VIRGINIA BOARD OF DENTISTRY

AGENDA

March 11-12, 2010

Department of Health Professions

Perimeter Center - 9960 Mayland Drive, 2nd Floor Conference Center -Richmond, Virginia 23233

PAGE

March 11, 2010

2:30 p.m. **Formal Hearing**

March 12, 2010

9:00 a.m. **Board Meeting**

Call to Order – Dr. Levin, President

Evacuation Announcement – Ms. Reen

Public Comment

Approval of Minutes

- December 3, 2009 Formal Hearing 1-2
- December 4, 2009 Board Meeting 3-10

DHP Director's Report – Ms. Ryals

Heath Practitioners' Monitoring Program – Dr. Ziegler

Liaison/Committee Reports

- BHP – Dr. Zimmet
- AADB Report – Dr. Levin
- SRTA – Dr. Gokli
- Regulatory/Legislative Committee – Ms. Howard
  - January 22, 2010 meeting minutes 11-13

Legislation and Regulation – Ms. Reen

- Report on 2010 Legislation 14-20
- Review of Regulatory Actions Chart 21
- Adoption of Regulations for Dental Assistants II
  - Comment received 22-60
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Board Discussion/Action

- Letter from Dr. Carter 79-81

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Report on Case Activity – Mr. Heaberlin 82-83

Executive Director's Report/Business – Ms. Reen

Board Counsel Report – Mr. Casway

Adjourn

VIRGINIA BOARD OF DENTISTRY
FORMAL HEARINGS
DECEMBER 3, 2009

TIME AND PLACE: The meeting of the Virginia Board of Dentistry was called to order at 11:01 a.m. on December 3, 2009 in Board Room 4, Department of Health Professions, 9960 Mayland Drive, Suite 201, Henrico, Virginia.

PRESIDING: Jeffrey Levin, D.D.S.

MEMBERS PRESENT:
Jacqueline G. Pace, R.D.H.
Robert B. Hall, Jr., D.D.S.
Meera A. Gokli, D.D.S.
Myra Howard, Citizen Member
Augustus A. Petticolas, Jr., D.D.S.
Herbert R. Boyd, III, D.D.S.
Martha C. Cutright. D.D.S.

MEMBERS ABSENT:
Misty Mesimer, R.D.H.
Paul N. Zimmet, D.D.S.

STAFF PRESENT:
Sandra K. Reen., Executive Director
Huong Vu, Administrative Assistant

COUNSEL PRESENT: Howard M. Casway, Senior Assistant Attorney General

OTHERS PRESENT:
James E. Schliessmann, Assistant Attorney General
Gail Ross, Adjudication Specialist
Lynn Taylor, Court Reporter, Farnsworth & Taylor Reporting

ESTABLISHMENT OF A QUORUM: With eight members present, a quorum was established.

Jennifer Moore, D.D.S.
Case No. 127710

Dr. Moore appeared without counsel, Kerri B. Taylor, in accordance with a Notice of the Board dated November 5, 2009.

Dr. Levin admitted into evidence Commonwealth's exhibits 1 through 6.

Ms. Taylor advised that the Respondent had no additional evidence.

Dr. Levin swore in the witnesses.

Testifying on behalf of the Commonwealth was Vicki Fox, Senior Investigator, Department of Health Professions.

Testifying on behalf of the respondent were her criminal attorney, Charles Sipe, and David C. Blanton, D.D.S.

Dr. Moore testified on her own behalf.

Closed Meeting: Ms. Pace moved that the Board enter into a closed meeting pursuant to §2.2-3711(A)(27) of the Code of Virginia to deliberate for the purpose of reaching a decision in the matter of Dr. Moore. Additionally, it was moved that Board staff, Sandra Reen, Huong Vu and Board counsel, Howard Casway attend the closed meeting because their presence in the closed meeting was deemed necessary and would aid the Board in its deliberations. The motion was seconded and passed.

Reconvene: Ms. Pace moved to certify that only public matters lawfully exempted from open meeting requirements under Virginia law were discussed in the closed meeting and only public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Board. The motion was seconded and passed.

The Board reconvened in open session pursuant to § 2.2-3712(D) of the Code.

Decision: Dr. Levin asked Mr. Casway to report the Findings of Fact, Conclusions of Law and Sanctions adopted by the Board.

Dr. Hall moved to adopt the Findings of Fact and Conclusions of Law as reported by Mr. Casway and to issue an order stating that Dr. Moore's license is reinstated and thereafter suspended indefinitely with said suspension stayed for a period of not less than 36 months from the date of entry of the order. Terms and conditions imposed were:

- Compliance with her Health Practitioner Monitoring Program contract,
- She may not apply for reinstatement of her Drug Enforcement Administration certificate for a period of not less than 36 months and/or without express approval of the Board, and
- She may only possess, administer or prescribe the following Schedule VI drugs: antibiotics, local and topical anesthetic, sealants and fluoride.

The motion was seconded and passed.

ADJOURNMENT: The Board adjourned at 1:59 p.m.

_____ _____

Jeffrey Levin, D.D.S., President Sandra K. Reen, Executive Director

_____ _____

Date Date

VIRGINIA BOARD OF DENTISTRY
MINUTES
DECEMBER 4, 2009

TIME AND PLACE: The meeting of the Board of Dentistry was called to order at 9:10 A.M. on December 4, 2009 in Board Room 4, Department of Health Professions, 9960 Mayland Drive, Suite 201, Henrico, Virginia.

PRESIDING: Jeffrey Levin, D.D.S., President

BOARD MEMBERS PRESENT:
Jacqueline G. Pace, R.D.H., Vice President
Robert B. Hall, Jr. D.D.S., Secretary-Treasurer
Herbert R. Boyd, III, D.D.S.
Martha C. Cutright, D.D.S.
Meera A. Gokli, D.D.S.
Myra Howard, Citizen Member
Misty Mesimer, R.D.H.
Augustus A. Petticolas, Jr. D.D.S.
Paul N. Zimmet, D.D.S.

STAFF PRESENT:
Sandra K. Reen, Executive Director for the Board
Sandra Ryals, Director for the Agency
Alan Heaberlin, Deputy Executive Director for the Board
Huong Vu, Administrative Assistant

OTHERS PRESENT: Howard M. Casway, Senior Assistant Attorney General

ESTABLISHMENT OF A QUORUM: All members of the Board were present.

PUBLIC COMMENT: **Jack Mrazik, D.D.S.,** spoke on behalf of the Virginia Society of Oral and Maxillofacial Surgeons regarding concerns about the provisions for nurses in Guidance Document 60-13. He asked that the document be amended to allow nurses to assist in administering all levels of sedation including general anesthesia.

APPROVAL OF MINUTES: Dr. Levin asked if the Board members had reviewed the minutes in the agenda package. Dr. Petticolas moved to accept the minutes of the September 10, 2009 meeting. The motion was seconded and carried.

Dr. Boyd moved to accept the minutes of the September 11, 2009 meeting then noted that he would like the Board to revisit the decision about dental hygienists assessing and applying sealants. Dr. Levin added that matter to Board Discussion. The motion on the minutes was seconded and carried.

DHP DIRECTOR'S REPORT:

Ms. Ryals reported to the Board on the following topics:

Performance measures – the Board is doing very well on the Governor's performance measures. She noted that all the boards in the agency met or exceeded the stretch goal of completing cases within 250 days for the first time in the first quarter of 2010. She went on to report that the Board achieved:

- a 106% clearance rate,
- a pending caseload with only 8% of the cases older than 250 business days, and
- 94% of all cases closed were closed within 250 business days.

She asked that staff and Board members continue their efforts to improve performance. Dr. Zimmet thanked Mr. Heaberlin and Ms. Reen for their guidance.

Customer satisfactory survey - Ms. Ryals noted that the survey is now conducted online and the Board is still in good shape at 96% with target for the goal of 97%. Dr. Zimmet asked what the general complaints were. Ms. Reen responded that there was no one consistent complaint, rather they range from lack of courtesy to taking too long to requiring too much documentation. She also said that she has all the staff review all the comments received.

Online application - Ms. Ryals reports that soon applications will be accepted online and all moneys collected will be processed by a central receipting center.

Healthcare Workforce Data Center - Ms. Ryals reported that the Center is wrapping up its first year of work which focused on physicians and nurses. She advised that dental professions would be addressed next year. She noted that the start-up of the Center was funded through the Workforce Investment Fund and future funding ties in with licensure. She said that more information will be available soon.

Licensing Fees – Ms. Ryals said the good news was that the Board did not have to act to increase fees this year but that it is likely that the Board will have to look at fee increase in the near future.

Budget – Ms. Ryals reported that the Governor is planning to transfer $636,000 from DHP to the General Fund to balance the budget in difficult economic times. Dr. Hall asked what the Board's portion will be. Ms. Reen replied $4255. Ms. Reen later corrected the amount, stating that $33,992 would be the Board's share. Ms. Ryals went on to say that the amount charged to a board was calculated based on the number of licensees and the number of staff.

Prescription Monitoring Program (PMP) – Ms. Ryals stated the program now has enhanced security software and provides 24/7

electronic access to the data. She noted that there is an increase in registered users and that an education campaign for new users is in the works. She said she would like to add a dentist to the PMP Advisory Committee and invited nominations. Dr. Hall asked which states are currently participating with the PMP. Ms. Ryals responded all the states bordering Virginia with the exception of West Virginia.

Dr. Zimmet asked Ms. Ryals if the computer problem has been resolved. Ms. Ryals stated yes and added that the criminal investigation is still going on. She went on to say that the only system that was breached was the Prescription Monitoring Program.

Dr. Zimmet asked if the Agency had requested reinstatement of the $50 per diem. Ms. Ryals responded that she has reported how unhappy the Board members are and noted that the change was made in the Appropriations Act.

HEALTH PRACTITIONERS' MONITORING PROGRAM (HPMP):

Peggy Wood, Program Manager and Liaison – thanked the Board for its interest in the program and noted that the program director, Ms. Ziegler, sends her regrets for not being able to attend. Ms. Wood then gave a Power Point presentation on:

- the program structure which includes a seven member oversight committee,
- eligibility and dismissal,
- participation and monitoring contracts, and
- the number of participants.

Dr. Hall asked who sets the requirements for peer monitors. Ms. Wood responded that the Division of Addiction Psychiatry of the VCU Health System does. Ms. Pace asked if case managers should generally appear at formal hearings. Ms. Wood stated yes and added if they are not available in person, they are available by phone. Several board members commented that case managers have not been at recent formal hearings. Ms. Wood said she would look into this to make sure that case managers attend. Dr. Gokli asked about the costs being charged to participants. Ms. Wood said presently the participants do not pay and the agency pays $225 per month per participant for monitoring. Ms. Mesimer asked how the Board should address concerns about case managers. Ms. Wood responded they should be reported to her to address and follow up with the Board. She went on to say that there are three stages of dismissal process (warning, pre-dismissal, and dismissal) but participant can be dismissed immediately. Ms. Mesimer asked if the licensee would need approval from the Board to have their contract amended. Ms. Wood stated that participant can pull a compliance report five days before administrative proceeding to show their status.

Dr. Levin asked to have Dr. Ziegler speak at the next Board meeting. Ms. Wood stated that she will pass on the message to Dr. Ziegler.

REPORTS:

Board of Health Professions (BHP). Dr. Zimmet reported he was not at the last meeting and asked Ms. Ryals for an update. Ms. Ryals stated that the focus is on the need to register or license a number of emerging professions, including polysomnographers, surgical assistants and community health workers.

AADB. Dr. Levin reported that actions taken in the Hawaii meeting included changing the organizations name from examiners to boards, adding a public member to the executive council and monitoring developments regarding a single national exam. He added that the next meeting will be in April 2010 in Chicago.

SRTA. Dr. Gokli noted that the Southern Conference of Deans and Dental Examiners will meet in D.C. in January and offered SRTA's 2010 examination schedule for review. She directed attention to Dr. Watkins's Exam Committee report and said the matters addressed in the last Board of Director's conference call meeting were:

- The fees for the examinations will not change this year,
- Examiners will take the calibration exam online,
- Evaluating the use of plastic versus natural teeth in the endodontics section, and
- The Alabama Board of Dentistry is now accepting SRTA examinations.

Ms. Reen asked Dr. Gokli to send her information on the SRTA Board of Directors meeting being held in January of 2010. Dr. Boyd asked if the examiners have to be current or former Board member. Ms. Reen stated yes for SRTA but not for all the testing agencies.

Regulatory/Legislative Committee. Ms. Howard reported the following regulatory actions were discussed at the November 2009 Committee meeting:

- Registration of Mobile Clinics – the emergency regulations become effective on January 8, 2010 and the comment period on the NOIRA is open until December 23, 2009.
- Recovery of Disciplinary Costs – proposed regulations will be presented to the Board for action later today.
- Registration and Practice of Dental Assistants – were pending the Governor's Office review.
- Periodic Review of Regulations – the chart on Part V was presented and is currently being circulated to committee members for review. Staff is working to have the members' reviews of the last three parts (V, VI, and VII) ready for discussion at the next Committee meeting scheduled for January 22, 2010.

LEGISLATION AND REGULATION:

Ms. Yeatts reported the following agenda items:

Review of Regulatory Actions. Ms. Yeatts reported the following:

- Registration of Dental Assistants II – the Governor has approved the proposed regulations which will be published for comment on the 21st of December. There will also be a public hearing on January 22, 2010 at 1:00 pm.
- Mobile Dental Clinics – these emergency regulations have been approved and will be in effect on January 8, 2010. Ms. Reen added that she has sent notices of the registration requirements to four companies that have practiced in mobile clinics in Virginia.
- Disciplinary Action Cost Recovery – the proposed draft is presented for action by the Board. She said the proposal was based on other states' regulations. Ms. Yeatts then reviewed the proposal noting that:
  A. Investigation costs – would be calculated each year using agency cost data, would be set out in a guidance document and would be charged as a part of Board Orders.
  B. Monitoring costs – would also be calculated each year, set out in a guidance document and addressed in Board Orders. She added that these costs would be assessed for each year of monitoring and noted that inspection fees, returned check fee and collection costs are not included in monitoring.
  C. Total assessment – the limit for recovering investigation and monitoring costs is set in statute at $5000. Dr. Levin asked how the investigation cost would be calculated. Ms. Ryals responded that Enforcement has the responsibility of tracking the hours spent on a case and Finance will determine the hourly cost of the investigation.
  D. Waiver of cost – the Committee decided against including a waiver provision but wanted the Board to see the language it recommends striking.

  Following discussion, Dr. Zimmet moved to accept the regulations as recommended by the Committee. The motion was seconded and passed.

BOARD DISCUSSION/ACTION:

ADA Letter on Exam Acceptance. Dr. Levin noted this was provided as information only.

VASOMS Letter on Guidance Document 60-13. Ms. Reen noted that in response to Dr. Thomas Padgett's email, she has done some additional research. She talked again to the Executive Director of Board of Nursing and AAMOS to better understand what nurses are currently permitted to do and to see if it there was a way to address VASOMS concerns. She stated it was important for everyone to

understand that the guidance document is not a law or regulation and it cannot be used as the basis for disciplinary action. It does not establish new policy but addresses what is currently permitted in law and regulation. She noted that the Board of Nursing Guidance Document 90-5 on nurses administering conscious sedation clearly says the additional license for the Certified Registered Nurse Anesthetist (CRNA) is required to administer general anesthesia and further Dentistry's regulations only allow delegation to an anesthesiologist or in certain instances a CRNA. Ms. Reen reported that Guidance Document 60-13 is accurate as issued.

Ms. Mesimer expressed concern about not allowing dental hygienists to administer local anesthesia after the administration of anxiolysis. Dr. Petticolas asked what could be done for the oral and maxillofacial surgeons. Ms. Reen responded that the Board could not resolve the concern because the issue is the scope of practice of nurses. Mr. Casway added that there is no statutory authority for the action requested by the surgeons and Ms. Ryals agreed. Dr. Levin stated that the guidance document will stay as is.

Review of Guidance Document 60-19. Ms. Reen stated that the guidance doc on periodontal diagnosis and treatment and the 2007 Current Procedural Terminology are before the Board to consider if a guidance document is still needed and if it is should it be revised. Ms. Mesimer noted that the guidance document seems to limit what dentists can do. Ms. Reen asked if there was adequate literature available on this topic or is the document still needed. The consensus that emerged from discussion of amending the guidance document was that it is out of date and no longer needed. Dr. Hall moved to withdraw the Guidance Document. The motion was seconded and passed.

AGD Transcript – Survey. Ms. Reen stated that she received this email from AGD to see to if the Board is interested in pursuing a universal continuing education (CE) certificate. Dr. Zimmet recommended the response should be no because there isn't a problem. All Board members agreed.

Information on Sargenti Paste from Ms. Miczulski. Ms. Reen noted that the Board addressed this in the past as the use of the paste does not meet the standard of care. She said that there is a video available if the Board wished to view. Dr, Levin decided there was no need to view the video since the Board has already dealt with this.

Standard for Professional Conduct. Dr. Levin reported the guidance document is recommended for adoption by the Executive Committee and asked if the Board has any questions. No question was raised. Dr. Petticolas moved to accept the guidance document. The motion was seconded and passed.

Guidance on General Supervision. Dr. Boyd asked for reconsideration of the response made to the VDH inquiry about general

supervision at the September 11, 2009 meeting. He stated that the minutes are correct but he is concerned that the response made allows dental hygienists to make a final diagnosis. Dr. Petticolas, who had voted on the prevailing side on September 11th, moved to reconsider the response. The motion was seconded and passed. Ms. Reen read the response that was sent following the September 11th meeting and advised that under current law, dental hygienists can not make a final diagnosis. She indicated that the response made was based on a conclusion that assessing the need to reapply sealants was not considered to be a final diagnosis. A motion to refer the matter to an appropriate committee was defeated.

REPORT ON CASE ACTIVITY:

Mr. Heaberlin reported that the performance goals for 2010 on the three key performance measures for discipline are:

- Maintaining a 100% clearance rate,
- Ensuring that no more than 25% of all patient care cases are open longer than 250 business days, and
- Closing 90% of cases within 250 business days.

He went on to state that out of the three largest boards, Dentistry is the only board that met all three performance measures for the first quarter of fiscal year 2010. He then reported that one year ago, the Board had 80 cases over 250 business days. At the beginning of the second quarter the Board had 5 cases over 250 business days.

He reminded Board members of the importance of giving clear reasons for their decisions for disposition of a case to help staff prepare documents or address respondent or source concerns. Ms. Reen asked Board members to be mindful that each case is reviewed by only one person. She said it is very important for the reviewer to consider if all the information needed to make a decision is in hand. She recently reviewed a case on RCT, where perforation into the sinus cavity was alleged, when the source contacted her about the case being closed no violation. She reviewed the file and found that there were no x-rays in evidence. She cautioned reviewers against making decisions without adequate information. Staff was encouraged to call the reviewer in such circumstances. Ms. Reen said she had asked Enforcement to obtain the x-rays for further review.

EXECUTIVE DIRECTOR'S REPORT/BUSINESS:

Report on OMS Audit. Ms. Reen gave a Power Point presentation on the cosmetic procedures Quality Assurance Review completed in 2009. The presentation addressed:

- the history of the requirements in §54.1-2709.1
- the outcomes of the first review completed in 2007
- the outcomes to date of the 2009 review
- costs and fees.

Law Exam. Ms. Reen reported that the law exam given by the Texas Board is administered so that the actual law or regulation will pop-up for review if an incorrect answer is given. She added that until the question was answered correctly, the applicant/licensee could not move on to the next question. She asked for permission to explore revising the Board's current law examination to see if this reference feature could be added. Approval was agreed to by consensus.

BOARD COUNSEL REPORT: Mr. Casway stated that he had nothing to report.

SERVICE AWARD: Dr. Levin presented Dr. Gokli with a plaque recognizing her service as the President for Board of Dentistry. Dr. Gokli thanked everyone for their support.

ADJOURNMENT: With all business concluded, the meeting was adjourned at 1:40 p.m.

Jeffrey Levin, D.D.S., President

Sandra K. Reen, Executive Director

Date

Date

VIRGINIA BOARD OF DENTISTRY
MINUTES OF REGULATORY/LEGISLATIVE COMMITTEE
JANUARY 22, 2010

TIME AND PLACE: The meeting of the Regulatory/Legislative Committee of the Board of Dentistry was called to order at 1:25 p.m. on January 22, 2010 in Board Room 2, Department of Health Professions, 9960 Mayland Drive, Suite 201, Richmond, Virginia.

PRESIDING: Myra Howard, Chair

MEMBERS PRESENT: Jacqueline G. Pace, R.D.H.
Robert B. Hall, Jr., D.D.S.
Herbert R. Boyd., D.D.S

STAFF PRESENT: Sandra K. Reen, Executive Director
Debbie M. Carter, Administrative Assistant

OTHERS PRESENT: Elaine Yeatts, Senior Policy Analyst, Department of Health Professions

QUORUM: All members of the Committee were present.

PUBLIC COMMENT: Ms. Patricia Bonwell, RDH addressed the Board about the need to serve the public in nursing homes and asked that dental hygienists be allowed to do preliminary examinations and hygiene treatment without a supervising dentist. She stated that hygienists could be required to make referrals for further dental treatment. Ms. Bonwell stated that this would allow hygienists to use mobile clinics to provide preventative oral health care.

Ms. Michelle Satterlund with the Virginia Association of Nurse Anesthetists proposed that CRNA's be allowed to practice in all dental settings regardless of the training of the dentist to align with the practice permitted by the Board of Medicine. She spoke about the level of skill, education and training that certified nurse anesthetists have and offered her assistance in developing the regulations. She also stated that this proposal had been discussed with the Virginia Society of Oral Maxillofacial Surgeons.

MINUTES: Ms. Howard asked if the members had reviewed the minutes of the November 20, 2009 meeting. Dr. Hall moved to accept the minutes. The motion was seconded and passed.

STATUS REPORT ON REGULATORY ACTIONS:

Recovery of Disciplinary Costs – Ms. Yeatts reported that these regulations were submitted for administrative review on December 16, 2009 and are currently being reviewed by the Department of Planning and Budget.

LEGISLATIVE UPDATE: Ms. Yeatts reviewed the following legislation in the 2010 General Assembly session which affects health professions:

- HB 87 (Medical incident compensation; penalties) establishes a new system for determining liability in malpractice claims against physicians and hospitals.

- HB 308 (Mobile dental clinics; Board of Dentistry to develop regulations) codifies the authority to issue regulations as provided in the 2009 Appropriations Act.

- HB 654 (Administrative Process Act; final decision reviewable by a de novo appeal) changes the scope of appeals of administrative case decisions to court from consideration of the record to a de novo hearing.

- HB 662 (Health professions; disciplinary actions) permits boards to accept surrender of a license in lieu of disciplinary action.

- HB 1166 (Controlled substances; unlawfully obtaining or attempting to obtain, report required) requires patients to disclose if they have had controlled substances prescribed by more than one prescriber within the previous 30 days. If this information is not reported, the prescriber must make a report to law enforcement.

- HB 1167 (Scheduled II, III, or IV controlled substances; request and review information about patient) requires prescribers to obtain Prescription Monitoring Program reports on certain patients.

- HB 1169 (Education, continuing; on substance abuse, addiction, & related pain management for those licensed) requires prescribers to obtain continuing education on substance abuse, addiction and related pain management and prescribing practices.

- HB 1170 (Drug screens; random for certain prescriptions) requires physicians to obtain urine drug screening tests of patients when prescribing certain controlled substance for greater than 31 days.

- HB 1263 (Dentist and oral surgeons; reimbursement for certain services) prohibits certain provisions in contracts between dental plans and dentists regarding fees.

PERIODIC REVIEW OF REGULATIONS:

Chart on Part VI, Direction and Delegation of Duties/Chart on Part VII, Oral and Maxillofacial Surgeons – Ms. Reen stated that the internal review was near completion with the final Parts, VI and VII, being circulated to the committee members.

Regulatory Review Mark-up – Ms. Reen said the mark-up shows the changes in structure and content the Committee members have identified in Parts I through IV. She indicated that it was clear that the regulations should be reorganized and developed substantially in this process so she felt there was adequate information for discussing

issuance of the Notice of Intended Regulatory Action (NOIRA) to start the 18 to 24 month process for amending the regulations.

DISCUSSION OF NOIRA – Ms. Reen said the first consideration is deciding the structure the committee will propose. She discussed two options. The first was keeping one chapter and adding articles in each part as needed to separate provisions for dentists, dental hygienists and dental assistants. The second option was to address each profession in a separate chapter and noted that the Board of Medicine is using this approach. Discussions followed about which option would be best for staff, applicants and the public. Dr. Hall moved to use chapters to organize the proposed regulations. The motion was seconded and passed.

Ms. Reen explained that this means the NOIRA will describe the action being proposed as being to repeal the current regulations and replace them with new regulations. She added this would likely require the development of a reference tool to help the public understand where new language was being proposed.

Description of Actions - Ms. Reen asked if the Committee wanted to schedule another meeting to go over the changes that should be identified in the NOIRA or if it would like staff to use the guidance given through the internal review to identify the changes. She added if the Committee was supportive of the latter approach she could work with Ms. Yeatts to have a draft for the March 12th Board meeting. Discussion followed and the consensus was that staff should develop it for inclusion in the March 12th agenda package but that committee members could request that it be deferred for additional work by the Committee.

NEXT MEETING: It was agreed to schedule the next meeting at the March 12th Board meeting.

ADJOURNMENT: Ms. Howard adjourned the meeting at 2:55 p.m.

Myra Howard, Chair

Sandra K. Reen, Executive Director

Date

Date

2010 Legislation relating to Practice of Dentistry

10104328D

HOUSE BILL NO. 308

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare, and Institutions on January 19, 2010)

(Patron Prior to Substitute—Delegate O'Bannon)

A BILL to amend the Code of Virginia by adding in Article 1 of Chapter 27 of Title 54.1 a section numbered 54.1-2708.3, relating to regulation of mobile dental clinics.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 1 of Chapter 27 of Title 54.1 a section numbered 54.1-2708.3 as follows:

§ 54.1-2708.3. Regulation of mobile dental clinics.

No person shall operate a mobile dental clinic or other portable dental operation without first registering such mobile dental clinic or other portable dental operation with the Board, except that mobile dental clinics or other portable dental operations operated by federal, state, or local government agencies or other entities identified by the Board in regulations shall be exempt from such registration requirement.

The Board shall promulgate regulations for mobile dental clinics and other portable dental operations to ensure that patient safety is protected, appropriate dental services are rendered, and needed follow-up care is provided. Such regulations shall include, but not be limited to, requirements for the registration of mobile dental clinics, locations where services may be provided, requirements for reporting by providers, and other requirements necessary to provide accountability for services rendered.

2/3/10 10:43

HOUSE SUBSTITUTE

HB308H1

10104728D

HOUSE BILL NO. 1263

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Commerce and Labor on February 2, 2010)

(Patron Prior to Substitute—Delegate Ware, R.L.)

A BILL to amend and reenact §§ 38.2-4214, 38.2-4319, and 38.2-4509 of the Code of Virginia and to amend the Code of Virginia by adding in Article 1 of Chapter 34 of Title 38.2 a section numbered 38.2-3407.17, relating to limitations by a dental plan on reimbursements for certain services provided by dentists and oral surgeons.

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-4214, 38.2-4319, and 38.2-4509 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 1 of Chapter 34 of Title 38.2 a section numbered 38.2-3407.17, as follows:

§ 38.2-3407.17. Payment for services by dentists and oral surgeons.

A. As used in this section:

"Covered services" means the health care services for which benefits under a policy, contract, or evidence of coverage are payable by a dental plan, including services paid by the insureds, subscribers, or enrollees because the annual or periodic payment maximum established by the dental plan has been met.

"Dental plan" includes (i) an insurer proposing to issue individual or group accident and sickness insurance policies providing hospital, medical, and surgical or major medical coverage on an expense-incurred basis, (ii) an entity providing individual or group accident and sickness subscription contracts, (iii) a dental services plan offering or administering prepaid dental services, (iv) a health maintenance organization providing a health care plan, and (v) a dental plan organization.

B. No contract between a dental plan and a dentist or oral surgeon may establish the fee or rate that the dentist or oral surgeon is required to accept for the provision of health care services, or require that a dentist or oral surgeon accept the reimbursement paid as payment in full, unless the services are covered services under the applicable dental plan.

C. This section shall apply with respect to any contract between a dental plan and a dentist or oral surgeon for the provision of health care to patients that is entered into, amended, extended, or renewed on or after July 1, 2010.

D. The Commission shall have no jurisdiction to adjudicate individual controversies arising out of this section.

§ 38.2-4214. Application of certain provisions of law.

No provision of this title except this chapter and, insofar as they are not inconsistent with this chapter, §§ 38.2-200, 38.2-203, 38.2-209 through 38.2-213, 38.2-218 through 38.2-225, 38.2-230, 38.2-232, 38.2-305, 38.2-316, 38.2-322, 38.2-400, 38.2-402 through 38.2-413, 38.2-500 through 38.2-515, 38.2-600 through 38.2-620, 38.2-700 through 38.2-705, 38.2-900 through 38.2-904, 38.2-1017, 38.2-1018, 38.2-1038, 38.2-1040 through 38.2-1044, Articles 1 (§ 38.2-1300 et seq.) and 2 (§ 38.2-1306.2 et seq.) of Chapter 13, §§ 38.2-1312, 38.2-1314, 38.2-1315.1, 38.2-1317 through 38.2-1328, 38.2-1334, 38.2-1340, 38.2-1400 through 38.2-1444, 38.2-1800 through 38.2-1836, 38.2-3400, 38.2-3401, 38.2-3404, 38.2-3405, 38.2-3405.1, 38.2-3406.1, 38.2-3406.2, 38.2-3407.1 through 38.2-3407.6:1, 38.2-3407.9 through ~~38.2-3407.16~~ *38.2-3407.17*, 38.2-3409, 38.2-3411 through 38.2-3419.1, 38.2-3430.1 through 38.2-3437, 38.2-3501, 38.2-3502, subdivision 13 of § 38.2-3503, subdivision 8 of § 38.2-3504, §§ 38.2-3514.1, 38.2-3514.2, §§ 38.2-3516 through 38.2-3520 as they apply to Medicare supplement policies, §§ 38.2-3522.1 through 38.2-3523.4, 38.2-3525, 38.2-3540.1, 38.2-3541, 38.2-3541.1, 38.2-3542, 38.2-3543.2, Article 5 (§ 38.2-3551 et seq.) of Chapter 35, §§ 38.2-3600 through 38.2-3607, Chapter 52 (§ 38.2-5200 et seq.), Chapter 55 (§ 38.2-5500 et seq.), Chapter 58 (§ 38.2-5800 et seq.) and § 38.2-5903 of this title shall apply to the operation of a plan.

§ 38.2-4319. Statutory construction and relationship to other laws.

A. No provisions of this title except this chapter and, insofar as they are not inconsistent with this chapter, §§ 38.2-100, 38.2-136, 38.2-200, 38.2-203, 38.2-209 through 38.2-213, 38.2-216, 38.2-218 through 38.2-225, 38.2-229, 38.2-232, 38.2-305, 38.2-316, 38.2-322, 38.2-400, 38.2-402 through 38.2-413, 38.2-500 through 38.2-515, 38.2-600 through 38.2-620, Chapter 9 (§ 38.2-900 et seq.), §§ 38.2-1016.1 through 38.2-1023, 38.2-1057, Article 2 (§ 38.2-1306.2 et seq.), § 38.2-1306.1, § 38.2-1315.1, Articles 3.1 (§ 38.2-1316.1 et seq.), 4 (§ 38.2-1317 et seq.) and 5 (§ 38.2-1322 et seq.) of Chapter 13, Articles 1 (§ 38.2-1400 et seq.) and 2 (§ 38.2-1412 et seq.) of Chapter 14, §§ 38.2-1800 through 38.2-1836, 38.2-3401, 38.2-3405, 38.2-3405.1, 38.2-3407.2 through 38.2-3407.6:1, 38.2-3407.9 through ~~38.2-3407.16~~ *38.2-3407.17*, 38.2-3411.2, 38.2-3411.3, 38.2-3411.4, 38.2-3412.1:01, 38.2-3414.1,

38.2-3418.1 through 38.2-3418.15, 38.2-3419.1, 38.2-3430.1 through 38.2-3437, 38.2-3500, subdivision 13 of § 38.2-3503, subdivision 8 of § 38.2-3504, §§ 38.2-3514.1, 38.2-3514.2, 38.2-3522.1 through 38.2-3523.4, 38.2-3525, 38.2-3540.1, 38.2-3541.1, 38.2-3542, 38.2-3543.2, Article 5 (§ 38.2-3551 et seq.) of Chapter 35, Chapter 52 (§ 38.2-5200 et seq.), Chapter 55 (§ 38.2-5500 et seq.), Chapter 58 (§ 38.2-5800 et seq.) and § 38.2-5903 of this title shall be applicable to any health maintenance organization granted a license under this chapter. This chapter shall not apply to an insurer or health services plan licensed and regulated in conformance with the insurance laws or Chapter 42 (§ 38.2-4200 et seq.) of this title except with respect to the activities of its health maintenance organization.

B. For plans administered by the Department of Medical Assistance Services that provide benefits pursuant to Title XIX or Title XXI of the Social Security Act, as amended, no provisions of this title except this chapter and, insofar as they are not inconsistent with this chapter, §§ 38.2-100, 38.2-136, 38.2-200, 38.2-203, 38.2-209 through 38.2-213, 38.2-216, 38.2-218 through 38.2-225, 38.2-229, 38.2-232, 38.2-322, 38.2-400, 38.2-402 through 38.2-413, 38.2-500 through 38.2-515, 38.2-600 through 38.2-620, Chapter 9 (§ 38.2-900 et seq.), §§ 38.2-1016.1 through 38.2-1023, 38.2-1057, § 38.2-1306.1, Article 2 (§ 38.2-1306.2 et seq.), § 38.2-1315.1, Articles 3.1 (§ 38.2-1316.1 et seq.), 4 (§ 38.2-1317 et seq.) and 5 (§ 38.2-1322 et seq.) of Chapter 13, Articles 1 (§ 38.2-1400 et seq.) and 2 (§ 38.2-1412 et seq.) of Chapter 14, §§ 38.2-3401, 38.2-3405, 38.2-3407.2 through 38.2-3407.5, 38.2-3407.6 and 38.2-3407.6:1, 38.2-3407.9, 38.2-3407.9:01, and 38.2-3407.9:02, subdivisions 1, 2, and 3 of subsection F of § 38.2-3407.10, 38.2-3407.11, 38.2-3407.11:3, 38.2-3407.13, 38.2-3407.13:1, and 38.2-3407.14, 38.2-3411.2, 38.2-3418.1, 38.2-3418.2, 38.2-3419.1, 38.2-3430.1 through 38.2-3437, 38.2-3500, subdivision 13 of § 38.2-3503, subdivision 8 of § 38.2-3504, §§ 38.2-3514.1, 38.2-3514.2, 38.2-3522.1 through 38.2-3523.4, 38.2-3525, 38.2-3540.1, 38.2-3542, 38.2-3543.2, Chapter 52 (§ 38.2-5200 et seq.), Chapter 55 (§ 38.2-5500 et seq.), Chapter 58 (§ 38.2-5800 et seq.) and § 38.2-5903 shall be applicable to any health maintenance organization granted a license under this chapter. This chapter shall not apply to an insurer or health services plan licensed and regulated in conformance with the insurance laws or Chapter 42 (§ 38.2-4200 et seq.) of this title except with respect to the activities of its health maintenance organization.

C. Solicitation of enrollees by a licensed health maintenance organization or by its representatives shall not be construed to violate any provisions of law relating to solicitation or advertising by health professionals.

D. A licensed health maintenance organization shall not be deemed to be engaged in the unlawful practice of medicine. All health care providers associated with a health maintenance organization shall be subject to all provisions of law.

E. Notwithstanding the definition of an eligible employee as set forth in § 38.2-3431, a health maintenance organization providing health care plans pursuant to § 38.2-3431 shall not be required to offer coverage to or accept applications from an employee who does not reside within the health maintenance organization's service area.

F. For purposes of applying this section, "insurer" when used in a section cited in subsections A and B of this section shall be construed to mean and include "health maintenance organizations" unless the section cited clearly applies to health maintenance organizations without such construction.

§ 38.2-4509. Application of certain laws.

A. No provision of this title except this chapter and, insofar as they are not inconsistent with this chapter, §§ 38.2-200, 38.2-203, 38.2-209 through 38.2-213, 38.2-218 through 38.2-225, 38.2-229, 38.2-316, 38.2-400, 38.2-402 through 38.2-413, 38.2-500 through 38.2-515, 38.2-600 through 38.2-620, 38.2-900 through 38.2-904, 38.2-1038, 38.2-1040 through 38.2-1044, Articles 1 (§ 38.2-1300 et seq.) and 2 (§ 38.2-1306.2 et seq.) of Chapter 13, §§ 38.2-1312, 38.2-1314, 38.2-1315.1, Article 4 (§ 38.2-1317 et seq.) of Chapter 13, §§ 38.2-1400 through 38.2-1444, 38.2-1800 through 38.2-1836, 38.2-3401, 38.2-3404, 38.2-3405, 38.2-3407.10, 38.2-3407.13, 38.2-3407.14, 38.2-3407.15, *38.2-3407.17,* 38.2-3415, 38.2-3541, Article 5 (§ 38.2-3551 et seq.) of Chapter 35, §§ 38.2-3600 through 38.2-3603, Chapter 55 (§ 38.2-5500 et seq.), Chapter 58 (§ 38.2-5800 et seq.) and § 38.2-5903 of this title shall apply to the operation of a plan.

B. The provisions of subsection A of § 38.2-322 shall apply to an optometric services plan. The provisions of subsection C of § 38.2-322 shall apply to a dental services plan.

C. The provisions of Article 1.2 (§ 32.1-137.7 et seq.) of Chapter 5 of Title 32.1 shall not apply to either an optometric or dental services plan.

10103626D

HOUSE BILL NO. 662

Offered January 13, 2010
Prefiled January 12, 2010

A BILL to amend and reenact §§ 54.1-2400, 54.1-2408, and 54.1-2409 of the Code of Virginia, relating to disciplinary authority of health regulatory boards.

Patron—Morrissey

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2400, 54.1-2408, and 54.1-2409 of the Code of Virginia are amended and reenacted as follows:

§ 54.1-2400. General powers and duties of health regulatory boards.

The general powers and duties of health regulatory boards shall be:

1. To establish the qualifications for registration, certification, licensure or the issuance of a multistate licensure privilege in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.

2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.

3. To register, certify, license or issue a multistate licensure privilege to qualified applicants as practitioners of the particular profession or professions regulated by such board.

4. To establish schedules for renewals of registration, certification, licensure, and the issuance of a multistate licensure privilege.

5. To levy and collect fees for application processing, examination, registration, certification or licensure or the issuance of a multistate licensure privilege and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.

6. To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) of this title.

7. To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate, license or multistate licensure privilege which such board has authority to issue for causes enumerated in applicable law and regulations.

8. To appoint designees from their membership or immediate staff to coordinate with the Director and the Health Practitioners' Monitoring Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.

9. To take appropriate disciplinary action for violations of applicable law and regulations, *and to accept, in their discretion, the surrender of a license, certificate, registration or multistate licensure privilege in lieu of disciplinary action.*

10. To appoint a special conference committee, composed of not less than two members of a health regulatory board or, when required for special conference committees of the Board of Medicine, not less than two members of the Board and one member of the relevant advisory board, or, when required for special conference committees of the Board of Nursing, not less than one member of the Board and one member of the relevant advisory board, to act in accordance with § 2.2-4019 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final 30 days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the 30-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 2.2-4020, and the action of the committee shall be vacated. This subdivision shall not be construed to limit the authority of a board to delegate to an appropriately qualified agency subordinate, as defined in § 2.2-4001, the authority to conduct informal fact-finding proceedings in accordance with § 2.2-4019,

upon receipt of information that a practitioner may be subject to a disciplinary action. *The recommendation of such subordinate may be considered by a panel consisting of at least five board members, or, if a quorum of the board is less than five members, consisting of a quorum of the members, convened for the purpose of issuing a case decision.* Criteria for the appointment of an agency subordinate shall be set forth in regulations adopted by the board.

11. To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 2.2-4020, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 2.2-4019 shall serve on a panel conducting formal proceedings pursuant to § 2.2-4020 to consider the same matter.

12. To issue inactive licenses or certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of licenses or certificates.

13. To meet by telephone conference call to consider settlement proposals in matters pending before special conference committees convened pursuant to this section, or matters referred for formal proceedings pursuant to § 2.2-4020 to a health regulatory board or a panel of the board or to consider modifications of previously issued board orders when such considerations have been requested by either of the parties.

14. To request and accept from a certified, registered or licensed practitioner or person holding a multistate licensure privilege to practice nursing, in lieu of disciplinary action, a confidential consent agreement. A confidential consent agreement shall be subject to the confidentiality provisions of § 54.1-2400.2 and shall not be disclosed by a practitioner. A confidential consent agreement shall include findings of fact and may include an admission or a finding of a violation. A confidential consent agreement shall not be considered either a notice or order of any health regulatory board, but it may be considered by a board in future disciplinary proceedings. A confidential consent agreement shall be entered into only in cases involving minor misconduct where there is little or no injury to a patient or the public and little likelihood of repetition by the practitioner. A board shall not enter into a confidential consent agreement if there is probable cause to believe the practitioner has (i) demonstrated gross negligence or intentional misconduct in the care of patients or (ii) conducted his practice in such a manner as to be a danger to the health and welfare of his patients or the public. A certified, registered or licensed practitioner who has entered into two confidential consent agreements involving a standard of care violation, within the 10-year period immediately preceding a board's receipt of the most recent report or complaint being considered, shall receive public discipline for any subsequent violation within the 10-year period unless the board finds there are sufficient facts and circumstances to rebut the presumption that the disciplinary action be made public.

15. When a board has probable cause to believe a practitioner is unable to practice with reasonable skill and safety to patients because of excessive use of alcohol or drugs or physical or mental illness, the board, after preliminary investigation by an informal fact-finding proceeding, may direct that the practitioner submit to a mental or physical examination. Failure to submit to the examination shall constitute grounds for disciplinary action. Any practitioner affected by this subsection shall be afforded reasonable opportunity to demonstrate that he is competent to practice with reasonable skill and safety to patients. For the purposes of this subdivision, "practitioner" shall include any person holding a multistate licensure privilege to practice nursing.

§ 54.1-2408. Disqualification for license, certificate or registration.

A board within the Department of Health Professions shall refuse to admit a candidate to any examination and shall refuse to issue a license, certificate or registration to any applicant if the candidate or applicant has had his license, certificate or registration to practice the profession or occupation revoked or suspended, and has not had his license, certificate or registration to so practice reinstated by the jurisdiction which revoked or suspended his license, certificate or registration, *except as may be necessary to license a nurse eligible for reinstatement in another party state as consistent with the Nurse Licensure Compact.*

§ 54.1-2409. Mandatory suspension or revocation; reinstatement; hearing for reinstatement.

A. Upon receipt of documentation by ~~a~~ *any* court or *government* agency~~, state or federal,~~ that a person licensed, certified, or registered by a board within the Department of Health Professions has had his license, certificate, or registration to practice the same profession or occupation revoked, ~~or~~ suspended, *or accepted for surrender in lieu of disciplinary action* in another jurisdiction and has not had his license, certificate, or registration to so practice reinstated within that jurisdiction, or has been convicted of a felony or has been adjudged incapacitated, the Director of the Department shall immediately suspend, without a hearing, the license, certificate, or registration of any person so disciplined, convicted or adjudged. The Director shall notify such person or his legal guardian,

conservator, trustee, committee, or other representative of the suspension in writing to his address on record with the Department. Such notice shall include a copy of the documentation from such court or agency, certified by the Director as the documentation received from such court or agency. Such person shall not have the right to practice within this Commonwealth until his license, certificate, or registration has been reinstated by the Board.

B. The clerk of any court in which a conviction of a felony or an adjudication of incapacity is made, who has knowledge that a person licensed, certified, or registered by a board within the Department has been convicted or found incapacitated, shall have a duty to report these findings promptly to the Director.

C. When a conviction has not become final, the Director may decline to suspend the license, certificate, or registration until the conviction becomes final if there is a likelihood of injury or damage to the public if the person's services are not available.

D. Any person whose license, certificate, or registration has been suspended as provided in this section may apply to the board for reinstatement of his license, certificate, or registration. Such person shall be entitled to a hearing not later than the next regular meeting of the board after the expiration of 60 days from the receipt of such application, and shall have the right to be represented by counsel and to summon witnesses to testify in his behalf. The Board may consider other information concerning possible violations of Virginia law at such hearing, if reasonable notice is given to such person of the information.

The reinstatement of the applicant's license, certificate, or registration shall require the affirmative vote of three-fourths of the members of the board at the hearing. The board may order such reinstatement without further examination of the applicant, or reinstate the license, certificate, or registration upon such terms and conditions as it deems appropriate.

E. Pursuant to the authority of the Board of Nursing provided in Chapter 30 (§ 54.1-3000 et seq.) of this title, the provisions of this section shall apply, mutatis mutandis, to persons holding a multistate licensure privilege to practice nursing.

INTRODUCED

Agenda Item: **Regulatory Actions - Chart of Regulatory Actions**

Staff Note: Status of regulations for the Board as of mailing of agenda

Action: None – provided for information only

Chapter	Action / Stage Information	
Virginia Board of Dentistry Regulations [18 VAC 60 - 20]	Action:	Registration of mobile clinics
	Stage:	Emergency/NOIRA - *Register Date: 11/23/09* *Effective period of regulations: 1/8/10 to 1/7/11* *Adoption of proposed regulations: 3/12/10*
Virginia Board of Dentistry Regulations [18 VAC 60 - 20]	Action:	Registration and practice of dental assistants
	Stage:	Proposed - *Register Date: 12/21/09* *Close of comment: 2/19/10* *Adoption of final regulations: 3/12/10*
Virginia Board of Dentistry Regulations [18 VAC 60 - 20]	Action:	Recovery of disciplinary costs
	Stage:	Proposed - *At Secretary's Office*

Agenda Item: **Regulatory Action – Adoption of Final Regulation Registration of Dental Assistants II**

Included in your package:

A copy of the transcript from the public hearing held on January 22, 2010

A copy of comment from the Virginia Dental Hygienist Association with draft of changes requested (only written comment)

A summary of all public comment

A copy of draft final regulations with some changes recommended

Board action:

1) Review of comments received at the hearing and in writing and response of the board to comment

2) Consideration of changes to proposed regulations

3) Adoption of final regulations, as published or as amended

V I R G I N I A

BOARD OF DENTISTRY

PUBLIC HEARING OF PROPOSED REGULATIONS

January 22, 2010

APPEARANCE:

Debbie Carter, Administrative Assistant
Jacqueline G. Pace, RDH, Board Member
Robert B. Hall, Jr., DDS, Board Member
Myra Howard, Board Member and Chair of Regulatory and Legislative Committee
Sandra Reen, Executive Director of the Board
Herbert R. Boyd, III, DDS
Elaine Yeatts, Policy Analyst for the Department

THE CHAIR: Welcome to this Public Hearing and Meeting of the Regulatory and Legislative Committee. Am I shouting at you? Okay. Thank you-all for joining us this afternoon.

I am now going to call this meeting to order and would ask the Staff and Board Members present to introduce themselves beginning on my left.

DEBBIE CARTER: My name is Debbie Carter and I'm an Administrative Assistant.

ROBERT B. HALL, JR, DDS: Bob Hall, Member of the Board.

MYRA HOWARD: I'm Myra Howard, Member of the Board and Chair of the Regulatory and Legislative Committee of the Board.

SANDRA REEN: Sandy Reen, Executive Director of the Board.

HERTBERT R. BOYD, III, DDS: Reed Boyd, Member of the Board.

ELAINE YEATTS: Elaine Yeatts, Policy Analyst for the Department.

THE CHAIR: At this time I would like to ask Ms. Reen to inform us of the emergency procedures.

SANDRA REEN: In the event of a fire or

other emergency requiring the evacuation of the building, alarms will sound. When the alarm sound, please leave the room immediately and follow any instructions given by security staff. To exit this room you should go out either of the rear doors on the sides that I'm pointing to, turn right, follow the corridor to the emergency exit at the end of the hall. Using that exit you proceed through the parking lot, to the back of the parking lot where the fence is, and wait for further instructions.

If you need assistance exiting the building, please let myself or Ms. Carter know and we will be happy to make sure that security personnel are aware of your needs for assistance.

Thank you.

THE CHAIR: Good morning, again. As I mentioned I'm Myra Howard, Chair of the Regulatory Committee of the Board of Dentistry. This is a public hearing to receive comments on proposed amendments, with the registration and practice of Dental Assistant II.

There are copies of the proposed regulations in the agenda package or on the

sign-up table. At this time I will call on person who have signed up to comment. As I call your name, please come forward and tell us your name and where you are from. As soon as I have the sign-up sheet.

Kelley Tanner Williams from VDHA.

MS. WILLIAMS: Good morning. Is this adequate?

THE CHAIR: Yes.

MS. WILLIAMS: I'm Kelley Tanner Williams and I'm here representing the Virginia Dental Hygienist's Association. We would like to start by expressing our gratefulness for the work that the Board of Dentistry and also the Committee has conducted on this effort because we know there is a lot of time and effort that went into this.

While we are aware of the time that has been invested into the process by the Board and its Committee, we would like to voice the following concerns and suggestions.

The first concern is regarding the restrictions of registered dental hygienists. It is understandable that a restriction on the number of DA IIs at one time maybe necessary

due to the physical demands on the dentist having to provide constant direct supervision of the DA II. However, the new category of personnel should not cause greater restriction upon dental hygiene practitioners.

The second concern is that there are no provisions for the registered dental hygienists to achieve and/or fulfill the educational and training requirements for those interested in pursuing the practice of what has been described as a DA II. In looking at how dentistry can improve access and needed care to many populations, any proposed regulations should keep the doors open for the already licensed dental workforce. An example of how the public can benefit from dental hygienist becoming "certified" as a Dental Assistant II is when the dental assistant is working in a public or remote setting, the dental hygienist can be utilized in both roles to serve the public as both a dental hygienist and a DA II.

Our third suggestion is in regard to the DA II registration. Discussion of the Board of Dentistry and Committee meeting supported that a DA II had to be a Certified Dental Assistant,

a CDA prior to becoming a DA II. Therefore, in our opinion, the CDA should be the minimum for any credential agency being recognized by the Board of Dentistry. Granting registration from "another certification credential organization" does not insure that the minimum standard of Certified Dental Assistant status will be required.

And I've saved my last and most important point as Number 4. It has been stated at previous regulatory committee meetings that the profession of Dental Assisting would be written in a separate section of the regulations, just as dentistry and dental hygiene have been written separately. The education, regulation, supervision for the scope of practice of the DA II, Dental Hygienists, and Dentist are not comparable and should not be combined, in our opinion. The public and profession deserve clarity in the regulatory language so that the professions and the public remain protected.

Thank you-all in advance for considering our comments and also on the diligent work for improving care and promoting professional excellence.

Thank you for your time.

THE CHAIR: Thank you. Are there any questions from Members of the Board?

Thank you.

Nancy L. Daniel.

MS. DANIEL: Actually, I just thought that was the sign-up sheet. Sorry.

I'm Nancy Daniel from J. Sargeant Reynolds and I do have just one question. The spreadsheets that we worked on last fall, when the very first part of it was talking about etching and bonding and who was going to be placing that. I assume seeing that it's not in the nondelegable duties for dental assistant that even the level I will be allowed to place those? I thought maybe the Board might would look into. I couldn't remember on the spreadsheet whether we did decide to consider Level I being allowed to place bonding and etching. I do not see where it cannot be done under Part 4, 18VAC-60-21-90, so that to me would be allowing the Level I to be allowed to place those since it's not under there.

SANDRA REEN: I think basically we are not here to answer questions, but to hear your

comments. But we will consider your questions as we look into language.

MS. DANIEL: Okay. That would be my comment.

THE CHAIR: Okay. Great. Thank you.

Patricia Bonwell.

MS. BONWELL: Good afternoon to you-all. I'm Patricia Bonwell, who you just called. I'm here to state an opinion or a suggestion on a different note, outside of this particular call today.

My interest and focus is on the geriatric population within nursing homes.

SANDRA REEN: Ma'am, if you are not addressing us on Dental Assistant II, then you need to wait until the Public Hearing is over before you address us.

MS. BONWELL: Okay. I can do that. That's absolutely fine. Sure. Thank you very much for the opportunity. Thank you.

THE CHAIR: Lori Givens.

MS. GIVENS: Sorry.

THE CHAIR: Okay.

I would also like to welcome Ms. Jacqueline Pace, Member of the Board, who has

just come from a hearing.

Is there anyone else in the audience who would like to speak on the proposed Dental Assistant II Regulations? Okay.

Please be certain that we have the name and mailing address of all persons who have provided comment on the sign-in sheet. So, if you spoke please make sure that we have the complete information.

I want to remind everyone that written comments on the proposed Regulations should be directed to Sandra Reen, Executive Director of the Board or an electronic comment can be posted on the Virginia Regulatory Town Hall at www.Townhall.Virginia.Gov or sent by mail. The comment period will close on February 19, 2010.

This concludes our hearing.

(Hearing concluded.)

American
Dental
Hygienists'
Association
Virginia
The Virginia Dental Hygienists' Association
www.vdha.net
888-RDH-VDHA

February 18, 2010

Ms. Sandy Reen
Executive Director
Virginia Board of Dentistry
9960 Mayland Drive, Suite 300
Henrico, VA 23233-1463

Dear Ms Reen,

The Virginia Dental Hygienists' Association (VDHA) is very grateful for the Board of Dentistry's (BOD) work on the Dental Assistant II (DA II) regulations. While we are aware of the time that has been invested into the process by the Board and its committee we would like to voice the following concerns and suggestions;

- Regarding the restriction of registered dental hygienists it is understandable that a restriction on the number of DAII at one time may be necessary due to the physical demands on the dentist having to provide constant direct supervision of the DAII; however, the new category of personnel should not cause greater restriction upon dental hygiene practitioners.
- There are no provisions for the registered dental hygienist to achieve and/or fulfill the educational and training requirements for those interested in pursuing the practice of what has been described as a DA II. In looking at how Dentistry can improve access and needed care by many populations, any proposed regulation should keep the doors open for the already licensed dental workforce.
- In regard to DAII registration, discussion in the BOD and committee meeting supported that the DA had to be a Certified Dental Assistant (CDA) prior to becoming a DAII; therefore the CDA should be the minimum for any credentialing agency being recognized by the BOD. Granting registration from "another certification credentialing organization" does not ensure that the minimum standard of Certified Dental Assistant (CDA) status will be required.
- It has been stated at previous regulatory committee meetings that the profession of dental assisting would be written in a separate section of the regulations, just as dentistry and dental hygiene have been written separately. The education, regulation, supervision and scope of practice for the DA II, Dental Hygienist and Dentist are not comparable and should not be combined. The public and profession deserve clarity in regulatory language so that the professions and the public remain protected.

As requested by Sandra Reen, I have also enclosed a document offering language that VDHA is proposing as a result of our concerns to assist the Board in deciding whether to amend the regulations before adoption. Thank you in advance for considering our comments. On behalf of the dental profession we thank you also for your diligent work on improving care and promoting professional excellence.

Sincerely,

Ellen Austin-Prillaman, RDH
President

Kelly Tanner Williams, RDH, MSDH
Chair, Governmental and Professional Relations

cc: Hilton Graham

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BOARD OF DENTISTRY

Registration and practice of dental assistants

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CHAPTER 20
REGULATIONS GOVERNING ~~THE~~ DENTAL PRACTICE ~~OF DENTISTRY AND DENTAL HYGIENE~~

Part I
General Provisions

18VAC60-20-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"ADA" means the American Dental Association.

"Advertising" means a representation or other notice given to the public or members thereof, directly or indirectly, by a dentist on behalf of himself, his facility, his partner or associate, or any dentist affiliated with the dentist or his facility by any means or method for the purpose of inducing purchase, sale or use of dental methods, services, treatments, operations, procedures or products, or to promote continued or increased use of such dental methods, treatments, operations, procedures or products.

"Analgesia" means the diminution or elimination of pain in the conscious patient.

"Anxiolysis" means the diminution or elimination of anxiety through the use of pharmacological agents in a dosage that does not cause depression of consciousness.

"Conscious sedation" means a minimally depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and verbal commands, produced by pharmacological or nonpharmacological methods, including inhalation, parenteral, transdermal or enteral, or a combination thereof.

"Deep sedation/general anesthesia" means an induced state of depressed consciousness or unconsciousness accompanied by a complete or partial loss of protective reflexes, including the inability to continually maintain an airway independently and/or respond purposefully to physical stimulation or verbal command and is produced by a pharmacological or nonpharmacological method or a combination thereof.

"Dental assistant" means any unlicensed person under the supervision of a dentist who renders assistance for services provided to the patient as authorized under this chapter but shall not include an individual serving in purely a secretarial or clerical capacity.

"Dental assistant II" means a person under the direction of a dentist who is registered to perform reversible, intraoral procedures as specified in this chapter.

"Direct supervision" means that the dentist examines the patient and records diagnostic findings prior to delegating restorative or prosthetic treatment and related services to dental assistant II for completion the same day or at a later date. The dentist prepares the tooth or teeth to be restored and remains in the operatory or an area immediately adjacent to the operatory in order to be immediately available to the dental assistant II for guidance or assistance during the delivery of treatment and related services. The dentist examines the patient to evaluate the treatment and services before the patient is dismissed.

"Direction" means ~~the dentist examines the patient and is present for observation, advice, and control over the performance of dental services~~ the level of supervision that a dentist is required to exercise with a dental hygienist and with a dental assistant or that a dental hygienist is required to exercise with a dental assistant to direct and oversee the delivery of treatment and related services.

"Enteral" is any technique of administration in which the agent is absorbed through the gastrointestinal tract or oral mucosa (i.e., oral, rectal, sublingual).

"General supervision" means that ~~the dentist has examined the patient and issued a written order for the specific, authorized services to be provided by a dental hygienist when the dentist is not present in the facility while the services are being provided~~ a dentist completes a periodic comprehensive examination of the patient and issues a written order for hygiene treatment which states the specific services to be provided by a dental hygienist during one or more subsequent appointments when the dentist may or may not be present. "Indirect supervision" means the dentist examines the patient at some point during the appointment, is continuously present in the office to advise and assist a dental hygienist or a dental assistant or who is preparing the patient for examination or treatment by the dentist or dental hygienist or who is preparing the patient for dismissal following treatment.

"Inhalation" is a technique of administration in which a gaseous or volatile agent, including nitrous oxide, is introduced into the pulmonary tree and whose primary effect is due to absorption through the pulmonary bed.

"Inhalation analgesia" means the inhalation of nitrous oxide and oxygen to produce a state of reduced sensibility to pain without the loss of consciousness.

"Local anesthesia" means the loss of sensation or pain in the oral cavity or the maxillofacial or adjacent and associated structures generally produced by a topically applied or injected agent without depressing the level of consciousness.

"Parenteral" means a technique of administration in which the drug bypasses the gastrointestinal tract (i.e., intramuscular, intravenous, intranasal, submucosal, subcutaneous, or intraocular).

"Radiographs" means intraoral and extraoral x-rays of hard and soft tissues to be used for purposes of diagnosis.

18VAC60-20-15. Recordkeeping.

A dentist shall maintain patient records for not less than three years from the most recent date of service for purposes of review by the board to include the following:

1. Patient's name and date of treatment;
2. Updated health history;
3. Diagnosis and treatment rendered;
4. List of drugs prescribed, administered, dispensed and the quantity;
5. Radiographs;
6. Patient financial records;
7. Name of the dentist and the dental hygienist or the dental assistant II providing service; and
8. Laboratory work orders which meet the requirements of § 54.1-2719 of the Code of Virginia.

Comment [VDHA1]: This last sentence is unnecessary, as condition of RDH supervising the DA II is addressed under 'Direction".

Deleted: The order may authorize the dental hygienist to supervise a dental assistant who prepares the patient for treatment and prepares the patient for dismissal following treatment

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18VAC60-20-16. Address of record; posting of licenses or registrations.

A. At all times, each licensed dentist ~~and~~, dental hygienist and dental assistant II shall provide the board with a current address of record. All required notices mailed by the board to any ~~such~~ licensee or registrant shall be validly given when mailed to the latest address of record given ~~by the licensee~~. All changes in the address of record or in the public address, if different from the address of record, shall be furnished to the board in writing within 30 days of such changes.

B. Posting of license or registration.

A copy of the registration of a dental assistant II shall either be posted in an operatory in which the person is providing services to the public or in the patient reception area where it is clearly visible to patients and accessible for reading.

Part II
~~Licensure~~ Renewal and Fees

18VAC60-20-20. ~~License renewal~~ Renewal and reinstatement.

A. Renewal fees. Every person holding an active or inactive license or a dental assistant II registration or a full-time faculty license shall, on or before March 31, renew his license or registration. Every person holding a teacher's license, temporary resident's license, a restricted volunteer license to practice dentistry or dental hygiene, or a temporary permit to practice dentistry or dental hygiene shall, on or before June 30, request renewal of his license.

1. The fee for renewal of an active license or permit to practice or teach dentistry shall be $285, and the fee for renewal of an active license or permit to practice or teach dental hygiene shall be $75. The fee for renewal of registration as a dental assistant II shall be $50.

2. The fee for renewal of an inactive license shall be $145 for dentists and $40 for dental hygienists. The fee for an inactive registration as a dental assistant II shall be $25.

3. The fee for renewal of a restricted volunteer license shall be $15.

4. The application fee for temporary resident's license shall be $60. The annual renewal fee shall be $35 a year. An additional fee for late renewal of licensure shall be $15.

B. Late fees. Any person who does not return the completed form and fee by the deadline required in subsection A of this section shall be required to pay an additional late fee of $100 for dentists with an active license, ~~and~~ $25 for dental hygienists with an active license, and $20 for a dental assistant II with active registration. The late fee shall be $50 for dentists with an inactive license ~~and~~; $15 for dental hygienists with an inactive license; and $10 for a dental assistant II with an inactive registration. The board shall renew a license or dental assistant II registration if the renewal form, renewal fee, and late fee are received within one year of the deadline required in subsection A of this section.

C. Reinstatement fees and procedures. The license or registration of any person who does not return the completed renewal form and fees by the deadline required in subsection A of this section shall automatically expire and become invalid and his practice ~~of dentistry/dental hygiene~~ as a dentist, dental hygienist, or dental assistant II shall be illegal.

1. Any person whose license or dental assistant II registration has expired for more than one year and who wishes to reinstate such license or registration shall submit to the board a reinstatement application and the reinstatement fee of $500 for dentists, ~~and~~ $200 for dental hygienists or $125 for dental assistants II.

2. With the exception of practice with a restricted volunteer license as provided in §§ 54.1-2712.1 and 54.1-2726.1 of the Code of Virginia, practicing in Virginia with an expired license or registration may subject the licensee to disciplinary action by the board.

3. The executive director may reinstate such expired license or registration provided that the applicant can demonstrate continuing competence, that no grounds exist pursuant to § 54.1-2706 of the Code of Virginia and 18VAC60-20-170 to deny said reinstatement, and that the applicant has paid the unpaid reinstatement fee and any fines or assessments. Evidence of continuing competence shall include hours of continuing education as required by subsection H of 18VAC60-20-50 and may also include evidence of active practice in another state or in federal service or current specialty board certification.

D. Reinstatement of a license or dental assistant II registration previously revoked or indefinitely suspended. Any person whose license or registration has been revoked shall submit to the board for its approval a reinstatement application and fee of $1,000 for dentists, ~~and~~ $500 for dental hygienists and $300 for dental assistants II. Any person whose license or registration has been indefinitely suspended shall submit to the board for its approval a reinstatement application and fee of $750 for dentists, ~~and~~ $400 for dental hygienists, and $250 for dental assistants II.

18VAC60-20-30. Other fees.

A. Dental licensure application fees. The application fee for a dental license by examination, a license to teach dentistry, a full-time faculty license, or a temporary permit as a dentist shall be $400. The application fee for dental license by credentials shall be $500.

B. Dental hygiene licensure application fees. The application fee for a dental hygiene license by examination, a license to teach dental hygiene, or a temporary permit as a dental hygienist shall be $175. The application fee for dental hygienist license by endorsement shall be $275.

C. Dental assistant II registration application fee. The application fee for registration as a dental assistant II shall be $100.

~~C~~D. ~~Duplicate wall~~ Wall certificate. Licensees desiring a duplicate wall certificate or a dental assistant II desiring a wall certificate shall submit a request in writing stating the necessity for ~~such duplicate~~ a wall certificate, accompanied by a fee of $60.

~~D~~E. Duplicate license or registration. Licensees or registrants desiring a duplicate license or registration shall submit a request in writing stating the necessity for such duplicate ~~license~~, accompanied by a fee of $20. If a licensee or registrant maintains more than one office, a notarized photocopy of a license or registration may be used.

~~E~~F. Licensure or registration certification. Licensees or registrants requesting endorsement or certification by this board shall pay a fee of $35 for each endorsement or certification.

~~F~~G. Restricted license. Restricted license issued in accordance with § 54.1-2714 of the Code of Virginia shall be at a fee of $285.

~~G~~H. Restricted volunteer license. The application fee for licensure as a restricted volunteer dentist or dental hygienist issued in accordance with § 54.1-2712.1 or § 54.1-2726.1 of the Code of Virginia shall be $25.

~~H~~I. Returned check. The fee for a returned check shall be $35.

~~I~~J. Inspection fee. The fee for an inspection of a dental office shall be $350.

18VAC60-20-50. Requirements for continuing education.

A. ~~After April 1, 1995, a~~ A dentist or a dental hygienist shall be required to have completed a minimum of 15 hours of approved continuing education for each annual renewal of licensure. A dental assistant II shall be required to maintain current certification from the Dental Assisting

National Board or another national credentialing organization recognized by the American Dental Association.

1. ~~Effective June 29, 2006, a~~ A dentist, ~~or~~ a dental hygienist or a dental assistant II shall be required to maintain evidence of successful completion of training in basic cardiopulmonary resuscitation.

2. ~~Effective June 29, 2006, a~~ A dentist who administers or a dental hygienist who monitors patients under general anesthesia, deep sedation or conscious sedation shall complete four hours every two years of approved continuing education directly related to administration or monitoring of such anesthesia or sedation as part of the hours required for licensure renewal.

3. Continuing education hours in excess of the number required for renewal may be transferred or credited to the next renewal year for a total of not more than 15 hours.

B. An approved continuing dental education program shall be relevant to the treatment and care of patients and shall be:

1. Clinical courses in ~~dentistry and dental hygiene~~; or

2. Nonclinical subjects that relate to the skills necessary to provide dental or dental hygiene services and are supportive of clinical services (i.e., patient management, legal and ethical responsibilities, stress management). Courses not acceptable for the purpose of this subsection include, but are not limited to, estate planning, financial planning, investments, and personal health.

C. Continuing education credit may be earned for verifiable attendance at or participation in any courses, to include audio and video presentations, which meet the requirements in subdivision B 1 of this section and which are given by one of the following sponsors:

1. American Dental Association and National Dental Association, their constituent and component/branch associations;

2. American Dental Hygienists' Association and National Dental Hygienists Association, their constituent and component/branch associations;

3. American Dental Assisting Association, its constituent and component/branch associations;

4. American Dental Association specialty organizations, their constituent and component/branch associations;

5. American Medical Association and National Medical Association, their specialty organizations, constituent, and component/branch associations;

6. Academy of General Dentistry, its constituent and component/branch associations;

7. Community colleges with an accredited dental hygiene program if offered under the auspices of the dental hygienist program;

8. A college or university that is accredited by an accrediting agency approved by the U.S. Department of Education or a hospital or health care institution accredited by the Joint Commission on Accreditation of Health Care Organizations;

9. The American Heart Association, the American Red Cross, the American Safety and Health Institute and the American Cancer Society;

10. A medical school which is accredited by the American Medical Association's Liaison Committee for Medical Education or a dental school or dental specialty residency program accredited by the Commission on Dental Accreditation of the American Dental Association;

Comment [VDHA2]: Keep " dentistry and dental hygiene". "practice" is too narrowly focused. Clinical courses in products, materials and research can increase one's knowledge in understanding evidence base decision making, and yet may not be solely focused on "practice". Knowledge gained from literature reviews and research can be far more encompassing that a clinical course simply focused on "practice". DH studies in public health which are relevant to treatment and care of patients and populations may not be viewed as a course in "dental practice".

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11. State or federal government agencies (i.e., military dental division, Veteran's Administration, etc.);

12. The Commonwealth Dental Hygienists' Society;

13. The MCV Orthodontic and Research Foundation;

14. The Dental Assisting National Board; or

15. A regional testing agency (i.e., Central Regional Dental Testing Service, Northeast Regional Board of Dental Examiners, Southern Regional Testing Agency, or Western Regional Examining Board) when serving as an examiner.

D. A licensee is exempt from completing continuing education requirements and considered in compliance on the first renewal date following the licensee's initial licensure.

E. The board may grant an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

F. A licensee is required to provide information on compliance with continuing education requirements in his annual license renewal. A dental assistant II is required to attest to current certification by the Dental Assisting National Board or another national credentialing organization recognized by the American Dental Association. Following the renewal period, the board may conduct an audit of licensees or registrants to verify compliance. Licensees or registrants selected for audit must provide original documents certifying that they have fulfilled their continuing education requirements by the deadline date as specified by the board.

G. All licensees or registrants are required to maintain original documents verifying the date and subject of the program or activity. Documentation must be maintained for a period of four years following renewal.

H. A licensee who has allowed his license to lapse, or who has had his license suspended or revoked, must submit evidence of completion of continuing education equal to the requirements for the number of years in which his license has not been active, not to exceed a total of 45 hours. Of the required hours, at least 15 must be earned in the most recent 12 months and the remainder within the 36 months preceding an application for reinstatement. A dental assistant II who has allowed his registration to lapse, or who has had his registration suspended or revoked, must submit evidence of current certification from a credentialing organization recognized by the American Dental Association in order to reinstate his registration.

I. Continuing education hours required by board order shall not be used to satisfy the continuing education requirement for license or registration renewal or reinstatement.

J. Failure to comply with continuing education requirements or current certification requirements may subject the licensee or registrant to disciplinary action by the board.

Part III
Entry ~~and Licensure~~ Requirements

18VAC60-20-60. ~~Education~~ Educational requirements for dentists and dental hygienists.

A. Dental licensure. An applicant for dental licensure shall be a graduate and a holder of a diploma or a certificate from a dental program accredited by the Commission on Dental Accreditation of the American Dental Association, which consists of either a pre-doctoral dental education program or at least a 12-month post-doctoral advanced general dentistry program or a post-doctoral dental education program in any other specialty.

B. Dental hygiene licensure. An applicant for dental hygiene licensure shall have graduated from or have been issued a certificate by a program of dental hygiene accredited by the Commission on Dental Accreditation of the American Dental Association.

18VAC60-20-61. Educational requirements for dental assistants II.

A. A prerequisite for entry into an educational program preparing a person for registration as a dental assistant II shall be current certification as a Certified Dental Assistant (CDA) conferred by the Dental Assisting National Board or a licensed dental hygienist..

B. In order to be registered as a dental assistant IIor for a licensed dental hygienist to render the expanded duties of a dental assistant II., a person shall complete the following requirements from an educational program accredited by the Commission on Dental Accreditation of the American Dental Association:

1. At least 50 hours of didactic course work in dental anatomy and operative dentistry, which may be completed on-line;

2. Laboratory training, which may be completed in the following modules with no more than 20% of the specified instruction to be completed as homework in a dental office:

a. At least 40 hours of placing, packing, carving and polishing of amalgam restorations;

b. At least 60 hours of placing and shaping composite resin restorations;

c. At least 20 hours of taking final impressions and use of a non-epinephrine retraction cord;

d. At least 30 hours of final cementation of crowns and bridges after adjustment and fitting by the dentist.

3. Clinical experience applying the techniques learned in the preclinical coursework and laboratory training, which may be completed in a dental office in the following modules:

a. At least 80 hours of placing, packing, carving and polishing of amalgam restorations;

b. At least 120 hours of placing and shaping composite resin restorations;

c. At least 40 hours of taking final impressions and use of a non-epinephrine retraction cord;

d. At least 60 hours of final cementation of crowns and bridges after adjustment and fitting by the dentist.

4. Successful completion of the following competency examinations given by the accredited educational programs:

a. A written examination at the conclusion of the 50 hours of didactic coursework;

b. A practical examination at the conclusion of each module of laboratory training; and

c. A comprehensive written examination at the conclusion of all required coursework, training and experience for each of the corresponding modules.

C. All treatment of patients shall be under the direct and immediate supervision of a licensed dentist, who is responsible for the performance of duties by the student. The dentist shall attest to successful completion of the clinical competencies and restorative experiences.

18VAC60-20-70. Licensure examinations; registration certification.

A. Dental examinations.

1. All applicants shall have successfully completed Part I and Part II of the examinations of the Joint Commission on National Dental Examinations prior to making application to this board.

2. All applicants to practice dentistry shall satisfactorily pass the complete board-approved examinations in dentistry. Applicants who successfully completed the board-approved examinations five or more years prior to the date of receipt of their applications for licensure by this board may be required to retake the examinations or take board-approved continuing education unless they demonstrate that they have maintained clinical, ethical and legal practice for 48 of the past 60 months immediately prior to submission of an application for licensure.

3. If the candidate has failed any section of a board-approved examination three times, the candidate shall complete a minimum of 14 hours of additional clinical training in each section of the examination to be retested in order to be approved by the board to sit for the examination a fourth time.

B. Dental hygiene examinations.

1. All applicants are required to successfully complete the dental hygiene examination of the Joint Commission on National Dental Examinations prior to making application to this board for licensure.

2. All applicants to practice dental hygiene shall successfully complete the board-approved examinations in dental hygiene, except those persons eligible for licensure pursuant to 18VAC60-20-80.

3. If the candidate has failed any section of a board-approved examination three times, the candidate shall complete a minimum of seven hours of additional clinical training in each section of the examination to be retested in order to be approved by the board to sit for the examination a fourth time.

C. Dental assistant II certification. All applicants for registration as a dental assistant II shall provide evidence of a current credential as a Certified Dental Assistant (CDA) conferred by the Dental Assisting National Board.

~~C~~ D. All applicants who successfully complete the board-approved examinations five or more years prior to the date of receipt of their applications for licensure or registration by this board may be required to retake the board-approved examinations or take board-approved continuing education unless they demonstrate that they have maintained clinical, ethical, and legal practice for 48 of the past 60 months immediately prior to submission of an application for licensure or registration.

~~D~~ E. All applicants for licensure by examination or registration as a dental assistant II shall be required to attest that they have read and understand and will remain current with the applicable Virginia dental and dental hygiene laws and the regulations of this board.

18VAC60-20-72. Registration by endorsement as a dental assistant II.

A. An applicant for registration as a dental assistant II or for a licensed dental hygienist to practice expanded duties of the dental assistant IIby endorsement shall provide evidence of the following:

1. Hold current certification as a Certified Dental Assistant (CDA) conferred by the Dental Assisting National Board or active dental hygiene license;

2. Be currently authorized to perform expanded duties as a dental assistant or a licensed dental hygienist in another state, territory, District of Columbia, or possession of the United States;

3. Hold a credential, registration or certificate with qualifications substantially equivalent in hours of instruction and course content to those set forth in 18VAC60-20-61 or; If the qualifications were not substantially equivalent, the dental assistant can document experience in the restorative and prosthetic expanded duties set forth in 18VAC60-20-230 for at least 24 of the past 48 months preceding application for registration in Virginia.

Comment [VDHA3]: During BOD meetings it was discussed that the DA had to be a CDA; therefore, that should be the minimum for any credentialing agency being recognized by the BOD. VDHA is comfortable to only recognize the CDA credential as entry point, especially considering the clinical training in restorative can be OJT, then the public deserves personnel that have more than the 3 skill areas listed for the "other credentialing agency". This "another certification credentialing organization" does NOT ensure that the minimum standard of CDA status will be required.

Deleted: or another certification from a credentialing organization recognized by the American Dental Association and acceptable to the board, which was granted following passage of an examination on general chairside assisting, radiation health and safety, and infection control

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Comment [VDHA4]: This will open doors for RDH to pursue training and practice of expanded duties to assist dentistry in meeting the needs of the public. Team concept!

Deleted: or another national credentialing organization recognized by the American Dental Association

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B. An applicant shall also:

1. Be certified to be in good standing from each state in which he is currently registered, certified or credentialed or in which he has ever held a registration, certificate or credential;

2. Be of good moral character;

3. Not have committed any act which would constitute a violation of § 54.1-2706 of the Code of Virginia; and

4. Attest to having read and understand and to remain current with the laws and the regulations governing dental practice in Virginia.

18VAC60-20-105. Inactive license or registration.

A. Any dentist or dental hygienist who holds a current, unrestricted license in Virginia may, upon a request on the renewal application and submission of the required fee, be issued an inactive license. With the exception of practice with a restricted volunteer license as provided in §§ 54.1-2712.1 and 54.1-2726.1 of the Code of Virginia, the holder of an inactive license shall not be entitled to perform any act requiring a license to practice dentistry or dental hygiene in Virginia.

B. An inactive license may be reactivated upon submission of the required application, payment of the current renewal fee, and documentation of having completed continuing education hours equal to the requirement for the number of years in which the license has been inactive, not to exceed a total of 45 hours. Of the required hours, at least 15 must be earned in the most recent 12 months and the remainder within the 36 months immediately preceding the application for activation. The board reserves the right to deny a request for reactivation to any licensee who has been determined to have committed an act in violation of § 54.1-2706 of the Code of Virginia.

C. Any dental assistant II who holds a current, unrestricted registration in Virginia may, upon a request on the renewal application and submission of the required fee, be issued an inactive registration. The holder of an inactive registration shall not be entitled to perform any act requiring registration to practice as a dental assistant II in Virginia. An inactive registration may be reactivated upon submission of evidence of current certification from the national credentialing organization recognized by the American Dental Association. The board reserves the right to deny a request for reactivation to any registrant who has been determined to have committed an act in violation of § 54.1-2706 of the Code of Virginia.

Part V
Unprofessional Conduct

18VAC60-20-170. Acts constituting unprofessional conduct.

The following practices shall constitute unprofessional conduct within the meaning of § 54.1-2706 of the Code of Virginia:

1. Fraudulently obtaining, attempting to obtain or cooperating with others in obtaining payment for services;

2. Performing services for a patient under terms or conditions which are unconscionable. The board shall not consider terms unconscionable where there has been a full and fair disclosure of all terms and where the patient entered the agreement without fraud or duress;

3. Misrepresenting to a patient and the public the materials or methods and techniques the licensee uses or intends to use;

4. Committing any act in violation of the Code of Virginia reasonably related to the practice of dentistry and dental hygiene;

5. Delegating any service or operation which requires the professional competence of a dentist ~~or~~, dental hygienist, or dental assistant II to any person who is not a dentist ~~or~~, dental hygienist or dental assistant II as authorized by this chapter;

6. Certifying completion of a dental procedure that has not actually been completed;

7. Knowingly or negligently violating any applicable statute or regulation governing ionizing radiation in the Commonwealth of Virginia, including, but not limited to, current regulations promulgated by the Virginia Department of Health; and

8. Permitting or condoning the placement or exposure of dental x-ray film by an unlicensed person, except where the unlicensed person has complied with 18VAC60-20-195.

Part VI
Direction and Delegation of Duties

18VAC60-20-190. Nondelegable duties; dentists.

Only licensed dentists shall perform the following duties:

1. Final diagnosis and treatment planning;

2. Performing surgical or cutting procedures on hard or soft tissue;

3. Prescribing or parenterally administering drugs or medicaments, except a dental hygienist, who meets the requirements of 18VAC60-20-81, may parenterally administer Schedule VI local anesthesia to patients 18 years of age or older;

4. Authorization of work orders for any appliance or prosthetic device or restoration to be inserted into a patient's mouth;

5. Operation of high speed rotary instruments in the mouth;

~~6. Performing pulp capping procedures;~~

~~7.~~6. Administering and monitoring general anesthetics and conscious sedation except as provided for in § 54.1-2701 of the Code of Virginia and 18VAC60-20-108 C, 18VAC60-20-110 F, and 18VAC60-20-120 F;

~~8.~~7. Condensing, contouring or adjusting any final, fixed or removable prosthodontic appliance or restoration in the mouth, with the exception of placing, packing and carving amalgam and composite resins by dental assistants II with advanced training as specified in 18VAC65-20-61 B;

~~9.~~8. Final positioning and attachment of orthodontic bonds and bands; and

~~10. Taking impressions for master casts to be used for prosthetic restoration of teeth or oral structures;~~

~~11.~~9. Final ~~cementation~~ adjustment and fitting of crowns and bridges in preparation for final cementation; ~~and~~

~~12. Placement of retraction cord~~.

18VAC60-20-200. Utilization of dental assistants II.

~~No dentist shall have more than two~~ A dentist may utilize up to a total of four dental hygienists or dental assistants II in any combination practicing under direction or general supervision at one and the same time, with the exception that a dentist may issue written orders for services to be provided by dental hygienists under general supervision in a free clinic, a public health program, or on a voluntary basis.

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Comment [VDHA5]: VHDA supports unlimited restriction on the number of DH. There is disparity in public health settings and it would benefit the public to have no restriction of # of RDHs to care for the patients.

Comment [VDHA6]: Combining DA II with DH is confusing as it reads that DA can practice under general supervision.

18VAC60-20-210. Requirements for direction and general supervision.

A. In all instances and on the basis of his diagnosis, a licensed dentist assumes ultimate responsibility for determining~~, on the basis of his diagnosis,~~ the specific treatment the patient will receive, ~~and~~ which aspects of treatment will be delegated to qualified personnel and the direction required for such treatment, in accordance with this chapter and the Code of Virginia.

B. Dental hygienists shall engage in their respective duties only while in the employment of a licensed dentist or governmental agency or when volunteering services as provided in 18VAC60-20-200. Persons acting within the scope of a license issued to them by the board under § 54.1-2725 of the Code of Virginia to teach dental hygiene and those persons licensed pursuant to § 54.1-2722 of the Code of Virginia providing oral health education and preliminary dental screenings in any setting are exempt from this section.

C. ~~Duties delegated to a dental hygienist under direction shall only be performed when the dentist is present in the facility and examines the patient during the time services are being provided~~.

Comment [VDHA7]: Need a paragraph defining the conditions under which duties may be delegated to the DA II. Direct supervision

~~D.~~ Duties that are delegated to a dental hygienist under general supervision shall only be performed if the following requirements are met:

1. The treatment to be provided shall be ordered by a dentist licensed in Virginia and shall be entered in writing in the record. The services noted on the original order shall be rendered within a specific time period, not to exceed 10 months from the date the dentist last examined the patient. Upon expiration of the order, the dentist shall have examined the patient before writing a new order for treatment.

2. The dental hygienist shall consent in writing to providing services under general supervision.

3. The patient or a responsible adult shall be informed prior to the appointment that ~~no~~ a dentist ~~will~~ may not be present, that no anesthesia can be administered, and that only those services prescribed by the dentist will be provided.

4. Written basic emergency procedures shall be established and in place, and the hygienist shall be capable of implementing those procedures.

~~E~~ D. General supervision shall not preclude the use of direction when, in the professional judgment of the dentist, such direction is necessary to meet the individual needs of the patient.

18VAC60-20-220. Dental hygienists.

A. The following duties shall only be delegated to dental hygienists under direction ~~with the dentist being present~~ and may be performed under indirect supervision:

1. Scaling and/or root planing of natural and restored teeth using hand instruments, rotary instruments and ultrasonic devices under anesthesia ~~administered by the dentist~~.

~~3~~. Administering nitrous oxide or local anesthesia.

Comment [VDHA8]: Unnecessary to have under indirect supervision. Not necessary to be stated, as is redundant with A. statement

Deleted: 2. Performing an initial examination of teeth and surrounding tissues including the charting of carious lesions, periodontal pockets or other abnormal conditions for assisting the dentist in the diagnosis. ¶

B. The following duties shall only be delegated to dental hygienists and may be delegated by written order in accordance with § 54.1-3408 of the Code of Virginia to be performed under general supervision ~~without~~ when the dentist ~~being~~ may not be present:

1. Scaling and/or root planing of natural and restored teeth using hand instruments, rotary instruments and ultrasonic devices.

2. Polishing of natural and restored teeth using air polishers.

Deleted: by dental hygienists qualified in accordance with the requirements of 18VAC60-20-81

Deleted: .

3. Performing a an initial orclinical examination of teeth and surrounding tissues including the charting of carious lesions, periodontal pockets or other abnormal conditions for assisting the dentist in the diagnosis.

4. Subgingival irrigation or subgingival application of topical Schedule VI medicinal agents.

5. Duties appropriate to the education and experience of the dental hygienist and the practice of the supervising dentist, with the exception of those listed in subsection A of this section and those listed as nondelegable in 18VAC60-20-190.

C. Nothing in this section shall be interpreted so as to prevent a licensed dental hygienist from providing educational services, assessment, screening or data collection for the preparation of preliminary written records for evaluation by a licensed dentist.

18VAC60-20-230. Delegation to dental assistants.

A. Duties appropriate to the training and experience of the dental assistant and the practice of the supervising dentist may be delegated to a dental assistant under the direction or under general supervision required in 18VAC60-20-210, with the exception of those listed as nondelegable in 18VAC60-20-190 and those which may only be delegated to dental hygienists as listed in 18VAC60-20-220.

B. Duties delegated to a dental assistant under general supervision shall be under the direction of the dental hygienist who supervises the implementation of the dentist's orders by examining the patient, observing the services rendered by an assistant and being available for consultation on patient care.

C. The following duties may only be delegated under the direction and direct supervision of a dentist to a dental assistant II who has completed the coursework, corresponding module of laboratory training, corresponding module of clinical experience and examinations specified in 18VAC60-20-61:

1. Performing pulp capping procedures;

2. Packing and carving of amalgam restorations;

3. Placing and shaping composite resin restorations;

4. Taking final impressions;

5. Use of a non-epinephrine retraction cord; and

6. Final cementation of crowns and bridges after adjustment and fitting by the dentist.

Comment [VDHA9]: Moving "initial exam" out from under indirect supervision to general and combining with clinical exam and "assisting dentist with the diagnosis" covers all bases for current, every day practice in both private and public health settings.

Deleted: further evaluation and diagnosis by the dentist

Deleted: .

SUMMARY OF COMMENTS ON PROPOSED REGULATIONS

Virginia Board of Dentistry

Regulations Governing the Practice of Dentistry and Dental Hygiene 18 VAC 60-20-10 et seq.

Registration and Practice of Dental Assistants II

Proposed regulations were published in the Virginia Register of Regulations on December 21, 2009. Public comment was requested for a 60-day period ending February 19, 2010.

Written comment was received from Ellen Austin-Prillaman, RDH on behalf of the Virginia Dental Hygienists' Association. The comment is summarized as follows:

- The new category of personnel should not cause greater restriction upon dental hygiene practitioners in specifying the number of assistants who may be supervised at one time. Combining dental assistants and dental hygienists may appear to mean that dental assistants may practice under general supervision.

- There are no provisions for the registered dental hygienist to achieve and/or fulfill the educational and training requirements for those interested in pursuing the practice of what has been described as a DA II. In looking at how Dentistry can improve access and needed care by many populations, any proposed regulation should keep the doors open for the already licensed dental workforce.

- In regard to DAII registration, the Certified Dental Assistant credential should be the minimum for any credentialing agency being recognized by the Board. Granting registration from "another certification credentialing organization" does not ensure that the minimum standard of Certified Dental Assistant (CDA) status will be required.

- The profession of dental assisting should be written in a separate section of the regulations, just as dentistry and dental hygiene have been written separately. The education, regulation, supervision and scope of practice for the DA II, Dental Hygienist and Dentist are not comparable and should not be combined.

A public hearing on proposed regulations was conducted on January 22, 2010. There were two comments received:

Kelly Williams spoke on behalf of the Virginia Dental Hygienists' Association. She thanked the board members for their work in developing the regulations and stated concern that provisions were not made for dental hygienists to qualify to perform the duties that

DAII's will be permitted to do. She asked that the certified dental assistant credential be addressed as the minimum standard and that provisions be added to allow dental hygienists with appropriate training to qualify to perform the same procedures.

Ms. Nancy Daniel with J. Sargeant Reynolds Community College asked if she understood the spreadsheet on delegation of duties correctly to permit delegation of etching and bonding to dental assistants I.

The Board is required by the Administrative Process Act to send a summary of comments to the commenters at least five days prior to the Board's adoption of a final regulation. The Board will consider and respond to the comments at the time of adoption of a final regulation on March 12, 2010.

Draft Final Regulations

BOARD OF DENTISTRY

Registration and practice of dental assistants

CHAPTER 20
REGULATIONS GOVERNING ~~THE~~ DENTAL PRACTICE ~~OF DENTISTRY AND DENTAL HYGIENE~~

Part I
General Provisions

18VAC60-20-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"ADA" means the American Dental Association.

"Advertising" means a representation or other notice given to the public or members thereof, directly or indirectly, by a dentist on behalf of himself, his facility, his partner or associate, or any dentist affiliated with the dentist or his facility by any means or method for the purpose of inducing purchase, sale or use of dental methods, services, treatments, operations, procedures or products, or to promote continued or increased use of such dental methods, treatments, operations, procedures or products.

"Analgesia" means the diminution or elimination of pain in the conscious patient.

"Anxiolysis" means the diminution or elimination of anxiety through the use of pharmacological agents in a dosage that does not cause depression of consciousness.

"Conscious sedation" means a minimally depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and verbal commands, produced by pharmacological or nonpharmacological methods, including inhalation, parenteral, transdermal or enteral, or a combination thereof.

"Deep sedation/general anesthesia" means an induced state of depressed consciousness or unconsciousness accompanied by a complete or partial loss of protective reflexes, including the inability to continually maintain an airway independently and/or respond purposefully to physical stimulation or verbal command and is produced by a pharmacological or nonpharmacological method or a combination thereof.

"Dental assistant [I] " means any unlicensed person under the [~~supervision~~ direction] of a dentist [or a dental hygienist] who renders assistance for services provided to the patient as authorized under this chapter but shall not include an individual serving in purely a secretarial or clerical capacity.

"Dental assistant II" means a person under the direction [and direct supervision] of a dentist who is registered to perform reversible, intraoral procedures as specified in this chapter.

"Direct supervision" means that the dentist examines the patient and records diagnostic findings prior to delegating restorative or prosthetic treatment and related services to dental assistant II for completion the same day or at a later date. The dentist prepares the tooth or teeth to be restored and remains in the operatory or an area immediately adjacent to the operatory in order to be immediately available to the dental assistant II for guidance or assistance during the delivery of treatment and related

services. The dentist examines the patient to evaluate the treatment and services before the patient is dismissed.

"Direction" means ~~the dentist examines the patient and is present for observation, advice, and control over the performance of dental services~~ the level of supervision that a dentist is required to exercise with a dental hygienist and with a dental assistant or that a dental hygienist is required to exercise with a dental assistant to direct and oversee the delivery of treatment and related services.

"Enteral" is any technique of administration in which the agent is absorbed through the gastrointestinal tract or oral mucosa (i.e., oral, rectal, sublingual).

"General supervision" means that ~~the dentist has examined the patient and issued a written order for the specific, authorized services to be provided by a dental hygienist when the dentist is not present in the facility while the services are being provided~~ a dentist completes a periodic comprehensive examination of the patient and issues a written order for hygiene treatment that states the specific services to be provided by a dental hygienist during one or more subsequent appointments when the dentist may or may not be present. The order may authorize the dental hygienist to supervise a dental assistant who prepares the patient for treatment and prepares the patient for dismissal following treatment.

"Indirect supervision" means the dentist examines the patient at some point during the appointment, and is continuously present in the office to advise and assist a dental hygienist or a dental assistant who is (i) delivering hygiene treatment, (ii) preparing the patient for examination or treatment by the dentist or dental hygienist, or (iii) preparing the patient for dismissal following treatment.

"Inhalation" is a technique of administration in which a gaseous or volatile agent, including nitrous oxide, is introduced into the pulmonary tree and whose primary effect is due to absorption through the pulmonary bed.

"Inhalation analgesia" means the inhalation of nitrous oxide and oxygen to produce a state of reduced sensibility to pain without the loss of consciousness.

"Local anesthesia" means the loss of sensation or pain in the oral cavity or the maxillofacial or adjacent and associated structures generally produced by a topically applied or injected agent without depressing the level of consciousness.

"Parenteral" means a technique of administration in which the drug bypasses the gastrointestinal tract (i.e., intramuscular, intravenous, intranasal, submucosal, subcutaneous, or intraocular).

"Radiographs" means intraoral and extraoral x-rays of hard and soft tissues to be used for purposes of diagnosis.

18VAC60-20-15. Recordkeeping.

A dentist shall maintain patient records for not less than three years from the most recent date of service for purposes of review by the board to include the following:

1. Patient's name and date of treatment;
2. Updated health history;
3. Diagnosis and treatment rendered;
4. List of drugs prescribed, administered, dispensed and the quantity;
5. Radiographs;
6. Patient financial records;

7. Name of the dentist and the dental hygienist or the dental assistant II providing service; and

8. Laboratory work orders which meet the requirements of § 54.1-2719 of the Code of Virginia.

18VAC60-20-16. Address of record; posting of licenses or registrations.

A. Address of record. At all times, each licensed dentist ~~and~~, dental hygienist, and dental assistant II shall provide the board with a current address of record. All required notices mailed by the board to any ~~such~~ licensee or registrant shall be validly given when mailed to the latest address of record given ~~by the licensee~~. All changes in the address of record or in the public address, if different from the address of record, shall be furnished to the board in writing within 30 days of such changes.

B. Posting of license or registration. A copy of the registration of a dental assistant II shall either be posted in an operatory in which the person is providing services to the public or in the patient reception area where it is clearly visible to patients and accessible for reading.

Part II

~~Licensure~~ Renewal and Fees

18VAC60-20-20. ~~License renewal~~ Renewal and reinstatement.

A. Renewal fees. Every person holding an active or inactive license or a dental assistant II registration or a full-time faculty license shall, on or before March 31, renew his license or registration. Every person holding a teacher's license, temporary resident's license, a restricted volunteer license to practice dentistry or dental hygiene, or a temporary permit to practice dentistry or dental hygiene shall, on or before June 30, request renewal of his license.

1. The fee for renewal of an active license or permit to practice or teach dentistry shall be $285, and the fee for renewal of an active license or permit to practice or teach dental hygiene shall be $75. The fee for renewal of registration as a dental assistant II shall be $50.

2. The fee for renewal of an inactive license shall be $145 for dentists and $40 for dental hygienists. The fee for renewal of an inactive registration as a dental assistant II shall be $25.

3. The fee for renewal of a restricted volunteer license shall be $15.

4. The application fee for temporary resident's license shall be $60. The annual renewal fee shall be $35 a year. An additional fee for late renewal of licensure shall be $15.

B. Late fees. Any person who does not return the completed form and fee by the deadline required in subsection A of this section shall be required to pay an additional late fee of $100 for dentists with an active license ~~and~~, $25 for dental hygienists with an active license, and $20 for a dental assistant II with active registration. The late fee shall be $50 for dentists with an inactive license ~~and~~, $15 for dental hygienists with an inactive license, and $10 for a dental assistant II with an inactive registration. The board shall renew a license or dental assistant II registration if the renewal form, renewal fee, and late fee are received within one year of the deadline required in subsection A of this section.

C. Reinstatement fees and procedures. The license or registration of any person who does not return the completed renewal form and fees by the deadline required in subsection A of this section shall automatically expire and become invalid and his

practice ~~of dentistry/dental hygiene~~ as a dentist, dental hygienist, or dental assistant II shall be illegal.

1. Any person whose license or dental assistant II registration has expired for more than one year and who wishes to reinstate such license or registration shall submit to the board a reinstatement application and the reinstatement fee of $500 for dentists ~~and~~, $200 for dental hygienists or $125 for dental assistants II.

2. With the exception of practice with a restricted volunteer license as provided in §§ 54.1-2712.1 and 54.1-2726.1 of the Code of Virginia, practicing in Virginia with an expired license or registration may subject the licensee to disciplinary action by the board.

3. The executive director may reinstate such expired license or registration provided that the applicant can demonstrate continuing competence, that no grounds exist pursuant to § 54.1-2706 of the Code of Virginia and 18VAC60-20-170 to deny said reinstatement, and that the applicant has paid the unpaid reinstatement fee and any fines or assessments. Evidence of continuing competence shall include hours of continuing education as required by subsection H of 18VAC60-20-50 and may also include evidence of active practice in another state or in federal service or current specialty board certification.

D. Reinstatement of a license or dental assistant II registration previously revoked or indefinitely suspended. Any person whose license or registration has been revoked shall submit to the board for its approval a reinstatement application and fee of $1,000 for dentists ~~and~~, $500 for dental hygienists and $300 for dental assistants II. Any person whose license or registration has been indefinitely suspended shall submit to the board for its approval a reinstatement application and fee of $750 for dentists ~~and~~, $400 for dental hygienists, and $250 for dental assistants II.

18VAC60-20-30. Other fees.

A. Dental licensure application fees. The application fee for a dental license by examination, a license to teach dentistry, a full-time faculty license, or a temporary permit as a dentist shall be $400. The application fee for dental license by credentials shall be $500.

B. Dental hygiene licensure application fees. The application fee for a dental hygiene license by examination, a license to teach dental hygiene, or a temporary permit as a dental hygienist shall be $175. The application fee for dental hygienist license by endorsement shall be $275.

C. Dental assistant II registration application fee. The application fee for registration as a dental assistant II shall be $100.

~~C. Duplicate wall~~ D. Wall certificate. Licensees desiring a duplicate wall certificate or a dental assistant II desiring a wall certificate shall submit a request in writing stating the necessity for ~~such duplicate~~ a wall certificate, accompanied by a fee of $60.

~~D.~~ E. Duplicate license or registration. Licensees or registrants desiring a duplicate license or registration shall submit a request in writing stating the necessity for such duplicate ~~license~~, accompanied by a fee of $20. If a licensee or registrant maintains more than one office, a notarized photocopy of a license or registration may be used.

~~E.~~ F. Licensure or registration certification. Licensees or registrants requesting endorsement or certification by this board shall pay a fee of $35 for each endorsement or certification.

~~F.~~ G. Restricted license. Restricted license issued in accordance with § 54.1-2714 of the Code of Virginia shall be at a fee of $285.

~~G.~~ H. Restricted volunteer license. The application fee for licensure as a restricted volunteer dentist or dental hygienist issued in accordance with § 54.1-2712.1 or § 54.1-2726.1 of the Code of Virginia shall be $25.

~~H.~~ I. Returned check. The fee for a returned check shall be $35.

~~I.~~ J. Inspection fee. The fee for an inspection of a dental office shall be $350.

18VAC60-20-50. Requirements for continuing education.

A. ~~After April 1, 1995, a~~ A dentist or a dental hygienist shall be required to have completed a minimum of 15 hours of approved continuing education for each annual renewal of licensure. A dental assistant II shall be required to maintain current certification from the Dental Assisting National Board or another national credentialing organization recognized by the American Dental Association.

1. ~~Effective June 29, 2006, a~~ A dentist, ~~or~~ a dental hygienist, or a dental assistant II shall be required to maintain evidence of successful completion of training in basic cardiopulmonary resuscitation.

2. ~~Effective June 29, 2006, a~~ A dentist who administers or a dental hygienist who monitors patients under general anesthesia, deep sedation or conscious sedation shall complete four hours every two years of approved continuing education directly related to administration or monitoring of such anesthesia or sedation as part of the hours required for licensure renewal.

3. Continuing education hours in excess of the number required for renewal may be transferred or credited to the next renewal year for a total of not more than 15 hours.

B. An approved continuing dental education program shall be relevant to the treatment and care of patients and shall be:

1. Clinical courses in ~~dentistry and dental hygiene~~ dental practice; or

2. Nonclinical subjects that relate to the skills necessary to provide dental or dental hygiene services and are supportive of clinical services (i.e., patient management, legal and ethical responsibilities, stress management). Courses not acceptable for the purpose of this subsection include, but are not limited to, estate planning, financial planning, investments, and personal health.

C. Continuing education credit may be earned for verifiable attendance at or participation in any courses, to include audio and video presentations, which meet the requirements in subdivision B 1 of this section and which are given by one of the following sponsors:

1. American Dental Association and National Dental Association, their constituent and component/branch associations;

2. American Dental Hygienists' Association and National Dental Hygienists Association, their constituent and component/branch associations;

3. American Dental Assisting Association, its constituent and component/branch associations;

4. American Dental Association specialty organizations, their constituent and component/branch associations;

5. American Medical Association and National Medical Association, their specialty organizations, constituent, and component/branch associations;

6. Academy of General Dentistry, its constituent and component/branch associations;

7. Community colleges with an accredited dental hygiene program if offered under the auspices of the dental hygienist program;

8. A college or university that is accredited by an accrediting agency approved by the U.S. Department of Education or a hospital or health care institution accredited by the Joint Commission on Accreditation of Health Care Organizations;

9. The American Heart Association, the American Red Cross, the American Safety and Health Institute and the American Cancer Society;

10. A medical school which is accredited by the American Medical Association's Liaison Committee for Medical Education or a dental school or dental specialty residency program accredited by the Commission on Dental Accreditation of the American Dental Association;

11. State or federal government agencies (i.e., military dental division, Veteran's Administration, etc.);

12. The Commonwealth Dental Hygienists' Society;

13. The MCV Orthodontic and Research Foundation;

14. The Dental Assisting National Board; or

15. A regional testing agency (i.e., Central Regional Dental Testing Service, Northeast Regional Board of Dental Examiners, Southern Regional Testing Agency, or Western Regional Examining Board) when serving as an examiner.

D. A licensee is exempt from completing continuing education requirements and considered in compliance on the first renewal date following the licensee's initial licensure.

E. The board may grant an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

F. A licensee is required to provide information on compliance with continuing education requirements in his annual license renewal. A dental assistant II is required to attest to current certification by the Dental Assisting National Board or another national credentialing organization recognized by the American Dental Association. Following the renewal period, the board may conduct an audit of licensees or registrants to verify compliance. Licensees or registrants selected for audit must provide original documents certifying that they have fulfilled their continuing education requirements by the deadline date as specified by the board.

G. All licensees or registrants are required to maintain original documents verifying the date and subject of the program or activity. Documentation must be maintained for a period of four years following renewal.

H. A licensee who has allowed his license to lapse, or who has had his license suspended or revoked, must submit evidence of completion of continuing education equal to the requirements for the number of years in which his license has not been active, not to exceed a total of 45 hours. Of the required hours, at least 15 must be earned in the most recent 12 months and the remainder within the 36 months preceding an application for reinstatement. A dental assistant II who has allowed his registration to lapse or who has had his registration suspended or revoked must submit evidence of

current certification from a credentialing organization recognized by the American Dental Association to reinstate his registration.

I. Continuing education hours required by board order shall not be used to satisfy the continuing education requirement for license or registration renewal or reinstatement.

J. Failure to comply with continuing education requirements or current certification requirements may subject the licensee or registrant to disciplinary action by the board.

Part III

Entry ~~and Licensure~~ Requirements

18VAC60-20-60. ~~Education~~ Educational requirements for dentists and dental hygienists.

A. Dental licensure. An applicant for dental licensure shall be a graduate and a holder of a diploma or a certificate from a dental program accredited by the Commission on Dental Accreditation of the American Dental Association, which consists of either a pre-doctoral dental education program or at least a 12-month post-doctoral advanced general dentistry program or a post-doctoral dental education program in any other specialty.

B. Dental hygiene licensure. An applicant for dental hygiene licensure shall have graduated from or have been issued a certificate by a program of dental hygiene accredited by the Commission on Dental Accreditation of the American Dental Association.

18VAC60-20-61. Educational requirements for dental assistants II.

A. A prerequisite for entry into an educational program preparing a person for registration as a dental assistant II shall be current certification as a Certified Dental Assistant (CDA) conferred by the Dental Assisting National Board.

B. To be registered as a dental assistant II [or for a dental hygienist to perform the duties of a dental assistant II as specified in 18VAC60-20-230 C] , a person shall complete the following requirements from an educational program accredited by the Commission on Dental Accreditation of the American Dental Association:

1. At least 50 hours of didactic course work in dental anatomy and operative dentistry that may be completed on-line.

2. Laboratory training that may be completed in the following modules with no more than 20% of the specified instruction to be completed as homework in a dental office:

a. At least 40 hours of placing, packing, carving, and polishing of amalgam restorations;

b. At least 60 hours of placing and shaping composite resin restorations;

c. At least 20 hours of taking final impressions and use of a non-epinephrine retraction cord; and

d. At least 30 hours of final cementation of crowns and bridges after adjustment and fitting by the dentist.

3. Clinical experience applying the techniques learned in the preclinical coursework and laboratory training that may be completed in a dental office in the following modules:

a. At least 80 hours of placing, packing, carving, and polishing of amalgam restorations;

b. At least 120 hours of placing and shaping composite resin restorations;

c. At least 40 hours of taking final impressions and use of a non-epinephrine retraction cord; and

d. At least 60 hours of final cementation of crowns and bridges after adjustment and fitting by the dentist.

4. Successful completion of the following competency examinations given by the accredited educational programs:

a. A written examination at the conclusion of the 50 hours of didactic coursework;

b. A practical examination at the conclusion of each module of laboratory training; and

c. A comprehensive written examination at the conclusion of all required coursework, training, and experience for each of the corresponding modules.

C. All treatment of patients shall be under the direct and immediate supervision of a licensed dentist who is responsible for the performance of duties by the student. The dentist shall attest to successful completion of the clinical competencies and restorative experiences.

18VAC60-20-70. Licensure examinations; registration certification.

A. Dental examinations.

1. All applicants shall have successfully completed Part I and Part II of the examinations of the Joint Commission on National Dental Examinations prior to making application to this board.

2. All applicants to practice dentistry shall satisfactorily pass the complete board-approved examinations in dentistry. Applicants who successfully completed the board-approved examinations five or more years prior to the date of receipt of their applications for licensure by this board may be required to retake the examinations or take board-approved continuing education unless they demonstrate that they have maintained clinical, ethical and legal practice for 48 of the past 60 months immediately prior to submission of an application for licensure.

3. If the candidate has failed any section of a board-approved examination three times, the candidate shall complete a minimum of 14 hours of additional clinical training in each section of the examination to be retested in order to be approved by the board to sit for the examination a fourth time.

B. Dental hygiene examinations.

1. All applicants are required to successfully complete the dental hygiene examination of the Joint Commission on National Dental Examinations prior to making application to this board for licensure.

2. All applicants to practice dental hygiene shall successfully complete the board-approved examinations in dental hygiene, except those persons eligible for licensure pursuant to 18VAC60-20-80.

3. If the candidate has failed any section of a board-approved examination three times, the candidate shall complete a minimum of seven hours of additional clinical training in each section of the examination to be retested in order to be approved by the board to sit for the examination a fourth time.

C. Dental assistant II certification. All applicants for registration as a dental assistant II shall provide evidence of a current credential as a Certified Dental Assistant (CDA) conferred by the Dental Assisting National Board or another certification from a

credentialing organization recognized by the American Dental Association and acceptable to the board, which was granted following passage of an examination on general chairside assisting, radiation health and safety, and infection control.

~~C.~~ D. All applicants who successfully complete the board-approved examinations five or more years prior to the date of receipt of their applications for licensure or registration by this board may be required to retake the board-approved examinations or take board-approved continuing education unless they demonstrate that they have maintained clinical, ethical, and legal practice for 48 of the past 60 months immediately prior to submission of an application for licensure or registration.

~~D.~~ E. All applicants for licensure by examination or registration as a dental assistant II shall be required to attest that they have read and understand and will remain current with the applicable Virginia dental and dental hygiene laws and the regulations of this board.

18VAC60-20-72. Registration by endorsement as a dental assistant II.

A. An applicant for registration by endorsement as a dental assistant II shall provide evidence of the following:

1. Hold current certification as a Certified Dental Assistant (CDA) conferred by the Dental Assisting National Board or another national credentialing organization recognized by the American Dental Association;

2. Be currently authorized to perform expanded duties as a dental assistant in another state, territory, District of Columbia, or possession of the United States;

3. Hold a credential, registration, or certificate with qualifications substantially equivalent in hours of instruction and course content to those set forth in 18VAC60-20-61 or if the qualifications were not substantially equivalent the dental assistant can document experience in the restorative and prosthetic expanded duties set forth in 18VAC60-20-230 for at least 24 of the past 48 months preceding application for registration in Virginia.

B. An applicant shall also:

1. Be certified to be in good standing from each state in which he is currently registered, certified, or credentialed or in which he has ever held a registration, certificate, or credential;

2. Be of good moral character;

3. Not have committed any act that would constitute a violation of § 54.1-2706 of the Code of Virginia; and

4. Attest to having read and understand and to remain current with the laws and the regulations governing dental practice in Virginia.

18VAC60-20-105. Inactive license or registration.

A. Any dentist or dental hygienist who holds a current, unrestricted license in Virginia may, upon a request on the renewal application and submission of the required fee, be issued an inactive license. With the exception of practice with a restricted volunteer license as provided in §§ 54.1-2712.1 and 54.1-2726.1 of the Code of Virginia, the holder of an inactive license shall not be entitled to perform any act requiring a license to practice dentistry or dental hygiene in Virginia.

B. An inactive license may be reactivated upon submission of the required application, payment of the current renewal fee, and documentation of having completed continuing education hours equal to the requirement for the number of years in which the license has been inactive, not to exceed a total of 45 hours. Of the required hours, at

least 15 must be earned in the most recent 12 months and the remainder within the 36 months immediately preceding the application for activation. The board reserves the right to deny a request for reactivation to any licensee who has been determined to have committed an act in violation of § 54.1-2706 of the Code of Virginia.

C. Any dental assistant II who holds a current, unrestricted registration in Virginia may upon a request on the renewal application and submission of the required fee be issued an inactive registration. The holder of an inactive registration shall not be entitled to perform any act requiring registration to practice as a dental assistant II in Virginia. An inactive registration may be reactivated upon submission of evidence of current certification from the national credentialing organization recognized by the American Dental Association. The board reserves the right to deny a request for reactivation to any registrant who has been determined to have committed an act in violation of § 54.1-2706 of the Code of Virginia.

Part V
Unprofessional Conduct

18VAC60-20-170. Acts constituting unprofessional conduct.

The following practices shall constitute unprofessional conduct within the meaning of § 54.1-2706 of the Code of Virginia:

1. Fraudulently obtaining, attempting to obtain or cooperating with others in obtaining payment for services;

2. Performing services for a patient under terms or conditions which are unconscionable. The board shall not consider terms unconscionable where there has been a full and fair disclosure of all terms and where the patient entered the agreement without fraud or duress;

3. Misrepresenting to a patient and the public the materials or methods and techniques the licensee uses or intends to use;

4. Committing any act in violation of the Code of Virginia reasonably related to the practice of dentistry and dental hygiene;

5. Delegating any service or operation which requires the professional competence of a dentist ~~or~~, dental hygienist, or dental assistant II to any person who is not a dentist ~~or~~, dental hygienist, or dental assistant II as authorized by this chapter;

6. Certifying completion of a dental procedure that has not actually been completed;

7. Knowingly or negligently violating any applicable statute or regulation governing ionizing radiation in the Commonwealth of Virginia, including, but not limited to, current regulations promulgated by the Virginia Department of Health; and

8. Permitting or condoning the placement or exposure of dental x-ray film by an unlicensed person, except where the unlicensed person has complied with 18VAC60-20-195.

Part VI
Direction and Delegation of Duties

18VAC60-20-190. Nondelegable duties; dentists.

Only licensed dentists shall perform the following duties:

1. Final diagnosis and treatment planning;

2. Performing surgical or cutting procedures on hard or soft tissue;

3. Prescribing or parenterally administering drugs or medicaments, except a dental hygienist, who meets the requirements of 18VAC60-20-81, may parenterally administer Schedule VI local anesthesia to patients 18 years of age or older;

4. Authorization of work orders for any appliance or prosthetic device or restoration to be inserted into a patient's mouth;

5. Operation of high speed rotary instruments in the mouth;

~~6. Performing pulp capping procedures;~~

~~7.~~ 6. Administering and monitoring general anesthetics and conscious sedation except as provided for in § 54.1-2701 of the Code of Virginia and 18VAC60-20-108 C, 18VAC60-20-110 F, and 18VAC60-20-120 F;

~~8.~~ 7. Condensing, contouring or adjusting any final, fixed or removable prosthodontic appliance or restoration in the mouth with the exception of [~~placing,~~] packing [,] and carving amalgam and [placing and shaping] composite resins by dental assistants II [or dental hygienists] with advanced training as specified in 18VAC60-20-61 B;

~~9.~~ 8. Final positioning and attachment of orthodontic bonds and bands; and

~~10. Taking impressions for master casts to be used for prosthetic restoration of teeth or oral structures;~~

~~11.~~ 9. Final ~~cementation~~ adjustment and fitting of crowns and bridges~~; and~~ in preparation for final cementation.

~~12. Placement of retraction cord.~~

18VAC60-20-200. Utilization of dental hygienists and dental assistants II.

~~No dentist shall have more than two~~ A dentist may utilize up to a total of four dental hygienists or dental assistants II in any combination practicing under direction [~~or general supervision~~] at one and the same time, with the exception that a dentist may issue written orders for services to be provided by dental hygienists under general supervision in a free clinic, a public health program, or on a voluntary basis.

18VAC60-20-210. Requirements for direction and general supervision.

A. In all instances and on the basis of his diagnosis, a licensed dentist assumes ultimate responsibility for determining~~, on the basis of his diagnosis,~~ the specific treatment the patient will receive ~~and~~, which aspects of treatment will be delegated to qualified personnel, and the direction required for such treatment, in accordance with this chapter and the Code of Virginia.

B. Dental hygienists shall engage in their respective duties only while in the employment of a licensed dentist or governmental agency or when volunteering services as provided in 18VAC60-20-200. Persons acting within the scope of a license issued to them by the board under § 54.1-2725 of the Code of Virginia to teach dental hygiene and those persons licensed pursuant to § 54.1-2722 of the Code of Virginia providing oral health education and preliminary dental screenings in any setting are exempt from this section.

~~C. Duties delegated to a dental hygienist under direction shall only be performed when the dentist is present in the facility and examines the patient during the time services are being provided~~.

~~D.~~ C. Duties that are delegated to a dental hygienist under general supervision shall only be performed if the following requirements are met:

1. The treatment to be provided shall be ordered by a dentist licensed in Virginia and shall be entered in writing in the record. The services noted on the original order shall be rendered within a specific time period, not to exceed 10 months from the date the dentist last examined the patient. Upon expiration of the order, the dentist shall have examined the patient before writing a new order for treatment.

2. The dental hygienist shall consent in writing to providing services under general supervision.

3. The patient or a responsible adult shall be informed prior to the appointment that ~~no~~ a dentist ~~will~~ may not be present, that no anesthesia can be administered, and that only those services prescribed by the dentist will be provided.

4. Written basic emergency procedures shall be established and in place, and the hygienist shall be capable of implementing those procedures.

~~E.~~ D. General supervision shall not preclude the use of direction when, in the professional judgment of the dentist, such direction is necessary to meet the individual needs of the patient.

18VAC60-20-220. Dental hygienists.

A. The following duties shall only be delegated to dental hygienists under direction ~~with the dentist being present~~ and may be performed under indirect supervision:

1. Scaling and/or root planing of natural and restored teeth using hand instruments, rotary instruments and ultrasonic devices under anesthesia ~~administered by the dentist~~.

2. Performing an initial examination of teeth and surrounding tissues including the charting of carious lesions, periodontal pockets or other abnormal conditions for assisting the dentist in the diagnosis.

3. Administering nitrous oxide or local anesthesia by dental hygienists qualified in accordance with the requirements of 18VAC60-20-81.

B. The following duties shall only be delegated to dental hygienists and may be delegated by written order in accordance with § 54.1-3408 of the Code of Virginia to be performed under general supervision ~~without~~ when the dentist ~~being~~ may not be present:

1. Scaling and/or root planing of natural and restored teeth using hand instruments, rotary instruments and ultrasonic devices.

2. Polishing of natural and restored teeth using air polishers.

3. Performing a clinical examination of teeth and surrounding tissues including the charting of carious lesions, periodontal pockets or other abnormal conditions for further evaluation and diagnosis by the dentist.

4. Subgingival irrigation or subgingival application of topical Schedule VI medicinal agents.

5. Duties appropriate to the education and experience of the dental hygienist and the practice of the supervising dentist, with the exception of those listed in subsection A of this section and those listed as nondelegable in 18VAC60-20-190.

C. Nothing in this section shall be interpreted so as to prevent a licensed dental hygienist from providing educational services, assessment, screening or data collection for the preparation of preliminary written records for evaluation by a licensed dentist.

18VAC60-20-230. Delegation to dental assistants.

A. Duties appropriate to the training and experience of the dental assistant and the practice of the supervising dentist may be delegated to a dental assistant under the direction or under general supervision required in 18VAC60-20-210, with the exception of those listed as nondelegable in 18VAC60-20-190 and those which may only be delegated to dental hygienists as listed in 18VAC60-20-220.

B. Duties delegated to a dental assistant under general supervision shall be under the direction of the dental hygienist who supervises the implementation of the dentist's orders by examining the patient, observing the services rendered by an assistant and being available for consultation on patient care.

C. The following duties may only be delegated under the direction and direct supervision of a dentist to a dental assistant II [or a dental hygienist] who has completed the coursework, corresponding module of laboratory training, corresponding module of clinical experience, and examinations specified in 18VAC60-20-61:

1. Performing pulp capping procedures;

2. Packing and carving of amalgam restorations;

3. Placing and shaping composite resin restorations;

4. Taking final impressions;

5. Use of a non-epinephrine retraction cord; and

6. Final cementation of crowns and bridges after adjustment and fitting by the dentist.

Agenda Item: Adoption of a proposed regulation for requirements for registration of mobile dental clinics or portable dental operations

Staff Note:

The emergency regulation became effective 1/8/10. The comment period on the Notice of Intended Regulatory Action (NOIRA) closed on 12/23/09.

Included in your packet:

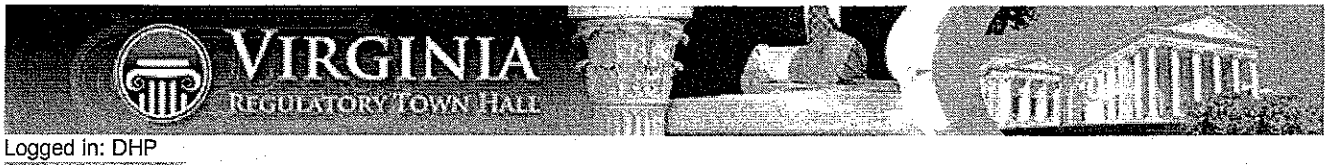
Copy of the comment received on the NOIRA – a petition to amend the emergency regulation is included

Copy of the emergency regulation

Copy of draft changes for Board's consideration

Board action:

Adoption of proposed regulations to replace emergency regulations currently in effect



Logged in: DHP

Agency **Department of Health Professions**

Board **Board of Dentistry**

Chapter **Virginia Board of Dentistry Regulations [18 VAC 60 - 20]**

Action	**Registration of mobile clinics**
Stage	**Emergency/NOIRA**
Comment Period	Ends 12/23/2009

Commenter: Terry D. Dickinson, DDS- Virginia Dental Association * 12/14/09

10678

mobile dental clinics

The Virginia Dental Association is in support of the emergency regulations concerning the use of mobile dental vans providing dental services to areas within the Commonwealth. We feel that the regulations are necessary to protect the public and to make sure that the for-profit mobile clinics are held to the same standards as fixed based dental operations. The goal of these mobile clinics should be, above all, to make sure that the children seen are connected to a 'dental home'. We feel that these regulations do that and do provide adequate safety requirements and responsibilties to assure quality of care to the children seen by these clinics.

Back to List Comments

* Nonregistered public user

COMMONWEALTH OF VIRGINIA
Board of Dentistry

9960 Mayland Drive, Suite 300
Richmond, Virginia 23233-1463

(804) 367-4538 (Tel)
(804) 527-4428 (Fax)

Petition for Rule-making

The Code of Virginia (§ 2.2-4007) and the Public Participation Guidelines of this board require a person who wishes to petition the board to develop a new regulation or amend an existing regulation to provide certain information. Within 14 days of receiving a valid petition, the board will notify the petitioner and send a notice to the Register of Regulations identifying the petitioner, the nature of the request and the plan for responding to the petition. Following publication of the petition in the Register, a 21-day comment period will begin to allow written comment on the petition. Within 90 days after the comment period, the board will issue a written decision on the petition.

Please provide the information requested below. (Print or Type)

Petitioner's full name (Last, First, Middle initial, Suffix,)		
Mix, Joseph A.		
Street Address 532 Woodhaven Drive	Area Code and Telephone Number (434) 592-4096	
City Lynchburg	State VA	Zip Code 24502
Email Address (optional) jamix@liberty.edu	Fax (optional)	

Respond to the following questions:

1. What regulation are you petitioning the board to amend? Please state the title of the regulation and the section/sections you want the board to consider amending.

   Emergency regulation 18VAC60-20-332.Registration of a mobile clinic. The regulation requiring notification of the board, at least 10 days prior, as to the location where mobile services will be provided would place an undue burden on me as a dental provider who wishes to provide timely (within 24 hours), low-cost, emergency dental care to adults living in their homes with the use of portable dental equipment.

2. Please summarize the substance of the change you are requesting and state the rationale or purpose for the new or amended rule.

   I believe the intent of the regulation originally was to govern mobile clinics that primarily treat school children in the school setting, but it will adversely impact my desire to provide emergency care for adults in their homes. Perhaps consider revising the provisions of **18VAC60-20-352. Exemptions from requirement for registration** so that mobile clinics such as mine whose primary focus is to deliver timely emergency dental care to adults in their homes would be exempt. I would respectfully suggest the following exemptions:

   1. All federal, state or local governmental agencies.
   2. Dental treatment which is provided without charge to patients or to any third party payer.
   3. Dental treatment which has as its primary focus the treatment of dental emergencies in the patient's home and is not provided on a regular basis (recurring at fixed or uniform intervals).

3. State the legal authority of the board to take the action requested. In general, the legal authority for the adoption of regulations by the board is found in § 54.1-2400 of the Code of Virginia. If there is other legal authority for promulgation of a regulation, please provide that Code reference.

   As provided in § 54.1-2400 of the Code of Virginia.

Signature: *Joseph A. Mix, D.M.D.* **Date: January 12, 2010**
Joseph A. Mix, DMD

Emergency Regulations
Effective January 8, 2010 to January 7, 2011

BOARD OF DENTISTRY
Registration of mobile clinics

Part I
General Provisions

18VAC60-20-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"ADA" means the American Dental Association.

"Advertising" means a representation or other notice given to the public or members thereof, directly or indirectly, by a dentist on behalf of himself, his facility, his partner or associate, or any dentist affiliated with the dentist or his facility by any means or method for the purpose of inducing purchase, sale or use of dental methods, services, treatments, operations, procedures or products, or to promote continued or increased use of such dental methods, treatments, operations, procedures or products.

"Analgesia" means the diminution or elimination of pain in the conscious patient.

"Anxiolysis" means the diminution or elimination of anxiety through the use of pharmacological agents in a dosage that does not cause depression of consciousness.

"Conscious sedation" means a minimally depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and verbal commands, produced by pharmacological or nonpharmacological methods, including inhalation, parenteral, transdermal or enteral, or a combination thereof.

"Deep sedation/general anesthesia" means an induced state of depressed consciousness or unconsciousness accompanied by a complete or partial loss of protective reflexes, including the inability to continually maintain an airway independently and/or respond purposefully to physical stimulation or verbal command and is produced by a pharmacological or nonpharmacological method or a combination thereof.

"Dental assistant" means any unlicensed person under the supervision of a dentist who renders assistance for services provided to the patient as authorized under this chapter but shall not include an individual serving in purely a secretarial or clerical capacity.

"Direction" means the dentist examines the patient and is present for observation, advice, and control over the performance of dental services.

"Enteral" is any technique of administration in which the agent is absorbed through the gastrointestinal tract or oral mucosa (i.e., oral, rectal, sublingual).

"General supervision" means that the dentist has examined the patient and issued a written order for the specific, authorized services to be provided by a dental hygienist when the dentist is not present in the facility while the services are being provided.

"Inhalation" is a technique of administration in which a gaseous or volatile agent, including nitrous oxide, is introduced into the pulmonary tree and whose primary effect is due to absorption through the pulmonary bed.

"Inhalation analgesia" means the inhalation of nitrous oxide and oxygen to produce a state of reduced sensibility to pain without the loss of consciousness.

"Local anesthesia" means the loss of sensation or pain in the oral cavity or the maxillofacial or adjacent and associated structures generally produced by a topically applied or injected agent without depressing the level of consciousness.

"Mobile dental facility" means a self-contained unit in which dentistry is practiced that is not confined to a single building and can be transported from one location to another.

"Parenteral" means a technique of administration in which the drug bypasses the gastrointestinal tract (i.e., intramuscular, intravenous, intranasal, submucosal, subcutaneous, or intraocular).

"Portable dental operation" means a nonfacility in which dental equipment used in the practice of dentistry is transported to and utilized on a temporary basis at an out-of-office location, including patient's homes, schools, nursing homes or other institutions.

"Radiographs" means intraoral and extraoral x-rays of hard and soft tissues to be used for purposes of diagnosis.

18VAC60-20-30. Other fees.

A. Dental licensure application fees. The application fee for a dental license by examination, a license to teach dentistry, a full-time faculty license, or a temporary permit as a dentist shall be $400. The application fee for dental license by credentials shall be $500.

B. Dental hygiene licensure application fees. The application fee for a dental hygiene license by examination, a license to teach dental hygiene, or a temporary permit as a dental hygienist shall be $175. The application fee for dental hygienist license by endorsement shall be $275.

C. Duplicate wall certificate. Licensees desiring a duplicate wall certificate shall submit a request in writing stating the necessity for such duplicate wall certificate, accompanied by a fee of $60.

D. Duplicate license. Licensees desiring a duplicate license shall submit a request in writing stating the necessity for such duplicate license, accompanied by a fee of $20. If a licensee maintains more than one office, a notarized photocopy of a license may be used.

E. Licensure certification. Licensees requesting endorsement or certification by this board shall pay a fee of $35 for each endorsement or certification.

F. Restricted license. Restricted license issued in accordance with § 54.1-2714 of the Code of Virginia shall be at a fee of $285.

G. Restricted volunteer license. The application fee for licensure as a restricted volunteer dentist or dental hygienist issued in accordance with § 54.1-2712.1 or § 54.1-2726.1 of the Code of Virginia shall be $25.

H. Returned check. The fee for a returned check shall be $35.

I. Inspection fee. The fee for an inspection of a dental office shall be $350.

J. Mobile dental clinic or portable dental operation. The application fee for registration of a mobile dental clinic or portable dental operation shall be $250. The annual renewal fee shall be $150.

Part VIII.

Mobile dental clinics and portable dental operations.

18VAC60-20-332. Registration of a mobile dental clinic or portable dental operation.

A. An applicant for registration of a mobile dental facility or portable dental operation shall provide:

1. The name and address of the owner of the facility or operation and an official address of record for the facility or operation, which shall not be a post office address. Notice shall be given to the board within 30 days if there is a change in the ownership or the address of record for a mobile dental facility or portable dental operation;

2. The name, address and license number of each dentist and dental hygienist or the name, address and registration number of each dental assistant II who will provide dental services in the facility or operation. The identity and license or registration number of any additional dentists, dental hygienists or dental assistants II providing dental services in a mobile dental facility or portable dental operation shall be provided to the board at least 10 days prior to the provision of such services;

3. The address or location of each place where the mobile dental facility or portable dental operation will provide dental services and the dates on which such services will be provided. Any additional locations or dates for the provision of dental services in a mobile dental facility or portable dental operation shall be provided to the board at least 10 days prior to the provision of such services.

B. An application for registration of a mobile dental facility or portable dental operation shall include:

1. Certification that there is a written agreement for follow-up care for patients to include identification of and arrangements for treatment in a dental office which is permanently established within a reasonable geographic area;

2. Certification that the facility or operation has access to communication facilities that enable the dental personnel to contact assistance in the event of a medical or dental emergency;

3. Certification that the facility has a water supply and all equipment necessary to provide the dental services to be rendered therein;

4. Certification that the facility or operation conforms to all applicable federal, state and local laws, regulations and ordinances dealing with radiographic equipment, sanitation, zoning, flammability and construction standards; and

5. Certification that the applicant possesses all applicable city or county licenses or permits to operate the facility or operation.

C. Registration may be denied or revoked for a violation of provisions of § 54.1-2706 of the Code of Virginia.

18VAC60-20-342. Requirements for a mobile dental clinic or portable dental operation.

A. The registration of the facility or operation and copies of the licenses of the dentists and dental hygienists or registrations of the dental assistants II shall be displayed in plain view of patients.

B. Prior to treatment, the facility or operation shall obtain written consent from the patient or if the patient is a minor or incapable of consent, his parent, guardian or authorized representative.

C. Each patient shall be provided with an information sheet or if the patient, his parent, guardian or authorized agent has given written consent to an institution or school to have access to the patient's dental health record, the institution may be provided a copy of the information. At a minimum, the information sheet shall include:

1. Patient name, date of service and location where treatment was provided;

2. Name of dentist or dental hygienist who provided services;

3. Description of the treatment rendered and tooth numbers, when appropriate;

4. Billed service codes and fees associated with treatment;

5. Description of any additional dental needs observed or diagnosed;

6. Referral or recommendation to another dentist if the facility or operation is unable to provide follow-up treatment; and

7. Emergency contact information.

D. Patient records shall be maintained, as required by 18VAC60-20-15, in a secure manner within the facility or at the address of record listed on the registration application. Records shall be made available upon request by the patient, his parent guardian or authorized representative and shall be available to the board for inspection and copying.

E. The practice of dentistry and dental hygiene in a mobile dental clinic or portable dental operation shall be in accordance with the laws and regulations governing such practice.

18VAC60-20-352. Exemptions from requirement for registration.

The following shall be exempt from requirements for registration as a mobile dental clinic or portable dental operation:

1. All federal, state or local governmental agencies; and

2. Dental treatment which is provided without charge to patients or to any third party payer and which is not provided on a regular basis (recurring at fixed or uniform intervals).

FORMS (18VAC60-20)

Application for Registration of a Mobile Dental Facility or Portable Dental Operation (eff. 1/10).

Draft changes to mobile dental clinics for Board consideration

18VAC60-20-332. Registration of a mobile dental clinic or portable dental operation.

A. An applicant for registration of a mobile dental facility or portable dental operation shall provide:

1. The name and address of the owner of the facility or operation and an official address of record for the facility or operation, which shall not be a post office address. Notice shall be given to the board within 30 days if there is a change in the ownership or the address of record for a mobile dental facility or portable dental operation;

2. The name, address and license number of each dentist and dental hygienist or the name, address and registration number of each dental assistant II who will provide dental services in the facility or operation. The identity and license or registration number of any additional dentists, dental hygienists or dental assistants II providing dental services in a mobile dental facility or portable dental operation shall be provided to the board at least 10 days prior to the provision of such services;

3. The address or location of each place where the mobile dental facility or portable dental operation will provide dental services and the dates on which such services will be provided. Any additional locations or dates for the provision of dental services in a mobile dental facility or portable dental operation shall be provided to the board ~~at least 10 days~~ prior to the provision of such services.

18VAC60-20-352. Exemptions from requirement for registration.

A. The following shall be exempt from requirements for registration as a mobile dental clinic or portable dental operation:

1. All federal, state or local governmental agencies;

2. Emergency dental treatment which is provided to a person in his residence, a nursing home, or an assisted living facility and which is not provided on a regular basis; and

3. Dental treatment which is provided without charge to patients or to any third party payer and which is not provided on a regular basis.

B. For purposes of this section, "regular basis" shall mean recurring at fixed or uniform intervals.

Virginia
Regulatory
Town Hall

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Notice of Intended Regulatory Action (NOIRA)
Agency Background Document

Agency name	Board of Dentistry, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC60-20-10 et seq.
Regulation title	Regulations Governing the Practice of Dentistry and Dental Hygiene
Action title	Periodic review
Date this document prepared	March 12, 2010

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual.*

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The goal of this action is to update, clarify and reorganize regulations consistent with current practices of the professions and policies of the board. The intent is to repeal the current Chapter 20 and reorganize into four new chapters – Chapter 15 for general disciplinary provisions; Chapter 21 for the practice of dentistry; Chapter 30 for the practice of dental hygiene; and Chapter 40 for the practice of dental assisting. For the most part, the regulations will be consistent with current requirements, but the board intends to add provisions stated in several guidance documents relating to professional conduct, patient health records, reporting of adverse reactions, and administration of controlled substances. Additionally, to update the rules for sedation and anesthesia, the board will utilize the 2007 Guidelines of the American Dental and the 2006 Academy of Pediatric Dentistry Guidelines.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400, which provides the Board of Dentistry the authority to promulgate regulations to administer the regulatory system:

> ***§ 54.1-2400 -General powers and duties of health regulatory boards***
> *The general powers and duties of health regulatory boards shall be:*
>
> *1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
>
> *2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
>
> *3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
>
> *...*
> *6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) of this title. ...*

Specific regulatory authority for the Board of Dentistry is found in Chapter 27 of Title 54.1.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The purpose of the board's action is to provide the practitioner with clearer rules for practice and treatment of patients and to make the practice of dentistry safer and more transparent for patients. Issues that may need to be addressed as the regulation is developed primarily relate to the provision of anesthesia and sedation in dental practices. While guidelines from the American Dental Association will be utilized, the board will examine each regulation in relation to its effect on public health and safety.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

The Regulatory/Legislative Committee of the Board served as the workgroup to conduct the periodic review and recommended that Chapter 20 be repealed and regulations for the professions of dentistry, dental hygiene and dental assisting be reorganized into three new chapters for each profession – Chapter 21, Chapter 30 and Chapter 40. Additionally, the board may adopt a new chapter (Chapter 15) for general disciplinary provisions relating to delegation to an agency subordinate and recovery of disciplinary costs. The structure and content of each chapter is intended to be as follows:

CHAPTER 21
REGULATIONS GOVERNING THE PRACTICE OF DENTISTRY

Part I General Provisions

Definitions – currently section 10 of Chapter 20

Several of the terms defined are used in the context of regulation for sedation/anesthesia. Terms and definitions may be amended for consistency with the current American Dental Association (ADA) guidelines.

Practice of dentistry - new section with reference to practice defined in § 54.1-2711

Exceptions to practice of dentistry – currently 18VAC60-20-240 plus reference to §§ 54.1-2701 and 54.1-2712

Licensee addresses - Section16 of Chapter 20

Posting requirements - new section with reference to requirements in §§ 54.1-2720 and 54.1-2721 and language from section 110

Required fees – currently in sections 20, 30, 40, 250 and 310 of Chapter 20

Part II Standards of Professional Conduct -18VAC60-20-170

Patient information and records -18VAC60-20-15 for required content

To include language from 2005 Guidance Document 60-3 on the meaning of an updated health history. The section will also reference law on confidentiality and release of records. The board will consider amending the time period for maintenance of records from three to five years and expansion of information on services provided, drugs administered and images taken in order to have sufficient information by which to evaluate treatment. A new subsection will also be included to specify the content of a record relating to provision of sedation or anesthesia.

Scope of practice

- *A new section on professional conduct may be added to include provisions currently set out in a 2009 Guidance Document 60-15 on treating and prescribing for self and family; duty to patients, professional boundaries; billing and financial transactions; and reporting abuse and neglect.*
- Reporting adverse reactions – currently in 18VAC60-20-140 *with clarifying amendments*
- Advertising – currently in 18VAC60-20-180 and Guidance Document 60-15
- *A new section may be added on compliance with applicable laws and regulations, such as Code of Virginia sections applicable to all health professions as well as*

those specific to dentistry, and federal requirements for health, safety and sanitation

Part III. Direction, delegation and supervision
- Dentists' responsibilities - 18VAC60-20-200, 210
  - Treatment or practices restricted to dentists - 18VAC60-20-190
- Dental hygienists - 18VAC60-20-200,210,220
- Dental assistants - 18VAC60-20-230

Part IV. License and registration requirements

Article 1. Application requirements – currently in 18VAC60-20-100

Article 2. Unrestricted dental license
- Education -18VAC60-20-60
- Licensure by examination -18VAC60-20-70
- Licensure by credentials -18VAC60-20-71

Article 3. Restricted dental license
- Temporary license for residents and interns - 18VAC60-20-91
- Temporary permit -18VAC60-20-90
- Full time faculty license - 18VAC60-20-90
- Teacher's license - 18VAC60-20-90
- Volunteer temporary registration - 18VAC60-20-106
- Volunteer restricted license - 18VAC60-20-106

Article 4. Additional requirements to practice oral maxillofacial surgery
- Registration - 18VAC60-20-250
- Profile of information - 18VAC60-20-260
  - Required reporting - 18VAC60-20-270
  - Noncompliance or falsification - 18VAC60-20-280
- Certification to perform cosmetic procedures - 18VAC60-20-290
  - Required credentials - 18VAC60-20-310
  - Restricted procedures - 18VAC60-20-290
  - Exempt procedures - 18VAC60-20-300
  - Quality assurance reviews - 18VAC60-20-330
  - Complaints management - 18VAC60-20-331

Article 5. Registration of mobile facilities and portable operations -18VAC60-20-332

Part V. License and registration renewal
- Unrestricted license -18VAC60-20-20
- Inactive license - 18VAC60-20-20, 105
- Restricted license - 18VAC60-20-20
- Registration of oral & maxillofacial surgeons - 18VAC60-20-260
- Certification for cosmetic procedures - 18VAC60-20-320
- Registration of mobile facilities and portable operations – 18VAC60-20-332
- Continuing education - 18VAC60-20-50

Part VI. Reinstatement - 18VAC60-20-20
- From lapsed license

From inactive license
From suspension or revocation

Part VII Controlled Drugs, Sedation and Anesthesia

- *Amendments will be considered for consistency with revised ADA guidelines on sedation and anesthesia.*
- *A new section on compliance with Drug Enforcement Administration and Drug Control Act will be added.*
- General provisions - 18VAC60-20-107 *with clarifying amendments and the addition of language for administration to children under the age of 12.*
- Requirements for education and training to administer, assist or monitor
  Licensed health professionals 18VAC60-20-110
  Dental assistants §54.1-3408, 18VAC60-20-135
- General requirements for minimal sedation, moderate sedation and general anesthesia (18VAC60-20-108, 18VAC60-20-110 and18VAC60-20-120)
- *A new section on patient monitoring may be added to specify what constitutes monitoring.*

CHAPTER 30
REGULATIONS GOVERNING THE PRACTICE OF DENTAL HYGIENE

Part I. General Provisions

- Applicable definitions from 18VAC60-20-10;
- A new section on practice of dental hygiene with reference to §54.1-2722 and the exceptions in exceptions 18VAC60-20-240 and §§54.1-2701 and 54.1-2712
- Required fees from 18VAC60-20-20, 30, 40, 250, 310
- Requirements for licensee addresses - 18VAC60-20-16
- Posting requirements new section with reference to §54.1-2727

Part II. Standards of Professional Conduct18VAC60-20-170

Patient information and records -18VAC60-20-15 for required content

To include language from 2005 Guidance Document 60-3 on the meaning of an updated health history. The section will also reference law on confidentiality and release of records. The board will consider an expansion of information on services provided, drugs administered and images taken in order to have sufficient information by which to evaluate treatment. A new subsection will also be included to specify the content of a record relating to provision of sedation or anesthesia.

Scope of practice

- *A new section on professional conduct may be added to include provisions currently set out in a 2009 Guidance Document 60-15*
- *A new section may be added on compliance with applicable laws and regulations, such as Code of Virginia sections applicable to all health professions as well as those specific to dentistry*

Part III. Direction and supervision

Direction required (levels of supervision) - 18VAC60-20-200, 210
Supervision of dental assistants - 18VAC60-20-230

Part IV. License and registration requirements
Article 1. Application requirements - 18VAC60-20-100
Article 2. Unrestricted dental hygiene license
Education - 18VAC60-20-60
Licensure by examination - 18VAC60-20-70
Licensure by credentials - 18VAC60-20-71
Article 3. Restricted dental hygiene license
Temporary permit - 18VAC60-20-90
Teacher's license - 18VAC60-20-90
Volunteer temporary registration - 18VAC60-20-106
Volunteer restricted license - 18VAC60-20-106

Part V. License renewal
Unrestricted license - 18VAC60-20-20
Inactive license - 18VAC60-20-20, 105
Restricted license - 18VAC60-20-20
Continuing education -18VAC60-20-50
Required hours
Required content
Required sponsors
Required documentation

Part VI. Reinstatement - 18VAC60-20-20
From lapsed license
From inactive license
From suspension or revocation

Part VII. Controlled Drugs, Sedation and Anesthesia
Administration
Authorization for topical drugs – reference to §§54.1-2722 and 54.1-3408
Requirements for administration of nitrous oxide/oxygen-18VAC60-20-81
Requirements for administration of local anesthesia - 18VAC60-20-81
Assisting with sedation and general anesthesia - new section
Monitoring patients during sedation and general anesthesia - new section

CHAPTER 40
REGULATIONS GOVERNING THE PRACTICE OF DENTAL ASSISTING

Part I. General Provisions
Definitions – as applicable from 18VAC60-20-10

Practice of dental assisting - new section referencing §§ 54.1-2712 and 54.1-2729.01
Fees required

Part II. Practice of Dental Assistants I
Direction required - 18VAC60-20-200, 230
Requirements for taking x-rays, digital images - 18VAC60-20-195
Requirements for administering topical drugs – reference to §§54.1-2722 and 54.1-3408
A new section on assisting with sedation and anesthesia
A new section on monitoring during sedation and anesthesia

Part III. Dental Assistants II
General Provisions
Practice of dental assistants II with reference to §54.1-2729.01
Direction required - 18VAC60-20-200, 230
Registrant addresses - 18VAC60-20-16
Address of record
Address for the public
Posting requirements from18VAC60-20-16 40, 250, 310

Registration requirements
National certification - 18VAC60-20-50
Education and training - 18VAC60-20-61
Registration by endorsement 18VAC60-20-72

Registration renewal 18VAC60-20-20

Reinstatement 18VAC60-20-20
From lapsed license
From inactive license
From suspension or revocation

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

The Board of Dentistry began a regulatory review process in October of 2007 with the intent of working through the regulations part by part to improve the flow of information, address inconsistencies with statutory provisions, clarify and develop language in areas where the meaning and application were questioned, and add provisions on practice topics of concern to licensees. The Regulatory/Legislative Committee (the Committee) began by focusing on Part II Licensure Renewal and Fees and Part III Entry and Licensure Requirements. The review was

tabled in March of 2008 to allow staff and Board members to focus on meeting Governor Kaine's key performance measures with intense activity to improve the Board's performance in processing patient care cases within 250 days.

Work on regulatory review resumed in December 2008, and the Committee has met on six occasions (12/3/08, 2/25/09, 4/22/09, 8/21/09, 11/20/09, and 1/22/10) to complete its review. The executive director of the Board prepared a review chart of statutes, regulations and issues for each part of the regulations to assist in the review. Part IV, on Anesthesia, Sedation and Analgesia, has been the subject of several petitions for rulemaking as well as public comment where divergent interests are advocated. Some have requested that the Board register and periodically inspect dental practices where sedation and anesthesia are administered, while others want the Board to relax the rules for administration of conscious sedation. A central theme in many of the comments is that the Board should consider and in large part conform to the **Guidelines for the Use of Sedation and General Anesthesia by Dentists** which were published by the American Dental Association in 2007. The one exception to this is the Virginia Association of Nurse Anesthetists, which says that the medical standards for administration should apply in dental practices.

In addition to the concerns coming from the public, the Board has had two high profile cases on administration of sedation and anesthesia. The Board found that its regulations are less than adequate in ensuring that:

- only appropriately trained and supervised staff is participating on the treatment team,
- adequate emergency equipment and procedures are in place, and
- patients are adequately assessed and monitored.

To address these and other issues relating to sedation and anesthesia, the executive director and the Committee are analyzing the ADA Guidelines and those published by the American Academy of Pediatric Dentistry, the American Association of Oral and Maxillofacial Surgeons and the American Society of Anesthesiologists to identify the standards the Board might want to consider during the promulgation of amended regulations.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax to Elaine Yeatts, Agency Regulatory Coordinator, 9960 Mayland Drive, (804) 527-4434 (fax) or **Elaine.yeatts@dhp.virginia.gov** or comment may be posted on the Regulatory Townhall at **www.townhall.virginia.gov** Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

In addition, the agency is seeking information on (1) the continued need for the regulation; (2) the complexity of the regulation; (3) the extent to the which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (4) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

A public hearing will be held after the Board has adopted proposed regulations. Notice of the hearing may be found on the Virginia Regulatory Town Hall website **www.townhall.virginia.gov** and can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

There is no impact on the family.

Periodic review – Public comment

If this NOIRA is the result of a periodic review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 36, e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

A Notice of Periodic Review of Regulations and request for public comment was sent in October 2007. There were comments received from:
The American Society of Plastic Surgeons – comment that the certification requirements allow the performance of cosmetic procedures by oral and maxillofacial surgeons without any formal training; patients should be assured that plastic surgery is being provided by someone with the requisite education and training; current regulations expose Virginia patients to unnecessary risks and potentially dangerous outcomes.

The Virginia Association of Nurse Anesthetists – comment in support of clearer guidance to practitioners for the administration of anesthesia; urges uniformity in the office-based anesthesia safety rules, regardless of the delivery setting and practitioner performing; rules for dental offices are significantly less stringent than for a physician office.

The Virginia Society of Oral and Maxillofacial Surgeons – comment in request of clarification of several issues relating to administration of controlled substances by persons other than the dentist; request to provide information on extensive training in anesthesia.

The Board of Dentistry has determined that the regulation is necessary for the protection of public health, safety and welfare. It is being reorganized and amended to make it more clearly written and more easily understandable.

Periodic review - Discussion

If this NOIRA is the result of a periodic review or if the periodic review is to be performed in combination with the NOIRA, please include a discussion of the agency's consideration of: (1) the continued need for the rule; (2) the complexity of the regulation; (3) the extent to the which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (4) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, include a discussion of the agency's determination whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

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1) There is a continued need for the regulation because it is mandated by statute (Chapter 27 of Title 54.1), which requires the promulgation of regulations for the licensure and practice of dentists, dental hygienists and dental assistants.
2) The regulation has been amended repeatedly as necessary for consistency with changes in law and practice for the professions. Through the periodic review of regulations, amendments have been identified that are needed for clarity or to delete out-dated language or requirements. Since it has become increasingly difficult for practitioners and the public to determine the requirements for each of the dental professions, the board is recommended repeal of the current Chapter 20 and reorganization into three separate chapters for dentistry, dental hygiene and dental assisting;
3) The regulation does not overlap with federal law or regulation; licensure of dental practice is a power exercised by individual states. In its review, the board did not identify any regulation that overlaps with the Code; in several sections of law, the board is expressly required to adopt a regulation, such as requirements for continuing competency.
4) A periodic review was last completed for Chapter 20 in 2005, and 15 regulatory actions have been completed on the chapter since that time. Amendments have been adopted as needed or mandated by changes in the Code of Virginia.
The regulation should be amended to eliminate unnecessary provisions and to render the Chapter more user-friendly to regulated entities.

Stephen D. Carter, D.D.S., L.L.C.
Family Dentistry

FEB 25 2010
DHP

February 22, 2010

RECEIVED
FEB 25 2010
Virginia Board of Dentistry

Dear Dental Board Member;

Please note the enclosed letter from me to Compendium, and the author's response. It is not my purpose to contend with Dr. Anson, nor is it my purpose to disparage implants, because they are a godsend to countless patients.

I attempted to obtain the six studies that Dr. Anson listed, but Emory Health Science Library could locate only two. Perhaps that indicates that the other four were not adequately refereed. The remaining two studies followed implants for one to ten years. In recognizing that dental procedures fail at a rate that increases disproportionately with the passage of time, it is vital that we substantiate claims of unparalleled longevity.

Dr. Anson accurately stated in his article that implants have become the standard of care in many states, and that is the reason for this letter. The standard of care designation has far reaching implications, and has little to do with the relatively mundane discussion of a bridge vs. an implant, aside from legal implications. But it has much to do with implants vs. natural restorable teeth. Even endodontists are "cross training" for implants. Surely, the economic incentive and relative ease of implant placement will tempt endodontists to extract the more challenging teeth which they have historically treated with success. And surely the teeth with higher thresholds of restorative difficulty, and which have been successfully treated by restorative dentists in the past, will be referred for implant placement. The patient will subsequently return from the implant surgeon, at which time an expensive restoration can be easily done, typically without the need for local anesthesia. The lure is strong.

The preceding scenarios are not unethical, because the treatment decisions are made in good faith. The widespread perception, right or wrong, is that implants are a veritable panacea; if they are not as good as natural teeth, the perception is that the difference is negligible. In keeping with that thinking, why not go ahead and give the patient something that will really last? However, if implants are that good, to my knowledge they are the only prosthetic body part in health care to make that claim.

Dental boards are the only entities that have the influence to buffer the massive and pervasive implant marketing. In a few decades, we will have sufficient retrospective analyses to truly define the long term success of implants. In the meantime, hopefully, dental boards will tread cautiously when putting their powerful "standard of care" imprimatur on implants.

Sincerely,

Steve

Stephen D. Carter, DDS

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Excellence Is Our Goal

A Response to "The Changing Treatment Paradigm: Save the Tooth or Place the Implant"—*October 2009*

While reading Dr. David Anson's excellent article ("The Changing Treatment Paradigm: Save the Tooth or Place the Implant") in the October 2009 issue of *Compendium,* I noted where he accurately quoted, "a 20-year study of single-tooth implants [which] had a success rate of 91%."[1] However, the quote itself is questionable. Since 2002, when I first saw a similar claim, I have attempted to monitor studies on implant longevity, especially those spanning 20 years.

In addition to the above study, I am aware of only one other 20-year study.[2] In that study, the authors empirically project a 19-year success rate of 83.3%. However, these implants were interforaminal. Undoubtedly, implant longevity in other areas, especially the maxillary posterior, would be projected to be significantly less.

The 20-year study, which Dr. Anson accurately quotes, began with 112 implants and ended with 63. There were nine known failures. Forty implants were lost to follow-up, with 26 lost due to death. The authors apparently concluded that all 40 of the lost implants were successful, which is a specious assumption. This is especially true in recognizing that those who died were likely elderly and infirmed and the implants would be more vulnerable to failure.

Conventional bridges and implants are frequently compared; however, this can be largely irrelevant or misleading because the implant is the supporting structure and the bridge a prosthesis. A more valid assessment could be made by comparing the implant with a natural abutment because both have prosthetic failures (which Dr. Anson effectively noted).

A recent survey of my own 40-year practice showed that the average bridge lasted 12.5 years, whereas patients with excellent home care could anticipate twice that longevity. Of great significance is the fact that most of these bridges were replaced using the same abutment teeth. Natural abutment teeth that are free of periodontal disease can be expected to last decades. It will be many years before implants have been in place long enough to be accurately compared to natural abutments. In the meantime, we should insist on tenable data. Otherwise, we will develop standards of care that denigrate conventional bridges, the result of which will be unjustifiable censure and/or lawsuits.

In my practice, I typically recommend a conventional bridge if the abutment teeth are reasonable candidates for full coverage. However, an increasingly large body of dentists now believe implants are the only quality choice. I do hope that the governing bodies in dentistry will insist on complete objectivity as they establish standards of care. However, objectivity is increasingly elusive because of aggressive marketing. Perhaps this is most evident in dental schools, many of which are generously funded by implant manufacturers.

Sincerely,

Stephen D. Carter, DDS

REFERENCES

1. Lekholm U, Gröndahl K, Jemt T. Outcome of oral implant treatment in partially edentulous jaws followed 20 years in clinical function. *Clin Implant Dent Relat Res.* 2006;8(4):178-186.
2. Lambrecht J, Hodel Y. Long-term results of immediately loaded interforaminal implants, *Quintessence Int.* 2007;38(2):111-119.

Dear Dr. Carter,

Thank you for your response to my article in the October *Compendium* issue. I appreciate your feedback and am glad that you thought that it was an excellent article.

I do, though, want to address some of the issues that you mentioned in your letter. First, I understand you are having problems with the Lekholm article. This article is not the only one showing a higher long-term success rate with implants than those published regarding fixed toothborne bridges (there are no studies that I am aware of that directly compare one vs the other).[1-4]

Regarding the second point of implant success being much higher in the mandibular arch than the maxillary posterior area, with current surface-treated implants, this is not accurate (although it was accurate with the old machine-surface implants).[5]

In your point about the inappropriateness of comparing implants to fixed bridges, you are factually correct; however, the point of the article was to address that particular restorative choice—implant vs bridge. One point that I did not discuss in the article is that the teeth adjacent to an implant have fewer complications than bridge abutment teeth.[6]

Also, as you report in your own practice, you have an overall success rate of 12.5 years with "the average bridge," "whereas patients with excellent home care could anticipate twice that longevity." I highly commend you for keeping statistics in your practice (which is very time-consuming). However, the referenced articles on implant success were about the overall success rates, not those specifically targeted for a particular characteristic (eg, home care ability). Also, as noted in the referenced articles, the long-term implant success rates are in excess of 90% (including short-term failure rates).

I disagree with your last point regarding fixed bridges being the first restorative recommendation "if the abutment teeth are reasonable candidates for full coverage." I do agree with you, however, that some practitioners use the literature to rationalize treatment plans that are excessive in their use of extractions and implants. I still feel, as I am sure you do, that keeping the natural dentition in health, comfort, and function, with acceptable esthetics for the life of the patient, should be our goal.

Sincerely,

David Anson, DDS

REFERENCES

1. Jemt T. Single implants in the anterior maxilla after 15 years of follow-up: comparison with central implants in the edentulous maxilla. *Int J Prosthodont.* 2008;21(5):400-408.
2. Blanes RJ, Bernard JP, Blanes ZM, et al. A 10-year prospective study of ITI dental implants placed in the posterior region. I: clinical and radiographic results. *Clin Oral Implants Res.* 2007; 18(6):699-706.
3. Lambrecht JT, Filippi A, Künzel AR, et al. Long-term evaluation of submerged and nonsubmerged ITI solid-screw titanium implants: a 10-year life table analysis of 468 implants. *Int J Oral Maxillofac Implants.* 2003;18(6):826-834.
4. Levine RA, Clem D, Beagle J, et al. Multicenter retrospective analysis of the solid-screw ITI implant for posterior single-tooth replacements. *Int J Oral Maxillofac Implants.* 2002;17 (4):550-556.
5. Eckert SE, Wollan PC. Retrospective review of 1170 endosseous implants placed in partially edentulous jaws. *J Prosthet Dent.* 1998;79(4):415-421.
6. Priest G. Single-tooth implants and their role in preserving remaining teeth: a 10-year survival study. *Int J Oral Maxillofac Implants.* 1999;14(2):181-188.

Disciplinary Board Report for March 11, 2010

This report addresses the three key performance measures for discipline for the second quarter of fiscal year 2010 as well as provides some highlights for where the disciplinary cases now stand.

The agency's three key performance measures to be met for disciplinary case processing are as follows:

1. We will achieve a 100% clearance rate of allegations of misconduct by the end of FY 2009 and maintain 100% through the end of FY 2010.
   (Dentistry's Clearance rate for the second quarter is 83%)

2. We will ensure that, by the end of FY 2010, no more than 25% of all open patient care cases are older than 250 business days.
   (Dentistry case load of over 250 business days is 8%)

3. We will investigate and process 90% of patient care cases within 250 work days.
   (Dentistry closed 97% of its patient care cases within 250 work days.)

According to the most recent Quarterly Performance Measurement released by the Agency on January 4, 2010, the Board of Dentistry received 155 patient care cases and closed 129. These are all standard of care cases that fall into categories A, B & C. According to the agency report, the clearance rate "dropped for the 2nd consecutive quarter as DHP received more cases than in any previous quarter examined." It is also of import to note that the 155 Dentistry cases first had to go through enforcement and be fully investigated before they were sent to the Board for probable cause review and adjudication.

Dentistry's internal numbers show that for the second quarter of 2010 –October through December 2009- the Board received 164 cases from Enforcement in all categories A-D (which includes non-standard of care cases) and closed 172 cases for a clearance rate of 105%. So far, the third quarter shows similar results. The latest numbers available for January 2010 show the Board received 23 A-D cases and closed a total of 36.

The 172 cases closed in the second quarter were as follows:

- No Violation/Undetermined – 88 cases
- No Violation / Advisory Letter 66 cases (license was lapsed for 30 days or less)
- Violation / IFC, PHCO, Formal – 16 cases
- Violation / CCA – 2 cases

As of this writing there are 8 cases over 250 days. Four cases are scheduled for an informal conference. Two cases have outstanding CCAs and we are awaiting their return. One case is scheduled for a Formal Hearing on March 11; one case is at the Administrative Proceedings Division.

A Reminder About Billing Fraud and Case Reviews

A couple of issues have come up since the last Board meeting regarding probable cause reviews. One issue is files with incomplete investigations and another is determining potential billing fraud versus billing disagreements.

Please take a second look when reviewing a case to determine that all documents needed to make a decision are included in the file. If the probable cause decision is to close a case with no violation, it is important to determine that a complete investigation has occurred. A complete investigation should include the treatment records of all dental care providers as well as complete and thorough interviews. Please do not rely on merely the investigator's summary reports when making probable cause decisions, but rather take into account the entire record. A statement from a witness, a source or a respondent without documentation to back it up is usually not enough for dispositive evidence.

Secondly, while it is true the Board does not have standing to interject itself into billing disagreements, §54.1-2706(4), gives the Board the authority to sanction licensees for unprofessional conduct that is likely to defraud or to deceive the public or patients. Examples of fraud could include making charges to Care Credit Accounts and not rendering the treatment; charging patients more than allowed by insurance or refusing to issue refunds when billing errors have occurred. Please do not merely request the closure of a case because the issue is billing without first determining if the Respondent's actions could be fraudulent.

Remember to call Alan if you have any questions or need further information while reviewing a case.