complaints during fiscal years 2015 through 2019 and did not report these sanctions to the NPDB.** As a result, other states could potentially license these individuals without being aware of Louisiana's disciplinary actions, thus allowing them to practice and put the public at risk. The 16 complaints that LSBDD resolved by privately disciplining the dentists but did not report to the NPDB<sup>17</sup> include the following:

- Fine of \$1,500 for an anesthesia violation

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<sup>15</sup> 42 USC § 1396r-2

<sup>16</sup> <https://www.npdb.hrsa.gov/topNavigation/aboutUs.jsp>

<sup>17</sup> We discussed these 16 cases with NPDB in August 2020; NPDB agreed that some or all of these cases may be reportable. NPDB recommended that LSBDD review the NPDB criteria and ensure that it correctly reports disciplinary actions as required by federal law.

- Letter of reprimand for substandard care
- Denial of a license reinstatement request
- Voluntary retirement or surrender of three licenses in lieu of an investigation or disciplinary action
- Requirement that 10 dentists refund patients' costs, take continuing education courses, or undergo evaluations and remediation of their dental skills without signing consent decrees

These private actions were not publicly disclosed on LSBD's website and were not reported to the NPDB. In addition, by not requiring the dentists to sign consent decrees for the required actions, LSBD is not able to document the conditions imposed on the dentists and hold them accountable for noncompliance.

We also found at least two instances where LSBD signed public consent decrees with dentists stipulating that the Board would not report the sanctions to the NPDB because they did not involve patient care. By not reporting the sanctions to the NPDB, LSBD may have violated federal regulations. In one case, a dentist signed a consent decree requiring her to pay a fine of \$500 for an advertising violation of the Dental Practice Act, but stated that the matter was not related to patient care and therefore not reportable to the NPDB. However, according to NPDB, all adverse actions are reportable, not just those related to patient care. In another case, LSBD resolved two complaints regarding fee disputes and substandard dental care by having a dentist sign a consent decree stating that LSBD would not report the action to the NPDB because the decree did not address any issues related to patient care. LSBD privately required the dentist to complete an ethics course for three other complaints involving substandard care, billing for services not provided, and not providing patients with copies of their records. None of these actions taken by the Board were reported to the NPDB.

**In addition, LSBD does not query the NPDB for information related to the professional competence and conduct of licensees when making license renewal decisions; as a result, it may renew a license to an applicant who was disciplined in another state.** State regulations<sup>18</sup> require LSBD to use information from the NPDB and/or the American Association of Dental Examiners' Clearinghouse when determining the professional ability, conduct, and character of applicants for a dental or dental hygienist license for licensure by credentials. According to LSBD, all applicants for initial licensure must request a self-query from NPDB and provide the results to the Board. However, these reports only provide a snapshot of an applicant's disciplinary history and are not updated to reflect subsequent activity. Additionally, LSBD requires applicants for renewal to only self-disclose disciplinary actions and does not require them to submit NPDB reports as confirmation.

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<sup>18</sup> 46 LAC Pt.33 §307, §707

According to LSBD, it does not need to query the NPDB for license renewals because it participates in NPDB's Electronic Report Forwarding Service<sup>19</sup> which forwards reports from certain reporting organizations to participating state licensing boards. However, NPDB recommends that state boards enroll practitioners in a “Continuous Query” service that would notify LSBD via email within 24 hours of a report received by the NPDB on LSBD’s enrolled licensees even if the boards already receive reports from reporting organizations concerning licensees. This is because there could be adverse actions and reports against licensees that other state boards and reporting organizations are not required to share with LSBD.

The Texas Sunset Advisory Commission's 2017 report<sup>20</sup> found that the Texas State Board of Dental Examiners, similar to LSBD, only required applicants for license renewal to self-disclose disciplinary actions and did not query the NPDB for confirmation. According to this report, reliance on self-disclosure allows too many gaps for potentially dangerous licensees to skip through, as shown in the example on the right. Because of these risks, the report recommended that the Texas Board request continuous query reports from NPDB for each applicant for initial licensure and each renewal applicant to ensure the Board receives accurate, timely notice of actions taken by other states or agencies. Similarly, in our May 2020 audit report on the Regulation of the Physical Therapy Profession, we recommended that the Louisiana Physical Therapy Board enroll practitioners in a continuous query to ensure the Board receives accurate, timely notice of actions taken by other states and healthcare entities.

**Example of Failure of Self-Disclosure Process from Texas Sunset Advisory Commission 2017 Report**

A dentist licensed in Texas and Nevada was disciplined in Nevada in February 2014 after two patients died following the dentist's administration of anesthesia during treatment. In October 2014, the dentist failed to self-disclose the disciplinary actions on his license renewal application in Texas. He continued to treat patients in Texas until November 2015, when the Board discovered the omission and issued a temporary suspension. Between the license renewal in 2014 and the suspension in 2015, a patient was hospitalized following the dentist's mismanagement of an anesthesia related emergency in Texas.

**Recommendation 8:** LSBD should ensure that it reports all adverse actions to National Practitioner Data Bank within 30 days as required by federal law.

**Summary of Management’s Response:** LSBD agrees with this recommendation and stated that it has shifted the responsibility for reporting to a different staff member to ensure compliance. See Appendix A for LSBD’s full response.

**Recommendation 9:** LSBD should enroll licensees in “Continuous Query” reports from the National Practitioner Data Bank for each applicant for initial licensure and each renewal applicant to ensure the Board receives accurate, timely notice of actions taken by other states and healthcare entities.

<sup>19</sup> Organizations include entities that make medical malpractice payments, hospitals or other health care entities, the DEA, state licensing or certification authorities, and state law enforcement authorities that report actions to the NPDB. Certain NPDB reporters may elect to send an electronic version of the report to the appropriate state boards through NPDB’s Electronic Report Forwarding Service, provided that the state board has agreed to accept electronic notices of actions.

<sup>20</sup>

<https://www.sunset.texas.gov/public/uploads/files/reports/Dental%20Staff%20Report%20with%20Final%20Results%206-21-17.pdf>

**Summary of Management's Response:** LSBD agrees with this recommendation and stated that it approved the purchase of new licensing software that will assist in accomplishing this goal at its August 14, 2020 Board Meeting. The software currently used is not compatible with using continuous query. See Appendix A for LSBD's full response.



## APPENDIX A: MANAGEMENT'S RESPONSE







## Louisiana State Board of Dentistry

1201 NORTH THIRD STREET, SUITE G-136  
BATON ROUGE, LOUISIANA 70802  
TELEPHONE: (504) 568-8574  
www.lsbd.org

August 27, 2020

Transmitted via email  
dpurpera@lla.state.la.us

Mr. Daryl G. Purpera, CPE, CFE  
Louisiana Legislative Auditor  
1600 North Third Street  
P.O. Box 94397  
Baton Rouge, LA 70804-9397

Re: Legislative Auditors' Performance Audit

Dear Mr. Purpera:

Please accept this response by the Louisiana State Board of Dentistry to the performance audit report produced by your office.

### **RESPONSE BY THE LOUISIANA STATE BOARD OF DENTISTRY TO THE LEGISLATIVE AUDITOR PERFORMANCE AUDIT REPORT**

**Recommendation 1:** LSBD should ensure that dental offices submit proof of correction within 30 days and send noncompliant offices to a Disciplinary Oversight Committee as required by policy

**Response:** The LSBD is committed to complying with this recommendation. At its August 14, 2020 board meeting the LSBD approved the purchase of new licensing software that will assist in accomplishing this goal.

**Recommendation 2:** LSBD should formally define in policy which violations require staff to re-inspect dental offices to ensure they are corrected.

**Response:** The staff will draft a policy which defines which violations require an office to be re-inspected to ensure the correction of violations.

**Recommendation 3:** LSBSD should refer high-risk dental offices to a Disciplinary Oversight Committee as required by policy to determine whether disciplinary action is needed.

**Response:** The LSBSD is committed to complying with this recommendation. At its August 14, 2020 board meeting the LSBSD approved the purchase of new licensing software that will assist in accomplishing this goal.

**Recommendation 4:** LSBSD should electronically track all disciplinary actions taken by the Board irrespective of whether the actions were public or not and provide Disciplinary Oversight Committee members information on not only the licensee under review, but also on how the Board has sanctioned similar cases in the past.

**Response:** The LSBSD is committed to complying with this recommendation. At its August 14, 2020 board meeting the LSBSD approved the purchase of new licensing software that will assist in accomplishing this goal.

**Recommendation 5:** LSBSD should develop a complete disciplinary matrix that includes all violations of the Dental Practice Act and all disciplinary actions that the Board can take in a graduated manner and takes into account aggravating and mitigating factors.

**Response:** The LSBSD staff will urge the full Board to comply with this recommendation.

It should be noted that the cases reviewed by the auditor are settlements rather than discipline imposed by the Board. For the Board to actually impose a sanction, due process requirements must be followed and there must be a trial before a committee composed of three board members during which the licensee is allowed to call witnesses and present evidence. Although the staff will urge the Board to adopt a more complete disciplinary matrix of the for matters in which it will impose a sanction on a licensee, as opposed to a settlement, it would be unwise for the Board to remove its discretion to settle matter prior to a full contradictory hearing that is required in order for the Board to impose a sanction.

**Recommendation 6:** LSBSD should develop a process to use the PMP to investigate all complaints regarding illegal prescribing practices.

**Response:** The LSBSD will comply with this recommendation.

In the past the LSBSD has always used the PMP to investigate all complaints regarding illegal prescribing practices when it felt that reviewing the PMP was material. In the example given in the auditor's report, a complaint was filed alleging that the dentist was allowing a staff member to call in prescriptions for emergency patients at times when the dentist was not in the office. There was no allegation that the dentist was over-prescribing, so it was not felt that reviewing the PMP was necessary. Going forward whenever illegal prescribing is alleged the PMP will be reviewed regardless of whether it is material.

**Recommendation 7:** LSBSD should develop a process to monitor all sanctioned licensees, including using the PMP to ensure dentists with prescription restrictions are not prescribing in an illegal or improper manner.

**Response:** The LSBDD is committed to complying with this recommendation. At its August 14, 2020 board meeting the LSBDD approved the purchase of new licensing software that will assist in accomplishing this goal.

**Recommendation 8:** LSBDD should ensure that it reports all adverse actions to National Practitioner Data Bank within 30 days as required by federal law.

**Response:** The LSBDD will comply with this recommendation.

The LSBDD has shifted the responsibility for reporting to a different staff member in order to ensure compliance.

**Recommendation 9:** LSBDD should enroll licensees in “Continuous Query” reports from the National Practitioner Data Bank for each applicant for initial licensure and each renewal applicant to ensure the Board receives accurate, timely notice of actions taken by other states and healthcare entities.

**Response:** The LSBDD is committed to complying with this recommendation. At its August 14, 2020 board meeting the LSBDD approved the purchase of new licensing software that will assist in accomplishing this goal. The software currently used is not compatible with using continuous query.

Yours truly,



Arthur F. Hickham, Jr.

Executive Director

Cc via email : Emily Wilson, EWilson@lla.la.gov

Mukta Pathak, mpathak@LLA.La.gov



Louisiana Legislative Auditor  
Performance Audit Services

Checklist for Audit Recommendations

**Agency:** Louisiana State Board of Dentistry

**Audit Title:** Progress Report: Regulation of the Dental Profession

**Audit Report Number:** 40190024

**Instructions to Audited Agency:** Please fill in the information below for each recommendation. A summary of your response for each recommendation will be included in the body of the report. The entire text of your response will be included as an appendix to the audit report.

<p><b>Finding 1:</b> During fiscal years 2016 through 2018, LSBSD inspected 1,441 (94.4%) of 1,527 active dental offices at least once, as required by policy. This is an improvement from our 2016 audit which found that LSBSD only inspected 1,032 (64.5%) of 1,600 dental offices during fiscal years 2012 through 2014. However, LSBSD did not always ensure that dentists submitted proof that violations were corrected within 30 days following inspection for 213 (48.1%) of 443 inspections with violations, as required by LSBSD policy.</p>	
<p><i>Recommendation 1: LSBSD should ensure that dental offices submit proof of correction within 30 days and send noncompliant offices to a Disciplinary Oversight Committee as required by policy.</i></p>	
<p>Does Agency Agree with Recommendation?    <input checked="" type="checkbox"/> Agree    <input type="checkbox"/> Disagree</p>	
<p>Agency Contact Responsible for Recommendation:</p>	
<p><i>Name/Title:</i>    <u>Alexx Smith/inspector</u></p>	
<p><i>Address:</i>            <u>P.O. Box 5256 Baton Rouge, LA 70821-5256</u></p>	
<p><i>City, State, Zip:</i></p>	
<p><i>Phone Number:</i>    <u>225-219-733</u></p>	
<p><i>Email:</i>    <u>alex@lsbd.org</u></p>	

<p><b>Finding 2:</b> While LSBSD developed criteria to identify high-risk dental offices, it did not refer 15 (71.4%) of 21 high-risk dental offices to a Disciplinary Oversight Committee, as required by policy, to determine whether disciplinary action was needed.</p>	
<p><i>Recommendation 2: LSBSD should formally define in policy which violations require staff to re-inspect dental offices to ensure they are corrected.</i></p>	
<p>Does Agency Agree with Recommendation?    <input checked="" type="checkbox"/> Agree    <input type="checkbox"/> Disagree</p>	

Agency Contact Responsible for Recommendation:
<i>Name/Title:</i> Arthur Hickham/Executive Director
<i>Address:</i> PO Box 5256 Baton Rouge LA 70821-5256
<i>City, State, Zip:</i>
<i>Phone Number:</i> 225-219-7330
<i>Email:</i> ahickham@lsbd.org
<i>Recommendation 3: LSBD should refer high-risk dental offices to a Disciplinary Oversight Committee as required by policy to determine whether disciplinary action is needed.</i>
Does Agency Agree with Recommendation? <input checked="" type="checkbox"/> Agree <input type="checkbox"/> Disagree
Agency Contact Responsible for Recommendation:
<i>Name/Title:</i> Arthur Hickham, executive director
<i>Address:</i> same as for #2
<i>City, State, Zip:</i>
<i>Phone Number:</i>
<i>Email:</i>

<b>Finding 3:</b> LSBD’s electronic tracking system does not track all disciplinary actions taken by the Board. As a result, Disciplinary Oversight Committee members may not have all necessary information to make disciplinary recommendations and may not be sanctioning dentists in a fair and equitable manner. In addition, while LSBD adopted a disciplinary matrix in December 2019, this matrix does not address all violations or include the full range of disciplinary actions available to the Board.
<i>Recommendation 4: LSBD should electronically track all disciplinary actions taken by the Board irrespective of whether the actions were public or not and provide Disciplinary Oversight Committee members information on not only the licensee under review, but also on how the Board has sanctioned similar cases in the past.</i>
Does Agency Agree with Recommendation? <input checked="" type="checkbox"/> Agree <input type="checkbox"/> Disagree
Agency Contact Responsible for Recommendation:
<i>Name/Title:</i> Erin Conner /assistant executive director
<i>Address:</i>
<i>City, State, Zip:</i> same as for #2
<i>Phone Number:</i>
<i>Email:</i>
<i>Recommendation 5: LSBD should develop a complete disciplinary matrix that includes all violations of the Dental Practice Act and all disciplinary actions that the Board can take in a graduated manner and takes into account aggravating and mitigating factors.</i>
Does Agency Agree with Recommendation? <input checked="" type="checkbox"/> Agree <input type="checkbox"/> Disagree
Agency Contact Responsible for Recommendation:
<i>Name/Title:</i> Arthur Hickham
<i>Address:</i>
<i>City, State, Zip:</i>

<i>Phone Number:</i>
<i>Email:</i>

**Finding 4:** LSBDD has not developed a process that requires the consistent use of the Prescription Monitoring Program (PMP) to investigate complaints and monitor sanctioned licensees to ensure that they comply with the terms of their consent decrees or Board orders. We found that during fiscal years 2016 through 2019, LSBDD did not use the PMP to investigate six (50.0%) of the 12 complaints it received regarding illegal prescribing or practice by dentists and to monitor sanctioned licensees to ensure that they complied with the terms of their consent decrees or Board orders.

*Recommendation 6: LSBDD should develop a process to use the PMP to investigate all complaints regarding illegal prescribing practices.*

Does Agency Agree with Recommendation?  Agree  Disagree

Agency Contact Responsible for Recommendation:

*Name/Title:* Arthur Hickham

*Address:*

*City, State, Zip:*

*Phone Number:*

*Email:*

*Recommendation 7: LSBDD should develop a process to monitor all sanctioned licensees, including using the PMP to ensure dentists with prescription restrictions are not prescribing in an illegal or improper manner.*

Does Agency Agree with Recommendation?  Agree  Disagree

Agency Contact Responsible for Recommendation:

*Name/Title:* Arthur Hickham

*Address:*

*City, State, Zip:*

*Phone Number:*

*Email:*

**Finding 5:** During fiscal years 2016 through 2019, LSBDD did not report all adverse actions to the National Practitioners Data Bank (NPDB) as required by federal regulations. We found that LSBDD did not report 16 (34.0%) of 47 actions against licensees to the NPDB at all and did not report the remaining 31 (66.0%) actions within 30 days.

*Recommendation 8: LSBDD should ensure that it reports all adverse actions to National Practitioner Data Bank within 30 days as required by federal law.*

Does Agency Agree with Recommendation?  Agree  Disagree

Agency Contact Responsible for Recommendation:

*Name/Title:* Rachal Daniel/executive assistant

*Address:* PO Box 5256 Baton Rouge LA 70821-5256

*City, State, Zip:*

<i>Phone Number:</i> 225-219-7330
<i>Email:</i> rachal@lsbd.org
<i>Recommendation 9: LSBDD should enroll licensees in "Continuous Query" reports from the National Practitioner Data Bank for each applicant for initial licensure and each renewal applicant to ensure the Board receives accurate, timely notice of actions taken by other states and healthcare entities</i>
Does Agency Agree with Recommendation? <input checked="" type="checkbox"/> Agree <input type="checkbox"/> Disagree
Agency Contact Responsible for Recommendation:
<i>Name/Title:</i> Erin Conner
<i>Address:</i>
<i>City, State, Zip:</i>
<i>Phone Number:</i>
<i>Email:</i>





## APPENDIX B: SCOPE AND METHODOLOGY

This report provides the results of our performance audit of the Louisiana State Board of Dentistry (LSBD). We conducted this performance audit under the provisions of Title 24 of the Louisiana Revised Statutes of 1950, as amended. This audit generally covered the period of July 1, 2015, through June 30, 2019. Our audit objective was:

**To evaluate LSBD’s progress toward addressing issues identified in our October 2016 audit report on the regulation of the dental profession, as well as its use of the National Practitioner Data Bank (NPDB) and Prescription Monitoring Program (PMP) in its regulatory activities.**

We conducted this performance audit in accordance with generally-accepted *Government Auditing Standards* issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide reasonable basis for our findings and conclusions based on our audit objective. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. To answer our objective, we reviewed internal controls relevant to the audit objective and performed the following audit steps:

- Researched and reviewed relevant state and federal statutes and regulations related to the regulation of the dental profession in Louisiana.
- Researched best practices and other state and federal audits related to healthcare licensing and regulatory boards.
- Interviewed LSBD staff and obtained policies and procedures to gain an understanding of its process for regulating the dental profession in Louisiana.
- Obtained LSBD budget information from the Division of Administration’s Boards and Commissions website.
- Obtained and analyzed inspections, active dentists and hygienists, active dental offices, disciplinary actions, and complaints data from LSBD.
  - Tested data for reliability. We did not identify significant reliability issues. For minor issues, we adjusted our analyses to exclude these records, if needed.
  - Communicated with LSBD staff to understand the data and how it was used internally.
  - Tested the data to determine if dental offices were inspected once every three years as required by LSBD policy.

- Tested the data to determine if dental offices provided proof of correction as required by LSBSD policy when violations were noted during inspections.
- Communicated with LSBSD staff to understand the criteria used to identify high-risk dentists/dental offices, tested the data to identify high-risk offices, and determined if these dentists/dental offices were re-inspected.
- Communicated with LSBSD to understand their system for electronically tracking disciplinary actions and to determine if this data was being used to sanction dentists fairly and equitably.
- Requested and reviewed the disciplinary matrix approved by LSBSD in December 2019.
- Researched best practices and state and federal statutes and regulations related to the NPDB and the PMP.
  - Obtained information from LSBSD to determine if it queried the NPDB to receive notice of adverse actions taken by other states or agencies before issuing or renewing licenses to applicants.
  - Reviewed LSBSD board meeting minutes to identify formal disciplinary actions taken by the board during fiscal years 2016 through 2019, and obtained information from LSBSD to determine if it reported all required disciplinary actions to the NPDB.
  - Obtained complaints data and some case files from LSBSD and determined if complaints had been resolved appropriately and all required actions were reported to the NPDB.
  - Obtained information from LSBSD and LABP to determine whether they use the PMP to investigate complaints and monitor dentists who were sanctioned by LSBSD for illegal or improper prescribing practices.
- Discussed the results of our analysis with LSBSD board members and staff and provided the results of our analysis when requested.

**APPENDIX C: SUMMARY OF OCTOBER 2016 FINDINGS AND  
RECOMMENDATIONS\* AND LSBSD'S IMPLEMENTATION  
PROGRESS  
As of July 2020**

**Finding #1: LSBSD should establish a consistent policy on how often dental offices should be inspected to provide assurance to the public that offices are monitored regularly. We found that between fiscal years 2012 and 2014, LSBSD did not conduct inspections on 568 (35.5%) of 1,600 dental offices.**

<b>Recommendation</b>	<b>Status</b>
1. LSBSD should revise its current policy and require staff to periodically inspect all dental offices frequently enough to provide reasonable safeguards to the public by identifying dental offices that are not in compliance with the Dental Practice Act and other LSBSD requirements.	<b>Fully Implemented.</b> LSBSD updated its policy in March 2017 to inspect dental offices every three years. During the inspection, the inspector checks for CDC infection control violations, anesthesia violations, and CDS record keeping violations.
2. LSBSD should ensure that staff conducts inspections as required in its updated policy.	<b>Fully Implemented.</b> LSBSD inspected 1,441 (94.4%) of 1,527 active dental offices at least once during fiscal years 2016 through 2018.
3. LSBSD should improve its process for scheduling inspections to ensure that it inspects all dental offices in an efficient manner, potentially by using mapping software to plan routes.	<b>Fully Implemented.</b> LSBSD started using Google Maps in September 2015 to ensure that it inspects all dental offices in an efficient manner.

**Finding #2: LSBSD should ensure all violations it identifies are corrected. We found that LSBSD did not always notify dental offices of violations needing correction or require dentists to submit proof that violations were corrected.**

<b>Recommendation</b>	<b>Status</b>
4. LSBSD should review inspections to ensure that staff properly notify dental offices of inspection violations and request any necessary proof of correction in accordance with policy.	<b>Partially Implemented.</b> LSBSD put in place a system to send violation letters to notify dental offices of inspection violations. The violation letters list the violation(s) noted and request necessary proof of correction to be sent within 30 days, as per LSBSD policy. However, LSBSD did not always ensure that proof of correction was received within 30 days for 213 (48.1%) of 443 inspections with violations, as required by LSBSD policy.

<p>5. LSBSD should categorize violations based on severity and analyze violation data to identify high-risk dentists to re-inspect to ensure violations are corrected.</p>	<p><b>Partially Implemented.</b> LSBSD categorized continuing education and inspection violations based on severity and number of occurrences and defined criteria for high-risk dental offices based on these violations. However 15 (71.4%) of 21 offices met LSBSD’s criteria for high-risk but were not reviewed by a Disciplinary Oversight Committee, as required by LSBSD policy.</p>
<p>6. LSBSD should utilize any downtime that the inspector may have in each cycle of inspections to re-inspect offices that are deemed to be high-risk.</p>	<p><b>Not Implemented.</b> LSBSD does not require that high-risk offices be re-inspected. According to LSBSD, it only re-inspects offices if they are found to have unsanitary conditions, but this requirement is not formally documented in its policies. LSBSD’s policy during our audit scope does require that high-risk dental offices be referred to a Disciplinary Oversight Committee for review to determine whether disciplinary action was needed. However, we found that 15 (71.4%) of 21 offices that had repeat inspection violations and met LSBSD’s criteria for high-risk were not reviewed by a Disciplinary Oversight Committee as required by LSBSD policy.</p>

**Finding #3: LSBSD should track disciplinary actions and develop a disciplinary matrix in order to fairly and equitably administer sanctions to dentists who violate the Dental Practice Act. We found that cases with similar violations were not always treated consistently.**

<p><b>Recommendation</b></p>	<p><b>Status</b></p>
<p>7. LSBSD should electronically track disciplinary action data so that Disciplinary Oversight Committee members can reference similar cases and sanction dentists fairly and equitably.</p>	<p><b>Partially Implemented.</b> LSBSD created an electronic tracking system to track disciplinary actions but it does not track all disciplinary actions taken by the Board and cannot be searched by Disciplinary Oversight Committee members to reference similar cases from the past and sanction dentists fairly and equitably. We found that LSBSD’s electronic tracking system consists of scanned consent decrees and Board orders that are saved in each dentist’s electronic folder. Some disciplinary actions, such as license revocations due to not renewing licenses in time, license surrenders or retirements during or due to investigations by the Board, and letters of concern or reprimand sent to licensees are not included in the electronic tracking system. In addition,</p>

	<p>LSBD’s electronic tracking system for disciplinary actions cannot be used by Disciplinary Oversight Committee members to review disciplinary actions taken in similar cases in the past because violations and Board actions are tracked for each licensee individually and not by the types of violations.</p>
<p>8. LSBD should develop a graduated and equitable system of sanctions that specifies the number and severity of violations that trigger each level of sanction.</p>	<p><b>Partially Implemented.</b> LSBD’s disciplinary matrix only addresses continuing education and inspection violations and does not include and categorize any other violations of the Dental Practice Act or categorize them in a graduated manner based on severity and number of occurrences. In addition, LSBD’s matrix does not include all possible methods of sanction that State law allows the Board to take and does not prescribe their use in a graduated manner based on the severity of the violations, the number of offenses, or any aggravating or mitigating factors. LSBD’s disciplinary matrix only prescribes fines, reports to the NPDB in the case of major violations or second and subsequent continuing education (CE) or inspection violations, and license suspensions for third and subsequent CE or inspection violations. The matrix also does not describe mitigating or aggravating factors that could affect the Board’s action.</p>
<p>*The report can be found here:  <a href="https://lla.la.gov/PublicReports.nsf/2D8A75926C8C51A2862580570053BD04/\$FILE/0001165E.pdf">https://lla.la.gov/PublicReports.nsf/2D8A75926C8C51A2862580570053BD04/\$FILE/0001165E.pdf</a>  <b>Source:</b> Prepared by legislative auditor’s staff using information provided by LSBD.</p>	