

MEETING OF THE VIRGINIA BOARD OF DENTISTRY

REGULATORY – LEGISLATIVE COMMITTEE

Perimeter Center, 9960 Mayland Drive, Second Floor, Henrico, VA 23233

<u>TIME</u>		<u>PAGE</u>
9:00 AM	Call to Order –Tammy C. Ridout, RDH, Chair	
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	• May 17, 2019	
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	Next Meeting	
	Adjourn	

ANNOUNCEMENT REGARDING PUBLIC COMMENT

The **NOIRA*** public comment period for each of the following regulatory actions is closed:

- Administration of sedation anesthesia
- Use of Dental Specialties
- Education and training of dental assistants II, and
- Protocols for remote supervision of VDH & DBHDS dental hygienists

The Committee cannot accept comments on these actions at this meeting.

There will be another public comment period during the **Proposed**** stage on each of these regulatory actions. The comment period will be posted on the Regulatory TownHall and sent to the Board's Public Participation List.

The Comment period on Changing the Renewal Schedule to Birth months opened on September 16, 2019 and will close at midnight on November 15, 2019.

Standard Three Stage Process

1. **Notice of Intended Regulatory Action (NOIRA):** The public receives notification that a regulatory change is being considered, along with a description of the changes being considered. Once this stage is published in *The Virginia Register of Regulations* and appears on the Town Hall, there is at least a 30-day period during which the agency receives comments from the public. The agency reviews these comments as it develops the proposed regulation.
2. **Proposed:** The public is provided with the full text of the regulation, a statement explaining the substance of the regulatory action, and an Economic Impact Analysis (EIA) prepared by the Department of Planning and Budget. Once the proposed stage is published in *The Virginia Register of Regulations* and appears on the Town Hall, there is at least a 60-day public comment period. Based on the comments received, the agency may modify the proposed text of the regulation. The agency also provides a summary of comments that have been received during the NOIRA period, and the agency's response.
3. **Final:** The public is provided with the full text of the regulation, this time with an explanation of any changes made to the text of the regulation since the proposed stage. Once the final stage is published *The Virginia Register of Regulations* and appears on the Town Hall, there is a 30-day final adoption period.

**VIRGINIA BOARD OF DENTISTRY
REGULATORY-LEGISLATIVE COMMITTEE MINUTES
May 17, 2019**

TIME AND PLACE: The meeting of the Regulatory-Legislative Committee ("Committee") was called to order at 9:00 a.m., on May 17, 2019, at the Department of Health Professions, 9960 Mayland Drive, Suite 201, Board Room 3, Henrico, Virginia 23233.

PRESIDING: Augustus A. Petticolas, Jr., D.D.S., Chair

COMMITTEE MEMBERS PRESENT: Sandra J. Catchings, D.D.S.
Tammy C. Ridout, R.D.H.
James D. Watkins, D.D.S.

COMMITTEE MEMBERS ABSENT: Carol R. Russek, J.D.

OTHER BOARD MEMBERS PRESENT: Patricia B. Bonwell, R.D.H., PhD
Nathaniel C. Bryant, D.D.S.
Tonya A. Parris-Wilkins, D.D.S.
Perry E. Jones, D.D.S.

STAFF PRESENT: Sandra K. Reen, Executive Director for the Board
Kelley W. Palmatier, Deputy Executive Director
Donna Lee, Discipline Case Manager for the Board

COUNSEL PRESENT: James E. Rutkowski, Assistant Attorney General

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

Ms. Reen read the emergency evacuation procedures.

PUBLIC COMMENT: Dag Zapatero, D.D.S. – Dr. Zapatero discussed the May 8, 2019 ruling issued by the United States District Court for the Northern District of Georgia; stating the ruling found that SmileDirectClub's acts of taking digital scans of a patient's mouth falls within the definition of the practice of dentistry. He then addressed a New York Post article in which orthodontists explain the consequences of do it yourself aligners. He also reported that SmileDirect and CVS Health made a deal to double SmileDirect's retail locations in North America, to include Virginia. Dr. Zapatero urged the Committee to determine why SmileDirect would not be required to have a dentist present in their retail locations.

William Graham Gardner, D.D.S. – Dr. Gardner, an orthodontist in Virginia who teaches at the VCU dental school, also said that the Georgia Court ruling found digital scanning to be a dental procedure which SmileDirect refutes. Dr. Gardner concurred with Dr. Zapatero that the Board has to look into the issues regarding SmileDirect practicing in Virginia.

**APPROVAL OF
MINUTES:**

Dr. Catchings moved to accept the minutes from October 26, 2018 as presented. The motion was seconded and passed.

**LEGISLATION AND
REGULATORY
ACTIONS:**

Ms. Reen reported the following proposed regulations are currently under review by the Secretary of Health and Human Resources:

- changing the renewal schedule;
- amending the restriction on advertising dental specialties; and
- amending the provisions for sedation and anesthesia.

The proposed regulations for education and training of Dental Assistants II is under review at the Department of Planning and Budget.

Ms. Reen informed the Committee that, in response to legislation, on June 21st, the Board will consider adoption of emergency regulations addressing:

- the Department of Behavioral Health and Developmental Services' protocol for remote supervision of hygienists; and
- a time limited waiver for meeting electronic prescribing requirements.

In addition, the Board will consider adoption of two exempt actions addressing:

- restricted volunteer practice, and
- administration of drugs by dental hygienists under remote supervision.

Ms. Reen then explained the fee schedule needs to be amended because several fees were inadvertently left out of the Regulations Governing the Practice of Dentistry when the Board's regulations were separated into three chapters in 2015. The following corrections were reviewed:

- in 18VAC60-21-40(A) the temporary dental permit fee of \$400 is added.
- in 18VAC60-21-40(B)(1) the words "active, faculty, or temporary permit" are added.
- in 18VAC60-21-40(B)(9) the mobile clinic/portable operation fee of \$150 is added.

- 18VAC60-21-40(C) the numbering is corrected and the mobile clinic/portable operation fee of \$50 is added.
- in 18VAC60-21-40(D) numbers (5), (6) are added to address the \$150 reinstatement fees for moderate sedation permits and deep sedation/general anesthesia permits.

Mr. Rutkowski advised this action should be advanced as a Fast-Track action.

Dr. Watkins moved to recommend that the Board approve the proposed corrections. The motion was seconded and passed.

Ms. Reen reviewed proposed language amendments to the dentistry, dental hygiene and dental assisting regulations to reduce the fee for reactivation of an inactive license or registration; and amending 18VAC60-21-240 to add the renewal requirement for mobile clinics and portable dental operations.

Dr. Watkins moved to recommend that the Board approve the proposed language for reactivation fees and the renewal date for mobile clinics and portable dental operations. The motion was seconded and passed.

DEFINITION OF DENTISTRY AND A1C TESTING:

Ms. Reen advised that, during its December 2018 meeting, the Board assigned discussion of the current definition of dentistry and A1C testing to the Committee. She reviewed the information provided in the agenda package. Discussion followed about the benefits of A1C testing to patients, making referrals to doctors and consequences for patients.

Following discussion, the Committee agreed by consensus to table this assignment pending receipt of more information. Staff was asked to contact the states that allow A1C testing by dentists and dental hygienists for their laws and regulations. Information from the Medical Society of Virginia for its views on A1C testing being done in dental offices was also requested. Ms. Reen said she would get more information on the endocrineweb article on A1C testing.

NATIONAL REPORTS ON LICENSING:

Ms. Reen explained that she added the two reports related to licensing to the agenda because of the many changes being pursued regarding licensure requirements and testing alternatives in other states and nationally. She expressed concern about dental boards not having a national organization to rely on for information and advocacy. The Committee discussed the high pass rates for the regional clinical exams and the stake students have in the

changes being discussed. Ms. Reen asked if the Board might want to address the future of licensing in Virginia.

**DENTAL LICENSURE
COMPACT UPDATE:**

Dr. Parris-Wilkins gave an overview of the information provided at the meeting she and Ms. Reen attended on April 10-11, 2019 held by the Council of State Governments (CSG) regarding interstate compacts. She said younger dentists want to be mobile when they come out of dental school. She encouraged the Committee to promote mobility and put the Board at the front end of the licensure and testing conversation before options are taken away. She explained that a dental licensure compact would allow military families mobility, which affects Virginia because of the various military institutions in the state. She also noted that the professions of Nursing and EMT have active compacts in Virginia and Physical Therapy is completing their compact arrangements. She said CSG is talking to the Department of Defense about funding for a dental licensure compact.

NEXT MEETING:

Scheduled for October 18, 2019.

ADJOURNMENT:

With all business concluded, the meeting was adjourned at 10:50 a.m.

Augustus A. Petticolas, Jr., D.D.S., Chair

Sandra K. Reen, Executive Director

Date

Date

**Agenda Item: Regulatory Actions - Chart of Regulatory Actions
As of November 6, 2019**

Chapter		Action / Stage Information
[18 VAC 60 - 21]	Regulations Governing the Practice of Dentistry	<u>Change in renewal schedule</u> [Action 4975] Proposed – Comment period from 9/16/19 to 11/15/19 Public hearing on 10/18/19 – no comment received
[18 VAC 60 - 21]	Regulations Governing the Practice of Dentistry	<u>Amendment to restriction on advertising dental specialties</u> [Action 4920] Proposed - At Governor's Office for 52 days
[18 VAC 60 - 21]	Regulations Governing the Practice of Dentistry	<u>Administration of sedation and anesthesia</u> [Action 5056] Proposed - At Governor's office for 45 days
[18 VAC 60 - 21]	Regulations Governing the Practice of Dentistry	<u>Technical correction</u> [Action 5198] Fast-Track – At Secretary's office for 70 days
[18 VAC 60 - 25]	Regulations Governing the Practice of Dental Hygienists	<u>Protocols for remote supervision of VDH and DBHDS dental hygienists</u> [Action 5323] Emergency/NOIRA – Emergency regulation effective 10/1/19 Comment on NOIRA from 10/14/19 to 11/13/19
[18 VAC 60 - 30]	Regulations Governing the Practice of Dental Assistants	<u>Education and training for dental assistants II</u> [Action 4916] Proposed - At Governor's Office for 57 days
[18 VAC 60 - 21]	Regulations Governing the Practice of Dentistry	<u>Waiver for e-prescribing</u> [Action 5382] Emergency/NOIRA - At Governor's Office for 2 days

Agenda Item: Report on petition for rulemaking

Included in your agenda package are:

A copy of a petition from Deborah Blanchard, DDS

Copy of comments on the petition

Committee action:

The Committee should discuss the petition and comments and recommend action by the Board to initiate rulemaking or to deny the petition.



COMMONWEALTH OF VIRGINIA

Board of Dentistry

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(804) 367-4538 (Tel)
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Petition for Rule-making

The Code of Virginia (§2.2-4007) and the Public Participation Guidelines of this board require a person who wishes to petition the board to develop a new regulation or amend an existing regulation to provide certain information. Within 14 days of receiving a valid petition, the board will notify the petitioner and send a notice to the Register of Regulations identifying the petitioner, the nature of the request and the plan for responding to the petition. Following publication of the petition in the Register, a 21-day comment period will begin to allow written comment on the petition. Within 90 days after the comment period, the board will issue a written decision on the petition. If the board has not met within that 90-day period, the decision will be issued no later than 14 days after it next meets.

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

Petitioner's full name (Last, First, Middle Initial, Suffix.)
Blanchard, Deborah R.

Street Address
506 Pinewood Square

Area Code and Telephone Number
757-321-1300

City
Virginia Beach

State
VA

Zip Code
23451

Email Address (optional)

Fax (optional)

Respond to the following questions:

1. What regulation are you petitioning the board to amend? Please state the title of the regulation and the section/sections you want the board to consider amending.
18VAC60-21-110 Paragraph D. "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."

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

Delete the paragraph entirely as this requirement means that hygienists must always have a dentist present to provide an exam at the time the patient is being treated by the hygienist. This is the definition of direct supervision and it exceeds current standards by requiring a re-examination of the patient by the dentist before such procedures as applying sealants and/or scaling and root planing.

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

54.1-2400 of the Code of Virginia

Signature:

Deborah R. Blanchard DDS

Date:

8/16/2019

Virginia.gov Agencies | Governor

Secretariat **Health and Human Resources**Agency **Department of Health Professions**Board **Board of Dentistry**[Edit Petition](#)

Petition 304

Petition Information	
Petition Title	Elimination of requirements for indirect supervision of dental hygienists
Date Filed	8/16/2019 [Transmittal Sheet]
Petitioner	Deborah Blanchard, DDS
Petitioner's Request	To delete the requirements for the dentist to be present in the facility and to examine a patient during the time services are being provided (Subsection D of section 120)
Agency's Plan	The petition will be published on September 16, 2019 in the Register of Regulations and also posted on the Virginia Regulatory Townhall at www.townhall.virginia.gov to receive public comment ending October 15, 2019. The request to amend regulations and any comments for or against the petition will be considered by the Board at the first scheduled meeting after close of comment, which will be December 13, 2019. The petitioner will receive information on the Board's decision after that date.
Comment Period	Ended 10/15/2019 3 comments
Agency Decision	Pending
Contact Information:	
Name / Title:	Sandra Reen / <i>Executive Director</i>
Address:	9960 Mayland Drive Suite 300 Richmond, 23233
Email Address:	sandra.reen@dhp.virginia.gov
Telephone:	(804)367-4437 FAX: (804)527-4428 TDD: (-)



Agency

Department of Health Professions

Board

Board of Dentistry

Chapter

Regulations Governing the Practice of Dentistry [18 VAC 60 - 21]

3 comments

All comments for this forum**[Back to List of Comments](#)****Commenter:** Americans for Prosperity**10/11/19 11:40 am****Great policy proposal!**

Thank you for considering this policy reform to increase the capabilities of dental care providers to serve more Virginians. With that in mind, states like Minnesota have seen tremendous improvements to access, lower wait times, and satisfaction with dental care because of the good policy reforms enabling dental teams to appropriately delegate responsibilities and skills of their teammates to serve those in need of dental care where it doesn't serve the care outcome for a dentist to be there. We support this reform and hope to see care providers innovate to serve more of the populace through innovative thinking like this.

Commenter: Jacob Fish**10/11/19 11:55 am****Great way to increase number of providers**

This is a great policy reform that would better help utilize the number of existing dental providers by giving more power to members on the dental team that are just as qualified by currently require additional oversight. This will increase access to dental care and reduce wait times by allowing teams to delegate responsibility to better serve their customers and solve shortages of current providers, especially in SW Virginia. Exactly the type of innovation that should continue in Virginia.

Commenter: Meagan Stroud**10/11/19 12:00 pm****Rural SWVA Resident Supports 100%**

As a resident of rural SWVA, I completely support this. This will allow for increased access to care, which our region's individuals and families so desperately need.



Yeatts, Elaine <elaine.yeatts@dhp.virginia.gov>

FW: Disagreement with Petition for rule making #304

1 message

Sandra Reen <sandra.reen@dhp.virginia.gov>

Thu, Oct 17, 2019 at 9:11 PM

To: Elaine Yeatts <elaine.yeatts@dhp.virginia.gov>, Jamie Sacksteder <jamie.sacksteder@dhp.virginia.gov>

Hi:

Public Comment for our record.

Sandy

From: Dr. Dag Zapatero <dag@starfishdental.com>**Sent:** Tuesday, October 15, 2019 10:07 PM**To:** sandra.reen@dhp.virginia.gov**Subject:** Disagreement with Petition for rule making #304

Dear Ms. Reen,

Although well intended I am not sure how petition #304 would benefit patient care in our Commonwealth. I am not in favor of a rules change.

The Board of Dentistry grants dentist the authority to provide treatment and to determine and supervise, who and how care is delivered to a patient. Being present is a responsibility which we should hold as a sacred bond in the doctor patient relationships even if the dentist feels inconvenienced by that responsibility. We already allowed patients to receive care if examined within the prior 5 months to totally abandon the requirement irresponsible in my opinion.

Best,

Dag Zapatero, DDS

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A1c Testing

A1c Testing

The A1C test is a common blood test used to diagnose type 1 and type 2 diabetes and to monitor how well you're managing your diabetes. The A1C test goes by many other names, including glycosylated hemoglobin, glycosylated hemoglobin, hemoglobin A1C and HbA1c.

The A1C test result reflects your average blood sugar level for the past two to three months. Specifically, the A1C test measures what percentage of your hemoglobin — a protein in red blood cells that carries oxygen — is coated with sugar (glycated). The higher your A1C level, the poorer your blood sugar control and the higher your risk of diabetes complications. (Mayo Clinic, 2018)

Current CDT Codes

Code D0411 was added to the CDT Code effective January 1, 2018 and the full published entry is:

D0411 HbA1c in-office point of service testing Code (American Dental Association, 2019)

D0412 was added to the CDT Code effective January 1, 2019 and the full published entry is:

D0412 blood glucose level test – in-office using a glucose meter This procedure provides an immediate finding of a patient's blood glucose level at the time of sample collection for the point of service analysis. (American Dental Association, 2019)

Why would dentist administer the A1c?

Dentists are not expected to diagnose diabetes but in-office monitoring of patient blood glucose levels on an ongoing basis or immediately prior to treatment are appropriate activities. Findings from monitoring the patient's glycemic control may prompt a dentist to amend the patient's oral care treatment planning. (American Dental Association, 2019)

There are several factors associated with increased risk of diabetes, some of which may already be in their dental records, such as:

- Obesity or being overweight
- Ethnic background (diabetes happens more often in Hispanic/Latino Americans, African Americans, Native Americans, Asian-Americans, Pacific Islanders, and Alaska natives)
- Sedentary lifestyle (exercise less than three times a week)
- Family history (parent or sibling who has diabetes) (American Dental Association, 2019)

If a person with diabetes or at risk for the condition is about to undergo a long complex dental procedure, it is important to know their current blood glucose level – and the D0412 procedure determines the patient's blood glucose level at the time of sample collection. HbA1c measures the proportion of hemoglobin that is glycosylated (to which glucose is bound) and provides a summary measure of a patient's average circulating blood glucose level over the previous 2 to 3-month period. (American Dental Association, 2019)

Even though the patient's HbA1c percentage may indicate good glycemic control, glucose levels vary during the course of a day. Therefore, the patient's actual blood glucose level at the time of procedure delivery could be very low, or very high. (American Dental Association, 2019)

A dentist can determine, using the D0412 procedure, how the patient's blood glucose level, may affect treatment scheduled for the day's appointment.

- A glucose level below 70mg/dl is the clinical definition of hypoglycemia alert level, which means the patient is at risk of a hypoglycemic event during the procedure. Therefore, the procedure ought not be initiated until the patient's blood sugar level is in the acceptable range.
- A glucose level over 300 mg/dl could lead to delayed healing of the surgical site and severe infection. This suggests that elective surgical procedures be rescheduled and delivered when the patient's circulating glucose level is in the acceptable range. (American Dental Association, 2019)

Dentistry by State regarding A1c testing

New Jersey: In 2018, New Jersey Dentist were able to get paid for performing chairside diabetes screenings for at-risk patients (Stainton, 2017). In 2014, the New Jersey State Board of Dentistry ruled that dentists in New Jersey could screen at-risk patients for diabetes, and although such in-office screening is within the scope of licensure in the state, this testing is not to be presumed to be the standard of care (Richard H. Nagelberg, 2017). The New Jersey State Board of Dentistry has explicitly state that HbA1c screening is not presumed to be a standard of care (American Dental Association, 2019).

Definition of Dentistry: 45:6-19. "Practicing dentistry" defined Any person shall be regarded as practicing dentistry within the meaning of this chapter who (1) Uses a dental degree, or the terms "mechanical dentist" or the use of the word "dentist" in English or any foreign language, or designation, or card, device, directory, poster, sign, or other media whereby he represents himself as being able to diagnose, treat, prescribe or operate for any disease, pain, deformity, deficiency, injury, or physical condition of the human tooth, teeth, alveolar process, gums, cheek, or jaws, or oral cavity and associated tissues; or (2) Is a manager, proprietor, operator, or conductor of a place where dental operations are performed; or (3) Performs dental operations of any kind gratuitously, or for a fee, gift, compensation or reward, paid or to be paid, either to himself or to another person or agency; or (4) Uses himself or by any employee, uses a Roentgen or X-ray machine for dental treatment, dental radiograms, or for dental diagnostic purposes; or (5) Extracts a human tooth or teeth, or corrects or attempts to correct malpositions of the human teeth or jaws; or (6) Offers and undertakes, by any means or method, to diagnose, treat or remove stains or concretions from human teeth or jaws; or (7) Uses or administers local or general anesthetics in the treatment of dental or oral diseases or in any preparation incident to a dental operation of any kind or character; or (8) Takes impressions of the human tooth, teeth, jaws, or performs any phase of any operation incident to the replacement of a part of a tooth, teeth, or associated tissues; or (9) Performs any clinical operation included in the curricula of recognized dental schools or colleges.

New York: As part of their scope of professional practice, dentists licensed in New York State can perform "physical examinations" necessary to provide dental treatment safely and effectively. It is

permissible for dentists to do blood glucose testing on their own patients as part of a complete physical examination when necessary. Dentists cannot diagnose diabetes and need to refer any patient with questionable test results to their physician. (New York State Dental Association, 2019)

Definition of Dentistry: § 6601. Definition of practice of dentistry.

The practice of the profession of dentistry is defined as diagnosing, treating, operating, or prescribing for any disease, pain, injury, deformity, or physical condition of the oral and maxillofacial area related to restoring and maintaining dental health. The practice of dentistry includes the prescribing and fabrication of dental prostheses and appliances. The practice of dentistry may include performing physical evaluations in conjunction with the provision of dental treatment.

Oregon: At its Board Meeting on December 14, 2018, the Board of Dentistry recognized that it is within the scope of practice for a licensee to perform in-office A1C diabetes screening test for at-risk patients. The Board noted that: a) such testing is not presumed to be the standard of care; and b) for A1C screenings beyond the normal range, licensees should refer patients to a physician for a formal evaluation, diagnosis, and treatment (Oregon Dental Association, 2018).

Definition of Dentistry: (7)(a) "Dentistry" means the healing art concerned with:

(A) The examination, diagnosis, treatment planning, treatment, care and prevention of conditions within the human oral cavity and maxillofacial region, and of conditions of adjacent or related tissues and structures; and

(B) The prescribing, dispensing and administering of prescription drugs for purposes related to the activities described in subparagraph (A) of this paragraph.

(b) "Dentistry" includes, but is not limited to, the cutting, altering, repairing, removing, replacing or repositioning of hard or soft tissues and other acts or procedures as determined by the Oregon Board of Dentistry and included in the curricula of:

(A) Dental schools accredited by the Commission on Dental Accreditation of the American Dental Association;

(B) Post-graduate training programs; or

(C) Continuing education courses.

North Carolina: The new American Dental Association CDT Code D0411 became effective on January 1, 2018. The code concerns a finger stick capillary HbA1c glucose test procedure. The test is a measure of the amount of glucose attached to red blood cells and directly relates to the average blood glucose levels over a certain time frame. The test can be utilized by physicians as part of a potential diagnosis of diabetes. Because only a physician can diagnose diabetes, dentists should not administer an HbA1c test to diagnose or pre-screen for diabetes. Consequently, ADA CDT Code D0411 cannot be billed in North Carolina for an HbA1c test administered to pre-screen or diagnose diabetes.

It is within the proper scope of the practice of dentistry, however, for a dentist with appropriate training, knowledge, and experience to administer the HbA1c test and use the test results to make decisions about potential dental treatment. As noted in the ADA guide on CDT Code D0411, a dentist also would need to comply with all applicable federal and state regulatory requirements to offer such tests, including the federal regulation – Clinical Laboratory Improvement Amendments of 1988 (CLIA). ADA CDT Code D0411 may be billed if a dentist properly administers the HbA1c test to determine appropriate dental treatment. If a dentist receives the results of an HbA1c test properly administered to determine dental treatment, which results along with other known risk factors also raise concerns about potential diabetes or pre-diabetes, it is appropriate for the dentist to make a referral to a physician for a potential diagnosis and treatment (North Carolina State Board of Dental Examiners, 2018).

Definition of Dentistry: b) A person shall be deemed to be practicing dentistry in this State who does, undertakes or attempts to do, or claims the ability to do any one or more of the following acts or things which, for the purposes of this Article, constitute the practice of dentistry:

- (1) Diagnoses, treats, operates, or prescribes for any disease, disorder, pain, deformity, injury, deficiency, defect, or other physical condition of the human teeth, gums, alveolar process, jaws, maxilla, mandible, or adjacent tissues or structures of the oral cavity;
- (2) Removes stains, accretions or deposits from the human teeth;
- (3) Extracts a human tooth or teeth;
- (4) Performs any phase of any operation relative or incident to the replacement or restoration of all or a part of a human tooth or teeth with any artificial substance, material or device;
- (5) Corrects the malposition or malformation of the human teeth;
- (6) Administers an anesthetic of any kind in the treatment of dental or oral diseases or physical conditions, or in preparation for or incident to any operation within the oral cavity; provided, however, that this subsection shall not apply to a lawfully qualified nurse anesthetist who administers such anesthetic under the supervision and direction of a licensed dentist or physician;
- (6a) Expired pursuant to Session Laws 1991, c. 678, s. 2.
- (7) Takes or makes an impression of the human teeth, gums or jaws;
- (8) Makes, builds, constructs, furnishes, processes, reproduces, repairs, adjusts, supplies or professionally places in the human mouth any prosthetic denture, bridge, appliance, corrective device, or other structure designed or constructed as a substitute for a natural human tooth or teeth or as an aid in the treatment of the malposition or malformation of a tooth or teeth, except to the extent the same may lawfully be performed in accordance with the provisions of G.S. 90-29.1 and 90-29.2;
- (9) Uses a Roentgen or X-ray machine or device for dental treatment or diagnostic purposes, or gives interpretations or readings of dental Roentgenograms or X rays;
- (10) Performs or engages in any of the clinical practices included in the curricula of recognized dental schools or colleges;

(11) Owns, manages, supervises, controls or conducts, either himself or by and through another person or other persons, any enterprise wherein any one or more of the acts or practices set forth in subdivisions (1) through (10) above are done, attempted to be done, or represented to be done;

(12) Uses, in connection with his name, any title or designation, such as "dentist," "dental surgeon," "doctor of dental surgery," "D.D.S.," "D.M.D.," or any other letters, words or descriptive matter which, in any manner, represents him as being a dentist able or qualified to do or perform any one or more of the acts or practices set forth in subdivisions (1) through (10) above;

(13) 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 set forth in subdivisions (1) through (10) above.

Factors to consider

- Scope of Practice/knowledge
- Referral considerations: closing the referral loop, what to do with the results if pt. doesn't have a PCP.
- Equipment needed
- Ethical obligations
- Documentation

References

American Dental Association. (2019, 01 01). *American Dental Association*. Retrieved 11 5, 2019, from American Dental Association: https://www.ada.org/~media/ADA/Publications/Files/CDT_D0411_D0412_Guide_v1_2019Jan02.pdf?la=en

Mayo Clinic. (2018, December 18). *Mayo Clinic*. Retrieved November 15, 2019, from Mayo Clinic: <https://www.mayoclinic.org/tests-procedures/a1c-test/about/pac-20384643>

New York State Dental Association. (2019, 1 23). *Blood Glucose Monitoring in the Dental Office*. Retrieved from New York State Dental Association: <https://www.nysdental.org/news-publications/news/2019/01/23/blood-glucose-monitoring-in-the-dental-office>

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Virginia Board of Dentistry
Policy on
CONFIDENTIAL CONSENT AGREEMENTS (CCAs)

Excerpts of Applicable Law, Regulation and Guidance

- CCAs may be entered into only in cases involving minor misconduct where there is little or no injury to a patient or the public and little likelihood of repetition by the practitioner, §54.1-2400 (14)
- A licensed practitioner who has entered into two CCAs involving a standard of care violation, within the ten year period immediately preceding a board's receipt of the most recent report or complaint being considered, shall receive public discipline for any subsequent violation within the 10 year period unless....§54.1-2400 (14)

Probable Cause Decisions

1. Consideration of CCAs shall be addressed in probable cause reviews.
2. Reviewers may use CCAs to address one or more minor or technical violations to include:
 - advertising
 - continuing education*
 - recordkeeping
 - inadequate communication with patient
 - standard of care findings when there was little or no injury
 - practicing with a lapsed license up to 90 days**
 - failure to post required license, credential or certificate
 - failure to file and maintain OMS profile
 - OHSA standards
 - expired drug stock
 - releasing records
 -
3. The offered CCA shall include a finding that a violation occurred, shall direct that the licensee institute or cease a certain practice and may require continuing education.
4. A proposal from a respondent for a CCA will only be considered during probable cause review stage and shall not be considered once a notice is executed.
5. Upon receipt of a decision to offer a CCA in which standard of care violations are to be addressed, staff shall review the licensee's history to determine if two such CCAs have been entered. If a licensee already has two CCAs addressing standard of care violations, staff will confer with the Reviewer on the action to be taken.

* As addressed in Guidance Document: 60-5

** As addressed in Guidance Document: 60-6

Virginia Board of Dentistry

Periodic Office Inspections for Administration of Sedation and Anesthesia

- Withdraw as a Guidance Document and develop one with information for permit holders.
- Enforcement has requested that inspection be required before a permit is issued indicating they could manage this in a timely manner. Allow advance scheduling.
- Need to require notice of practice location changes.
- Need to clarify if all permit holders are subject to inspection whether or not they report not currently administering moderate sedation or deep sedation and general anesthesia.
- Should the Board request OMSs to provide AAOMS office examination reports every five years?

Purpose

The purpose of instituting periodic **unannounced** office inspections is to foster and verify compliance with regulatory requirements by dentists who hold a permit to administer sedation or general anesthesia (**hereinafter referred to as** permit holders). Verifying compliance with the requirements will assure that appropriate protections are in place for the health and safety of patients who undergo **conscious/moderate** sedation, deep sedation, or general anesthesia for dental treatment.

Applicable Laws and Regulation

- Employees of the Department of Health Professions, when properly identified, shall be authorized, during ordinary business hours, to enter and inspect any dental office or dental laboratory for the purpose of enforcing the provisions of this chapter as provided by §54.1-2703 of the Code of Virginia.
- The Board shall establish by regulation reasonable education, training, and equipment standards for safe administration and monitoring of sedation and anesthesia to patients in a dental office as provided by §54.1-2709.5 of the Code.
- **Part VI VII** of the Regulations Governing the Practice of Dentistry addresses the requirements for administration of anesthesia, sedation and analgesia beginning at 18VAC60-21-260.†

Scope of Periodic Inspections

- Dentists who do not provide any level of sedation and those that only provide minimal sedation do not require a permit and are not subject to periodic inspections **related to sedation and anesthesia.**
- Oral and maxillofacial surgeons (**hereinafter referred to as OMSs**) who maintain membership in AAOMS and who provide the Board with the reports which result from the periodic office examinations required by AAOMS do not require a permit and are not subject to periodic inspections. **by the Board so long as e-Each Virginia office an OMSs**

practices in has ~~must have~~ undergone an AAMOS periodic office examination within the five preceding years and the reports of the examinations are to be provided to the Board upon request.

- Every OMS who does not maintain AAOMS membership or who does not provide an have a current AAOMS report ~~to the Board~~ is required to hold a permit to administer sedation or general anesthesia and is subject to periodic inspections by the Board.
- Every dentist who administers ~~conscious/moderate sedation, enteral conscious/moderate sedation~~, deep sedation or general anesthesia is required to hold a permit. Permit holders are subject to periodic ~~unannounced~~ office inspections with the following two exceptions. Permit holders are not subject to periodic office inspections if they administer any of these levels of sedation to patients:
 - only as a faculty member within educational facilities owned or operated by or affiliated with an accredited dental school or program, or
 - only in a hospital or an ambulatory surgery center accredited by a national accrediting organization, such as the Joint Commission, which is granted authority by the Centers for Medicare and Medicaid Services to assure compliance with Medicare conditions of participation pursuant to § 1865 of Title XVIII of the Social Security Act (42 U.S.C. § 1395bb).
- Permit holders who practice in multiple offices shall identify each location for inspection. Each office will be inspected at least once in an inspection cycle. If a permit holder is the sole practitioner in each of the locations, inspections of each office will be coordinated to address findings in a comprehensive inspection report.
- Practices with multiple permit holders will be inspected for general compliance at least once in an inspection cycle. These inspections will address the compliance of each permit holder at the practice so that a complete inspection report is issued for each permit holder as necessary to have each permit holder's practices inspected ~~once every three years~~.
- Permit holders practicing on an itinerant basis shall identify a primary practice location for a periodic inspection and shall report and provide information about the arrangements in place with employing dentists to facilitate inspection of those practice settings.
- The practice locations of permit holders who use the services of another qualified health professional to administer ~~conscious/moderate sedation~~, deep sedation or general anesthesia as permitted in sections 18VAC60-21-291.A and 18VAC60-21-301.B of the Regulations Governing the Practice of Dentistry shall be inspected.

Inspection Cycle

The standard inspection cycle is to conduct an unannounced inspection of each permit holder's practice(s) once every three ~~to five~~ years. This cycle will be followed when an inspection finds that all requirements have been met or that only a few minor violations have been identified for correction, ~~which~~ Such findings might be resolved through an advisory letter or a confidential consent agreement. Significant findings of violations may result in administrative proceedings, disciplinary action and more frequent inspections.

Initiation of Inspections

The Board will conduct a pre-inspection survey of all permit holders. The purpose of this survey will be to collect information about the level of sedation practiced, practice locations and

staffing. This information will facilitate planning for inspections. Permit holders will receive a copy of this guidance document and the inspection form with the survey.

Following review of the survey results, the Enforcement Division of the Department of Health Professions will initiate ~~unannounced~~ inspections of the offices of permit holders.

Following initiation of the periodic inspections, the Board will send an e-mail request to each OMS for submission of the most recent reports which resulted from the periodic office examinations required by AAOMS. This request will include a form to be completed and returned to the Board with the name of the primary contact person and the name, address, and phone number of each office where the OMS practices.

Costs Related to Inspections

Permit holders will not be charged an inspection fee for a periodic inspection. A \$350 fee will be charged for any additional inspections that result from a disciplinary order issued to address findings of non-compliance in periodic inspections.

Inspection Reports and AAOMS Office Examination Results

Inspection reports and AAOMS results will be submitted to the Board for review. The Board staff will review the information received to determine if the results indicate that a probable cause review of a permit holder's or AAOMS member's inspection findings is are in compliance with the regulatory requirements addressed in the inspection form. The inspection reports and AAOMS results are confidential documents pursuant to §54.1-2400.2 of the Code of Virginia.

~~* Previously such administration was addressed in Part IV of the Expired May 7, 2014 Regulations Governing Dental Practice beginning at 18VAC60-20-107.~~

VIRGINIA BOARD OF DENTISTRY
Questions and Answers
On
Analgesia, Sedation and Anesthesia Practice

WHAT ARE THE REQUIREMENTS FOR MANAGING ANXIOLYSIS?

- Anxiolysis is addressed in the Regulations Governing the Practice of Dentistry- (Regulations) in the definition of minimal sedation in section 18VAC60-21-10.D and in the provisions for minimal sedation in sections 18VAC60-21-260.B., C., E., F., G., H., I., J., and K., and in 18VAC60-21-280.

DOES PRESCRIBING XANAX FOR PRE-APPOINTMENT USE CONSTITUTE SEDATION PRACTICE?

- Yes, benzodiazepines such as Xanax and Valium which are prescribed or are administered or dispensed for self-administration to reduce anxiety for dental treatment generally fall within the definition of minimal sedation. Adding nitrous oxide or another drug may induce a deeper level of sedation. It is important to keep in mind that the type and dosage of medication, the method of administration and the individual characteristics of the patient must be considered in deciding the level of sedation being administered. See sections 18VAC60-21-260.G and 18VAC60-21-280 in the Regulations to review provisions on minimal sedation.

ARE THERE MODEL FORMS OR TEMPLATES AVAILABLE FOR KEEPING A RECORD OF DRUGS, FOR PERFORMING BIENNIAL INVENTORIES?

- No, the Board has not adopted model forms.

HOW SHOULD COMPLETION OF STAFF TRAINING IN EMERGENCY PROCEDURES BE DOCUMENTED?

- This is guidance for implementing section 18VAC-60-21-260.H of the Regulations.
The employing dentist is responsible for keeping a record of the training provided. The record must include the date of the training, the content of the training, and a list of the staff who participated in the training.

WHO CAN DISMISS THE PATIENT UNDER SEDATION OR GENERAL ANESTHESIA?

- When minimal sedation has been administered, the dentist is responsible for discharging the patient. See section 18VAC60-21-280.G.
- When conscious/moderate sedation has been administered, the dentist or the designated licensed professional who administered the drugs or another practitioner qualified to administer the drugs is responsible for assessing and discharging the patient. See sections 18VAC60-21-291.D.3 and E.

- When deep sedation or general anesthesia has been administered, the dentist or the designated licensed professional who administered the drugs or another practitioner qualified to administer the drugs is responsible for assessing and discharging the patient. See sections 60-21-301.E.3. and G.

WHAT REGULATIONS APPLY WHEN A PATIENT WANTS SEDATION FOR SCALING AND ROOT PLANING TREATMENT BY A DENTAL HYGIENIST? DOES THE DDS WHO HOLDS A CONSCIOUS/MODERATE SEDATION PERMIT HAVE TO STAY IN THE TREATMENT ROOM AFTER PROVIDING THE SEDATION WHILE THE RDH TREATS THE PATIENT?

- The treatment team for conscious/moderate sedation must include the operating dentist. There is no statute or regulation which permits a dental hygienist to treat patients under conscious/moderate sedation, deep sedation or general anesthesia with or without a dentist present during treatment. See the staffing requirements in section 18VAC60-21-291.C and 301.D.

DOES INFORMED CONSENT HAVE TO BE GIVEN PRIOR TO EACH SEDATION ADMINISTRATION OR IF A LONG-STANDING PATIENT, CAN THERE BE A BLANKET SEDATION INFORMED CONSENT?

- To meet the requirement in 18 VAC 60-21-260.D.2 and 3, written informed consent must be obtained each time sedation will be administered.

VIRGINIA BOARD OF DENTISTRY CODE OF CONDUCT FOR MEMBERS

The Code of Conduct represents the proper ethic and conduct for board members when interacting with colleagues, patients, and the public. It includes the observance of and compliance with the Board of Dentistry's policies, and procedures as well as the rules and regulations of the Commonwealth of Virginia.

A Board of Dentistry Member

- **Refrains from harm to the public, profession, or staff**
- **Makes the public health and safety the first and most important consideration in all actions and discussions as a member of the Board of Dentistry**
- **Strives to do that which is right and good by**
 - Not interfering with reporting, investigations, or adjudication of alleged violations of the statutes or regulations governing practice
 - Refraining from any contact with respondents, witnesses and their legal counsel before or after a notice or order has been issued
 - Respecting the public right to self determination and confidentiality
 - Respecting the legal, personal rights, dignity and privacy of all members of the Profession, Board, and individuals who are subject to investigation
 - Maintaining confidentiality and safeguarding all Board of Dentistry materials that are confidential in nature
 - Obtaining and maintaining knowledge of governmental laws, rules and regulations that govern the practice of Dentistry in the Commonwealth of Virginia
 - Complying with the Dental Practice Act and related rules and regulations of the Commonwealth that promote public health and safety of all citizens
 - Reporting violations of the Commonwealth of Virginia's Dental Practice Act, Environmental Protection Act, pharmacology and radiological safety health rules and regulations
 - Reporting illegal or unethical acts of others whether inside or outside the dental professions that would endanger the public

- **Maintains proper attire, decorum, and behavior during any meeting concerning matters of the Board of Dentistry by**
 - Treating all people fairly regardless of race, color, gender and ethnic origin
 - Making statements that are true and founded on fact
 - Recusing oneself if there is a conflict or perceived conflict
 - Always behaving ethically, without a conflict of interest. Refraining from becoming involved in investigations and cases where there is a cause for ethical dilemmas
 - Preparing for each meeting by reading all required materials and informing the President if not able to prepare
 - Being on time for each meeting
 - Silencing personal devices
 - Informing the Executive Director if going to be tardy or miss a meeting
 - Ensuring that demeanor and body language remains appropriate
 - Being fair, equitable, impartial and consistent
 - Allowing for an orderly conduct of all meetings, hearings, and conferences
 - Protecting the rights to due process and protecting the integrity of the individuals who appear before the Board
 - Accepting the decisions made by the Board regardless of personal opinion

- **Conducts oneself in a manner which will maintain or elevate the integrity of the Board and the esteem of the dental professions by**
 - Keeping knowledge and skills current in relation to the professions of Dentistry
 - Avoiding communication and relationships that could impair your professional judgment or the risk of exploiting confidences

- Consulting the Executive Director of the Board of Dentistry if any ethical or controversial dilemmas should arise affecting your duties as a member of the Board of Dentistry
- Seeking consultation when necessary from the Executive Director, staff, Board Counsel, or experts when appropriate through correct channels
- Seeking appropriate advice and guidance when faced with unresolved ethical dilemmas
- Not claiming to represent, speak, or write opinions of the Board of Dentistry without prior permission from the Executive Director in concert with the President of the Board of Dentistry
- Not discussing matters of confidentiality or conducting business outside the Board of Dentistry regular meetings which include matters pertaining to the Board of Dentistry with other members of the Board of Dentistry without a proper quorum or authority to conduct such matters
- Only undertaking assignments that one is qualified to perform completely and without a conflict of interest
- Representing the Board of Dentistry without impairment from substance abuse, cognitive deficiency or mental illness
- Increasing professional competency through continuous learning always incorporating knowledge into your actions and decision-making; being accurate and consistent
- Reporting violations of the Code of Conduct to Executive Director of the Board of Dentistry who reports the violations to the President of the Board and the Director of the Department of Health Professions
- Refraining from actions that expose the Board of Dentistry to legal, ethical, or financial risks
- Maintaining professional boundaries in relationships with other members of the Board of Dentistry
- Always acting in the best interests of the Board of Dentistry by conducting oneself with honesty and integrity at all times

Practice of a Dental Hygienist under Remote Supervision

References from § 54.1-2722.E and F. and § 54.1-3408 of the Code of Virginia

- **What is meant by “remote supervision”?**
~~“Remote supervision” means that a supervising dentist is accessible and available for communication and consultation with a dental hygienist during the delivery of dental hygiene services but the supervising dentist may not have conducted an initial examination of the patients who are seen and treated by the dental hygienist. The dentist need not be present with the hygienist when hygiene services are being provided.~~
 There are two definitions of "Remote Supervision" in §54.1-2722 of the Code of Virginia (see the full text below).
 - The definition in **subsection E** addresses practice under remote supervision in the Virginia Department of Health (VDH) and in the Department of Behavioral Health and Developmental Services (DBHDS). In these two state agencies “remote supervision” means a public health dentist has regular, periodic communications with a public health dental hygienist regarding patient treatment...
 - The definition in **subsection F** means that a supervising dentist is accessible and available for communication and consultation with a dental hygienist during the delivery of dental hygiene services...
- **Where can remote supervision be practiced?**
 - **Subsection E** permits a dental hygienist employed by VDH to practice under the remote supervision of a public health dentist in providing hygiene treatment in VDH public health facilities.
 - **Subsection E** also permits a dental hygienist employed by DBHDS to practice under the remote supervision of a DBHDS dentist in providing hygiene treatment in DBHDS’s mobile/remote supervision program.
 - **Subsection F** permits a qualified dental hygienist to practice under the remote supervision of a qualified dentist at a federally qualified health center; charitable safety net facility; free clinic; long-term care facility; elementary or secondary school; Head Start program; mobile dentistry program for adults with developmental disabilities operated by the Department of Behavioral Health and Developmental Services' Office of Integrated Health; or women, infants, and children (WIC) program.
- **Who can supervise a dental hygienist’s practice of dental hygiene under remote supervision?**
 - **Subsection E** requires that the supervising dentist be an employee of VDH or an employee of DBHDS.
 - ~~A dentist who holds~~ **Subsection F** requires that the supervising dentist have an active, license issued by the Virginia Board of Dentistry and ~~who has~~ have a dental office physically located in the Commonwealth, including Consistent with the provisions of the statute, the Board has determined that dental offices maintained by a federally qualified health center, charitable safety net facility, free clinic, long-term care facility, elementary or secondary school, Head Start program, or women, infants, and children (WIC)

program, including a mobile dental clinic or portable dental operation that is operated by one of these settings qualify as dental offices physically located in the Commonwealth.

• **What qualifications are necessary for a dental hygienist to practice under remote supervision?**

The hygienist must have (i) completed a continuing education course designed to develop the competencies needed to provide care under remote supervision offered by an accredited dental education program or from a continuing education provider approved by the Board and (ii) at least two years of clinical experience, consisting of at least 2,500 hours.

• **What is required for a continuing education course in remote supervision?**

The Board requires a remote supervision course to be no less than two hours in duration and to be offered by an accredited dental education program or an approved sponsor listed in the regulation. The required course content is: a) Intent and definitions of remote supervision; b) Review of dental hygiene scope of practice and delegation of services; c) Administration of controlled substances; d) Patient records/documentation/risk management; e) Remote supervision laws for dental hygienists and dentists; f) Written practice protocols; and g) Settings allowed for remote supervision.

• **Are there other requirements for practice under remote supervision?**

A dental hygienist practicing under remote supervision shall have professional liability insurance with policy limits acceptable to the supervising dentist.

• ~~**In what settings can a dental hygienist practice under remote supervision?**~~

~~A hygienist can only practice dental hygiene under remote supervision at a federally qualified health center, charitable safety net facility, free clinic, long term care facility, elementary or secondary school, Head Start program, or women, infants, and children (WIC) program, including a mobile facility or portable dental operation that is operated by one of these settings.~~

• **What tasks can a dental hygienist practicing under remote supervision perform?**

A hygienist practicing under remote supervision may (a) obtain a patient's treatment history and consent, (b) perform an oral assessment, (c) perform scaling and polishing, (d) perform all educational and preventative services, (e) take X-rays as ordered by the supervising dentist or consistent with a standing order, (f) maintain appropriate documentation in the patient's chart, (g) administer Schedule VI topical drugs including topical oral fluorides, topical oral anesthetics and topical and directly applied antimicrobial agents pursuant to subsections J and V of §54.1-3408 of the Code of Virginia, and (h) perform any other service ordered by the supervising dentist or required by statute or Board regulation.

Under the provisions of § 54.1-3408.V as referenced above, a dental hygienist is authorized to possess and administer topical fluoride varnish pursuant to an oral or written order or a standing protocol issued by a dentist or a doctor of medicine or osteopathic medicine.

Is the dental hygienist allowed to administer local anesthetic or nitrous oxide?

A dental hygienist practicing under remote supervision is not allowed to administer local anesthetic parenterally or to administer nitrous oxide.

What disclosures and permissions are required?

Prior to providing a patient dental hygiene services, a dental hygienist practicing under remote supervision shall obtain (1) the patient's or the patient's legal representative's signature on a statement disclosing that the delivery of dental hygiene services under remote supervision is not a substitute for the need for regular dental examinations by a dentist and (2) verbal confirmation from the patient that he does not have a dentist of record whom he is seeing regularly.

- **How is the dental hygienist required to involve the dentist when practicing under remote supervision?**
 - a) After conducting an initial oral assessment of a patient, a dental hygienist practicing under remote supervision may provide further dental hygiene services following a written practice protocol developed and provided by the supervising dentist. Such written practice protocol shall consider, at a minimum, the medical complexity of the patient and the presenting signs and symptoms of oral disease.
 - b) A dental hygienist practicing under remote supervision shall inform the supervising dentist of all findings for a patient. A dental hygienist practicing under remote supervision may continue to treat a patient for 90 days. After such 90-day period, the supervising dentist, absent emergent circumstances, shall either conduct an examination of the patient or refer the patient to another dentist to conduct an examination. The supervising dentist shall develop a diagnosis and treatment plan for the patient and either the supervising dentist or the dental hygienist shall provide the treatment plan to the patient.
 - c) The supervising dentist shall review a patient's records at least once every 10 months.
- **Can a dental hygienist see a patient beyond 90 days if the patient has not seen a dentist?**

Only if the supervising dentist authorizes such treatment to address an emergent circumstance requiring dental hygiene treatment. The practice protocol developed by the supervising dentist is the initial authorization for a hygienist to provide hygiene treatment under remote supervision for 90 days of treatment. After that 90 day period (absent emergent circumstances), the supervising dentist (or another dentist) must examine the patient, develop a diagnosis and establish the treatment plan for the patient which might address both future dental treatment and dental hygiene treatment and the time spans for such treatment. The dentist decides how often he will see a patient in accord with his professional judgment of the patient's dental needs and the resulting treatment plan. In addition, by statute the dentist must review the patient's records at a minimum of every 10 months. Treatment planning and record review are two distinct requirements.
- **Is a dental hygienist who is practicing under remote supervision allowed to also practice dental hygiene under general supervision whether as an employee or as a volunteer?**

Yes, § 54.1-2722.F specifically states that "nothing in this subsection shall prevent a dental hygienist from practicing dental hygiene under general supervision whether as an employee or as a volunteer."

- **Are the requirements for remote supervision different for a public health dental hygienist employed by the Virginia Department of Health and the Department of Behavioral Health and Developmental Services?**

Yes, remote supervision in a public health setting is defined in § 54.1-2722 E:

E. For the purposes of this subsection, "remote supervision" means that a public health dentist has regular, periodic communications with a public health dental hygienist regarding patient treatment, but such dentist may not have conducted an initial examination of the patients who are to be seen and treated by the dental hygienist and may not be present with the dental hygienist when dental hygiene services are being provided.

Notwithstanding any provision of law, a dental hygienist employed by the Virginia Department of Health or the Department of Behavioral Health and Developmental Services who holds a license issued by the Board of Dentistry may provide educational and preventative dental care in the Commonwealth under the remote supervision of a dentist employed by the Department of Health or the Department of Behavioral Health and Developmental Services. A dental hygienist providing such services shall practice pursuant to protocols developed jointly by the Department of Health and the Department of Behavioral Health and Developmental Services for each agency, in consultation with the Virginia Dental Association and the Virginia Dental Hygienists' Association. Such protocols shall be adopted by the Board as regulations.

The protocols are available in the "Laws & Regulations" tab on the Virginia Board of Dentistry web page.

Law on remote supervision - Code of Virginia:

§ 54.1-2722. License; application; qualifications; practice of dental hygiene; report.

E. For the purposes of this subsection, "remote supervision" means that a public health dentist has regular, periodic communications with a public health dental hygienist regarding patient treatment, but such dentist may not have conducted an initial examination of the patients who are to be seen and treated by the dental hygienist and may not be present with the dental hygienist when dental hygiene services are being provided.

Notwithstanding any provision of law, a dental hygienist employed by the Virginia Department of Health or the Department of Behavioral Health and Developmental Services who holds a license issued by the Board of Dentistry may provide educational and preventative dental care in the Commonwealth under the remote supervision of a dentist employed by the Department of Health or the Department of Behavioral Health and Developmental Services. A dental hygienist providing such services shall practice pursuant to protocols developed jointly by the Department of Health and the Department of Behavioral Health and Developmental Services for each agency, in consultation with the Virginia Dental Association and the Virginia Dental Hygienists' Association. Such protocols shall be adopted by the Board as regulations.

A report of services provided by dental hygienists employed by the Virginia Department of Health pursuant to such protocol, including their impact upon the oral health of the citizens of the Commonwealth, shall be prepared and submitted annually to the Secretary of Health and Human Resources by the Department of Health, and a report of services provided by dental hygienists employed by the Department of Behavioral Health and

Developmental Services shall be prepared and submitted annually to the Secretary of Health and Human Resources by the Department of Behavioral Health and Developmental Services. Nothing in this section shall be construed to authorize or establish the independent practice of dental hygiene.

F. For the purposes of this subsection, "remote supervision" means that a supervising dentist is accessible and available for communication and consultation with a dental hygienist during the delivery of dental hygiene services, but such dentist may not have conducted an initial examination of the patients who are to be seen and treated by the dental hygienist and may not be present with the dental hygienist when dental hygiene services are being provided.

Notwithstanding any other provision of law, a dental hygienist may practice dental hygiene under the remote supervision of a dentist who holds an active license by the Board and who has a dental practice physically located in the Commonwealth. No dental hygienist shall practice under remote supervision unless he has (i) completed a continuing education course designed to develop the competencies needed to provide care under remote supervision offered by an accredited dental education program or from a continuing education provider approved by the Board and (ii) at least two years of clinical experience, consisting of at least 2,500 hours of clinical experience. A dental hygienist practicing under remote supervision shall have professional liability insurance with policy limits acceptable to the supervising dentist. A dental hygienist shall only practice under remote supervision at a federally qualified health center; charitable safety net facility; free clinic; long-term care facility; elementary or secondary school; Head Start program; mobile dentistry program for adults with developmental disabilities operated by the Department of Behavioral Health and Developmental Services' Office of Integrated Health; or women, infants, and children (WIC) program.

A dental hygienist practicing under remote supervision may (a) obtain a patient's treatment history and consent, (b) perform an oral assessment, (c) perform scaling and polishing, (d) perform all educational and preventative services, (e) take X-rays as ordered by the supervising dentist or consistent with a standing order, (f) maintain appropriate documentation in the patient's chart, (g) administer topical oral fluorides, topical oral anesthetics, topical and directly applied antimicrobial agents for treatment of periodontal pocket lesions, and any other Schedule VI topical drug approved by the Board of Dentistry under an oral or written order or a standing protocol issued by a dentist or a doctor of medicine or osteopathic medicine pursuant to subsection V of § 54.1-3408, and (h) perform any other service ordered by the supervising dentist or required by statute or Board regulation. No dental hygienist practicing under remote supervision shall administer local anesthetic or nitrous oxide.

Prior to providing a patient dental hygiene services, a dental hygienist practicing under remote supervision shall obtain (1) the patient's or the patient's legal representative's signature on a statement disclosing that the delivery of dental hygiene services under remote supervision is not a substitute for the need for regular dental examinations by a dentist and (2) verbal confirmation from the patient that he does not have a dentist of record whom he is seeing regularly.

After conducting an initial oral assessment of a patient, a dental hygienist practicing under remote supervision may provide further dental hygiene services following a written practice protocol developed and provided by the supervising dentist. Such written practice protocol shall consider, at a minimum, the medical complexity of the patient and the presenting signs and symptoms of oral disease.

A dental hygienist practicing under remote supervision shall inform the supervising dentist of all findings for a patient. A dental hygienist practicing under remote supervision may continue to treat a patient for 90 days. After such 90-day period, the supervising dentist, absent emergent circumstances, shall either conduct an examination of the patient or refer the patient to another dentist to conduct an examination. The supervising dentist shall develop a diagnosis and treatment plan for the patient, and either the supervising dentist or the dental hygienist shall provide the treatment plan to the patient. The supervising dentist shall review a patient's records at least once every 10 months.

Nothing in this subsection shall prevent a dental hygienist from practicing dental hygiene under general supervision whether as an employee or as a volunteer.

DRAFT

Virginia Board of Dentistry

Policy on Recovery of Disciplinary Costs

Applicable Law and Regulations

- §54.1-2708.2 of the Code of Virginia.
The Board of Dentistry (the Board) may recover from any licensee against whom disciplinary action has been imposed reasonable administrative costs associated with investigating and monitoring such licensee and confirming compliance with any terms and conditions imposed upon the licensee as set forth in the order imposing disciplinary action. Such recovery shall not exceed a total of \$5,000. All administrative costs recovered pursuant to this section shall be paid by the licensee to the Board. Such administrative costs shall be deposited into the account of the Board and shall not constitute a fine or penalty.
- 18VAC60-15-10 of the *Regulations Governing the Disciplinary Process*. The Board may assess:
 - the hourly costs to investigate the case,
 - the costs for hiring an expert witness, and
 - the costs of monitoring a licensee's compliance with the specific terms and conditions imposed up to \$5,000, consistent with the Board's published guidance document on costs. The costs being imposed on a licensee shall be included in the order agreed to by the parties or issued by the Board.

Policy

1. Disciplinary costs will not be assessed for licensees receiving their first Board Order in which violations were found and sanctions were imposed.
2. The maximum cost assessment for a dentist is \$5,000.
3. The maximum cost assessment for a dental hygienist is \$1,250.
4. In a second and any subsequent Order against a licensee, the Board will specify the administrative costs to be recovered from a licensee in each pre-hearing consent order offered and in each order entered following an administrative proceeding. These administrative costs are in addition to the sanctions imposed which might include a monetary penalty.
5. The amount of administrative costs to be recovered will be calculated using the assessment of costs specified below and will be recorded on a Disciplinary Cost Recovery Worksheet (the worksheet). All applicable costs will be assessed as set forth in this guidance document. Board staff shall complete the worksheet and assure that the cost to be assessed is included in Board orders. The completed worksheets shall be maintained in the case file. Assessed costs shall be paid within 45 days of the effective date of the Order, unless a payment plan has been requested and approved.

Assessment of Costs

Based on the expenditures incurred in the state's fiscal year which ended on June 30, 2019, the following costs will be used to calculate the amount of funds to be specified in a board order for recovery from a licensee being disciplined by the Board:

- \$114 per hour for an investigation multiplied by the number of hours the DHP Enforcement Division reports having expended to investigate and report case findings to the Board.
- \$150 per hour for an inspection conducted during the course of an investigation, multiplied by the number of hours the DHP Enforcement Division reports having expended to inspect the dental practice and report case findings to the Board.
- If applicable, the amount billed by an expert upon acceptance by the Board of his expert report.
- The applicable administrative costs for monitoring compliance with an order as follows:
 - ~~\$ 130.25~~ 143.75 Base cost to open, review and close a compliance case
 - ~~\$ 73.25~~ 80.00 For each continuing education course ordered
 - ~~\$ 19.00~~ 21.25 For each monetary penalty and cost assessment payment
 - ~~\$ 19.00~~ 21.25 For each practice inspection ordered
 - ~~\$ 38.00~~ 42.50 For each records audit ordered
 - ~~\$ 114.00~~ 127.50 For passing a clinical examination
 - ~~\$ 108.50~~ 117.50 For each practice restriction ordered
 - ~~\$ 89.50~~ 96.25 For each report required.

Inspection Fee

In addition to the assessment of administrative costs addressed above, a licensee shall be charged \$350 for each Board-ordered inspection of his practice as permitted by 18VAC60-21-40 of the *Regulations Governing the Practice of Dentistry*.

Effective: November 21, 2012

Last revised: December 14, 2018

Sandra Reen

From: Charles Giles
Sent: Wednesday, August 21, 2019 11:07 AM
To: Sandra Reen
Subject: FY20 Billable Hourly Rates

Sandy,

Listed below are the FY20 hourly rates for billing purposes.
Please pass the information to members of your staff that require it.

DHP	
Billable Hourly Rates	
FY20	
Investigative Hour	\$ 125
Senior Investigators	188
Pharmacy Inspectors	181
Board of Dentistry's Executive Director	150
Board of Dentistry's Administrative Assistant	85

Virginia Board of Dentistry Calculation of Costs for Recovery

<u>Compliance with Sanctions</u>	<u>Compliance Case Manager</u>		<u>Executive Director</u>		<u>Combined Costs</u>	<u>FY20 Proposed Charge</u>
	\$ per hr	charge per 1.25 hrs	\$ per hr	charge per .25 hr		
Base cost to open, review, and close compliance case	\$ 85.00	\$ 106.25	\$ 150.00	\$ 37.50	\$ 143.75	\$ 143.75
	\$ per hr	charge per .5 hr	\$ per hr	charge per .25 hr		
For each continuing education course order	\$ 85.00	\$ 42.50	\$ 150.00	\$ 37.50	\$ 80.00	\$ 80.00
	\$ per hr	charge per .25 hr				
For each monetary penalty and cost assessment payment	\$ 85.00	\$ 21.25				\$ 21.25
	\$ per hr	charge per .25 hr				
For each practice inspection ordered	\$ 85.00	\$ 21.25				\$ 21.25
	\$ per hr	charge per .5 hr				
For each records audit ordered	\$ 85.00	\$ 42.50				\$ 42.50
	\$ per hr	charge per 1.5 hrs				
For passing a clinical examination	\$ 85.00	\$ 127.50				\$ 127.50
	\$ per hr	charge per .5 hr	\$ per hr	charge per .5 hr		
For each practice restriction ordered	\$ 85.00	\$ 42.50	\$ 150.00	\$ 75.00	\$ 117.50	\$ 117.50
	\$ per hr	charge per .25 hr	\$ per hr	charge per .5 hr		
For each report required	\$ 85.00	\$ 21.25	\$ 150.00	\$ 75.00	\$ 96.25	\$ 96.25

*Based on FY19 Expenditures

Virginia Board of Dentistry

Teledentistry

Section One: Preamble.

The Virginia Board of Dentistry ("Board") recognizes that using teledentistry services in the delivery of dental services offers potential benefits in the provision of dental care. The appropriate application of these services can enhance dental care by facilitating communication between practitioners, other health care providers, and their patients, prescribing medication, medication management, obtaining laboratory results, scheduling appointments, monitoring chronic conditions, providing health care information, and clarifying dental advice. The Virginia General Assembly has not established statutory parameters regarding the provision and delivery of teledental services. Therefore, practitioners must apply existing laws and regulations to the provision of teledentistry services. The Board issues this guidance document to assist practitioners with the application of current laws to teledentistry service practices.

These guidelines should not be construed to alter the scope of practice of any health care provider or authorize the delivery of health care services in a setting, or in a manner, not authorized by law. In fact, these guidelines support a consistent standard of care and scope of practice notwithstanding the delivery tool or business method used to enable practitioner-to-patient communications. For clarity, a practitioner using teledentistry services in the provision of dental services to a patient (whether existing or new) must take appropriate steps to establish the practitioner-patient relationship as defined in Virginia Code § 54.1-3303 and conduct all appropriate evaluations and history of the patient consistent with traditional standards of care for the particular patient presentation. As such, some situations and patient presentations are appropriate for the utilization of teledentistry services as a component of, or in lieu of, in-person provision of dental care, while others are not. The practitioner is responsible for making this determination, and in doing so must adhere to applicable laws and standards of care.

The Board has developed these guidelines to educate licensees as to the appropriate use of teledentistry services in the practice of dentistry. The Board is committed to ensuring patient access to the convenience and benefits afforded by teledentistry services, while promoting the responsible provision of health care services.

It is the expectation of the Board that practitioners who provide dental care, electronically or otherwise, maintain the highest degree of professionalism and should:

- Place the welfare of patients first;
- Maintain acceptable and appropriate standards of practice;
- Adhere to recognized ethical codes governing the applicable profession;
- Adhere to applicable laws and regulations;
- In the case of dentists, properly supervise non-dentist clinicians when required to do so by statute; and
- Protect patient confidentiality.

Section Two: Definitions.

For the purpose of these guidelines, the Board defines “teledentistry services” consistent with the definition of “telemedicine services” in § 38.2-3418.16 of the Code of Virginia. “Teledentistry services,” as it pertains to the delivery of dental services, means the use of electronic technology or media, including interactive audio or video, for the purpose of diagnosing or treating a patient or consulting with other health care providers regarding a patient’s diagnosis or treatment. “Teledentistry services” does not include an audio-only telephone, electronic mail message, facsimile transmission, or online questionnaire.

Section Three: Establishing the Practitioner-Patient Relationship.

The practitioner-patient relationship is fundamental to the provision of acceptable dental care. It is the expectation of the Board that practitioners recognize the obligations, responsibilities, and patient rights associated with establishing and maintaining a practitioner-patient relationship.

Where an existing practitioner-patient relationship is not present,¹ a practitioner must take appropriate steps to establish a practitioner-patient relationship consistent with the guidelines identified in this document, with Virginia law, and with any other applicable law.² While each circumstance is unique, such practitioner-patient relationships may be established using telemedicine services provided the standard of care is met.

Specifically, Virginia Code § 54.1-3303(A) provides the requirements to establish a practitioner-patient relationship. *See* Va. Code § 54.1-3303(A).

A practitioner is discouraged from rendering dental advice and/or care using teledentistry services without (1) fully verifying and authenticating the location and, to the extent possible, confirming the identity of the requesting patient; (2) disclosing and validating the practitioner’s identity and applicable credential(s); and (3) obtaining appropriate consents from requesting patients after disclosures regarding the delivery models and treatment methods or limitations, including any special informed consents regarding the use of teledental services. An appropriate practitioner-patient relationship has not been established when the identity of the practitioner may be unknown to the patient.

Section Four: Guidelines for the Appropriate Use of Teledentistry Services.

The Board has adopted the following guidelines for practitioners utilizing teledentistry services in the delivery of patient care, regardless of an existing practitioner-patient relationship prior to an encounter.

Licensure:

The practice of dentistry occurs where the patient is located at the time teledentistry services are used, and insurers may issue reimbursements based on where the practitioner is located. Therefore, a practitioner must be licensed by, or under the jurisdiction of, the regulatory board of the state where the patient is located and the state where the practitioner is located. Practitioners who treat or prescribe through online service sites must possess appropriate licensure in all

¹ This guidance document is not intended to address existing patient-practitioner relationships established through in-person visits.

² The practitioner must adhere not only to Virginia law defining a practitioner-patient relationship, but the law in any state where a patient is receiving services that defines the practitioner-patient relationship.

jurisdictions where patients receive care. To ensure appropriate insurance coverage, practitioners must make certain that they are compliant with federal and state laws and policies regarding reimbursements.

Evaluation and Treatment of the Patient:

A documented dental evaluation and collection of relevant clinical history commensurate with the presentation of the patient to establish diagnoses and identify underlying conditions and/or contra-indications to the treatment recommended/provided must be obtained prior to providing treatment, which treatment includes the issuance of prescriptions, electronically or otherwise. Treatment and consultation recommendations made in an online setting, including issuing a prescription via electronic means, will be held to the same standards of appropriate practice as those in traditional, in-person encounters. Treatment, including issuing a prescription based solely on an online questionnaire, does not constitute an acceptable standard of care.

Informed Consent:

Evidence documenting appropriate patient informed consent for the use of teledentistry services must be obtained and maintained. Appropriate informed consent should, as a baseline, include the following:

- Identification of the patient, the practitioner, and the practitioner's credentials;
- Types of activities permitted using teledentistry services (e.g. prescription refills, appointment scheduling, patient education, etc.);
- Agreement by the patient that it is the role of the practitioner to determine whether or not the condition being diagnosed and/or treated is appropriate for a teledentistry encounter;
- Details on security measures taken with the use of teledentistry services, such as encrypting date of service, password protected screen savers, encrypting data files, or utilizing other reliable authentication techniques, as well as potential risks to privacy notwithstanding such measures;
- Hold harmless clause for information lost due to technical failures; and
- Requirement for express patient consent to forward patient-identifiable information to a third party.

Dental Records:

The dental record should include, if applicable, copies of all patient-related electronic communications, including patient-practitioner communication, prescriptions, laboratory and test results, evaluations and consultations, records of past care, and instructions obtained or produced in connection with the utilization of teledentistry services. Informed consents obtained in connection with an encounter involving teledentistry services should also be filed in the dental record. The patient record established during the use of teledentistry services must be accessible to both the practitioner and the patient, and consistent with all established laws and regulations governing patient healthcare records.

Privacy and Security of Patient Records and Exchange of Information:

Written policies and procedures should be maintained for documentation, maintenance, and transmission of the records of encounters using teledentistry services. Such policies and procedures should address (1) privacy, (2) health-care personnel (in addition to the practitioner

addressee) who will process messages, (3) hours of operation, (4) types of transactions that will be permitted electronically, (5) required patient information to be included in the communication, such as patient name, identification number and type of transaction, (6) archival and retrieval, and (7) quality oversight mechanisms. Policies and procedures should be periodically evaluated for currency and be maintained in an accessible and readily available manner for review.

Prescribing:

Prescribing medications, in-person or via teledentistry services, is at the professional discretion of the prescribing practitioner. The indication, appropriateness, and safety considerations for each prescription provided via teledentistry services must be evaluated by the practitioner in accordance with applicable law and current standards of practice and consequently carries the same professional accountability as prescriptions delivered during an in-person encounter. Where such measures are upheld, and the appropriate clinical consideration is carried out and documented, the practitioner may exercise their judgment and prescribe medications as part of teledentistry encounters in accordance with applicable state and federal law.

Prescriptions must comply with the requirements set out in Virginia Code §§ 54.1-3408.01 and 54.1-3303(A). Additionally, practitioners issuing prescriptions as part of teledentistry services should include direct contact for the prescriber or the prescriber's agent on the prescription. This direct contact information ensures ease of access by pharmacists to clarify prescription orders, and further facilitates the prescriber-patient-pharmacist relationship.

Section Five: Guidance Document Limitations.

Nothing in this document shall be construed to limit the authority of the Board to investigate, discipline, or regulate its licensees pursuant to applicable Virginia statutes and regulations. Additionally, nothing in this document shall be construed to limit the Board's ability to review the delivery or use of teledentistry services by its licensees for adherence to the standard of care and compliance with the requirements set forth in the laws and regulations of the Commonwealth of Virginia. Furthermore, this document does not limit the Board's ability to determine that certain situations fail to meet the standard of care or standards set forth in laws and regulations despite technical adherence to the guidance produced herein.