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Fast-Track Regulation Agency Background Document

Agency name	Board of Dentistry, Department of Health Professions
Virginia Administrative Code (VAC) Chapter citation(s)	18VAC60-21 18VAC60-25 18VAC60-30
VAC Chapter title(s)	Regulations Governing the Practice of Dentistry Regulations Governing the Practice of Dental Hygiene Regulations Governing the Practice of Dental Assistants
Action title	Implementation of amendments identified during 2022 periodic review of Chapters 21, 25, and 30
Date this document prepared	December 2, 2022

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

Pursuant to its periodic review of Chapters 21, 25, and 30, the Board has adopted amendments to delete outdated, redundant, and duplicative provisions and clarify others consistent with current practice and to reduce barriers to licensure.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

AAOMS = American Association of Oral and Maxillofacial Surgeons
OMS = Oral and Maxillofacial Surgeon(s)

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

The Board of Dentistry voted to amend the Regulations Governing the Practice of Dentistry, Regulations Governing the Practice of Dental Hygiene, and the Regulations Governing the Practice of Dental Assistants by fast-track action on December 2, 2022.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.

The impetus for these amendments were the Board's 2022 periodic review of these chapters.

This rulemaking is expected to be noncontroversial because the majority of the changes in this action involve reduction of regulations. The regulations reduced are generally identical to statute or were inappropriately copied over from requirements for other practitioners when Chapter 20 was split into three chapters.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

Regulations of the Board of Dentistry are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Virginia Code § 54.1-2400(6) specifically states that the general powers and duties of health regulatory boards shall be "[t]o promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) that are reasonable and necessary to administer effectively the regulatory system."

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

The rationale for the changes included in this action are the reduction of regulations, elimination of provisions redundant of statutory language, elimination of provisions redundant of other regulations in the chapters governing the dental professions, eliminations of provisions that are no longer needed, and to reduce barriers to licensure. The elimination of redundant provisions and reduction of barriers to licensure generally protect the health, safety, and welfare of citizens by ensuring a sufficient workforce of dental health professionals with a reduction of barriers and reduction of redundant or outdated requirements. The goals the regulatory change is intended to solve is the elimination of redundant or outdated provisions from Chapters 21, 25, and 30.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

When the dentistry chapters were split from Chapter 20 into Chapters 21, 25, and 30, many provisions were copied over into each chapter regardless of their applicability. Therefore, many deletions remove provisions from each chapter related to a different regulated profession that do not belong in multiple chapters.

The changes additionally: create definitions where needed; delete outdated provisions that were limited to specific time periods; clarify requirements for what must be recorded in a patient's record, including post-operative care following sedation; eliminate requirements to attest to review and comprehension of applicable laws and regulations and to adhere to those requirements; eliminate prohibitions that do not involve actions which the Board has jurisdiction over; clarification of unprofessional conduct regulations; eliminate overly-restrictive advertising requirements; and clarify that some practitioners are exempt from needing permits from the Board to provide sedation.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

- 1) There are no primary advantages or disadvantages to the public.
- 2) There are no primary advantages or disadvantages to the agency or the Commonwealth.
- 3) The Director of the Department of Health Professions has reviewed the proposal and performed a competitive impact analysis. Any restraint on competition as a result of promulgating these regulations is a foreseeable, inherent, and ordinary result of the statutory obligation of the Board to protect the safety and health of citizens of the Commonwealth. The Board is authorized under § 54.1-2400 "[t]o promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) which are reasonable and necessary to administer effectively the regulatory system . . . Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) of this title." The

promulgated regulations do not conflict with the purpose or intent of Chapters 1 or 25 of Title 54.1.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are no applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected – none

Localities Particularly Affected – none

Other Entities Particularly Affected – none

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>The Department of Health Professions is a Special Fund agency. All operating costs for the regulatory boards are taken from fees for licensing and renewal of regulated professions. There are no active fees that have been removed in this action; therefore, there will be no costs, savings, or fees implicated by this regulatory action.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>There are no costs to other state agencies.</p>

For all agencies: Benefits the regulatory change is designed to produce.	There are no benefits to state agencies.
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Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

Projected costs, savings, fees or revenues resulting from the regulatory change.	No impact on localities.
Benefits the regulatory change is designed to produce.	No benefit to localities.

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	Current licensees and registered dental assistants.
Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	As of September 30, 2022, there were 7,844 licensed dentists, 6,089 licensed dental hygienists, and 47 registered dental assistant IIs. Cosmetic procedure certification: 41; deep sedation: 72; conscious/moderate sedation: 105; moderate sedation: 275; OMS registration: 284; sedation permit holder: 568.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	There are no costs to individuals, businesses, or entities.
Benefits the regulatory change is designed to produce.	Fewer redundant regulations and reduced regulatory burden.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small

businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

These are existing regulatory requirements. To remove or change them, the Board must amend the applicable regulations. There is no alternative.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

The amendments are necessary to reduce burdens on regulants and remove redundant or duplicative provisions, as stated above. 1) These amendments already reduce compliance requirements. 2) The amendments already reduce reporting requirements. 3) The amendments already simplify compliance. 4) There are no design or operational standards in the regulations. 5) Almost all dental offices are small businesses. To exempt them would be to completely eliminate requirements for public health and safety.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

Consistent with § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The Board of Dentistry is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency’s regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail to Erin Barrett, 9960 Mayland Drive, Suite 300, Henrico, Virginia 23233; by email to erin.barrett@dhp.virginia.gov; by fax to (804) 527-4434. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
Changes to Chapter 21			
21-10		Sets out definitions for use in the Chapter.	Deletion of definition for “Code,” which is not used in the Chapter. A definition of “vital signs” is added. This term is used and redefined continually throughout the Chapter.
21-30		Sets out posting requirements for licensees.	Deletes language that simply repeats the Code. Also deletes a requirement that a dentist “may” post a license obtained from the Board in each office location; evidence of licensure can be printed from the agency’s license lookup page for free and is sufficient for posting. The specific references deleted, which are included in the text that is deleted from the regulation, are Virginia Code §§ 54.1-2720 and 54.1-2721.
21-40		Sets out required fees.	Deletes licensure fees for 2021, when the Board was shifting to birth month renewals.
21-50		Lists requirements for the patient-practitioner relationship and treatment.	Specifies that, when treating or prescribing for family, the practitioner must maintain a patient record and demonstrate the statutory criteria for a bona fide practitioner-patient relationship are met. This provision is similar to other boards’ regulations for treating or prescribing for family.
21-60		Lists general responsibilities to patients to safeguard safety, health, and welfare of patients and the public.	Eliminates provisions regarding pets in treatment areas and defrauding patients. Any licensee conducting their practice in this manner would violate existing unprofessional conduct and standard of care requirements.

21-70		Lists acts that constitute unprofessional practice.	<p>Eliminates “knowingly or negligently” from a provision regarding violation of statutes or regulations governing ionizing radiation. The Board is not required to prove knowing or negligent violation of such provisions to impose discipline.</p> <p>Eliminates listing for unauthorized use or disclosure of information from the Prescription Monitoring Program. This is already covered under Virginia Code § 54.1-2525, which makes unauthorized disclosure a disciplinary offense.</p> <p>The sexual contact portion of the unprofessional conduct section has been rewritten to look more like the Board of Medicine’s treatment of this conduct under 18VAC85-20-100. The amendments are more consistent with the conduct seen by the Board during disciplinary hearings, and the amendments make it clear to practitioners what conduct may be or is prohibited.</p>
21-80		Lists advertising requirements and restrictions.	(F) and (G) are deleted. (F) states that requirements of certain Code provisions must be met (identified in the deleted text as §§ 54.1-2718 and 54.1-2720). (G) lists what constitutes “false, deceptive, or misleading” advertising. These provisions are overly prescriptive and are not used by the Board. Should any licensee improperly advertise false claims, for example, that practitioner would already be subject to disciplinary action under Virginia Code § 54.1-2706(4) and (7).
21-90		Contains requirements for patient information and records.	Amendments clarify that certain items of the patient record must consist of documentary evidence. (C) and (F) are deleted as they merely restate requirements already in the Code. As can be seen in the deleted language, (C) recited and referenced § 32.1-127.1:03 and (F) referenced § 54.1-2405.
21-106		Contains requirements for continuing education for prescribers.	Eliminates outdated provisions that expired in 2019.
21-107		Contains allowances for waivers for electronic prescribing.	Eliminates provisions tied to a particular date and combines the needed information into one paragraph.
21-110		Describes limits to the use of dental hygienists and assistants.	(B) is deleted, which only restated a requirement in the Code. The Code provision is cited in the deleted language: § 54.1-2724.

21-120		Sets out requirements for direction and general supervision.	<p>(B) is deleted, which includes requirements that licensed dental hygienists are subject to and which do not pertain to licensed dentists. See entry for 25-60, below, for related changes to the chapter regarding dental hygienists.</p> <p>(E)(2) is deleted. That provision is more akin to an employment document maintained by a practice and is not necessary to protect the public health, safety, and welfare.</p>
21-140		Lists duties that may be delegated to dental hygienists.	(C) is deleted. That subsection restates requirements and allowances in the two statutes cited within the regulatory language. The duplication is unnecessary. The provisions cited in the deleted language are § 54.1-2722 F and E.
21-160		Describes delegation to dental assistants I and II.	(B) is deleted. That subsection discusses the responsibilities of a dental hygienist when delegating to a dental assistant.
21-170		Lists requirements for use of x-ray machines for dentists and dental hygienists.	Eliminates the reference to dental hygienists, since the licensure of dental hygienists is covered in Chapter 25. The identical provision in Chapter 25 has been amended to remove the reference to dentists. The term “x-ray” is replaced with “radiograph,” the term used in practice and in the definitions section.
21-180		Listing of what does not constitute the practice of dentistry or dental hygiene.	This provision is repealed. The Board has no jurisdiction over actions which are not the practice of dentistry or dental hygiene. There is no reason for a list of such actions to be included in regulations.
21-190		Requirements for applications for licensure	<p>The language of (A)(1) and (2) is updated to eliminate the requirement that grades be included (only a certified transcript is needed) and to eliminate the phrasing “an original grade card” from the requirement for evidence of passage of the national examination. While the “original grade card” is still provided to applicants taking the national exam, this provision may not always be in place, and the wording may create unintended restrictions.</p> <p>(B) is deleted. The required attestation that an applicant has read all applicable laws and “will remain current with” the applicable laws and regulations provides no regulatory value. Licensees are already required to adhere to applicable laws and regulations and are expected to be aware of them and understand them. These attestations present an unnecessary requirement for licensure.</p>

			(D) and (E) are deleted. (D) restates that licenses, registrations, or permits may be denied for causes specified in §§ 54.1-111 and 54.1-2706. The provisions of § 54.1-2706, which already permit denial of applications, would adequately cover any actions enumerated under § 54.1-111, which statute on its own only covers civil and criminal penalties for the actions listed.
21-210		Lists requirements for licensure by examination and licensure by credentials (i.e., endorsement).	(A)(3) is amended to clarify that individuals applying for licensure by examination who passed the examination more than five years ago who have not participated in active practice 48 months of the 60 months prior to application must complete clinical training required by the Board. The current language only requires that the applicant complete continuing education, but the Board does not believe sitting through continuing education has been an adequate substitute for ensuring clinical competence prior to licensure in Virginia.
21-220		Covers inactive licensure, including reactivation.	(B) is amended to clarify that the Board will require evidence of continuing clinical competence.
21-230		Lists qualifications and procedures to receive certain temporary or restricted licenses.	(E) is amended to remove a duplication of requirements already listed in Virginia Code § 54.1-2712.1, which includes (E)(1), (2), and (4).
21-240		Provides requirements for license renewal and reinstatement for expired licenses.	(A) is deleted. All of the language contained in (A) does not need to be restated in regulation, and the statement that certain practice is “illegal” is not appropriate for regulation. (B) is amended to remove date-specific requirements that have passed. (F) is amended to: (1) clarify that clinical competence must be demonstrated prior to reinstatement; (2) move the continuing education requirement from 21-250(H), which was deleted, to this provision where logically it should go; and (3) remove the consideration of board specialty certifications. Additionally, (F)(2) is reorganized so it is easier for licensees and the public to understand the listed requirements.
21-250		Details requirements for continuing education.	(A)(1) is deleted. The required attestation that an applicant has read all applicable laws and “will remain current with” the applicable laws and regulations provides no regulatory value. Licensees are already required to adhere to applicable laws and

			<p>regulations and are expected to be aware of them and understand them. These attestations present an unnecessary requirement for licensure.</p> <p>(A)(5) is amended to allow up to three of the 15 required hours be satisfied through delivery of dental services without compensation to low-income individuals or through free healthcare clinics. (A)(5) is also amended to delete the language stating one hour may be credited for three hours of providing such service, making the ratio of service to credit one-to-one.</p> <p>(C) is amended to remove the list of approved sponsors of continuing education and replace the list with “a sponsor approved by the board.” The Board intends to place this sponsor list in a guidance document, which will coordinate with the effective date of these regulatory changes. This treatment of Board approval for continuing education sponsors is consistent with several other boards within the agency and allows for greater flexibility to add or remove sponsors from the list over time.</p> <p>(H) is deleted to remove the requirement that an individual applying for reinstatement submit evidence of completed continuing education equal to the number of years in which the license was inactive, capped at 45 hours. This has been moved to 21-240(F)(2).</p>
21-260		General provisions governing the administration of sedation by dentists.	<p>(F) is deleted. The requirement that a dentist obtain written, informed consent prior to administration of sedation and anesthesia for the dental procedure to be performed is already covered in 21-260(D)(3).</p> <p>(G) is amended to streamline and clarify requirements, and to remove vague language regarding drug usage.</p> <p>(H)(2) is amended to clarify that emergency procedures must be documented in either written or electronic format.</p> <p>(L) is amended to require documentation that monitoring equipment is in good working order and that the individual administering anesthesia or sedation is appropriately licensed and trained.</p>

<p>21-279</p>		<p>Administration of nitrous oxide.</p>	<p>(A) is amended to clarify that training must be documented.</p> <p>(F)(1) is amended to delete the description of vital signs, as that definition is now included in 21-10. (F)(5) is amended to state that the administration of oxygen for five minutes following nitrous oxide administration must be documented in the patient's record.</p> <p>(G)(1) is amended to delete the description of vital signs, as that definition is now included in 21-10. (G)(2) is amended to state that discharge instructions must be documented in the patient's chart. (G)(3) is amended to state that pediatric patients must be discharged with a responsible adult.</p>
<p>21-280</p>		<p>Administration of minimal sedation.</p>	<p>(F)(1) is amended to use the definition of vital signs, with the inclusion of temperature. Additionally, the provision is amended to remove the requirement to take baseline vital signs prior to discharge. Discharge requirements are addressed in (G).</p> <p>(F)(4) is amended to remove language stating that the administration of a certain number of drugs automatically requires that different sedation regulations must be followed. Whether a patient enters a different level of sedation is dependent on many factors, such as the dosage, the patient's health history, and weight. (F)(4) already states that, if deeper levels of sedation than minimal sedation are induced, then regulations for that level of sedation must be followed. This requirement on its own is sufficient to require a dentist to follow the appropriate sedation guidelines without requiring sedation levels by number of medications. If the Board were to leave the language as it is currently, the Board would need to alter the definitions of moderate sedation and deep sedation.</p> <p>(G)(1) is amended to delete the description of vital signs, except for the inclusion of oxygen saturation, as the definition of vital signs is now included in 21-10. (G)(2) is amended to state that discharge instructions must be documented in the patient's chart. (G)(3) is amended to state that pediatric patients must be discharged with a responsible adult.</p>

21-290		Requirements for moderate sedation permits.	<p>Although OMS who maintain membership in AAOMS are clearly excluded in the language of (A), many of these licensees still apply for moderate sedation permits with the Board unnecessarily. In an effort to make their exclusion from these provisions more clear, this section adds the phrase “for general dentistry” to the title, and the references to OMS with current AAOMS membership is deleted. Their exclusion will be addressed in a separate, new section, 21-303 (see below for details).</p> <p>Additional amendments to (A) clarify that the office providing moderate sedation must be inspected by the Board and a permit issued before moderate sedation can be administered at that location. Additionally, the Board must inspect each office location at which moderate sedation will be administered. Practitioners have contacted the Board believing that an inspection at one office location of a dental practice counts as an inspection for a separate location, which is incorrect.</p> <p>(C)(3) is amended to clarify that an official transcript, certifiable evidence of certification, or other documentation must be submitted. This has caused confusion among licensees.</p>
21-291		Requirements for administration of moderate sedation.	<p>“At that location” is added to (A)(2)(a) to make clear that moderate sedation permits must be held for each location of a dental practice at which moderate sedation is administered.</p> <p>(D)(1) and (2) are amended to use the new definition of vital signs included in changes to 21-10. The requirement to take vital signs prior to discharge is deleted. Discharge requirements are addressed in (E).</p> <p>(E)(2) is amended to state that discharge instructions must be documented in the patient’s chart. (E)(3) is amended to state that pediatric patients must be discharged with a responsible adult.</p>
21-300		Requirements for deep sedation/general anesthesia permit.	<p>Although OMS who maintain membership in AAOMS are clearly excluded in the language of (A), many of these licensees still apply for deep sedation permits with the Board unnecessarily. In an effort to make their exclusion from these provisions more clear, this section adds the phrase “for general dentistry” to the title, and the</p>

			<p>references to OMS with current AAOMS membership is deleted. Their exclusion will be addressed in a separate, new section, 21-303 (see below for details).</p> <p>Additional amendments to (A) clarify that the office providing deep sedation must be inspected by the Board and a permit issued before deep sedation can be administered at that location. Additionally, the Board must inspect each office location at which deep sedation will be administered. Practitioners have contacted the Board believing that an inspection at one office location of a dental practice counts as an inspection for a separate location, which is incorrect.</p> <p>(C)(2) is amended to clarify that verifiable evidence of a completed, accredited residency is required for a deep sedation permit.</p>
21-301		Requirements for administration of deep sedation or general anesthesia.	<p>(E)(2) is amended to remove the word “continuously” from the requirement to monitor temperature. This is difficult to do in practice with continual monitoring, and practitioners on the Board made clear they are in constant physical contact with patients under deep sedation or general anesthesia, and are aware of sudden temperature changes and do monitor regularly, but not “continuously” via instrumentation.</p> <p>(G)(4) is amended to state that discharge instructions must be documented in the patient’s chart. (G)(5) is amended to state that pediatric patients must be discharged with a responsible adult.</p>
	21-302		<p>This section is added to require that the holder of a sedation permit must notify the Board within 30 days of a change of address of the location at which sedation is provided or cessation of the provision of sedation at a permitted location.</p> <p>This provision is necessary because permit holders have either ceased providing sedation at locations or moved locations without notifying the Board. If sedation is no longer provided at a location, then the Board does not need to send an inspector to the location annually. Likewise, if a location changes, new inspections must be performed at the new location and annually going forward. When providers fail to notify the Board of these changes, inspectors</p>

			either arrive for the annual inspection to find it is no longer necessary, or arrive for the annual inspection to find the practice has moved locations.
	21-303		This new section makes clear, in one location, that OMS who maintain current membership with AAOMS are exempt from permitting requirements by the state. AAOMS conducts its own location inspections which are required for a surgeon to maintain current membership. Provided the OMS provides the Board with reports from the AAOMS inspections and posts the certificate issued by AAOMS – both of which were requirements in the deleted language of 21-290 and 21-300 – the OMS is exempt from needing to obtain a permit to administer sedation.
21-320		Requirements for oral and maxillofacial surgeons to provide for online profile.	The existing language of (A) is confusing. It requires an OMS to post profile information “upon initial request.” The Board does not “request” this information, but all OMS practitioners are required to provide it. Therefore the language is amended to clarify that the OMS must create a profile on the Board’s OMS profiles website within 30 days of registration as an OMS, and that the information shall be updated annually. (D) is moved from 21-340, which is repealed (see below).
21-330		Contains reporting requirements for malpractice paid claims.	The Board has repealed this section. The provisions here are not supported by Virginia Code § 54.1-2709.4, which contains reporting requirements for malpractice claims. This language appears to have been copied from the Board of Medicine. The Board of Medicine’s regulation, 18VAC85-20-290, however, is based on statutory requirements in Virginia Code § 54.1-2910.1. The Board of Dentistry has no similar statute that would support requiring this information.
21-340		Contains provisions for discipline of noncompliance or falsification of the practitioner profile.	This section is repealed. The information in (A) and (B) has been moved to 21-320 as a new subsection (D).
21-360		States actions for which certification is not required.	This section is repealed. Similar to 21-180, there is no reason for a list to be included in regulation for actions that do not fall under the Board’s jurisdiction.
21-370		Governs requirements to receive a certification to perform cosmetic procedures.	(3) is amended to require that an official transcript of completion of an oral and maxillofacial residency program is required.

			Current language states only “completion” of a program is required.
Changes to Chapter 25			
25-10		Provides definitions for the Chapter.	<p>The definitions for ADA and the Code are deleted. These terms are not used in Chapter 25.</p> <p>The definition for “monitoring” is deleted. The word is used only once in Chapter 25, and it is in a manner which does not require a definition. Monitoring is defined in Chapter 21, where it is used extensively in the sections addressing sedation.</p>
25-20		Requirements related to posting of licenses.	(B) is deleted, which simply repeats language in the cited Code provision. A requirement that a dental hygienist “may” post a license obtained from the Board in each office location is deleted; evidence of licensure can be printed from the agency’s license lookup page for free and is sufficient for posting. The Code provision is stated in the deleted language: § 54.1-2727.
25-30		Contains required fees for dental hygienists.	(G) is deleted. These fees were only applicable in 2021, when the Board was implementing renewal by birth month.
25-40		Scope of practice.	<p>(A) is deleted. This subsection merely restates what is in the Code. The Code provision is included in the deleted language: § 54.1-2727.</p> <p>(B) is amended to clarify that the duties of a dentist which are listed shall not be delegated to a dental hygienist, consistent with other regulatory provisions.</p>
25-50		Addresses how dentists may utilize dental hygienists and dental assistants.	This section is repealed. It relates to requirements for dentists, not dental hygienists. Additionally, these requirements are already covered in 21-110 and do not need to be repeated in Chapter 25, where the requirements have no effect.
25-60		Addresses delegation of services to dental hygienists.	The majority of this section addresses requirements and responsibilities of licensed dentists, not dental hygienists. Additionally, the language in this section is identical to 21-120. Rather than include the same language in both Chapters which does not entirely pertain to the licensees which are subject to the Chapter, the Board has amended this section to delete the provisions which are the responsibility of licensed dentists. Those include (A), (C), and (D).
25-70		Addresses delegation of duties to a dental assistant.	(A) is deleted. This provision refers to the abilities of a dental assistant to perform duties and does not pertain to dental

			hygienists. What may and may not be delegated to dental assistants I and dental assistants II is already covered in 18VAC60-21-150 and -160.
25-80		Lists requirements for use of x-ray machines for dentists and dental hygienists.	Eliminates the reference to dentists, since the licensure of dentists is covered in Chapter 21. The identical provision in Chapter 21 has been amended to remove the reference to dental hygienists. The term "x-ray film" is replaced with "radiograph," the term used in practice and the definitions section.
25-90		Lists what does not constitute the practice of dentistry or dental hygiene.	Similar to 21-180, this provision is repealed. The Board has no jurisdiction over actions which are not the practice of dentistry or dental hygiene. There is no reason for a list of such actions to be included in regulations.
25-100		Sets out requirements for administration of controlled substances.	(B)(1) and (C)(1) are both amended to remove the specific hour requirements for nitrous oxide and minimal sedation training. The training for both is given together at all CODA-accredited schools (which accreditation is required by the regulation), so there is no need to include hour requirements. Additionally, the hour requirements are confusing to licensees.
25-110		Governs patient records and confidentiality.	(A)(2) is amended to clarify that the patient's health history must be documented. (A)(3) is amended to clarify that documented written consent is included in the patient record for treatment, and that oral consent is not accepted. The first sentence of (B) is deleted as it merely restates what is already in the Code. The Code provision is cited in the deleted language: § 32.1-127.1:03.
25-120		Lists acts which constitute unprofessional conduct for dental hygienists.	This provision is amended to eliminate (1), (2), (4), and (6). Any licensee performing acts which are described in (1), (2), or (6) would violate existing unprofessional conduct and standard of care requirements and could be disciplined accordingly. (4) is unnecessary to state and is so vague as to be useless. None of these provisions are necessary for the protection of the public.
25-130		Contains application requirements.	Similar to the mirror provision for applications for a license to practice dentistry, (A)(2) is amended to require evidence of a passing score on the national exam rather than "an original grade card." The existing language is very limiting when

			<p>what the Board needs for licensure is verifiable evidence of a passing score.</p> <p>(A)(4) is deleted. Licensees are already required to comply with applicable laws and regulations and are expected to have knowledge of them. An attestation on this topic is a needless application requirement.</p>
25-150		Contains requirements for application by credentials (i.e., endorsement).	<p>(2) is amended to clarify that active clinical practice is required for application. The word “clinical” was already included in this provision, but in a confusing manner. The reference to required “ethical” practice is deleted. That concept is vague and unenforceable.</p> <p>(5) is deleted. Virginia Code § 54.1-2706 already permits the Board to deny an application for licensure if an applicant violates any of the provisions of that statute. It is not necessary to restate here.</p>
25-170		Governs voluntary and volunteer practice.	<p>(A) is deleted. It reproduces Virginia Code § 54.1-2726.1 in its entirety, which is not necessary.</p> <p>(B)(5) is deleted. The fee is already required in 25-30.</p>
25-180		Sets out requirements for licensure renewal.	<p>The portion of (A) is deleted that was limited to a specific timeframe and no longer effective.</p> <p>(C) is amended to remove the conclusory legal statement about “illegal” practice and to remove the unnecessary statement that practicing without a valid license may subject the expired licensee to disciplinary action by the Board.</p>
25-190		Contains requirements for continuing education.	<p>(A)(3) is amended to allow up to three of the 15 required hours be satisfied through delivery of dental services without compensation to low-income individuals or through free healthcare clinics. (A)(3) is also amended to delete the language stating one hour may be credited for three hours of providing such service, making the ratio of service to credit one-to-one.</p> <p>(C) is amended to remove the list of approved sponsors of continuing education and replace the list with “a sponsor approved by the board.” The Board intends to place this sponsor list in a guidance document, which will coordinate with the effective date of these regulatory changes. This treatment of Board approval for continuing education sponsors is consistent</p>

			with several other boards within the agency and allows for greater flexibility to add or remove sponsors from the list over time.
25-200		Contains provisions governing inactive licensure.	(C) is amended to properly reflect how licenses are renewed currently, by the birth month of the licensee.
25-210		Governs reinstatement or reactivation of a license.	(A)(3) and (B)(2) are amended to clarify that the Board requires evidence of continuing clinical competency, which may include completion of a clinical, hands-on refresher program for reinstatement. (A)(4) and (B)(3) are also amended to included clinical competence. (B)(1) is amended to remove the requirement for continuing education. While applicants may complete continuing education and submit evidence of it to the Board with their application, the Board does not base reinstatement on continuing education. The Board instead bases readiness to return to practice on clinical, hands-on training by approved entities. The inclusion of the continuing education in (B)(1) is therefore misleading.
Changes to Chapter 30			
30-10		Provides definitions for the Chapter.	The definitions for license, Code, local anesthesia, and monitoring are deleted. These terms are not used in the Chapter.
30-20		Contains requirements for address of record and posting of registration.	(B) is amended to delete the statement that, if a dental assistant is employed in more than one office, duplicate registration obtained from the Board may be displayed. Registration information is available on DHP's website for free and is easily accessible. License look up information is sufficient for posting in additional offices.
30-30		Sets out fees for dental assistants.	(G) is deleted. These fees were only effective in 2021, when the Board shifted renewals to birth months of licensees.
30-40		Practice of dental hygienists and dental assistants II under direction.	This section is repealed. The section deals with responsibilities of the licensed dentist and is not applicable to dental assistants. 40(A) restates 18VAC60-21-110(A). 40(B) restates 18VAC60-21-120(A).
30-50		Governs nondelegable duties.	This section is repealed. The section is identical to 18VAC60-21-130. Additionally, the language pertains only to the responsibilities of licensed dentists and does not belong in the chapter dedicated to dental assistants.
30-60		Governs delegation to dental assistants II.	This section is repealed. Delegation to dental assistants II is addressed in 18VAC60-21-150, and the language deals with what a licensed dentist may delegate

			and is ultimately responsible for. It does not contain requirements for dental assistants and does not belong in this Chapter.
30-70		Governs delegation to dental assistants I and II.	This section is repealed for the same reasons as 30-60. This section is identical to 18VAC21-160.
30-80		Governs radiation certification.	The phrase “x-ray film” is amended to be “radiographs,” which is the actual term for images taken via radiation in a dental office and is defined in 30-10.
30-90		States what does not constitute practice.	This section is repealed. Not only is a listing of what the Board does not have jurisdiction over not appropriate for regulation, this particular language deals with the practice of dental hygiene and dentistry, not dental assisting.
30-100		Governs patient records and confidentiality.	(A) is deleted. It is identical to 21-90(B)(1), (6), and (7), and 25-110(A)(1), (5), and (7), and does not make sense to require licensed dentists, licensed dental hygienists, and registered dental assistant IIs responsible for the exact same actions related to recording patient information. The first sentence of (B) restates a requirement in the Code and is deleted. The Code provision is cited in the deleted language: § 32.1-127.1:03. Additionally, the qualifying terms “willfully or negligently” are deleted from the regulation.
30-110		Lists acts which constitute unprofessional conduct.	The phrase “within the meaning of § 54.1-2706 of the Code” is deleted as unnecessary. (1), (2), (4), and (6) are deleted. Any dental assistant performing acts which are described in (1), (2), (4), or (6) would violate existing standard of care requirements and could be disciplined accordingly. (5) is deleted. Dental assistants cannot delegate duties. This provision applies to licensed dentists and licensed dental hygienists.
30-115		General application requirements for dental assistants.	(3) is deleted. Dental assistants are already required to know and abide by the laws governing their practice. The attestation of doing so is an unnecessary requirement for registration.
30-120		Educational requirements for dental assistants II.	(C) is deleted and (B) amended to include the provision from (C). Currently, (B) states that a dental assistant II may be registered after completion of an educational program that includes “all of the following.” (C) then states that a dental assistant II will be

			registered with a listing of the specific competencies in the section. When a dental assistant II is registered, the competencies for which they are trained are listed on their registration. They are not required to have completed “all” competencies, as implied by the current language of (B). It does not make sense to separate out (C), the language that explains how registrations are provided – with the specific competencies included on the registration.
30-140		Governs registration by endorsement of dental assistant IIs.	<p>(A)(3) is amended to clarify that an applicant for endorsement must hold a credential from another state. The current wording is confusing to applicants because they may receive credentials, registrations, or certificates from non-state entities.</p> <p>(B) is amended to delete (2) and (3). There is no matching language to (2) in 30-120, which governs applications by examination. Additionally the language is not necessary, as the Board can deny applications for violations of § 54.1-2706. (3) is removed consistent with other amendments to Chapters 21, 25, and 30. Dental assistants are already required to know and abide by the laws governing their practice. The attestation of doing so is an unnecessary requirement for registration.</p>
30-150		Governs registration renewal requirements.	<p>(A) is amended to remove language that was only applicable until January 1, 2022.</p> <p>(B) is amended to remove the conclusory legal statement that certain actions are “illegal.”</p> <p>(D) is amended to state that a current, hands-on course in cardiopulmonary resuscitation is required to renew a registration. The current language of (D) is not clear that the Board’s intent is to require hands-on CPR courses, and that training must be taken more than once and remain current.</p>
30-160		Governs inactive registration requests and reactivation.	(C) is deleted. The language is not necessary, as the Board can deny applications for violations of § 54.1-2706.
30-170		Registration reinstatement requirements.	(C) is amended to clarify that the executive director may reinstate an applicant provided the applicant can demonstrate continuing clinical competence.