VIRGINIA BOARD OF DENTISTRY

Regulatory-Legislative Committee
March 10, 2011 Agenda

Department of Health Professions
Perimeter Center - 9960 Mayland Drive, 2nd Floor Conference Center
Henrico, Virginia 23233

TIME		PAGE
1:00 p.m.	**Call to Order – Herbert R. Boyd, III, DDS, Chair**	
	Public Comment	
	• VDA Ethics Committee Letter on Advertising	P.1
	• Mr. Recker's Letter on Advertising Restrictions	P.2-P.28
	Approval of Minutes - February 10, 2011	P.29-P.33
	Report on Legislation Related to Dentistry	
	Status Report on Regulatory Actions	
	Periodic Review of Regulations	
	• Second Review Draft of Dental Practice Chapter	1-34
	• 18VAC60-21-100 – Practice of Dentistry	B1-B3
	Next Meeting	
Adjourn		

VIRGINIA DENTAL ASSOCIATION

Constituent of the American Dental Association

Post Office Box 3095/Henrico, Virginia 23228/804/261-1610
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22 February 2011

Virginia Board of Dentistry
Attn: Ms. Sandra Reen, Executive Director
9960 Mayland Drive, Suite 300
Henrico, VA 23233

Dear Ms. Reen,

As the Board of Dentistry is working on the periodic review of the Regulations Governing the Practice of Dentistry, I wanted to make you aware of some concerns that have been presented to the Virginia Dental Association's Ethics and Judicial Affairs Committee. The VDA Ethics Committee has had a surprising amount of complaints about advertising by dentists in the Commonwealth over the past several years. This is a problem that is growing too fast. Advertising is the most visible aspect of our profession. It sets the tone for how the public views dentists because it is in front of them all of the time. I fear the perception of the morality of dentists is decreasing. One of the biggest concerns is how the public and even other dentists are being deceived. There is evidence of dentists claiming that they are superior to other dentists. There is evidence of dentists claiming to be specialists when they are not. There is evidence of dentists using scare tactics to coerce patients into treatment.

The VDA Ethics Committee looks to the Board of Dentistry for clear and concise guidelines regarding advertising for the dental profession. The guidelines on advertising from the Board of Dentistry help to protect the public and to hold members of this profession to high ethical principals in advertising. Please help us maintain the high standards of dentistry in Virginia by taking a more aggressive stance on these issues as you conduct your review of the current regulations. Thank you for your consideration and please feel free to contact me at 804-282-6436 to discuss these matters.

Sincerely,

Wm. Graham Gardner D.D.S.
Chairman of the VDA Ethics Committee

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January 28, 2011

Sandra Reen
Executive Director
Virginia Board of Dentistry
Perimeter Center
9960 Mayland Drive, Suite 300
Henrico, Virginia 23233
VIA REGULAR U.S. MAIL

RE: Advertising Regulations

Dear Ms. Reen,

As you know, this firm represents the American Academy of Implant Dentistry (AAID) and the American Board of Oral Implantology/Implant Dentistry (ABOI/ID). I write as a follow-up to our August 13, 2010 letter outlining our concerns relative to the Virginia Board's advertising restrictions, at which time we enclosed a copy of the *DuCoin* decision of April 2009, rendered by a Florida State court.

There has been a significant development in this area since our last correspondence. In November 2010, the United States District Court for the Eastern District of California in Sacramento rendered a decision in our clients' favor regarding a challenge to California's restrictions on advertising credentials earned in non specialty areas of practice. In the case of Michael L. Potts, D.D.S., and The American Academy of Implant Dentistry v. Brian Stiger, et al., Case No. S:03-CV-00348, the court reviewed a California statute, Section 651(h)(5)(A),

which required a disclaimer to be included in any advertisement of AAID and/or ABOI/ID credentials unless the credential was based upon at least one year of formal postgraduate education. The court ultimately granted the AAID's request for declaratory judgment and injunctive relief.

For the Board's consideration, enclosed please find copies of the court's decision and final judgment, granting declaratory and injunctive relief. As you can see, the court held California's restrictions on the advertisement of the AAID's credentials unconstitutional on their face and as applied. The court also granted a permanent injunction against the defendants, enjoining them from implementing, applying, or otherwise enforcing the advertising restrictions.

We thank the Board in advance for its consideration of this matter. If we can be of any assistance or you have any questions, please do not hesitate to contact me. Thank you.

Sincerely,

Frank R. Recker, D.D.S., J.D.

FRR/mm
enc

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MICHAEL L. POTTS, D.D.S., and THE AMERICAN ACADEMY OF IMPLANT DENTISTRY, Plaintiffs, v. BRIAN STIGER, in his Official Capacity as Director, California Department of Consumer Affairs, et al., Defendants.	Case No.S:03-CV-00348 JAM-DAD **JUDGMENT**

Pursuant to Rules 58 and 65 of the Federal Rules of Civil Procedure ("FRCP"), and for the reasons stated in the Court's October 15, 2010 ruling granting Plaintiffs' motion under FRCP Rule 52(c) (*see* Transcript of Court's Ruling on Rule 52(c) Motion; Doc. #231), the Court orders, adjudges, and decrees:

1. The Court grants Plaintiff's request for declaratory relief and declares that section 651(h)(5)(A)") is unconstitutional both on its face and as applied to Plaintiffs Michael L. Potts, D.D.S. and The American Academy of Implant Dentistry;

2. The Court grants Plaintiffs' request for injunctive

relief and permanently enjoins Defendants, and all persons under the control or supervision of Defendants, from implementing, applying, or otherwise enforcing the provisions of Section 651(h)(5)(A); and

3. The matter of attorneys' fees will be handled by motion in accordance with Local Rule 293. *See* Second Amended Pretrial order, at 16:18-21 (Doc. #207).

IT IS SO ORDERED.

DATED: November 18, 2010.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

---oOo---

BEFORE THE HONORABLE JOHN A. MENDEZ, JUDGE

---oOo---

MICHAEL L. POTTS, D.D.S.,
and THE AMERICAN ACADEMY
OF IMPLANT DENTISTRY,

Plaintiffs, No. Civ. S-03-348

vs.

BRIAN STIGER, in his
Official Capacity as
Director, California
Department of Consumer
Affairs, et al.,

Defendants.

_____/

---oOo---

REPORTER'S TRANSCRIPT

COURT'S RULING ON RULE 52(c) MOTION

FRIDAY, OCTOBER 15, 2010

---oOo---

Reported by: KELLY O'HALLORAN, CSR #6660

APPEARANCES

For the Plaintiff:

MENNEMEIER, GLASSMAN & STROUD LLP
980 9th Street, Suite 1700
Sacramento, CA 95814
BY: KENNETH C. MENNEMEIER
SARAH JANE FISCHER

FRANK R. RECKER & ASSOCIATES
1850 San Marco Road, Suite A
Marco Island, FL 34145
BY: FRANK R. RECKER

For the Defendant:

CALIFORNIA OFFICE OF THE ATTORNEY GENERAL
1300 I Street
Sacramento, CA 95814
BY: JEFFREY M. PHILLIPS

SACRAMENTO, CALIFORNIA

FRIDAY, OCTOBER 15, 2010

---oOo---

THE COURT: All right. Back on the record. The Rule 52(c) motion has been submitted to the Court. The Court is prepared to rule as follows.

The reality of this case is that the defendant, represented vigorously and very effectively by Mr. Phillips, starts at a disadvantage in this case given the prior history of the case, including a decision which was referred to as Bingham II, which was then followed by the adoption of this statute. And in Bingham II, the defendants were not successful. They then went to the Legislature, which led to 651(h)(5)(A) which is at issue in this case, which then resulted in a decision by this court by a different judge in 2004 finding that the statute violated the First Amendment, followed by an appeal to the Ninth Circuit which, on a very narrow issue, sent the case back to this court. And so it is no secret and I think all parties recognize, as I just said, that, Mr. Phillips, I think just the nature of the case, you may have started at a disadvantage given the previous granting of summary judgment. And, in effect, 52(c) is similar to a request to grant summary judgment, although the Court has the benefit of having heard all the evidence in the case other than rebuttal evidence.

And the evidence I did hear and the purpose in large part of this trial was to see if there was, in fact, evidence on which, at least the Ninth Circuit believed there was a genuine issue of material fact, would change in any way the Court's view of the constitutionality of this statute. The Ninth Circuit instructed this Court and the parties in large part to focus on the survey evidence, but the Court did allow the parties to put on a more complete evidentiary record, including, and to the lawyers' credit, large credit, a terrific set of stipulated facts which assisted the Court greatly. And I do appreciate that. It was very helpful to have the parties agree, to not disagree, on 73 stipulated facts.

The additional evidence in this Court's view only gave more support to the plaintiffs' case. Even the testimony, for example, of defendants' witnesses Lozada and Kaye reaffirmed the Court's belief and the earlier finding by Judge Levi that the American Association of Implant Dentistry and the ABOI/ID are in every facet of the word legitimate, bona fide, well-respected organizations. These are not fly-by-night credentialing organizations. They take their role and responsibility seriously. And no one disagreed with that, even Dr. Neumann from the American Dental Association. Dr. Potts' testimony only reaffirmed his outstanding credentials, the pride that he has in how hard he had to work

to obtain the credentials.

And while this was not a trial about the American Dental Association and/or their decision to not grant specialty status to AAID or ABOI/ID, there was a lot of anecdotal and actual admitted evidence on that issue as to why they made the decision, how they went about making the decision, and whether there was wisdom in doing so, which in reality led to not only this litigation but litigation going on around the rest of the country. Whether the ADA wants to reexamine that is up to the ADA.

Again, that's not up to a federal court to render an opinion. But it does weigh into the Court's decision. That combined with the legislative history, again, gives support to the conclusions reached by Judge Levi earlier and the conclusion that I ultimately will reach in this case.

The plaintiffs make mention of a recent case out of Florida in their supplemental trial brief. It's a case called DuCoin, which although not binding or carries precedential value, it is instructive to the Court. It's an April 2009 case in which a Florida court concluded "although the state may regulate commercial speech, it may not do so by blindly adhering to the whims of a private organization, [the American Dental Association] and thereby arbitrarily suppressing a citizen's right to free speech."

The legislation in this case, given that it followed

almost immediately after an opinion by a federal district court judge, sponsored by the California Dental Association, which is obviously affiliated with the American Dental Association, with, from what I saw, no support from any consumer organizations and very little research into such issues as, as we've discussed, the possibility of including disclaimers and a careful examination into what, at least this Court was able to see in terms of evidence, as to the benefit and the discipline and the strict and verifiable requirements that go into a credential issued by the AAID and ABOI/ID. There wasn't a lot of that, if any at all, in the legislative history.

And so the California statute, at least in the Court's view, bears a strong similarity, and the court's opinion in DuCoin is very instructive to this Court that I should look closely to a statute that does seem to be blindly adhering to the whims of a private organization.

As was pointed out and as is in evidence, the legislation, again sponsored by the California Dental Association, that the language of the legislation almost tracks verbatim that ADA ethics section. And no coincidence, I don't think.

And so you start there and, in effect, end there in this case. And I'm going to obviously quote extensively, actually incorporate by reference in large part from

Judge Levi's decision, because the bottom line is now having had the benefit of hearing the evidence, I see no basis either in law or in the facts from varying at all from the previous decision. It was a guide. Now it becomes, in effect, this Court's decision.

And so let's focus on the law itself and what the law mandates in this case. As Judge Levi writes, "Dr. Potts wants to tell prospective and existing patients that he has certain credentials by, for example, displaying a certificate in his office or including the credentials after his name on a business card or telephone book listing. This is a classic form of commercial speech and, unless misleading, would not be subject to prohibition under well-established principles. Where the different professions are concerned, however, the analysis becomes somewhat more complex. Professionals who lack the claimed credential consider that those who would advertise it seek an unfair competitive advantage based on the false premise that the credential equates to a higher level of skill. Moreover, state-approved accrediting organizations believe that they bring expertise and knowledge of the profession and its art to the table and see their advertising regulations as part of their overall regulation of the profession through the establishment of meaningful standards. Those organizations that are not state sanctioned see this kind of regulation as protectionist of certain

interests and professional groups.

"A state may absolutely prohibit commercial speech that is false, deceptive, or misleading." That's the Virginia State Board of Pharmacy vs. Virginia Citizens Consumer Council case, 425 U.S. 748 (1976). Where the speech is not deceptive, the state may restrict it "only if the state shows that the restriction directly and materially advances a substantial state interest in a manner no more extensive than necessary to serve that interest." That's Ibanez vs. Florida Department of Business and Professional Regulation, Board of Accountancy, 512 U.S. 136, a 1994 Supreme Court case, which cited Central Hudson Gas and Electric Corp. vs. Public Service Commission, 447 U.S. 557, a 1980 case.

"Thus, if an advertisement is inherently misleading or has in actual practice misled members of the consuming public, it is not protected by the First Amendment and may be absolutely prohibited. The state need not demonstrate that a statute banning such inherently or actually misleading speech directly and materially advances a substantial interest or exhibits the reasonable means-end fit required under the Central Hudson test. However, if an advertisement is merely potentially misleading, in that the information could be presented in a different way that would not potentially mislead, then it is protected by the First Amendment and may

not be absolutely prohibited."

There was a lot of discussion in both the trial briefs and in the Rule 52(c) motion about Central Hudson and Peel. The first issue that we discussed was the argument about whether the advertising is inherently misleading. And as in the earlier summary judgment before Judge Levi and as in the trial briefs in this case and in the arguments, the defendants are relying in large part on the case of American Academy of Pain Management vs. Joseph, 353 F.3d 1099, a Ninth Circuit case 2004.

And I'm not going to read from Judge Levi's decision, but I am going to specifically incorporate by reference in ruling on this Rule 52(c) motion his discussion of Pain Management, the facts of Pain Management, and why that case is distinguishable from the case before this Court. And that's on pages 13 through 19 of his decision, memorandum of opinion and order, filed September 8, 2004. As Judge Levi concluded and I so conclude based on having now heard the evidence, in Pain Management, that dealt with the term "board certified," and there was a specific definition. In this case, the evidence showed that there is no equivalent definition for "board certified," "diplomate," "fellow," or any other type of credential to be found in Section 651(h)(5)(A). Nor was there any evidence of a well-established, specialized meaning accorded to all dental

specialty credentials in the same way that the term "board certified," as in the Pain Management case, has become a term of art within the medical profession.

I also agree completely with Judge Levi, and the evidence supports this as well, that unlike the American Academy of Pain Management, in that other case, AAID and ABOI/ID are bona fide credentialing organizations whose standards are rigorous, objectively clear, and verifiable. In addition to attainment of a dental degree, each credential issued by AAID and ABOI/ID requires a number of years of practice in implant dentistry, completion of a substantial number of hours of continuing education in implant dentistry, completion of a written examination, completion of an oral examination, and presentation of a certain number of cases demonstrating proficiency in performing various types of dental implants. And in Pain Management, that was not the case.

The factual circumstances of Pain Management come very close to Peel's definition of a sham organization, since in that case the AAPM apparently made little inquiry into applicants' fitness and conferred membership on applicants almost indiscriminately. AAID and ABOI/ID are in a very different position. They award their credentials only to applicants who have fulfilled rigorous criteria that are objectively clear and verifiable. And for those reasons,

651(h)(5)(A) cannot be sustained on the ground that it regulates only inherently misleading speech.

So then we come to the argument of potentially misleading. And again, I'm not going to read from Judge Levi's opinion, but this again focuses primarily on the survey evidence. And while I allowed and admitted the survey evidence from Dr. Cogan, having heard the evidence, my views of the evidence and her survey parallel, if not surpass, in terms of a negative view of the survey of Judge Levi's. It doesn't in any way meet whatever burden of proof, whether it's a clear and convincing evidence or even a preponderance, that the use of the credentials is inherently or potentially misleading. There are so many problems with the survey, as pointed out in the Rule 52(a) motion and as pointed out in Judge Levi's decision and as I asked Dr. Cogan during her testimony.

The ads themselves, as was established at trial, were asking people to comment on an illegal ad. Why Dr. Cogan didn't use Dr. Potts' actual ad or even change the ad name and use his ad is beyond me. And although defendants say we don't have to, it certainly would have been much more persuasive and compelling evidence, rather than use an ad that on its face was illegal.

I'll give Mr. Phillips credit. He did a terrific job arguing, without answering yes or no, and I thought it was an

excellent argument as to how part of that ad might be legal, but I don't think it helped the survey itself.

As Judge Levi writes, and I agree, the survey is of limited value in determining whether the AAID or ABOI/ID credentials are potentially misleading. It's not a probability sample, although I think Dr. Cogan, to her credit, did at least make a decent showing that there was some scientific basis behind mall surveys given the changes in the world when probability samples were done by calling people at home or visiting people at home.

The questions were leading. The questions are compound. The questions do tend to suggest their own answer, and they may well have guided respondents to a particular answer. When there's a compound question, it makes it impossible to determine which element the respondent is addressing in his or her response. Many of the responses were not relevant to the question at hand. And most of the questions in the survey do not measure the percentage of the general public that believes that, without regard to AAID or ABOI/ID credentials, implant dentistry is a dental specialty recognized by the ADA or the Dental Board.

The survey did not assess the background understanding of the general public regarding how much education a specialist in implant dentistry is required to complete. It's impossible to determine what, if any, misleading effect

AAID and ABOI/ID credentials have because there is no control set against which this effect can be measured.

And again, I know that one of the purposes of introducing the legislative history was to show that survey evidence was not considered by the Legislature in any fashion in adopting the legislation at issue in this case. Again, it's not determinative. It's instructive to the Court when I view this legislation on how much weight and whether it should be upheld against a First Amendment claim, but the absence of any survey evidence before the Legislature and, in effect, the Legislature simply adopting as true that this is inherently misleading wasn't necessarily supported by the legislative history.

The other interesting point, and it's in evidence and we admitted the survey results and conclusions themselves, is, as Judge Levi points out, that although the Cogan mall survey tested the effect of various disclaimers on public perceptions regarding educational requirements for and sponsorship of AAID and ABOI/ID credentials, these results of are of little help to defendants. First, the mall survey was conducted in a manner that renders its results far from reliable. Leaving that aside, it also tested mall shoppers who had been to a dentist in the past two years. It did not target people who had been to an implant dentist, who required the services of an implant dentist, or who even knew

what implant dentistry is. This is the audience that could be expected to study implant dentistry advertisements with care, and rely upon them in choosing a dentist, whereas the average mall shopper who has merely seen a general dentist in the past two years might not be so careful.

But here also is the more significant evidence. And that is that when the disclaimers were tested, they did in fact reduce the public misperceptions about the educational requirements for and sponsorship of AAID and ABOI/ID credentials. The website disclaimer reduced the number of people who thought that such credentials require completion of some education beyond a general dental degree from 68 percent to 52 percent, while the ADA nonrecognition disclaimer reduced the number from 78 percent to 50 percent.

In addition, the ADA nonrecognition disclaimer reduced the number of people who thought that AAID and ABOI/ID credentials are recognized by the ADA and the Dental Board from 70 percent down to 18 percent. The numbers indicate that a carefully worded disclaimer can be quite effective at reducing the general public's confusion as to the educational requirements for and sponsorship of AAID and ABOI/ID credentials.

As Judge Levi concludes, it's doubtful that the survey, standing alone, satisfies the standard articulated by the Supreme Court in Ibanez. And although Judge Levi decided

that it was not necessary to resolve this question, I tend to agree with that. Obviously in the evidence that I heard, it does resolve the question in favor of the plaintiffs and against the defendant. But going on, because I want to make sure the record's complete, even if you assume that the survey does meet the Ibanez threshold to demonstrate that the advertisement of the credentials are potentially misleading, the statute still cannot survive and plaintiffs' challenge is successful unless the statute satisfies the remaining three elements of the Central Hudson test. It does not based on the evidence before the Court satisfy that third or the fourth element. There wasn't a lot of discussion, I'm not going to get into it, with respect to the first three elements. All four elements have to be satisfied of the Central Hudson test.

And so I don't disagree with Judge Levi's conclusions that the statute serves a substantial state interest and that it directly and materially advances this interest. I clearly agree that the evidence in this case requires a conclusion that the statute doesn't meet the fourth test. And the fourth test of Central Hudson is that the statute restricts no more speech than necessary. The issue being whether the regulation is not more extensive than is necessary to serve the government interest.

The Supreme Court has emphasized that the final

element of the Central Hudson inquiry is not a least restrictive means analysis. The defendants must demonstrate "a reasonable fit between the Legislature's ends and the means chosen to accomplish those ends. The fit need not be perfect nor the single best to achieve those ends, but one whose scope is narrowly tailored to achieve the legislative objective." That's quoting from Pain Management which was quoting Florida Bar vs. Went For It, Inc.

Again, without reading the entire portion of Judge Levi's decision, I'm going to incorporate by reference pages 26 through 29 of his memorandum of opinion and order in which he discusses relevant cases. The Pain Management case and the Central Hudson test. The arguments haven't changed. Although an interesting argument was raised in the trial brief and discussed in the Rule 52(a) motion with respect to if the Court believed that you could simply add disclaimers, that would meet the Central Hudson test. That requiring that might still render the statute unconstitutional because it's, as the defendants argue, government-compelled speech.

The cases relied upon from Florida again are distinguishable. They've been distinguished by the plaintiffs. Those cases involved much broader, much worse, for lack of a better word, disclaimers, much more punitive, and there is at least no basis for including disclaimers in this statute.

As Judge Levi writes, "Section 651(h)(5)(A) is not narrowly tailored and is more extensive than necessary to achieve the state's interest in preventing misleading advertising of dental specialty credentials. Prohibiting the advertising of any credential that is not recognized by the ADA or the Dental Board or awarded by a board with equivalent requirements is substantially overbroad. A disclaimer requirement would restrict far less speech than an outright prohibition on advertising these credentials. Defendants' concern about consumer confusion as to sponsorship could be addressed by requiring a disclaimer that AAID and ABOI/ID are not recognized by or affiliated with the ADA or the Dental Board. The goal of assuring that consumers are not misled about the educational requirements for AAID and ABOI/ID credentials could be achieved by requiring advertisements to list the educational requirements for those credentials or to direct consumers to an Internet website containing that information." That was the suggestion made in Bingham II, 100 F.Supp.2d at 1240-1241.

In the context of the circumstances here involving a legitimate professional organization and genuine credentials as opposed to a sham arrangement, these kinds of disclaimers should suffice to protect the state's interests, and defendants' own survey accords with this conclusion.

While a court may not invalidate a statute that goes

"only marginally beyond what would adequately have served the governmental interest," the statute in this case is "substantially excessive, disregarding far less restrictive and more precise means." Fox, 492 U.S. at 479.

Let me add one other thought, or a few other thoughts. I asked on several occasions and wrote on a number of occasions in my own notes: Where is the harm in giving the consumers more information about the ABOI/ID and the AAID credentialing program? And the answer is there is no harm. It only benefits the consumer. And yet this statute would prohibit a consumer from obtaining that information under the guise that it's likely to confuse the consumer. I've already indicated that there's no evidence to support the confusion argument, and it makes absolutely no sense to me to prohibit a consumer from obtaining that information. As pointed out repeatedly, someone can go to the phone book, look at a number of dentists and have no idea what they specialize in, what they have additional experience in, what they have done to obtain certain credentials. That's the tragedy of the statute. And no one disagreed. I thought the most interesting answer was from Dr. Kaye where he absolutely agreed that more information is better.

And again, it was interesting to me, and I made this comment earlier, that the two specialists in this case, those that had obtained specialist status as that's defined by the

ADA, still had decided that they needed training, both clinical and didactic classroom training, continuing education, from the American Association of Implant Dentistry. And, in fact, Dr. Lozada actually obtained his diplomate certificate as well. That I think speaks volumes as to how AAID and ABOI/ID are viewed within the profession. It is a bona fide organization in every sense of the word.

For all those reasons, the Court does find that 651(h)(5)(A) does violate the First Amendment both on its face and in its application and must be invalidated. I find and declare that the statute is unconstitutional as applied to the advertisements of AAID and ABOI/ID credentials by dentists who have not completed a formal, full-time advanced education program that is affiliated with or sponsored by a university-based dental school and is beyond the dental degree at a graduate or postgraduate level. That's the requirement in 651(h)(5)(A)(ii)(I).

Given that finding and that ruling, the Court also grants judgment in favor of the plaintiffs on their third claim which is for a violation of 42 U.S.C. Section 1983, civil rights violation, the violation being the violation of the plaintiffs' First Amendment rights.

That's only part of this. And we will have to continue this in the sense of now the question is what should the injunctive relief look like, because the plaintiffs are

seeking both injunctive relief -- let me get your complaint. And I don't know if you've thought about this, Mr. Mennemeier, in terms of what exactly you envisioned an injunction to look like. You've got your declaratory relief. That's your request for relief one and two. Your third request is that I issue a permanent injunction prohibiting defendants from implementing or otherwise enforcing the provisions of 651(h)(5)(A) of the California Business and Professions Code as amended. In terms of attorney's fees, that's obviously done posttrial by motion under our local rules. But I'm I don't think prepared to do it orally, issue orally an order with respect to the permanent injunction. So my suggestion is that you submit a proposed form of judgment, see if Mr. Phillips will agree to it. And if not, I'll have a further hearing on the form of the injunction and the injunctive relief. I'm not sure Judge Levi was certain as to what it should look like. And he actually at the end of his order indicated he would schedule a further conference to allow the parties an opportunity to address the scope and timing of the injunctive relief that plaintiffs requested so that defendants have an opportunity to develop an appropriate disclaimer. I guess if that can't be done between the two of you, then I'll have to do it with input from both of you. That's where I'm going to leave it at this point. We will come back -- when is my calendar in November?

THE CLERK: December 3rd and 17th.

THE COURT: Let's come back November 3rd.

MR. MENNEMEIER: Your Honor, I'm scheduled to be in an arbitration hearing in San Francisco that day.

THE COURT: Okay. I have the 17th as well. It's up to you, though, if you want the injunctive relief sooner.

MR. MENNEMEIER: We'll make the 3rd work.

THE COURT: I mean you may be able to work it out. I'm not sure. If you obviously agree on the form of the order, then we will not have to have a hearing. If you can't agree on it, then we'll be back here November 3rd.

MR. MENNEMEIER: Can we set it for November 17th?

THE COURT: Okay.

MR. PHILLIPS: I'm not sure what they're enjoining because the statute isn't even enforced.

THE COURT: Well, but it's still there.

MR. PHILLIPS: Okay.

THE COURT: Until the Legislature repeals it.

MR. PHILLIPS: Okay.

THE COURT: It's there.

MR. PHILLIPS: And the time for the conference?

THE COURT: 9:30. November 17, 2010, at 9:30.

MR. PHILLIPS: What day is that, your Honor?

THE COURT: It's always a Wednesday.

All right. Thank you all. It was informative.

Mr. Phillips, you fought a good fight, as I said. And I appreciate the input from all sides. You did an excellent job, both sides, and I think you made an excellent record. So it's up to you as to where it goes from here.

Okay. Thank you all.

(Proceedings concluded at 6:04 p.m.)

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Kelly O'Halloran

KELLY O'HALLORAN, CSR #6660

VIRGINIA BOARD OF DENTISTRY
MINUTES OF REGULATORY/LEGISLATIVE COMMITTEE
FEBRUARY 10, 2011

TIME AND PLACE: The meeting of the Regulatory/Legislative Committee of the Board of Dentistry was called to order at 9:07 a.m., February 10, 2011 in Board Room 4, Department of Health Professions, 9960 Mayland Drive, Suite 201, Henrico, Virginia.

PRESIDING: Herbert R. Boyd, III, D.D.S., Chair

MEMBERS PRESENT: Jacqueline G. Pace, R.D.H.
Martha Cutright, D.D.S

MEMBER ABSENT: Robert B. Hall, Jr., D.D.S.
Meera A. Gokli, D.D.S.

OTHER BOARD MEMBER PRESENT: None

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

OTHERS PRESENT: Howard M. Casway, Senior Assistant Attorney General
Elaine Yeatts, Senior Policy Analyst, Department of Health Professions

ESTABLISHMENT OF A QUORUM: With three members of the Committee present, a quorum was established.

PUBLIC COMMENT: **Michelle Satterlund** with the Virginia Association of Nurse Anesthetists (VANA) thanked the Committee for the opportunity to provide comments and possible amendments to the proposed Dentistry regulations discussion draft. She passed out and reviewed a letter sent from the president of VANA to Ms. Reen on February 6, 2011 which requests that Dentistry's regulations be consistent with the regulations of the Board of Medicine by:

- Only permitting licensed health care providers (dentists, CRNAs or anesthesiologists) trained in the administration of anesthesia to monitor patients,
- Permitting only an anesthesiologist or CRNA to administer moderate sedation, deep sedation or general anesthesia so the dentist is focused on treatment, and
- Permitting CRNAs to practice in dental offices even when the dentist is not trained in sedation and anesthesia.

MINUTES: Dr. Boyd asked if the members had reviewed the minutes of the December 2-3, 2010 meeting. Ms. Pace moved to accept the minutes. The motion was seconded and passed.

REPORT ON LEGISLATION RELATED TO DENTISTRY: Ms. Yeatts said the dental faculty license bill proposed by the VCU School of Dentistry had been withdrawn on the Senate side but passed the House. She added it isn't clear if the House bill will be withdrawn. She reported that the Board's bill to require dentists to register in order to administer sedation and anesthesia has passed the Senate and is now on the House side.

STATUS REPORT ON REGULATORY ACTIONS: **Recovery of Disciplinary Costs** – Ms. Yeatts reported that these proposed regulations have been approved for public comment till March 2, 2011. The public hearing will be held on February 25, 2011.

Registration of Mobile Clinics – Ms. Yeatts reported that these proposed regulations will replace the emergency regulations which were extended through July 6, 2011. The comment period ends on March 4, 2011 and the public hearing will also be held on February 25, 2011.

Registration and Practice of Dental Assistants – Ms. Yeatts reported that these regulations have been approved by the Governor for publication as final regulations. These regulations will be effective on March 2, 2011.

PERIODIC REVIEW OF REGULATIONS: **First Review Draft of Dental Practice Chapter** - Ms. Reen stated that the discussion draft was developed using the results of the Committee member's individual reviews. She said it is time to be real detailed and careful in making sure that content is not lost and the regulations are accurate. She added that the highlighted sections throughout the draft have major changes from the current regulations.

Dr. Boyd asked the audience to comment as the Committee reviews the draft. Ms. Reen then led the discussion page by page as numbered in the agenda package. The following changes were agreed to:

Page 1
18VAC60-21-10 - Ms. Yeatts said that the words and terms defined in §54.1-2700 of the Code need to be referenced in this section and the definition of CODA needs to be added.

"Direct supervision" – change to read "remains ***in the dental office*** **and is** immediately available to the dental assistant II..."

Page 2
"Direction" – add the names of the three levels of supervision - direct, indirect and general - right after "level of supervision."

"Monitoring" – change to "means to observe, ***interpret, assess,*** and record appropriate physiologic functions of the body during sedative procedures and general anesthesia ***appropriate to the level of administration as provided in Part VI.*** "

Page 3
"Radiographs" – add "***radiographic***" before "digital images"

18VAC60-21-30.B – add "***in each dental practice setting***" at the end of the first sentence.

18VAC60-21-30 – add a provision E. on posting life support training certificates

Page 4
18VAC60-21-50 – expand the "bona fide dentist-patient relationship" section based on the language in §54.1-3303 of the Drug Control Act and the provisions adopted by other Boards.

Page 5
18VAC60-21-60.E – add a provision for accommodating service dogs
18VAC60-21-60.F – make sexual contact a separate section and expand based on language used by Medicine and the Behavioral Sciences
18VAC60-21-60.G – add "***at least***" in front of "30 days notice"
18VAC60-21-70 – add a provision for minors' records
18VAC60-21-70.A – replace "five years" with "***six years***" and add at the end "**or as otherwise required by state and federal law."**
18VAC60-21-70.B1 – replace "on each document" with "***on every page***"
18VAC60-21-70.C – move this provision to Part VI on Sedation and Anesthesia
18VAC60-21-70.C1 – replace "ASA" with "***American Society of Anesthesiologist***"
18VAC60-21-70.C2 – add "**patient's**" before "medical history" and strike "NPO"
18VAC60-21-70.C3 – add "***Written***" in front of "informed consent" and replace "drugs" with "***sedation and/or anesthesia***"

Page 6
18VAC60-21-70.C4 – rephrase to clarify the term "Time oriented"
18VAC60-21-70.D – replace "permitted" with "***authorized***"
18VAC60-21-70.E – replace "may" with "***shall***"
18VAC60-21-70.F – add language to reference §8.01-413 *in regard to subpoenaed records*
18VAC60-21-80 – replace "10 business days" with "***15 calendar days***" and change "the first 24 hours" to "***the first 72*** hours" and rework based on a review of the Joint Commission's Sentinel Event Policy
18VAC60-20-170 – Ms. Reen said the language in this section of the current regulations needs to reworded and added to the proposed chapter

Page 7
18VAC60-21-100 – Dr. Boyd agreed to draft language in regard to nondelegable duties

Page 8
18VAC60-21-120.B – divide this section into two sections and reword
18VAC60-21-120.E – add "**another level of** " after "the use of
"18VAC60-21-130.A1 – add "***gingival curettage"*** after "root planning"

Page 9
18VAC60-21-130.B1 – add "***gingival curettage***" after "root planning"

18VAC60-21-140.3 – add "***with slow speed hand pieces***" at the end of the sentence to describe the type of rotary instrument permitted
18VAC60-21-150.A – replace "direction or under general supervision" with "***indirect or general supervision***"

Page 10
18VAC60-21-170.1 – delete "and preliminary dental screenings in any setting"
18VAC60-21-180.A4 – delete
18VAC60-21-190 – replace "advanced specialty which addresses clinical treatment skills" with "***specialty which includes a clinical component***"
18VAC60-21-200 – divide this section into two sections one for unrestricted licenses and the other for restricted licenses

Page 11
18VAC60-21-200.A2 – amend to read as "***All applicants shall have passed a dental clinical competency examination which is accepted by the Board***"
18VAC60-21-200.B2 – amend to read as "***Have successfully completed a clinical competency examination***"

Page 12
18VAC60-21-200.E.1 – delete "regional"
18VAC60-21-200.F.A1 – delete "regional"
18VAC60-21-200.F.A4 – add after "renewed annually" "***on June 30***"

Page 14
18VAC60-21-210.B – Delete "regional"

Page 15
18VAC60-21-220.D.2 – delete "regional"
18VAC60-21-230.A2 (old 1) – add "***for healthcare provider***"

Page 18
18VAC60-21-240.C1 and C2 – add language on delegation of ASA assessment to the other qualified administrators, anesthesiologists and CRNAs

Page 19
18AC60-21-240.G – reword this section to address a qualified provider
18AC60-21-240.H – add for healthcare providers

Page 21
18VAC60-21-260.F1 – after "patient" change "to" to "from" and replace "he" with "***patient***"

Page 23
18VAC60-21-270.E – replace "King Airway" with a generic term
18VAC60-21-270.G – rework to address the conflict between G1 and G3

Page 24
18VAC60-21-270.H2 – add minimum standard which requires having driver with patient with any level of sedation

Page 25
18VAC60-21-280.D – the word "maintain" was replaced with "***have***"

Page 26
18VAC60-21-280.H2 – add a requirement for a person to drive the patient

Page 31
18VAC60-21-380 – change reference to §54.1-2502 to the appropriate Dentistry Code provision

Dr. Cutright moved to adopt in principle the proposed draft as amended for further discussion at the next meeting. The motion was seconded and passed.

NEXT MEETING: Dr. Boyd stated that next meeting will be on February 25, 2011 at 9:30 am.

ADJOURNMENT: Dr. Boyd adjourned the meeting at 5:19 p.m.

Herbert R. Boyd, III, D.D.S., Chair

Sandra K. Reen, Executive Director

Date

Date

BOARD OF DENTISTRY
Dentistry regulations

CHAPTER 21
REGULATIONS GOVERNING THE PRACTICE OF DENTISTRY

Part I. General Provisions.

KEY:
Language in gray highlights was new in the 2/10/11 draft.
Language in green highlights is new language in the 3/10/11 draft requested by the Committee on 2/10/11.
Entries in blue highlights are edits and changes made by the Committee on 2/10/11.
Language in yellow highlights needs to be checked for accuracy with the other chapters before presentation to the Board.

18VAC60-21-10. Definitions. **See current 18VAC60-20-10**
1) Anxiolysis renamed see minimal sedation 2) Conscious sedation renamed see moderate sedation 3) Deep sedation and General anesthesia defined separately 4) Code added 5) Inhalation analgesia dropped using nitrous oxide/oxygen instead 6) Added Monitoring and Topical oral anesthetics 7) Updated definitions for consistency with ADA Guidelines for Teaching Pain Control and Sedation

A. The following words and terms when used in this chapter shall have the meanings ascribed to them in §54.1-2700 of the Code of Virginia:

Board

Dental hygiene

Dental hygienist

Dentist

Dentistry

License

Maxillofacial

Oral and maxillofacial surgeon

B. 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.

“CODA” means the Commission on Dental Accreditation of American Dental Association.

“Code” means the Code of Virginia.

"Deep sedation" means a drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.

"Dental assistant I" means any unlicensed person under the 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 18VAC60-21-140 and 18VAC60-20-230. C.

"Direct supervision" means that the dentist examines the patient and records diagnostic findings prior to delegating restorative or prosthetic treatment and related services to a 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 immediately available in the office 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 level of supervision, direct, indirect or general, that a dentist is required to exercise with a dental hygienist, a dental assistant I or a dental assistant II 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 anesthesia” means a drug-induced loss of consciousness during which patients are not arousable, even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

"General supervision" means that 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.

Issuance of the order authorizes the dental hygienist to supervise a dental assistant performing duties delegable to dental assistants I.

"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 (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.

"Local anesthesia" means the elimination of sensation, especially pain, in one part of the body by the topical application or regional injection of a drug.

"Minimal Sedation" means a minimally depressed level of consciousness, produced by a pharmacological method, which retains the patient's ability to independently and continuously maintain an airway and respond normally to tactile stimulation and verbal command. Although cognitive function and coordination may be modestly impaired, ventilatory and cardiovascular functions are unaffected.

"Moderate Sedation" means a drug-induced depression of consciousness, during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained.

"Monitoring" means to observe, interpret, assess and record appropriate physiologic functions of the body during sedative procedures and general anesthesia appropriate to the level of sedation as provided in Part VI.

"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 and radiographic digital images of hard and soft tissues used for purposes of diagnosis.

"Topical oral anesthestic" means any drug, available in creams, ointments, aerosols, sprays, lotions or jellies that can be used orally for the purpose of rendering the oral cavity insensitive to pain without affecting consciousness.

18VAC60-21-20. Address of record. **See current 18VAC60-20-16**

Each licensed dentist shall provide the board with a current address of record. All required notices mailed by the board to any such licensee shall be validly given when mailed to the address of record on file with the Board. Each licensee may also provide a different address to be used as the public address, but if a second address is not provided, the address of record shall be the public address. All changes of address shall be furnished to the board in writing within 30 days of such changes.

18VAC60-21-30. Posting Requirements. NEW

1) In B. replaces use of notarized copies from 18VAC60-20-30.D with requiring a duplicate issued by the Board.

A. A dentist who is practicing under a firm name or who is practicing as an employee of another dentist is required by §54.1-2720 of the Code to conspicuously display his name at the entrance of the office. The employing dentist, firm or company must enable compliance by designating a space at the entrance of the office for the name to be displayed.

B. In accordance with §54.1-2721 of the Code, a dentist shall display a current, active license where it is conspicuous and readable by patients in each dental practice setting. If a licensee practices in more than one office, a duplicate license obtained from the board may be displayed.

C. A dentist who administers, prescribes or dispenses Schedule II through V controlled substances shall display his current registration with the federal Drug Enforcement Administration with his current active license.

D. A dentist who administers moderate sedation, deep sedation or general anesthesia shall display with his current active license:

1. a diploma from a CODA accredited dental program or a certificate of education from a continuing education sponsor which meets the requirements of 18VAC60-21-230, and
2. current certification in advanced resuscitation techniques with laboratory simulated airway training.

18VAC60-21-40. Fees. NEW consolidates provisions from 18VAC60-20-20, 30, 40, 106, 250, 310, and 320

A. Application/Registration Fees

1. Dental License by Examination	$400
2. Dental License by Credentials	$500
3. Dental Restricted Teaching License	$285
4. Dental Teacher's License	$285
5. Dental Full-time Faculty License	$285
6. Dental Temporary Resident's License	$60
7. Restricted Volunteer License	$25
8. Volunteer Exemption Registration	$10
9. Oral Maxillofacial Surgeon Registration	$175
10. Cosmetic Procedures Certification	$225
11. Mobile Clinic/Portable Operation	$250

B. Renewal Fees

1. Dental License - Active	$285
2. Dental license – Inactive	$145
3. Dental Temporary Resident's License	$35
4. Restricted Volunteer License	$15
5. Oral Maxillofacial Surgeon Registration	$175
6. Cosmetic Procedures Certification	$100
7. Mobile Clinic/Portable Operation	$150

C. Late Fees

1. Dental License - Active	$100

2. Dental License – Inactive	$50
3. Dental Temporary Resident's License	$15
4. Oral Maxillofacial Surgeon Registration	$55
5. Cosmetic Procedures Certification	$35

D. Reinstatement Fees

1. Dental License - Expired	$500
2. Dental License – Suspended	$750
3. Dental License - Revoked	$1000
4. Oral Maxillofacial Surgeon Registration	$350
5. Cosmetic Procedures Certification	$225

E. Document Fees

1. Duplicate Wall Certificate	$60
2. Duplicate License	$20
3. License Certification	$35

F. Other Fees

1. Returned Check Fee	$35
2. Practice Inspection Fee	$350

G. No fee will be refunded or applied for any purpose other than the purpose for which the fee is submitted.

Part II Standards of Professional Conduct

18VAC60-21-50. Scope of practice. **NEW** **§54.1-3303 on Prescriptions in the Drug Control Act**

Dentists shall only treat based on a bona fide dentist and patient relationship for medicinal or therapeutic purposes within the course of his professional practice consistent with the definition of dentistry in §54.1-2710 of the Code, the provisions for controlled substances in Chapter 34 of the Drug Control Act in the Code, and the general provisions for health practitioners in the Code. A bona fide dentist and patient relationship is established when examination and diagnosis of a patient is initiated. A bona fide dentist and patient relationship means that the dentist shall (i) ensure that a medical and drug history is obtained; (ii) provide information to the patient about the benefits and risks of treatment and the drugs being prescribed, administered or dispensed; (iii) perform or have performed an appropriate examination of the patient, either physically or by the use of instrumentation and diagnostic equipment through which images and medical records may be transmitted electronically; except for medical emergencies, the examination of the patient shall have been performed by the dentist himself, within the group in which he practices, or by a consulting practitioner prior to issuing a prescription; and (iv) initiate additional interventions and follow-up care, if necessary, especially if a prescribed drug may have serious side effects.

18VAC60-21-60. General responsibilities to patients. **NEW** **See Guidance Document 15**

A. A dentist is responsible for conducting his practice in a manner which safeguards the safety, health and welfare of his patients by:
   1. Maintaining a safe and sanitary practice.

2. Consulting with or referring patients to other practitioners with specialized knowledge, skills and experience when needed to safeguard and advance the health of the patient.
3. Treating according to the patient's desires only to the extent that such treatment is within the bounds of accepted treatment and only after the patient has been given a treatment recommendation and an explanation of the acceptable alternatives.
4. Only delegating patient care and exposure of dental x-rays to qualified, properly trained and supervised personnel as authorized in Part III, Direction and Delegation of Duties, of these regulations.
5. Containing or isolating pets away from the treatment areas of the dental practice.
6. Accommodating a service dog trained to accompany its owner or handler for the purpose of carrying items, retrieving objects, pulling a wheelchair, alerting the owner or handler to medical conditions, or other such activities of service or support necessary to mitigate a disability. From §51.5-44
7. Giving patients at least 30 days notice of a decision to terminate the dentist-patient relationship.
8. Knowing the signs of abuse and neglect and reporting suspected cases to the proper authorities consistent with state law.
9. Accurately representing to a patient and the public the materials or methods and techniques to be used in treatment.

B. A dentist shall not commit any act which violates provisions of the Code which reasonably relate to the practice of dentistry and dental hygiene including but not limited to:

1. Delegating any service or operation that requires the professional competence of a dentist or dental hygienist to any person who is not a dentist or dental hygienist.
2. 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.
3. Unauthorized use or disclosure of confidential information received from the Prescription Monitoring Program.
4. Failing to maintain and dispense of scheduled drugs as authorized by the Virginia Drug Control Act and the regulations of the Board of Pharmacy.

18VAC60-21-XX. Financial responsibilities to patients and third parties. **NEW rework of 18VAC60-20-170 see Guidance Document 60-15**

A dentist is responsible for conducting his financial transactions in an honest and ethical manner and shall:

1. Maintain a listing of customary fees and represent all fees being charged clearly and accurately.
2. Make a full and fair disclosure to his patient of all terms and considerations before entering into a payment agreement for services.
3. Not obtain, attempt to obtain or cooperate with others in obtaining payment for services by misrepresenting procedures performed, dates of service or status of treatment.
4. Make a full and fair disclosure to his patient of any financial incentives he received for promoting or selling products.
5. Not exploit the dentist and patient relationship for personal gain.

18VAC60-20-XXX Prohibited Sexual Contact See Medicine §54.1-2915.A.19 and 18VAC85-20-100

A. A dentist shall not engage in sexual contact with a patient concurrent with and by virtue of the dentist and patient relationship or otherwise engage at any time during the course of the dentist and patient relationship in conduct of a sexual nature that a reasonable patient would consider lewd and offensive.

B. For purposes of this section, sexual contact includes, but is not limited to, sexual behavior or verbal or physical behavior which:

1. May reasonably be interpreted as intended for the sexual arousal or gratification of the dentist, the patient, or both; or

2. May reasonably be interpreted as romantic involvement with a patient regardless of whether such involvement occurs in the professional setting or outside of it.

C. Sexual contact with a patient.

1. The determination of when a person is a patient is made on a case-by-case basis with consideration given to the nature, extent, and context of the professional relationship between the dentist and the person. The fact that a person is not actively receiving treatment or professional services from a dentist is not determinative of this issue. A person is presumed to remain a patient until the patient-dentist relationship is terminated.

2. The consent to, initiation of, or participation in sexual behavior or involvement with a dentist by a patient does not change the nature of the conduct.

D. Sexual contact between a dentist and a former patient.
Sexual contact between a practitioner and a former patient after termination of the dentist-patient relationship may still constitute unprofessional conduct if the sexual contact is a result of the exploitation of trust, knowledge, or influence of emotions derived from the professional relationship.

E. Sexual contact between a dentist and a key third party shall constitute unprofessional conduct if the sexual contact is a result of the exploitation of trust, knowledge or influence derived from the professional relationship or if the contact has had or is likely to have an adverse effect on patient care. For purposes of this section, key third party of a patient shall mean: spouse or partner, parent or child, guardian, or legal representative of the patient.

F. Sexual contact between a dentist and a dental student or other trainee shall constitute unprofessional conduct if the sexual contact is a result of the exploitation of trust, knowledge or influence derived from the professional relationship or if the contact has had or is likely to have an adverse effect on patient care.

18VAC60-21-70 Patient information and records **See current 18VAC60-20-15 and Medicine's 18VAC85-20-26**

A. A dentist shall maintain complete, legible patient records for not less than six years from the last date of service for purposes of review by the board with the following exceptions:
1. Records of a minor child shall be maintained until the child reaches the age of 18 or becomes emancipated, with a minimum time for record retention of six years from the last patient encounter regardless of the age of the child; or

2. Records that have previously been transferred to another practitioner or health care provider or provided to the patient or his personal representative; or
3. Records that are required by contractual obligation or federal law may need to be maintained for a longer period of time.

B. Every patient record shall include the following:
1. Patient's name on each page in the patient record;
2. A health history taken at the initial appointment which is updated when analgesia, sedation or anesthesia is to be administered and when medically indicated and at least annually;
3. Diagnosis, options discussed, consent obtained and treatment rendered;
4. List of drugs prescribed, administered, dispensed and the route of administration, quantity, dose and strength;
5. Radiographs, digital images and photographs clearly labeled with patient name and date taken;
6. Notation of each date of treatment and of the dentist, dental hygienist and dental assistant II providing service;
7. Duplicate laboratory work orders which meet the requirements of §54.1-2719 of the Code including the address and signature of the dentist; and
8. Itemized patient financial records as required by §54.1-2404 of the Code.

C. A licensee shall comply with the patient record confidentiality, release and disclosure provisions of §32.1-127.1:03 of the Code and shall only release patient information as authorized by law.

D. Records shall not be withheld because the patient has an outstanding financial obligation.

E. A reasonable cost-based fee may be charged for copying patient records to include the cost of supplies and labor for copying documents, duplication of radiographs and images and postage if mailing is requested as authorized by §32.1-127.1:03 of the Code. The charges specified in §8.01-413 of the Code are permitted when records are subpoenaed as evidence for purposes of civil litigation.

F. When closing, selling or relocating a practice, the licensee shall meet the requirements of § 54.1-2405 of the Code for giving notice and providing records.

G. Records shall not be abandoned or otherwise left in the care of someone who is not licensed except that, upon the death of a licensee, a trustee or executor of the estate may safeguard the records until they are transferred to a licensee, are sent to the patients of record or are destroyed.

H. Patient confidentiality must be preserved when records are destroyed.

18VAC60-21-80. Required report of traumatic events during treatment or the administration of sedation or anesthesia. See current 18VAC60-20-140

1) No longer limited to incidents as a direct result of administration of sedation or anesthesia

The treating dentist shall submit a written report to the board within 15 calendar days following an unexpected patient traumatic event which (i) occurred intra-operatively or during the first 72 hours immediately following the patient's departure from his facility, (ii) put the patient at risk of or resulted in death or physical injury, and, in the instance of physical injury, (iii) resulted in transport of the patient to a hospital.

18VAC60-21-90. Advertising. See current 18VAC60-20-180

A. Practice limitation. A general dentist who limits his practice to a dental specialty or describes his practice by types of treatment shall state in conjunction with his name that he is a general dentist providing certain services, e.g., orthodontic services.

B. Fee disclosures. Any statement specifying a fee for a dental service which does not include the cost of all related procedures, services, and products which, to a substantial likelihood, will be necessary for the completion of the advertised services as it would be understood by an ordinarily prudent person shall be deemed to be deceptive or misleading. Where reasonable disclosure of all relevant variables and considerations is made, a statement of a range of fees for specifically described dental services shall not be deemed to be deceptive or misleading.

C. Discounts. Discount offers for a dental service are permissible for advertising only when the non-discounted or full fee and the final discounted fee are also disclosed in the advertisement. The dentist shall maintain documented evidence to substantiate the discounted fee.

D. Retention of broadcast advertising. A prerecorded copy of all advertisements on radio or television shall be retained for a six-month period following the final appearance of the advertisement. The advertising dentist is responsible for making prerecorded copies of the advertisement available to the board within five days following a request by the board.

E. Routine dental services. Advertising of fees pursuant to subdivision F 3 of this section is limited to procedures which are determined by the board to be routine dental services as set forth in the American Dental Association's "Code on Dental Procedures and Nomenclature," as published in Current Dental Terminology (CDT-2007/2008), which is hereby adopted and incorporated by reference.

F. The following practices shall constitute false, deceptive, or misleading advertising within the meaning of §54.1-2706 (7) of the Code:

1. Publishing an advertisement which contains a material misrepresentation or omission of facts;
2. Publishing an advertisement which contains a representation or implication that is likely to cause an ordinarily prudent person to misunderstand or be deceived, or that fails to contain reasonable warnings or disclaimers necessary to make a representation or implication not deceptive;
3. Publishing an advertisement which fails to include the information and disclaimers required by this section;
4. Publishing an advertisement which contains a claim of professional superiority, claims to be a specialist, or uses any of the terms to designate a dental specialty unless he is entitled to such specialty designation under the guidelines or requirements for specialties approved by the American Dental Association (Requirements for Recognition of Dental Specialties and National Certifying Boards for Dental Specialists, October 1995), or such guidelines or requirements as subsequently amended ~~and approved by the dental disciplinary board, or other such organization recognized by the board;~~ and
5. A dentist not currently entitled to such specialty designation shall not represent that his practice is limited to providing services in a specialty area without clearly disclosing in the representation that he is a general dentist. A specialist who represents services in areas other than his specialty is considered to be practicing general dentistry.

G. Signage. Advertisements, including but not limited to signage, containing descriptions of the type of dentistry practiced or a specific geographic locator are permissible so long as the requirements of §§54.1-2718 and 54.1-2720 of the Code are met.

Part III. Direction and Delegation Of Duties.

18VAC60-21-100. Nondelegable duties; dentists. See current 18VAC60-20-190

Only licensed dentists shall perform the following duties:

A. Final diagnosis and treatment planning;

B. Performing surgical or cutting procedures on hard or soft tissue except a dental hygienist performing gingival curettage as provided in 18VAC60-21-130;

C. 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;

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

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

F. Administering and monitoring moderate sedation, deep sedation or general anesthetics except as provided for in § 54.1-2701 of the Code and 18VAC60-21-260, 18VAC60-21-270, and 18VAC60-21-280;

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

H. Final positioning and attachment of orthodontic bonds and bands; and

I. Final adjustment and fitting of crowns and bridges in preparation for final cementation.

18VAC60-21-110. Utilization of dental hygienists and dental assistants II. See current 18VAC60-20-200

A dentist may utilize up to a total of four dental hygienists or dental assistants II in any combination practicing under direction at one and the same time. In addition, a dentist may permit through issuance of written orders for services additional dental hygienists to practice under general supervision in a free clinic, a public health program, or on a voluntary basis.

18VAC60-21-120. Requirements for direction and general supervision. See current 18VAC60-20-210

A. In all instances and on the basis of his diagnosis, a licensed dentist assumes ultimate responsibility for determining the specific treatment the patient will receive, 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.

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 18VAC60-21-110.

C. Dental hygienists acting within the scope of a license issued to them by the board under §54.1-7722 or §54.1-2725 of the Code who teach dental hygiene in a CODA accredited program are exempt from this section.

D. Dental hygienists licensed pursuant to §54.1-2722 of the Code who provide general oral health education and preliminary dental screenings in any setting are exempt from this section.

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

F. 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 under general supervision.

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 a dentist 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. An order for treatment under general supervision shall not preclude the use of another level of supervision when, in the professional judgment of the dentist, such level of supervision is necessary to meet the individual needs of the patient.

18VAC60-21-130. Dental hygienists. **See current 18VAC60-20-220**

A. The following duties shall only be delegated to dental hygienists under direction and may only be performed under indirect supervision:

1. Scaling, root planing and/or gingival curettage of natural and restored teeth using hand instruments, rotary instruments, ultrasonic devices and non-surgical lasers with any sedation or 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 18VAC60-25-90.

B. The following duties shall only be delegated to dental hygienists and may be performed under indirect supervision or may be delegated by written order in accordance with §54.1-3408 of the Code to be performed under general supervision:

1. Scaling, root planing and/or gingival curettage of natural and restored teeth using hand instruments, rotary instruments, ultrasonic devices and non-surgical lasers with or without topical oral anesthetics.
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 as non-delegable in 18VAC60-21-100, those restricted to indirect supervision in subsection A of this section, and those restricted to delegation to dental assistants II in 18VAC60-21-140.

18VAC60-21-140. Delegation to dental assistants II. **See DAII 18VAC60-20-230.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 with a slow speed handpiece;
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.

18VAC60-21-150. Delegation to dental assistants I and II. **See DAII 18VAC60-20-230**

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 I or II under the indirect or under general supervision required in 18VAC60-21-120, with the exception of those listed as non-delegable in 18VAC60-21-100, those which may only be delegated to dental hygienists as listed in 18VAC60-21-130 and those which may only be delegated to a dental assistant II as listed in 18VAC60-21-140.

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.

18VAC60-21-160. Radiation certification. **See current 18VAC60-20-195**

No dentist or dental hygienist shall permit a person not otherwise licensed by this board to place or expose dental x-ray film unless he has (i) satisfactorily completed a course or examination recognized by the Commission on Dental Accreditation of the American Dental Association, (ii) been certified by the American Registry of Radiologic Technologists, (iii) satisfactorily completed a course and passed an examination in compliance with guidelines provided by the board, or (iv) satisfactorily completed a radiation course and passed an examination given by the Dental Assisting National Board. Any certificate issued pursuant to satisfying the requirements of this section shall be posted in plain view of the patient.

18VAC60-21-170. What does not constitute practice. **See current 18VAC60-20-240**

The following are not considered the practice of dental hygiene and dentistry:
1. General oral health education. NOTE – preliminary dental screenings was deleted.
2. Recording a patient's pulse, blood pressure, temperature, and medical history.

Part IV. Entry, Licensure and Registration Requirements.

18VAC60-21-180. General application provisions. **See current 18VAC60-20-70.C & D and 100**

A. Applications for any dental license, registration or permit issued by the board, other than for a volunteer exemption or for a restricted volunteer license, shall include:
1. A final certified transcript of the grades from the college from which the applicant received the dental degree, dental hygiene degree or certificate, or post-doctoral degree or certificate;
2. An original grade card documenting passage of all parts of the Joint Commission on National Dental Examinations showing passage of all parts of ; and
3. A current report from the Healthcare Integrity and Protection Data Bank (HIPDB) and a current report from the National Practitioner Data Bank (NPDB).

NOTE – Be of good moral character ….. was deleted.

B. All applicants for licensure, other than for a volunteer exemption or for a restricted volunteer license, shall be required to attest that they have read and understand and will remain current with the laws and regulations governing the practice of dentistry, dental hygiene and dental assisting in Virginia.

C. If a transcript or other documentation required for licensure cannot be produced by the entity from which it is required, the board, in its discretion, may accept other evidence of qualification for licensure.

E. Any application for a dental license, registration or permit may be denied for any cause specified in §54.1-2706 of the Code.

F. An application must include payment of the appropriate fee as specified in 18VAC60-21-40.

18VAC60-21-190. Education. **See current 18VAC60-20-60**

An applicant for any type of 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 program of at least 24 months in any other specialty which includes a clinical component.

18VAC60-21-200. Qualifications for an unrestricted license.

A. Dental licensure by examination. **See current 18VAC60-20-70.A**

1. All applicants shall have successfully completed all parts of the National Examination of the Joint Commission on National Dental Examinations.

2. All applicants shall have passed a dental clinical competency examination which is accepted by the board.

3. If a candidate has failed any section of a clinical competency 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.

4. Applicants who successfully completed a clinical competency examination five or more years prior to the date of receipt of their applications for licensure by this board may be required to retake an examination or take continuing education which meets the requirements of 18VAC60-20-50 unless they demonstrate that they have maintained clinical, ethical and legal practice in another jurisdiction of the United States or in federal civil or military service for 48 of the past 60 months immediately prior to submission of an application for licensure.

B. Dental licensure by credentials. **See current 18VAC60-20-71**

1. Have passed all parts of the national examination given by the Joint Commission on National Dental Examinations;

2. Have successfully completed a clinical competency examination acceptable to the board;

3. Hold a current, unrestricted license to practice dentistry in another jurisdiction in the United States and is certified to be in good standing by each jurisdiction in which he currently holds or has held a license; and

4. Have been in continuous clinical practice in another jurisdiction of the United States or in United States federal civil or military service for five out of the six years immediately preceding application for licensure pursuant to this section. Active patient care in the dental corps of the United States Armed Forces, volunteer practice in a public health clinic, or practice in an intern or residency program may be accepted by the board to satisfy this requirement. One year of clinical practice shall consist of a minimum of 600 hours of practice in a calendar year as attested by the applicant.

18VAC60-21-210. Inactive license. **See current 18VAC60-20-105**

A. Any dentist 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 current restricted volunteer license as provided in §§ 54.1-2712.1 of the Code, the holder of an inactive license shall not be entitled to perform any act requiring a license to practice dentistry in Virginia.

B. An inactive license may be reactivated upon submission of the required application which includes evidence of continuing competence, and payment of the current renewal fee. To evaluate continuing competence the board shall consider (i) hours of continuing education which meets the requirements of 18 VAC 60-21-230; (ii) evidence of active practice in another state or in federal service; (iii) current specialty board certification; (iv) recent passage of a clinical competency examination which is accepted by the board; or (v) a refresher program offered by a program accredited by the Commission on Dental Accreditation of the American Dental Association.

1. 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 must be included with the application. 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.

2. 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 or who is unable to demonstrate continuing competence.

18VAC60-21-XXXX. Qualifications for a restricted license

A. Temporary permit for public health settings. **See current 18VAC60-20-90**

A temporary permit shall be issued only for the purpose of allowing dental practice in a state agency or a Virginia charitable organization as limited by §§ 54.1-2715 of the Code.
1. Passage of a clinical competency examination is not required but the applicant can not have failed a clinical competency examination accepted by the Board.
2. A temporary permit will not be renewed unless the holder shows that extraordinary circumstances prevented the holder from taking the licensure examination during the term of the temporary permit.

B. Teacher's license. **See current 18VAC60-20-90**

A teacher's license shall be issued to any dentist certified to be on the faculty of an accredited dental program who meets the entry requirements of § 54.1-2713 of the Code of Virginia.

1. Passage of a clinical competency examination is not required but the applicant can not have failed a clinical competency examination accepted by the Board.
2. The holder of a teacher's license shall not practice intramurally or privately and shall not receive fees for service.
3. A teacher's license shall remain valid only while the holder is serving on the faculty of an accredited dental program in the Commonwealth. When any such license holder ceases to continue serving on the faculty of the dental school for which the license was issued, the licensee shall surrender the license, which shall be null and void upon termination of full-time employment.
4. The dean of the dental school shall notify the board within five working days of such termination of employment.

C. Full-time faculty license. **See current 18VAC60-20-90**

A faculty license shall be issued for the purpose of allowing dental practice as a full-time faculty member of an accredited dental program when the applicant meets the entry requirements of § 54.1-2713 of the Code of Virginia.
1. Passage of a clinical competency examination is not required but the applicant can not have failed a clinical competency examination accepted by the Board.
2. The holder of a faculty license may practice intramurally and may receive fees for service but can not practice privately.
3. A faculty license shall remain valid only while the holder is serving full time on the faculty of an accredited dental program in the Commonwealth. When any such license holder ceases to continue serving full time on the faculty of the dental school for which the license was issued, the licensee shall surrender the license, which shall be null and void upon termination of full-time employment.
4. The dean of the dental school shall notify the board within five working days of such termination of full-time employment.

D. Temporary licenses to persons enrolled in advanced dental education programs. **See current 18VAC60-20-91**

A dental intern, resident or post-doctoral certificate or degree candidate shall obtain a temporary license to practice in Virginia. The applicant shall:
1. Have successfully completed a D.D.S. or D.M.D. degree program required for admission to a clinical competency examination accepted by the Board. Submission of a letter of confirmation from the registrar of the school or college conferring the professional degree, or official transcripts confirming the professional degree and date the degree was received is required.
2. Submit a recommendation from the dean of the dental school or the director of the accredited advanced dental education program specifying the applicant's acceptance as an intern, resident or post-doctoral certificate or degree candidate. The beginning and ending dates of the internship, residency or post-doctoral program shall be specified.
3. The temporary license permits the holder to practice only in the hospital or outpatient clinics which are recognized parts of an advanced dental education program.
4. The temporary license may be renewed annually by June 30, for up to five times, upon the recommendation of the dean of the dental school or director of the accredited advanced dental education program.

5. The temporary license holder shall be responsible and accountable at all times to a licensed dentist, who is a member of the staff where the internship, residency or post-doctoral program is taken. The holder is prohibited from practicing outside of the advanced dental education program.
6. The temporary license holder shall abide by the accrediting requirements for an advanced dental education program as approved by the Commission on Dental Accreditation of the American Dental Association.

E. Restricted volunteer license. **See current 18VAC60-20-106.A**

1. In accordance with §§ 54.1-2712.1 or 54.1-2726.1, the board may issue a restricted volunteer license to a dentist who:
a. Held an unrestricted license in Virginia or another state as a licensee in good standing at the time the license expired or became inactive;
b. Is volunteering for a public health or community free clinic that provides dental services to populations of underserved people;
c. Has fulfilled the board's requirement related to knowledge of the laws and regulations governing the practice of dentistry in Virginia;
d. Has not failed a clinical examination within the past five years; and
e. Has had at least five years of clinical practice.

2. A person holding a restricted volunteer license under this section shall:
a. Only practice in public health or community free clinics that provide dental services to underserved populations;
b. Only treat patients who have been screened by the approved clinic and are eligible for treatment;
c. Attest on a form provided by the board that he will not receive remuneration directly or indirectly for providing dental services; and
d. Not be required to complete continuing education in order to renew such a license.

3. The restricted volunteer license shall specify whether supervision is required, and if not, the date by which it will be required. If a dentist with a restricted volunteer license issued under this section has not held an active, unrestricted license and been engaged in active practice within the past five years, he shall only practice dentistry and perform dental procedures if a dentist with an unrestricted Virginia license, volunteering at the clinic, reviews the quality of care rendered by the dentist with the restricted volunteer license at least every 30 days. If supervision is required, the supervising dentist shall directly observe patient care being provided by the restricted volunteer dentist and review all patient charts at least quarterly. Such supervision shall be noted in patient charts and maintained in accordance with 18VAC60-21-70.

4. A restricted volunteer license granted pursuant to this section shall expire on the June 30 of the second year after its issuance, or shall terminate when the supervising dentist withdraws his sponsorship.

5. A dentist holding a restricted volunteer license issued pursuant to this section is subject to the provisions of this chapter and the disciplinary regulations which apply to all licensees practicing in Virginia.

F. Registration for voluntary practice by out-of-state licensees. **See current 18VAC60-20-106.B**

Any dentist who does not hold a license to practice in Virginia and who seeks registration to practice on a voluntary basis under the auspices of a publicly supported, all volunteer, nonprofit organization that sponsors the provision of health care to populations of underserved people shall:
a. File a complete application for registration on a form provided by the board at least 15 days prior to engaging in such practice;
b. Provide a complete record of professional licensure in each state in which he has held a license and a copy of any current license;
c. Provide the name of the nonprofit organization, the dates and location of the voluntary provision of services; and
d. Provide a notarized statement from a representative of the nonprofit organization attesting to its compliance with provisions of subdivision 5 of §54.1-2701 of the Code.

Part V. Licensure Renewal

18VAC60-21-220. License renewal and reinstatement. See current 18VAC60-20-20

A. The license of any person who does not return the completed renewal form and fees by the deadline shall automatically expire and become invalid and his practice of dentistry shall be illegal. With the exception of practice with a current restricted volunteer license as provided in §§ 54.1-2712.1 of the Code, practicing in Virginia with an expired license may subject the licensee to disciplinary action by the board.

B. Renewal. Every person holding an active or inactive license or a full-time faculty license shall annually, on or before March 31, renew his license. Every person holding a teacher's license, temporary resident's license, a restricted volunteer license or a temporary permit shall, on or before June 30, request renewal of his license.

C. Late renewals. 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.

D. The board shall renew a license if the renewal form, renewal fee, and late fee are received within one year of the deadline required in subsection A of this section provided that no grounds exist to deny said renewal pursuant to § 54.1-2706 of the Code and Part II of these regulations, 18 VAC 60-21-50 et seq.

D. Reinstatement procedures.

1. Any person whose license has expired for more than one year or whose license has been revoked or suspended and who wishes to reinstate such license shall submit a reinstatement application and the reinstatement fee. The application must include evidence of continuing competence.

2. To evaluate continuing competence the board shall consider (i) hours of continuing education which meets the requirements of subsection G of 18 VAC 60-21-230; (ii) evidence of active practice in another state or in federal service; (iii) current specialty board certification; (iv) recent passage of a clinical competency examination accepted by the board; or (v) a refresher program offered by a program accredited by the Commission on Dental Accreditation of the American Dental Association.

3. The executive director may reinstate such expired license provided that the applicant can demonstrate continuing competence, has paid the reinstatement fee and any fines or assessments and that no grounds exist to deny said reinstatement pursuant to § 54.1-2706 of the Code and Part II of these regulations, 18 VAC 60-21-50 et seq.

18VAC60-21-230. Requirements for continuing education. See current 18VAC60-20-50

A. A dentist shall complete a minimum of 15 hours of continuing education, which meets the requirements for content, sponsorship and documentation set out in this section, for each annual renewal of licensure except for the first renewal following initial licensure and for any renewal of a restricted volunteer license.

1. All renewal applicants shall attest that they have read and understand and will remain current with the laws and regulations governing the practice of dentistry and dental hygiene in Virginia. Continuing education credit may be earned for passage of the online Virginia Dental Law Exam.

2. A dentist shall maintain current training certification in basic cardiopulmonary resuscitation or basic life support with laboratory simulated airway training for healthcare providers unless he is required by 18VAC60-21-XXXX or 18VAC60-21-to hold current certification in advanced life support with simulated airway training for healthcare providers.

3. A dentist who administers or monitors patients under general anesthesia, deep sedation or moderate sedation shall complete four hours every two years of approved continuing education directly related to administration and monitoring of such anesthesia or sedation as part of the hours required for licensure renewal.

4. 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. To be accepted for license renewal, continuing education programs shall be directly 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 which 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, business management, marketing 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 subsection B 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, and approved providers;

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 and approved providers;

7. 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;

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

9. A medical school which is accredited by the American Medical Association's Liaison Committee for Medical Education;

10. A dental, dental hygiene or dental assisting program or advanced dental education 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. 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. A written request with supporting documents must be submitted prior to renewal of the license.

E. A licensee is required to verify compliance with the continuing education requirements in his annual license renewal. Following the renewal period, the board may conduct an audit of licensees to verify

compliance. Licensees 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.

F. All licensees are required to maintain original documents verifying the date, subject of the program or activity, the sponsor and the amount of time earned. Documentation must be maintained for a period of four years following renewal.

G. 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.

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

I. Failure to comply with continuing education requirements may subject the licensee to disciplinary action by the board.

Part VI. Controlled Drugs, Sedation and Anesthesia

18 VAC 60-21-240. General provisions. See current 18VAC60-20-107 & Guidance Document 60-13

A. **Application of Part VI**. **See current 18VAC60-20-107**

This part (18 VAC 60-21-240 et seq.) applies to prescribing, dispensing and administering controlled drugs in dental offices, mobile dental facilities as defined in 18VAC60-20-10 and portable dental operations as defined in 18VAC60-20-10 and shall not apply to administration by a dentist practicing in (i) a licensed hospital as defined in § 32.1-123 of the Code of Virginia or (ii) a state-operated hospital or (iii) a facility directly maintained or operated by the federal government.

B. Registration required. NEW See current **18VAC60-20-110.C & 120.C**

Any dentist who prescribes, administers or dispenses Schedule II through V controlled drugs must hold a current registration with the federal Drug Enforcement Administration.

C. Additional requirements for patient information and records.

When moderate sedation, deep sedation or general anesthesia is administered the patient record shall also include:

1. Notation of the patient's American Society of Anesthesiologists classification;
2. Review of medical history and current conditions;
3. Written informed consent for administration of sedation and anesthesia and for the dental procedure to be performed;
4. A record of the name, dose, strength of drugs and route of administration including the administration of local anesthetics with notations of the time sedation and anesthesia were administered;
5. Physiological monitoring records; and

6. List of staff participating in the administration, treatment and monitoring including name, position and assigned duties.

D. Patient Evaluation Required. **See current 18VAC60-20-107 & Guidance Document 60-13**

1. The decision to administer controlled drugs for dental treatment must be based on a documented evaluation of the health history and current medical condition of the patient in accordance with the class I through V risk category classifications of the American Society of Anesthesiologists (ASA). The findings of the evaluation, the ASA risk assessment class assigned and any special considerations must be recorded in the patient's record.

a. Any level of sedation and general anesthesia may be provided for patients who are ASA Class I and Class II.

b. Patients in ASA Class III shall only be provided minimal sedation, moderate sedation, deep sedation or general anesthesia by:

1. A dentist after he has documented a consultation with their primary care physician or other medical specialist regarding potential risks and special monitoring requirements that may be necessary; or

2. An oral and maxillofacial surgeon who has performed a physical evaluation and documented the findings and the ASA risk assessment category of the patient and any special monitoring requirements that may be necessary or

3. A person licensed under Chapter 29 of Title 54.1 of the Code who has a specialty in anesthesia.

c. Minimal sedation may only be provided for patients who are in ASA Class IV by:

1. a dentist after he has documented a consultation with the primary care physician or other medical specialist regarding potential risks and special monitoring requirements that may be necessary; or

2. An oral and maxillofacial surgeon who has performed a physical evaluation and documented the findings and the ASA risk assessment category of the patient and any special monitoring requirements that may be necessary.

d. Moderate sedation, deep sedation or general anesthesia shall not be provided in a dental office for patients in ASA Classes IV and V.

E. Pediatric patients. NEW

A sedating medication shall not be prescribed for or administered to a child aged 12 and under without the safety net of medical supervision and a careful presedation evaluation for underlying medical or surgical conditions.

F. Informed written consent. See current 18VAC60-20-107.C

Prior to administration of any level of sedation or general anesthesia, the dentist shall discuss the nature and objectives of the planned level of sedation or general anesthesia along with the risks, benefits and alternatives and shall obtain informed, written consent from the patient or other responsible party for the administration and for the treatment to be provided. The written consent must be maintained in the patient record.

G. Level of sedation. See current 18VAC60-20-107.D

The determinant for the application of the rules for any level of sedation or for general anesthesia shall be the degree of sedation or consciousness level of a patient that should reasonably be expected to result from the type, strength and dosage of medication, the method of administration and the individual characteristics of

the patient as documented in the patient's record. The drugs and techniques used must carry a margin of safety wide enough to render the unintended reduction of or loss of consciousness unlikely factoring in titration, and the patient's age, weight and ability to metabolize drugs.

H. Emergency management. **NEW**

If a patient enters a deeper level of sedation than the dentist is qualified and prepared to provide, the dentist shall stop the dental procedure until the patient returns to and is stable at the intended level of sedation.

I. Ancillary personnel. **See current 18VAC60-20-135**

Dentists who employ unlicensed, ancillary personnel to assist in the administration and monitoring of any form of minimal sedation, moderate sedation, deep sedation, or general anesthesia shall maintain documentation that such personnel have:

1. Training and hold current certification in basic resuscitation techniques with hands-on airway training for healthcare providers, such as Basic Cardiac Life Support for Health Professionals or an approved, clinically oriented course devoted primarily to responding to clinical emergencies offered by an approved provider of continuing education as set forth in 18 VAC 60-21-230(C); or
2. Current certification as a certified anesthesia assistant (CAA) by the American Association of Oral and Maxillofacial Surgeons or the American Dental Society of Anesthesiology (ADSA).

J. Assisting in administration. **See current 18VAC60-20-110.B Guidance Document 13**

A dentist, consistent with the planned level of administration (local anesthesia, minimal sedation, moderate sedation, deep sedation or general anesthesia) and appropriate to his education, training and experience, may utilize the services of a dentist, anesthesiologist, certified registered nurse anesthetist, dental hygienist, dental assistant and/or nurse to perform functions appropriate to such practitioner's education, training and experience and consistent with that practitioner's respective scope of practice.

K. Patient monitoring. **See current 18VAC60-20-108.C, 110.E, 120.F Guidance Document 13**

1. A dentist may delegate monitoring of a patient to a dental hygienist, dental assistant or nurse who is under his direction or to another dentist, anesthesiologist or certified registered nurse anesthetist. The person assigned to monitor the patient shall be continuously in the presence of the patient in the office, operatory and recovery area (a) before administration is initiated or immediately upon arrival if the patient self-administered a sedative agent; (b) throughout the administration of drugs; (c) throughout the treatment of the patient; and (d) throughout recovery until the patient is discharged by the dentist.
2. The person monitoring the patient shall:
   a. have the patient's entire body in sight,
   b. be in close proximity so as to speak with the patient,
   c. converse with the patient to assess the patient's ability to respond in order to determine the patient's level of sedation,
   d. closely observe the patient for coloring, breathing, level of physical activity, facial expressions, eye movement and bodily gestures in order to immediately recognize and bring any changes in the patient's condition to the attention of the treating dentist, and
   e. read, report and record the patient's vital signs.

18VAC60-21-250. Administration of local anesthesia. **NEW Guidance Document 60-13**

A dentist may administer or use the services of the following personnel to administer local anesthesia:

A. A dentist;
B. An anesthesiologist;
C. A certified registered nurse anesthetist under his direction;
D. A dental hygienist with the training required by 18VAC60-25-90(C) to parenterally administer Schedule VI local anesthesia to persons age 18 or older under his direction;
E. A dental hygienist to administer Schedule VI topical oral anesthetics under his direction or under his order for such treatment under general supervision;
F. A dental assistant to administer Schedule VI topical oral anesthetics under his direction; and
G. A registered or licensed practical nurse to administer Schedule VI topical oral anesthetics under his direction.

18 VAC60-21-260. Administration of minimal sedation. **See current 18VAC60-20-108**

A. Education and training requirements. A dentist who utilizes minimal sedation shall have training in and knowledge of:
1. Medications used, the appropriate dosages, the potential complications of administration, the indicators for complications and the interventions to address the complications.
2. Physiological effects of nitrous oxide, potential complications of administration, the indicators for complications and the interventions to address the complications.
3. The use and maintenance of the equipment required in subsection C of this section.

B. Delegation of administration. **NEW Guidance Document 60-13**

1. A qualified dentist may administer or use the services of the following personnel to administer minimal sedation:
   a. A dentist;
   b. An anesthesiologist;
   ~~c.~~ A certified registered nurse anesthetist under his direction; and
   d. A dental hygienist with the training required by 18VAC60-25-90 (B) or (C) may only administer nitrous oxide/oxygen under his direction.

2. Preceding the administration of minimal sedation, a dentist may use the services of the following personnel to administer local anesthesia to numb an injection or treatment site:
   - A dental hygienist with the training required by 18VAC60-25-90(C) to administer Schedule VI local anesthesia to persons age 18 or older under his direction;
   - A dental hygienist to administer Schedule VI topical oral anesthetics under his direction;
   - A dental assistant to administer Schedule VI topical oral anesthetics under his direction; and
   - A registered or licensed practical nurse to administer Schedule VI topical oral anesthetics under his direction.
3. If minimal sedation is self-administered by a patient before arrival at the dental office/facility, the dentist may only use the personnel listed in 4.a. to administer local anesthesia.

C. **Equipment requirements**. **See current 18VAC60-20-108.B**

A dentist who utilizes minimal sedation or who directs the administration by another licensed health professional as permitted in 18VAC60-21-260(B)(1) shall maintain the following equipment in working order and immediately available to the areas where patients will be sedated and treated and will recover:

1. Blood pressure monitoring equipment.
2. Source of delivery of oxygen under controlled positive pressure.
3. Mechanical (hand) respiratory bag.
4. Suction apparatus.
5. Electrocardiographic monitor.
6. Defibrillator.

D. **Required Staffing.** **See current 18VAC60-20-108.C**

1. The treatment team for minimal sedation other than just inhalation of nitrous oxide/oxygen shall consist of the dentist and a second person in the operatory with the patient to assist the dentist and monitor the patient. The second person shall be a licensed health care professional or a person qualified in accordance with 18VAC60-21-240(H); or
2. When only nitrous oxide/oxygen is administered for minimal sedation a second person is not required. Either the dentist or qualified dental hygienist under the indirect supervision of a dentist may administer the nitrous oxide/oxygen and treat and monitor the patient.

E. Monitoring requirements. **See current 18VAC60-20-108.C**

1. Baseline vital signs shall be taken and recorded prior to administration of sedation and prior to discharge.
2. Blood pressure and heart rate shall be monitored during the administration.
3. Once the administration of minimal sedation has begun by any route of administration, the dentist shall ensure that a licensed health care professional or a person qualified in accordance with 18VAC60-21-240(H) monitors the patient at all times until discharged as required in subsection F of this section.
4. If nitrous oxide/oxygen is used, monitoring shall include making the proper adjustments of nitrous oxide/oxygen machines at the request of or by the dentist or by another qualified licensed health professional identified in 18VAC60-21-260.B.1. Only the dentist or another qualified licensed health professional identified in 18VAC60-21-260.B.1 may turn the nitrous oxide/oxygen machines on or off.

F. Discharge requirements. **See current 18VAC60-20-108.D**

1. The dentist shall not discharge a patient until he exhibits normal responses in a post-operative evaluation of the level of consciousness, oxygenation, ventilation and circulation. **V**ital signs shall be taken and recorded prior to discharge.
2. Postoperative instructions shall be given verbally and in writing. The written instructions shall include a 24 hour emergency telephone number.

18VAC60-21-270. Requirements to administer moderate sedation. **See current 18VAC60-20-**

A**. Automatic qualification**. **See current 18VAC60-20-120.A**

Dentists qualified to administer deep sedation and general anesthesia may administer moderate sedation.

B. **Education and training requirements**. **See current 18VAC60-20-120.B**

1. A dentist may use any method of administration by meeting one of the following criteria:

a. Completion of training for this treatment modality according to the ADA's Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry in effect at the time the training occurred, while enrolled in an accredited dental program or while enrolled in a post-doctoral university or teaching hospital program; or

b. Completion of a continuing education course which meets the requirements of 18VAC60-21-230 and consists of 60 hours of didactic instruction plus the management of at least 20 patients per participant, demonstration of competency and clinical experience in moderate sedation; and management of a compromised airway. The course content shall be consistent with the ADA's Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry in effect at the time the training occurred; or

c. A dentist who self-certified his qualifications in anesthesia and moderate sedation prior to January 1989 may continue to administer only moderate sedation.

2. Enteral administration only. A dentist may administer moderate sedation by only an enteral method if he has completed a continuing education program which meets the requirements of 18VAC60-21-230 and consists of not less than 18 hours of didactic instruction plus 20 clinically-oriented experiences in enteral and/or a combination of enteral and nitrous oxide/oxygen moderate sedation techniques. The course content shall be consistent with the ADA'sGuidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry in effect at the time the training occurred.

C. Additional training required. **See current 18VAC60-20-120.D**

1. Dentists who administer moderate sedation shall hold current certification in advanced resuscitation techniques with laboratory simulated airway training for healthcare providers, such as Advanced Cardiac Life Support for Health Professionals or Pediatric Advanced Life Support for Health Professionals as evidenced by a certificate of completion posted with the dental license.

2. Has current training in the use and maintenance of the equipment required in subsection E of this section.

D. Delegation of Administration. NEW Guidance Document 60-13

1. A dentist not qualified to administer moderate sedation shall only use the services of an anesthesiologist to administer such sedation in a dental office. In an outpatient surgery center, a dentist not qualified to administer moderate sedation shall use an anesthesiologist or a certified registered nurse anesthetist to administer such sedation.
2. A qualified dentist may administer or use the services of the following personnel to administer moderate sedation:
   - A dentist with the training required by 18VAC60-21-270(B)(2) to administer by an enteral method;
   - A dentist with the training required by 18VAC60-21-270(B)(1) to administer by any method;
   - An anesthesiologist; and

- A certified registered nurse anesthetist under the direction of a dentist who meets the training requirements of 18VAC60-21-270(B)(1).

3. If minimal sedation is self-administered by a patient before arrival at the dental office, the dentist may only use the personnel listed in 2 above to administer local anesthesia.
4. Preceding the administration of moderate sedation, a qualified dentist may use the services of the following personnel to administer local anesthesia to numb the injection or treatment site:

7. A dental hygienist with the training required by 18VAC60-25-90(C) to parenterally administer Schedule VI local anesthesia to persons age 18 or older under his direction;
8. A dental hygienist to administer Schedule VI topical oral anesthetics under his direction;
9. A dental assistant to administer Schedule VI topical oral anesthetics under his direction; and
10. A registered or licensed practical nurse to administer Schedule VI topical oral anesthetics under his direction.

E**. Equipment requirements**. **See current 18VAC60-20-120.F**

A dentist who administers moderate sedation shall maintain the following equipment in working order and immediately available to the areas where patients will be sedated and treated and will recover:

1. Full face mask for children or adults, as appropriate for the patient being treated;
2. Oral and nasopharyngeal airway management adjuncts;
3. Endotracheal tubes for children or adults, or both, with appropriate connectors or other appropriate airway management adjunct such as a laryngeal mask airway or oropharnygeal airway;
4. a laryngoscope with reserve batteries and bulbs and appropriately sized laryngoscope blades ~~for children or adults, or both. In lieu of a laryngoscope and endotracheal tubes, a dentist may maintain designed for the maintenance of a patent airway and the direct delivery of positive pressure oxygen~~;
5. Pulse oximetry;
6. Blood pressure monitoring equipment;
7. Pharmacologic antagonist agents;
8. Source of delivery of oxygen under controlled positive pressure;
9. Mechanical (hand) respiratory bag;
10. Appropriate emergency drugs for patient resuscitation;
11. Electrocardiographic monitor
12. Defibrillator
13. Suction apparatus; and
14. Throat pack.

F. Required Staffing. See current 18VAC60-20-120.F Guidance Document 60-13

At a minimum, there shall be a two person treatment team for moderate sedation. The team shall include the operating dentist and a second person to monitor the patient as provided in 18VAC60-21-240(J) and assist the operating dentist as provided in 18VAC60-21-240(I), both of whom shall be in the operatory with the patient throughout the dental procedure. If the second person is a dentist, an anesthesiologist or a certified registered nurse anesthetist who administers the drugs as permitted in 18VAC60-21-270(D), such person may monitor the patient.

G. Monitoring requirements. See current 18VAC60-20-120.F

1. Baseline vital signs shall be taken and recorded prior to administration of any controlled drug at the facility and prior to discharge.
2. Blood pressure and heart rate shall be monitored during the administration.

3. Monitoring of the patient under moderate sedation is to begin prior to administration of sedation, or, if pre-medication is self-administered by the patient, immediately upon the patient's arrival at the dental office and shall take place continuously during the dental procedure and recovery from sedation. The person who administers the sedation or another licensed practitioner qualified to administer the same level of sedation must remain on the premises of the dental facility until the patient is evaluated and is discharged.

H. **Discharge Requirements.** **See current 18VAC60-20-120.F Guidance Document 60-13**

1. The patient shall not be discharged until the responsible licensed practitioner determines that the patient's level of consciousness, oxygenation, ventilation and circulation are satisfactory for discharge and vital signs have been taken and recorded.
2. Postoperative instructions shall be given verbally and in writing. The written instructions shall include a 24 hour emergency telephone number.

I. **Emergency Management**. NEW

The dentist shall be proficient in handling emergencies and complications related to pain control procedures, including the maintenance of respiration and circulation, immediate establishment of an airway and cardiopulmonary resuscitation.

18VAC60-21-280. Requirements to administer deep sedation or general anesthesia.

A. Educational requirements. **See current 18VAC60-20-110**

A dentist may employ or use deep sedation or general anesthesia by meeting the following educational criteria:

1. Completion of a minimum of one calendar year of advanced training in anesthesiology and related academic subjects beyond the undergraduate dental school level in a training program in conformity with the ADA's Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry in effect at the time the training occurred; or

2. Completion of an ADA CODA accredited residency in any dental specialty which incorporates into its curriculum a minimum of one calendar year of full-time training in clinical anesthesia and related clinical medical subjects (i.e. medical evaluation and management of patients), comparable to those set forth in the ADA's Guidelines for Graduate and Postgraduate Training in Anesthesia in effect at the time the training occurred; and

3. Holds current certification in advanced resuscitative techniques with laboratory simulated airway training for healthcare providers, such as courses in Advanced Cardiac Life Support or Pediatric Advanced Life Support.

4. Has current training in the use and maintenance of the equipment required in subsection D of this section.

B. Preoperative requirements. **NEW**

Prior to the appointment for treatment under deep sedation or general anesthesia the patient shall:

1. be informed about the personnel and procedures used to deliver the sedative or anesthetic drugs to assure informed consent as required by 18VAC60-21-240(E).
2. have a physical evaluation as required by 18VAC60-21-240(C).
3. be given preoperative verbal and written instructions including any dietary or medication restrictions.

C. Delegation of administration. **See current 18VAC60-20-110.B Guidance document 60-13**

1. A dentist not qualified to administer deep sedation and general anesthesia shall only use the services of a qualified dentist or an anesthesiologist to administer deep sedation or general anesthesia in a dental office. In an outpatient surgery center, a dentist not qualified to administer deep sedation or general anesthesia shall use an anesthesiologist or a certified registered nurse anesthetist to administer deep sedation or general anesthesia.
2. A qualified dentist may administer or use the services of the following personnel to administer deep sedation or general anesthesia:
   a) A dentist with the training required by 18VAC60-21-280(A);
   b) An anesthesiologist; and
   c) A certified registered nurse anesthetist under the direction of a dentist who meets the training requirements of 18VAC60-21-280(A).
3. Preceding the administration of deep sedation or general anesthesia, a qualified dentist may use the services of the following personnel to administer local anesthesia to numb the injection or treatment site:
   a) A dental hygienist with the training required by 18VAC60-25-90(C) to parenterally administer Schedule VI local anesthesia to persons age 18 or older under his direction;
   b) A dental hygienist to administer Schedule VI topical oral anesthetics under his direction;
   c) A dental assistant to administer Schedule VI topical oral anesthetics under his direction; and
   d) A registered or licensed practical nurse to administer Schedule VI topical oral anesthetics under his direction.

D. Equipment requirements. **See current 18VAC60-20-110.D**

A dentist who administers deep sedation or general anesthesia shall maintain the following equipment in working order and immediately available to the areas where patients will be sedated and treated and will recover:

1. Full face mask for children or adults, as appropriate for the patient being treated;
2. Oral and nasopharyngeal airway management adjuncts;
3. Endotracheal tubes for children or adults, or both, with appropriate connectors or other appropriate airway management adjunct such as a laryngeal mask airway or oropharyngeal airway;
4. A laryngoscope with reserve batteries and bulbs and appropriately sized laryngoscope blades ~~for children or adults, or both~~;
5. Source of delivery of oxygen under controlled positive pressure;
6. Mechanical (hand) respiratory bag;
7. Pulse oximetry and blood pressure monitoring equipment available and used in the treatment room;
8. Appropriate emergency drugs for patient resuscitation;
9. EKG monitoring equipment
10. temperature measuring devices;
11. Pharmacologic antagonist agents;
12. External defibrillator (manual or automatic);

13. For intubated patients, an End-Tidal CO^2 monitor;
14. Suction apparatus; and
15. Throat pack.

E. Required Staffing. **See current 18VAC60-20-110.E**

At a minimum, there shall be a three person treatment team for deep sedation or general anesthesia. The team shall include the operating dentist, a second person to monitor the patient as provided in 18VAC60-21-240(J) and a third person to assist the operating dentist as provided in 18VAC60-21-240(I), all of whom shall be in the operatory with the patient during the dental procedure. If a second dentist, an anesthesiologist or a certified registered nurse anesthetist administers the drugs as permitted in 18VAC60-21-280(C), such person may serve as the second person to monitor the patient.

F. Monitoring requirements. **See current 18VAC60-20-110.E**

1. Baseline vital signs shall be taken and recorded prior to administration of any controlled drug at the facility to include: temperature, blood pressure, pulse, pulse Ox, O2 saturation, respiration and heart rate.
2. The patient's vital signs shall be monitored and reported to the treating dentist throughout the administration of controlled drugs and recovery. When depolarizing medications are administered temperature shall be monitored constantly.
3. Monitoring of the patient under deep sedation or general anesthesia is to begin prior to the administration of any drugs and shall take place continuously during administration, the dental procedure and recovery from anesthesia. The person who administers the anesthesia or another licensed practitioner qualified to administer the same level of anesthesia must remain on the premises of the dental facility until the patient has regained consciousness and is discharged.

G. Emergency Management. See current 18VAC60-20-110.D

1. A secured intravenous line must be established and maintained throughout the procedure.
2. The dentist shall be proficient in handling emergencies and complications related to pain control procedures, including the maintenance of respiration and circulation, immediate establishment of an airway and cardiopulmonary resuscitation.

H. Discharge requirements. NEW

1. The patient shall not be discharged until the responsible licensed practitioner determines that the patient's level of consciousness, oxygenation, ventilation and circulation are satisfactory for discharge and vital signs have been taken and recorded.
2. Postoperative instructions shall be given verbally and in writing. The written instructions shall include a 24 hour emergency telephone number.

Part VII. Oral and Maxillofacial Surgeons.

18VAC60-21-290. Registration of oral and maxillofacial surgeons. See current 18VAC60-20-250

Every licensed dentist who practices as an oral and maxillofacial surgeon, as defined in §54.1-2700 of the Code, shall register his practice with the board.

1. After initial registration, an oral and maxillofacial surgeon shall renew his registration annually on or before December 31.

2. An oral and maxillofacial surgeon who fails to register or to renew his registration and continues to practice oral and maxillofacial surgery may be subject to disciplinary action by the board.

3. Within one year of the expiration of a registration, an oral and maxillofacial surgeon may renew by payment of the renewal fee and a late fee.

4. After one year from the expiration date, an oral and maxillofacial surgeon who wishes to reinstate his registration shall update his profile and pay the reinstatement fee.

18VAC60-21-300. Profile of information for oral and maxillofacial surgeons. See current 18VAC60-20-260

A. In compliance with requirements of §54.1-2709.2 of the Code, an oral and maxillofacial surgeon registered with the board shall provide, upon initial request, the following information within 30 days:

1. The address of the primary practice setting and all secondary practice settings with the percentage of time spent at each location;

2. Names of dental or medical schools with dates of graduation;

3. Names of graduate medical or dental education programs attended at an institution approved by the Accreditation Council for Graduate Medical Education, the Commission on Dental Accreditation, and the American Dental Association with dates of completion of training;

4. Names and dates of specialty board certification or board eligibility, if any, as recognized by the Council on Dental Education and Licensure of the American Dental Association;

5. Number of years in active, clinical practice in the United States or Canada, following completion of medical or dental training and the number of years, if any, in active, clinical practice outside the United States or Canada;

6. Names of insurance plans accepted or managed care plans in which the oral and maxillofacial surgeon participates and whether he is accepting new patients under such plans;

7. Names of hospitals with which the oral and maxillofacial surgeon is affiliated;

8. Appointments within the past 10 years to dental school faculties with the years of service and academic rank;

9. Publications, not to exceed 10 in number, in peer-reviewed literature within the most recent five-year period;

10. Whether there is access to translating services for non-English speaking patients at the primary practice setting and which, if any, foreign languages are spoken in the practice; and

11. Whether the oral and maxillofacial surgeon participates in the Virginia Medicaid Program and whether he is accepting new Medicaid patients;

B. The oral and maxillofacial surgeon may provide additional information on hours of continuing education earned, subspecialities obtained, honors or awards received.

C. Whenever there is a change in the information on record with the profile system, the oral and maxillofacial surgeon shall provide current information in any of the categories in subsection A of this section within 30 days.

18VAC60-21-310. Reporting of malpractice paid claims and disciplinary notices and orders. See current 18VAC60-20-270

A. In compliance with requirements of §54.1-2709.4 of the Code, a dentist registered with the board as an oral and maxillofacial surgeon shall report all malpractice paid claims in the most recent 10-year period. Each report of a settlement or judgment shall indicate:

1. The year the claim was paid;

2. The total amount of the paid claim in United States dollars; and

3. The city, state, and country in which the paid claim occurred.

B. The board shall use the information provided to determine the relative frequency of paid claims described in terms of the percentage who have made malpractice payments within the most recent 10-year period. The statistical methodology used will be calculated on more than 10 paid claims for all dentists reporting, with the top 16% of the paid claims to be displayed as above-average payments, the next 68% of the paid claims to be displayed as average payments, and the last 16% of the paid claims to be displayed as below-average payments.

C. Adjudicated notices and final orders or decision documents, subject to §54.1-2400.2 D of the Code, shall be made available on the profile. Information shall also be posted indicating the availability of un-adjudicated notices and of orders that are subject to being vacated at determination of the practitioner.

18VAC60-21-320. Noncompliance or falsification of profile. See current 18VAC60-20-280

A. The failure to provide the information required in subsection A of 18VAC60-20-260 may constitute unprofessional conduct and may subject the licensee to disciplinary action by the board.

B. Intentionally providing false information to the board for the profile system shall constitute unprofessional conduct and shall subject the licensee to disciplinary action by the board.

18VAC60-21-330. Certification to perform cosmetic procedures; applicability. See current 18VAC60-20-290

A. In order for an oral and maxillofacial surgeon to perform aesthetic or cosmetic procedures, he shall be certified by the board pursuant to §54.1-2709.1 of the Code. Such certification shall only entitle the licensee to perform procedures above the clavicle or within the head and neck region of the body.

B. Based on the applicant's education, training and experience, certification may be granted to perform the following procedures for cosmetic treatment:

1. Rhinoplasty and other treatment of the nose;

2. Blepharoplasty and other treatment of the eyelid;

3. Rhytidectomy and other treatment of facial skin wrinkles and sagging;

4. Submental liposuction and other procedures to remove fat;

5. Laser resurfacing or dermabrasion and other procedures to remove facial skin irregularities;

6. Browlift (either open or endoscopic technique) and other procedures to remove furrows and sagging skin on the upper eyelid or forehead;

7. Platysmal muscle plication and other procedures to correct the angle between the chin and neck;

8. Otoplasty and other procedures to change the appearance of the ear; and

9. Application of injectable medication or material for the purpose of treating extra-oral cosmetic conditions.

18VAC60-21-340. Certification not required. **See current 18VAC60-20-300**

Certification shall not be required for performance of the following:

1. Treatment of facial diseases and injuries, including maxillofacial structures;

2. Facial fractures, deformity and wound treatment;

3. Repair of cleft lip and palate deformity;

4. Facial augmentation procedures; and

5. Genioplasty.

18VAC60-21-350. Credentials required for certification. **See current 18VAC60-20-310**

A. An applicant for certification shall:

1. Hold an active, unrestricted license from the board;

2. Submit a completed application and fee;

3. Complete an oral and maxillofacial residency program accredited by the Commission on Dental Accreditation;

4. Hold board certification by the American Board of Oral and Maxillofacial Surgery (ABOMS) or board eligibility as defined by ABOMS;

5. Have current privileges on a hospital staff to perform oral and maxillofacial surgery; and

6. If his oral and maxillofacial residency or cosmetic clinical fellowship was completed after July 1, 1996, and training in cosmetic surgery was a part of such residency or fellowship, the applicant shall submit:

a. A letter from the director of the residency or fellowship program documenting the training received in the residency or in the clinical fellowship to substantiate adequate training in the specific procedures for which the applicant is seeking certification; and

b. Documentation of having performed as primary or assistant surgeon at least 10 proctored cases in each of the procedures for which he seeks to be certified.

7. If his oral and maxillofacial residency was completed prior to July 1, 1996, or if his oral and maxillofacial residency was completed after July 1, 1996, and training in cosmetic surgery was not a part of the applicant's residency, the applicant shall submit:

a. Documentation of having completed didactic and clinically approved courses to include the dates attended, the location of the course, and a copy of the certificate of attendance. Courses shall provide sufficient training in the specific procedures requested for certification and shall be offered by:

(1) An advanced specialty education program in oral and maxillofacial surgery accredited by the Commission on Dental Accreditation;

(2) A medical school accredited by the Liaison Committee on Medical Education or other official accrediting body recognized by the American Medical Association;

(3) The American Dental Association (ADA) or one of its constituent and component societies or other ADA Continuing Education Recognized Programs (CERP) approved for continuing dental education; or

(4) The American Medical Association approved for category 1, continuing medical education.

b. Documentation of either:

(1) Holding current privileges to perform cosmetic surgical procedures within a hospital accredited by the Joint Commission on Accreditation of Healthcare Organizations; or

(2) Having completed at least 10 cases as primary or secondary surgeon in the specific procedures for which the applicant is seeking certification, of which at least five shall be proctored cases as defined in this chapter.

18VAC60-21-360. Renewal of certification. See current 18VAC60-20-320

In order to renew his certification to perform cosmetic procedures, an oral and maxillofacial surgeon shall possess a current, active, unrestricted license to practice dentistry from the Virginia Board of Dentistry and shall submit along with the renewal application and fee on or before December 31 of each year. If an oral and maxillofacial surgeon fails to renew his certificate, the certificate is lapsed and performance of cosmetic procedures is not permitted. To renew a lapsed certificate within one year of expiration, the oral and maxillofacial surgeon shall pay the renewal fees and a late fee. To reinstate a certification that has been lapsed for more than one year shall require completion of a reinstatement form documenting continued competency in the procedures for which the surgeon is certified and payment of a reinstatement fee.

18VAC60-21-370. Quality assurance review for procedures performed by certificate holders. See current 18VAC60-20-330

A. On a schedule of no less than once every three years, a random audit of charts for patients receiving cosmetic procedures ~~shall be~~ performed by a certificate holder in a facility not accredited by Joint Commission on Accreditation of Healthcare Organizations or other nationally recognized certifying organizations as determined by the board.

B. Oral and maxillofacial surgeons certified to perform cosmetic procedures shall maintain separate files, an index, coding or other system by which such charts can be identified by cosmetic procedure.

C. Cases selected in a random audit shall be reviewed for quality assurance by a person qualified to perform cosmetic procedures according to a methodology determined by the board.

18VAC60-21-380. Complaints against certificate holders for cosmetic procedures. See current 18VAC60-20-331

Complaints arising out of performance of cosmetic procedures by a certified oral and maxillofacial surgeon shall be adjudicated solely by the Board of Dentistry. Upon receipt of the investigation report on such complaints, the Board of Dentistry shall promptly notify the Board of Medicine, and the investigation report shall be reviewed and an opinion rendered by both a physician licensed by the Board of Medicine who actively practices in a related specialty and by an oral and maxillofacial surgeon licensed by the Board of Dentistry pursuant to §54.1-2502 of the Code. The Board of Medicine shall maintain the confidentiality of the complaint consistent with §54.1-2400.2 of the Code.

DOCUMENTS INCORPORATED BY REFERENCE

Current Dental Terminology 2007-2008, Code on Dental Procedures and Nomenclature, American Dental Association.

Requirements for Recognition of Dental Specialties and National Certifying Boards for Dental Specialists, October 2001, American Dental Association.

18VAC60-21-100. Practice of Dentistry

Dentistry means the evaluation, diagnosis, prevention, and treatment through surgical, non-surgical or related procedures, of diseases, disorders, and conditions of the oral cavity and the maxillofacial, adjacent and associated structures and their impact on the human body. Without limiting the foregoing definition of dentistry, any person shall be deemed to be practicing or attempting to practice dentistry who does any one or more of the following:

1. Who uses, or allows the use of the words "dentist" or "dental surgeon", a dental degree, or designation or card, device, directory, sign, or other media whereby the person represents an ability to diagnose, treat, prescribe or operate for any disease, pain, deformity, deficiency, injury, or physical condition of the human tooth, teeth, alveolar process, gums or jaws, or adjacent or associated structures;

2. Who represents to the public, by any advertisement or announcement, by or through any media, the ability or qualification to do or perform any of the acts or practices that constitute the practice of dentistry;

3. Who is a manager, proprietor, operator or conductor of a place where dental operations are performed;

4. Who examines, diagnoses, plans treatment of, or treats natural or artificial conditions associated with, adjacent to, or functionally related to the oral cavity, jaws, maxillofacial area, or adjacent or associated structures and their impact on the human body;

5. Who performs or attempts to perform dental operations of any kind gratuitously, or for a fee, gift, compensation or reward, paid or to be paid, to any person or agency;

6. Who uses a roentgen or x-ray machine for dental treatment, roentgenograms or for dental diagnostic purposes;

7. Who gives or professes to give interpretations of readings of dental x-rays or roentgenograms, CT scans or other diagnostic methodologies;

8. Who extracts or attempts to extract a human tooth or teeth, or corrects or attempts to correct malpositions of the human teeth or jaws;

9. Who offers and undertakes, by any means or method, to diagnose, treat or remove stains or accretions from human teeth or jaws;

10. Who directly or indirectly takes or attempts to take impressions of the human tooth, teeth, or jaws and performs any phase of any operation incident to the replacement of a part of a tooth, a tooth, teeth or associated tissues by means of a filling, a crown, a bridge, a denture or other appliance;

11. Who furnishes, supplies constructs, reproduces, repairs, or offers to furnish, supply, construct, reproduce or repair prosthetic dentures or plates, bridges, or other substitutes for natural teeth to the user, or prospective user thereof; or

12. Prescribes such drugs or medications and administers such general, or local anesthetics, or analgesia as may be necessary for the proper practice of dentistry;

13. Prescribes, induces and sets dosage levels for inhalation analgesia;

14. Gives or professes to give interpretations or readings of dental charts or records or gives treatment plans or interpretations of treatment plans derived from examinations, patient records dental x-rays or roentgenograms;

15. Who performs any clinical operation included in the curricula of recognized dental schools and colleges;

16. Who teaches or professes to teach any phase of dental practice or related procedures;