



## Fast Track Proposed Regulation Agency Background Document

<b>Agency name</b>	Board of Dentistry, Department of Health Professions
<b>Virginia Administrative Code (VAC) citation</b>	18VAC60-20-10 et seq.
<b>Regulation title</b>	Regulations Governing Dental Practice
<b>Action title</b>	Addition of training in pulp capping procedures for dental assistants II
<b>Date this document prepared</b>	3/11/2011

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.*

According to regulations for registration of dental assistants II (DAII) which became effective March 2, 2011, pulp capping procedures are among the duties that a dentist may delegate to a DAII. However, training in pulp capping as part of training in amalgam or composite resin restorations was inadvertently omitted in the educational requirements for DAII's set forth in Section 61 of the regulation. The Board has acted to include the topic of pulp capping in Section 61 without adding to the number of hours of training required for each area of practice.

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

On March 11, 2011, the Board of Dentistry amended Section 61 of 18VAC60-20-10 et seq., Regulations Governing Dental Practice.

**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 General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of 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:*

...

*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. ...*

The specific statutory authority for promulgation of regulations for the education and training of dental assistants II is found in:

§ [54.1-2729.01](#). *Practice of dental assistants.*

*A. A person who is employed to assist a licensed dentist or dental hygienist by performing duties not otherwise restricted to the practice of a dentist, dental hygienist, or dental assistant II, as prescribed in regulations promulgated by the Board may practice as a dental assistant I.*

*B. A person who (i) **has met the educational and training requirements prescribed by the Board**; (ii) holds a certification from a credentialing organization recognized by the American Dental Association; and (iii) has met any other qualifications for registration as prescribed in regulations promulgated by the Board may practice as a dental assistant II. A dental assistant II may perform duties not otherwise restricted to the practice of a dentist or dental hygienist under the direction of a licensed dentist that are reversible, intraoral procedures specified in regulations promulgated by the Board.*

**Purpose**

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

The purpose of the amended regulation is to ensure that dental assistants II, after completion of required education and training, will be able to perform procedures on patients that were

previously non-delegable and only performed by a dentist. Pulp capping is a necessary part of amalgam or composite resin restoration, so if a dental assistant II is authorized to perform those tasks, it is essential for the health and safety of dental patients that he is properly trained in a laboratory and in clinical practice.

**Rationale for using fast track process**

*Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?*

This regulatory action is necessary for the fast-track process to ensure clarity in the education and training of DAII. In the development of regulations, pulp capping was not initially listed in 230 as a duty delegable to a DAII, so it was not considered in the formulation of regulations for education and training of DAII's. In the adoption of proposed regulations, it was stricken from the list of duties that a dentist cannot delegate and added to the list that could be delegated to a DAII. Training in pulp capping procedures should have been added to Section 61 but was inadvertently omitted.

In September of 2010, the Board recognized the omission and authorized the promulgation of a fast-track action as soon as the regulations for DAII's were effective. There are no additional hours of training required, and it is generally acknowledged that appropriate training in amalgam and composite resin restoration should be inclusive of pulp capping procedures. Therefore, the Board has determined that the promulgation of this amendment is appropriate as a fast-track action.

**Substance**

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)*

The amendments to Section 61 will include pulp capping procedures in the 40 hours of training in placing, packing, carving and polishing amalgam restorations and in the 60 hours of training in placing and shaping composite resin restorations.

**Issues**

*Please identify the issues associated with the proposed regulatory action, including:*

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

*If there are no disadvantages to the public or the Commonwealth, please indicate.*

- 1) The primary advantage to the public is assurance of some training and clinical experience in pulp capping by dental assistants II, which if done improperly, could result in patient harm. There are no disadvantages.
- 2) There are no advantages or disadvantages to the agency or the Commonwealth.
- 3) There are no other pertinent matters of interest to the regulated community.

**Requirements more restrictive than federal**

*Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

There are no applicable federal requirements.

**Localities particularly affected**

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

There are no localities particularly affected.

**Regulatory flexibility analysis**

*Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

There are no alternative regulatory methods consistent with the health and safety of patients received dental care from a dental assistant II under the direction of a dentist.

**Economic impact**

*Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.*

<p><b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</b></p>	<p>a) As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation; b) Since notification to the Public Participation Guidelines mailing lists is primarily by email, costs for promulgation will be minimal. The regulatory action has been incorporated into mailings and meetings already scheduled; there are no on-going expenditures related to these amendments.</p>
<p><b>Projected cost of the <i>new regulations or changes to existing regulations on localities.</i></b></p>	<p>There are no costs to localities.</p>
<p><b>Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations.</i></b></p>	<p>The persons affected by the amended regulation would be those seeking to meet educational and training requirements for registration as a DAII.</p>
<p><b>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>There is no estimate of the number of entities affected. Because the registration of DAII’s only became effective March 2, 2011, there is no one currently registered and the Board does not know how many students are working towards registration. There are currently three educational programs planned for DAII; those programs will need to ensure training in pulp capping as part of training in restorations. Since DAII cannot practice independently, none of the affected entities would be considered small businesses.</p>
<p><b>All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</b></p>	<p>There would be no additional cost related to the amended regulation because the number of hours required for each area of training will not change.</p>
<p><b>Beneficial impact the regulation is designed to produce.</b></p>	<p>The beneficial impact is assurance that dental assistants II are trained to perform pulp capping procedures on patients.</p>

**Alternatives**

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

Since the fast-track action will not be effective for several months after its adoption, the Board is concerned that educational programs for dental assistants II are aware of its expectation that pulp capping is included in its training for restorations. To that end, the Board has also adopted a guidance document that states the Board’s interpretation of training in restoration, to include pulp capping.

**Family impact**

*Please assess the 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.

**Detail of changes**

*Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact in each section. Please describe the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all provisions of the new regulation or changes to existing regulations between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
61	n/a	Sets out educational and training requirements for a dental assistant II to be registered and practice	Inclusion of pulp capping procedures in the 40 hours of training in placing, packing, carving and polishing amalgam restorations and in the 60 hours of training in placing and shaping composite resin restorations