



Final Regulation Agency Background Document

Agency name	Board of Dentistry, Department of Health Professions	
Virginia Administrative Code (VAC) citation	18 VAC 60-20	
Regulation title	Regulations Governing the Practice of Dentistry and Dental Hygiene	
Action title	Increase in fees	
Document preparation date	9/18/06	

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. If applicable, generally describe the existing regulation.

Amendments to regulation are adopted in order to increase certain fees for the regulants of the Board, including dentists and dental hygienists, as necessary to provide sufficient funding for the licensing and disciplinary functions of the Board. An annual renewal fee for a dentist would be increased from \$150 to \$285 and for a dental hygienist from \$50 to \$75. Other fees, such as application and late fees that are tied to the renewal fee, would be increased correspondingly.

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 September 15, 2006, the Board of Dentistry adopted a final regulation for 18VAC60-20-10 et seq., Regulations Governing the Practice of Dentistry and Dental Hygiene, to increase fees charged to applicants and regulated entities.

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 numbers, 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.

18VAC60-20-10 et seq. Regulations Governing the Practice of Dentistry and Dental Hygiene are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400 (6) provides the Board of Dentistry the authority to promulgate regulations to administer the regulatory system and to levy fees:

§ 54.1-2400. General powers and duties of health regulatory Boards.--The general powers and duties of health regulatory Boards shall be:

...4. To establish schedules for renewals of registration, certification and licensure.

5. To levy and collect fees for application processing, examination, registration, certification or licensure 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 (§ 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 and Chapter 25 of this title...

The specific statutory mandate for an increase in fees is found in § 54.1 113:

§ 54.1-113. Regulatory Boards to adjust fees.

Following the close of any biennium, when the account for any regulatory Board within the Department of Professional and Occupational Regulation or the Department of Health Professions maintained under § 54.1-308 or § 54.1-2505 shows expenses allocated to it for the past biennium to be more than ten percent greater or less than moneys collected on behalf of the Board, it shall revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

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 it 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.

§ 54.1-113 of the *Code of Virginia* requires that at the end of each biennium, an analysis of revenues and expenditures of each regulatory Board shall be performed to ensure that each Board has sufficient revenue to cover its expenditures. At the conclusion of fiscal year '05, the deficit of the

Board was \$532,651; by the close of the 2004-2006 biennium, the Board of Dentistry had accumulated a deficit of \$873,452 and will continue to have a deficit through the next biennium, estimated to grow to over \$2 million by the end of FY08. Since the fees from licensees will no longer generate sufficient funds to pay operating expenses for the Board, a fee increase is essential by the renewal deadline in March, 2007.

As mandated by law, the purpose of the proposed amendments is to establish fees sufficient to cover the policy-making, licensing and disciplinary activities of the Board of Dentistry. Without adequate funding, the licensing of practitioners could be delayed, and dental care in the Commonwealth would be less accessible. In addition, sufficient funding is essential to carry out the investigative and disciplinary activities of the Board in order to protect the public health and safety.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

Section 20 is being amended to comply with a statutory mandate for the Board to provide sufficient funding to cover expenses related to licensing, investigations and disciplinary proceedings. Renewal fees for dentists will increase from \$150 to \$285 per year; renewal fees for dental hygienists will increase from \$50 to \$75 per year. Other fees are amended proportionately, i.e., inactive fees are typically one-half the active renewal fee and late fees are one-third the renewal fee. The application fees for licensure by credentials are increased to \$500 for dentists and \$275 for hygienists, compared to the \$400 for licensure by examination for dentists and \$175 for hygienists. As proposed, the reinstatement fee would be inclusive of the renewal fee, the late fee and the fee for a reinstatement application.

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 advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions:

Fee increases proposed by the Board of Dentistry should have no disadvantage to the consuming public. There is no projection of a reduction in the number of applicants for licensure or the number of licensed persons available to provide dental services to the public. In fact, with licensure by

credentials now available for dentists, there may be a modest increase in the number of practitioners. An increase in the renewal fee will result in an additional \$135 per year for a dental license and \$25 per year for a dental hygienist. With those increases spread across the patient population, it is not anticipated that the proposed fee increases will have any effect on prices for consumers.

There would be considerable disadvantages to the public if the Board took no action to address its deficit by increasing its fees to cover expenses. The only alternative currently available under the Code of Virginia would be a reduction in services and staff, which would result in delays in licensing applicants who would be unable to work and delays in approval or disapproval of candidates to sit for examinations. Potentially, the most serious consequence would be a reduction in or reprioritization of investigation of complaints against dentists and dental hygienists. There may be delays in adjudicating cases of substandard practice, resulting in potential danger to the patients in the Commonwealth.

Practitioners licensed by the Board of Dentistry will experience increased renewal fees under the proposed regulations. While that is a disadvantage to the licensees, the alternative of reduced services for the Board would be unacceptable to applicants, licensees and the general public. As a special-fund agency, renewal fees pay the vast majority of the expenses of Board operations, which include inspections, investigation of complaints, adjudication of disciplinary cases, review and approval of applicants, verification of licensure and education to other jurisdictions and entities, and communications with licensees about current practice and regulation.

2) The primary advantages and disadvantages to the agency or the Commonwealth:

As is stated above, the consequence of not increasing fees of the Board would be a reduction in services and staff, resulting in delays in licensing, reductions or delays in the cases investigated and brought through administrative proceedings to a hearing before the Board. The Board is solely funded by the fees charged to applicants and licensees. If increased fees are not adopted, the agency would have to cut its staff, both within the Board of Dentistry and within other divisions of the Department of Health Professions since the agency is dependent on revenues from the Board for approximately 5.42 % of its expenditures.

3) Other pertinent matters of interest to the regulated community, government officials, and the public:

There is no other pertinent matter of interest related to this action.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.

After a re-analysis of the revenue and expenditures from FY06, the Board was able to reduce the fee proposal for licensees. It had been projected that by the close of the 2004-2006 biennium,

the Board of Dentistry would accumulate a deficit of \$1,047,443; the actual deficit was \$873,452. Therefore, there was a reduction in the renewal fee from \$315 to \$285 for dentists and from \$85 to \$75 for hygienists; all other proposed fee increases were also adjusted downward and the fee increases for oral and maxillofacial surgeons were eliminated. It is estimated that the Board’s deficit will continue through 2007-08, but it will realize a surplus by 2009.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Proposed regulations were published in the Virginia Register of Regulations on June 26, 2006. Public comment was requested for a 60-day period ending August 25, 2006. Dr. Mark Crabtree, President of the Virginia Dental Association (VDA), wrote to express concern about the dramatic increase in fees. The VDA acknowledged the need for an increase to address expenses incurred by licensing agencies, but questioned an increase in excess of 100%. The VDA requested that the Board make sure the fee increases fairly and accurately reflect the cost of doing business.

A Public Hearing before the Board of Dentistry was held on July 21, 2006. There was no comment on the fee increase received at the hearing.

Board Response:

While the Board understands the perspective of the comment and regrets the necessity for an increase in fees, it has a responsibility to uphold its statutory duty 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.”

After a re-analysis of the revenue and expenditures from FY06, the Board was able to reduce the renewal fee for dentists to less than a 100% increase. The reduction for dentists was from a proposed \$315 to \$285; all other fee increases were also adjusted downward.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed change and rationale	
20	Establishes the	Changes in the fees are listed as follows:

	<p>schedules and fees for renewal and reinstatement</p>	<p>A. Renewal fees. 1. The fee for renewal of an active license or permit to practice or teach dentistry shall be \$150 <u>285</u>, and the fee for renewal of an active license or permit to practice or teach dental hygiene shall be \$50 <u>75</u>.</p> <p><i>Renewal fees were set as necessary to provide sufficient revenue for the board to eliminate a significant deficit and provide funding through the coming biennia adequate to avoid another fee increase.</i></p> <p>2. The fee for renewal of an inactive license shall be \$75 <u>145</u> for dentists and \$25 <u>40</u> for dental hygienists.</p> <p><i>Inactive fees are set at 1/2 the active renewal fee.</i></p> <p>4. The application fee for a temporary resident’s license shall be \$55 <u>60</u>. The annual renewal fee remains \$35 a year.</p> <p>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 \$50 <u>100</u> for dentists <u>with an active license</u> and \$20 <u>25</u> for dental hygienists <u>with an active license</u>. <u>The late fee shall be \$50 for dentists with an inactive license and \$15 for dental hygienists with an inactive license.</u></p> <p><i>Late fees are set at 1/3 the renewal fees.</i></p> <p>C. Reinstatement fees and procedures. 1. Any person whose license has expired for more than one year and who wishes to reinstate such license shall submit to the board a reinstatement application, the renewal fee and the reinstatement fee of \$225 <u>500</u> for dentists and \$135 <u>200</u> for dental hygienists.</p> <p><i>The reinstatement fee is inclusive of the renewal fee, the late fee and an administrative fee for processing a reinstatement application. If the fee had remained at \$225 (as in the current regulation), it would have cost more to reinstate when the renewal fee is added.</i></p> <p>D. Any person whose license has been revoked shall submit to the board for its approval a reinstatement application and fee of \$750 <u>1,000</u> for dentists and \$500 <u>500</u> for dental hygienists. Any person whose license has been indefinitely suspended shall submit to the board for its approval a reinstatement application and fee of \$350 <u>750</u> for dentists and \$250 <u>400</u> for dental hygienists.</p> <p><i>Fees for reinstatement after revocation or suspension are higher because the process involves a background investigation with significantly more costs than a normal reinstatement of a lapse license.</i></p>
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<p>30</p>	<p>Sets other fees, such as application fees</p>	<p>A. Dental licensure application fees. The application fee for a dental license <u>by examination</u>, a license to teach dentistry, a full-time faculty license, or a temporary permit as a dentist shall be \$225 <u>400</u>. The application fee for dental license by credentials shall be <u>\$500</u>.</p> <p>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 \$135 <u>175</u>. The application fee for dental hygienist license by endorsement shall be <u>\$275</u>.</p> <p><i>The application fee includes costs for review (sometimes involving board member time), processing and following up to ensure the application is complete and the renewal fee for one full renewal year. There are additional requirements and verifications for licensure by credentials or endorsement, so the increased fee reflects the additional work involved in the review and approval of such an application.</i></p> <p>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 \$25 <u>60</u>.</p> <p><i>The fee is calculated on the actual cost to the Board for producing the certificate and having it calligraphied.</i></p> <p>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 \$10 <u>20</u>. If a licensee maintains more than one office, a notarized photocopy of a license may be used.</p> <p><i>The fee represents increased cost for staff time in producing a duplicate license and managing the contacts/mailings.</i></p> <p>E. Licensure certification. Licensees requesting endorsement or certification by this board shall pay a fee of \$25 <u>35</u> for each endorsement or certification.</p> <p><i>The fee represents increased cost for staff time in managing the contacts/mailings associated with endorsement to another jurisdiction.</i></p> <p>F. Restricted license. Restricted license issued in accordance with §54.1-2714 of the Code of Virginia shall be at a fee of \$150 <u>285</u>.</p> <p><i>This licensure category is always consistent with the fee for active licensure, since persons holding this license can actively engage in full-time practice in certain settings.</i></p>
<p>250</p>	<p>Sets fees for the</p>	<p>Proposed fees were increased by a minimum of 5% across the</p>

	registration of oral and maxillofacial surgeons.	board, so all fees for oral and maxillofacial surgeons were increased correspondingly. When other fees were reduced in the final action, the proposed fees in section 250 were eliminated with the exception of the reinstatement fee. The proposed reinstatement fee was \$360 (increased from \$175); the final fee is \$350 for an oral and maxillofacial surgeon who wishes to reinstate his registration after one year of expiration.
310	Establishes the credentials for certification to do cosmetic procedures	<i>The proposed fee increase was eliminated.</i>
320	Establishes the procedure and fee for renewal of certification	<i>The proposed fee increase was eliminated.</i>

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

In its analysis of the proposed regulatory action, the agency has determined that there is no potential impact on the institution of the family and family stability. There will be a modest impact on disposable family income, as dentists and dental hygienists will experience an increase in the cost of maintaining a license. Compared to other costs of doing business, such as finding and hiring qualified personnel and third party billing, licensure fees are relatively insignificant.