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Fast-Track Regulation Agency Background Document

Agency name	Board of Dentistry, Department of Health Professions
Virginia Administrative Code (VAC) citation(s)	18VAC60-21-10 et seq.
Regulation title(s)	Regulations Governing the Practice of Dentistry
Action title	Content of acceptable examination
Date this document prepared	4/23/19

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please 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.

Subsections A (licensure by examination) and B (licensure by credentials) of Section 210 are amended to require that after the effective date of the regulation, all applicants are required to have passed a clinical competency examination that included sections on endodontics, prosthodontics, periodontics, and operative dentistry consisting of a posterior class II and anterior class III restoration.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

N/A

Statement of Final Agency Action

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

On December 14, 2018, the Board acted to submit proposed amendments to 18VAC60-21-10 et seq., Regulations Governing the Practice of Dentistry, by fast-track action.

Mandate and Impetus

Please 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, board decision, etc.). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "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."

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

In dentistry, the clinical examination required for licensure in Virginia can be one of five regional examinations. While Virginia accepts all regional examinations for licensure in Virginia, it now finds some inconsistencies in the content of the examinations. For the reason, the Board finds it necessary to specify the minimum content of an acceptable examination.

The proposed amendment was adopted as a fast-track action because it is consistent with current policy and Guidance Document (60-25) on acceptable examinations for licensure. Therefore, it is not expected to be controversial and is appropriate for fast-track action.

Legal Basis

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

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400, which provides the Board of Dentistry the authority to promulgate regulations to administer the regulatory system:

§ 54.1-2400. General powers and duties of health regulatory boards.

The general powers and duties of health regulatory boards shall be:

6. To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) that 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.).

The statutory authority for the Board to promulgate regulations to determine what clinical examination is acceptable for licensure found in § 54.1-2709:

§ 54.1-2709. License; application; qualifications; examinations.

A. No person shall practice dentistry unless he possesses a current valid license from the Board of Dentistry.

B. An application for such license shall be made to the Board in writing and shall be accompanied by satisfactory proof that the applicant (i) is of good moral character; (ii) is a graduate of an accredited dental school or college, or dental department of a university or college; (iii) has passed all parts of the examination given by the Joint Commission on National Dental Examinations; (iv) **has successfully completed a clinical examination acceptable to the Board;** and (v) has met other qualifications as determined in regulations promulgated by the Board.

C. The Board may grant a license to practice dentistry to an applicant licensed to practice in another jurisdiction if he (i) meets the requirements of subsection B; (ii) holds a current, unrestricted license to practice dentistry in another jurisdiction in the United States and is certified to be in good standing by each jurisdiction in which he currently holds or has held a license; (iii) has not committed any act that would constitute grounds for denial as set forth in § 54.1-2706; and (iv) has been in continuous clinical practice for five out of the six years immediately preceding application for licensure pursuant to this section. Active patient care in the dental corps of the United States Armed Forces, volunteer practice in a public health clinic, or practice in an intern or residency program may be accepted by the Board to satisfy this requirement.

D. The Board shall provide for an inactive license for those dentists who hold a current, unrestricted dental license in the Commonwealth at the time of application for an inactive license and who do not wish to practice in Virginia. The Board shall promulgate such regulations as may be necessary to carry out the provisions of this section, including requirements for remedial education to activate a license.

E. The Board shall promulgate regulations requiring continuing education for any dental license renewal or reinstatement. The Board may grant extensions or exemptions from these continuing education requirements.

Purpose

Please 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's intended to solve.

Passage of a clinical examination is essential for evidence of minimal competence to hold a license to practice dentistry. In order for an examination to be acceptable to the Board, it is important for it to exam the applicant on basis elements of the practice of dentistry –

endodontics, prosthodontics, periodontal and operative dentistry. Without passage of examination content in these areas of dentistry, the Board would not be able to assure the health and safety of patients receiving dental care in Virginia.

Substance

Please 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.

Subsections A (licensure by examination) and B (licensure by credentials) of Section 210 are amended to require that after the effective date of the regulation, all applicants are required to have passed a clinical competency examination that included sections on endodontics, prosthodontics, periodontics, and operative dentistry consisting of a posterior class II and anterior class III restoration.

Issues

Please 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) The primary advantage to the public is the greater protection for the citizens of the Commonwealth who receive services in dental offices. In order for the Board to assure minimal competency in the practice of dentistry, it is essential that applicants be tested on their knowledge and skills in basic aspects of dental practice. The advantage to applicants is clarity in what content of an examination must be taken and passed in order to be licensed in Virginia. There are no disadvantages.
- 2) There are no 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. The Board is authorized under 54.1-2400 "To 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..." As stated above, the Board has a statutory obligation to license persons who have demonstrated minimal competency in the practice of dentistry. Therefore, the proposed amendments are a foreseeable result of the statute requiring the Board to protect the safety and health of patients in the Commonwealth. Any restraint on competition that results from this regulation is in accord with the General Assembly's policy as articulated in § 54.1-100 and is necessary for the preservation of the health, safety, and welfare of the public.

Requirements More Restrictive than Federal

Please 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

Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "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 – There are no state agencies affected.

Localities Particularly Affected – There are no localities affected.

Other Entities Particularly Affected – There are no other entities affected.

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, please 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. Please keep in mind that this is 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:</p> <ul style="list-style-type: none"> 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>) As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation; b) The agency will incur no additional costs for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending notice of final regulations to regulated entities. There are no on-going expenditures.</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 agencies</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>The benefit is clarity in the Board's policy on acceptable examinations.</p>

Impact on Localities

Projected costs, savings, fees or revenues resulting from the regulatory change.	There are no costs, etc.
Benefits the regulatory change is designed to produce.	None

Impact on Other Entities

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.	The entities affected are applicants for licensure as dentists.
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. 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.	The number of persons licensed as dentists varies by quarter with the largest in the 1 st quarter of a fiscal year (approximately 150-200) and the smallest in the 2 nd quarter (approximately 50-55). There are no small businesses affected.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Please 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 associated with the regulatory change. Applicants have a choice of regional examinations since Virginia accepts all of those offered.
Benefits the regulatory change is designed to produce.	The benefit will be consistency in the required content so if there are changes in exam content by a regional testing agency, all future applicants will be able to determine which examination and/or which optional sections of an examination they need to take in order to be licensed in Virginia. The proposed regulation is a confirmation of the current policy and the guidance document adopted by the Board.

Alternatives

Please 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.

The Board adopted a guidance document on which clinical examinations are acceptable to the Board (as specified in § 54.1-2709); it revised that policy in December of 2018 to ensure that periodontics was included on an acceptable examination. However, Board counsel has advised that a requirement for the specific content of an examination should be stated in regulation in order to be enforceable. To meet the essential purpose of determining minimal competency to practice dentistry, section 210 to ensure that all regional examinations accepted by the Board for licensure contain essential sections on dental practice.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) 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.

There are no alternative regulatory methods.

Public Participation

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.

Detail of Changes

Please 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.

Current section number	Current requirement	Change, intent, rationale, and likely impact of new requirements
210	Sets out the qualifications for licensure of a dentist by examination or by credentials	Subsections A (licensure by examination) and B (licensure by credentials) are amended to require that after the effective date of this regulation, all applicants shall have passed a clinical competency examination that included sections on endodontics, prosthodontics, periodontics, and operative dentistry

		<p>consisting of a posterior class II and anterior class III restoration.</p> <p><i>The Examination Committee of the Board reviews the examinations of all the regional testing agencies and recommends which examinations are acceptable. Guidance document 60-25 sets out the acceptability of clinical examinations. There are now some inconsistencies in content among exams with certain sections that had been required now being optional. For example, the WREB (Western Regional Examining Board) examination has now made the prosthodontics section optional, but it is required on all other regional examination. Some applicants may choose to omit that section of the examination and still be eligible for licensure in Virginia. To ensure that the Board is adequately protecting Virginia patients, it is necessary to specify the minimal content of a clinical examination to include endodontics, prosthodontics, operative dentistry with certain types of restorations. In addition to WREB, Virginia accepts the clinical examinations of:</i></p> <p><i>SRTA (Southern Regional Testing Agency) CITA (Council of Interstate Testing Agencies) CRDTS (Central Regional Dental Testing Services) CDCA (Commission on Dental Competency Assessment) – formerly NERB</i></p>
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