



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	Board of Dentistry, Department of Health Professions
VAC Chapter Number:	18 VAC 60-20-10 et seq.
Regulation Title:	Regulations Governing the Practice of Dentistry and Dental Hygiene
Action Title:	General supervision for dental hygienists
Date:	5/16/03

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

Chapter 170 of the 2002 Acts of the Assembly mandates that the board promulgate regulations to implement provisions of the act permitting certain practices of a dental hygienist to be performed under general supervision. These final regulations replace emergency regulations that have been in effect since July 18, 2002.

Changes Made Since the Proposed Stage

Please detail any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication. Please provide citations of the sections of the proposed regulation that have been altered since the proposed stage and a statement of the purpose of each change.

In response to comment from the Virginia Dental Hygienists Association that the title of section 200 was no longer appropriate, the Board revised the title from “Employment of Dental Hygienists” to “Utilization of Dental Hygienists” because the section now included the practice of dental hygienists working as volunteers under general supervision in a free clinic or public health setting. The section was further amended to clarify that a dentist may write orders (more than a single order) for dental hygienists (more than a single hygienist) to provide hygiene services under general supervision in a free clinic, a public health program or as a volunteer.

To conform these regulations to Chapter 465 of the 2003 Acts of the Assembly related to delegation of the use of oral topical schedule VI drugs by dental hygienists under general supervision, the Board has made the following changes to the text of the proposed regulation since its publication. In subsection A of section 220, the subgingival irrigation or subgingival application of Schedule VI medicinal agents was only allowed under direction of a dentist because that was required by § 54.1-3408 of the Code of Virginia. With the change to that section of the law in Chapter 465 of the 2003 Acts, the use of Schedule VI topical drugs is permitted under general supervision. Therefore, those activities were added to subsection B, which listed the duties that may be performed under general supervision.

The Board also modified subsection B in section 220 to clarify that the written protocol for general supervision could include administration of certain drugs in accordance with § 54.1-3408 in the Drug Control Act. It also deleted the prohibition of the use of anesthesia under general supervision because the legislative change to the Drug Control Act permits the use of “topical oral anesthetics.”

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

On May 16, 2003, the Board of Dentistry adopted final amendments to 18 VAC 60-20-10 et seq., Regulations Governing the Practice of Dentistry and Dental Hygiene to provide for general supervision of dental hygienists.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400 (6) provides the Board 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 (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) of this title. ...*

The legal authority to promulgate the amendments for general supervision of dental hygienists is found in Chapter 170 of the 2002 Acts of the Assembly.

<http://leg1.state.va.us/cgi-bin/legp504.exe?021+ful+CHAP0170>

The Office of the Attorney General has certified by letter that the Board has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

Provisions in the amended regulation for an evaluation and order for services prior to having the patient treated under general supervision are intended to ensure that the quality of care and the health and safety of patients is being protected. To ensure that the patient is aware of the implications of general supervision, regulations require that the patient or a responsible adult is informed that a dentist will not be present and that only topical oral drugs can be used. Likewise, the Board determined that some procedures, especially those that involve the administration of drugs, are not appropriate to delegate under general supervision. While there is a limitation on the number of hygienists who can practice under the direction and supervision of a dentist, there is no limitation in the amended regulation for the number of hygienists who can work in a free clinic or public health setting as a volunteer.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.

Amendments to regulations are adopted to define “general supervision” of dental hygienists, to prescribe the number of hygienists that may work under general supervision at any one time with certain exceptions, to set out the criteria for such practice, and to determine the duties of a hygienist that may or may not be performed under general supervision. Dental hygiene services are limited to those ordered by a licensed dentist and rendered within a specific time period, not to exceed seven months.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term “issues” means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

The primary advantages to the public of implementing the amended regulations are the possibility of expanding the accessibility of dental services to certain populations, such as residents of nursing homes and those receiving care at free clinics, and the ability of dental hygienists employed in dental offices to provide care when the dentist is not present. In addition, the proposed regulation may expand the availability of dental hygiene services in a free clinic, a public health program or other settings that utilize volunteers, because it eliminates the restriction of two hygienists per dentist if the hygienists are practicing under general supervision in those settings and allows hygienists who are not employed by a dentist or a governmental agency to volunteer their service.

While the hygienist will be allowed to see patients without the dentist being physically present, he may only provide those services that have been specifically ordered after a dentist has seen and evaluated the patient. Regulations require that the patient or a responsible adult must be told that no dentist is present and that only topical oral anesthesia can be administered, so the patient is adequately protected and informed. Likewise, the public is protected by the limitation on those duties or services that may be delegated under general supervision without the presence of a dentist.

There are no disadvantages to the public as all amendments are intended to provide better access to qualified practitioners without any diminution in the quality of care.

There are no advantages or disadvantages to the agency; the amended regulation does not impose a new responsibility on the Board.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

Public comment was requested for the period from February 24, 2003 to April 25, 2003. There were three written comments received as follows:

1) The Virginia Dental Hygienists' Association supported the proposed changes to regulations to permit practice under general supervision. The only amendment recommended was a change in the title of section 200 to "Restrictions for Direction and General Supervision" to better reflect the current language in that section. In response to the Economic Impact Analysis (EIA), the Association agreed with the assertion by the Department of Planning and Budget (DPB) that the limitation of two dental hygienists per dentist is arbitrary and anti-competitive. The speaker agreed that some sort of ratio is needed, but that should be determined by what is necessary to provide the best care in interdependent relationships between the hygienists and the dentists.

Board response: The Board has amended the title of section 200 in response to the VDHA comment and has voted to place the ratio issue on the agenda for the Regulatory/Legislative Committee to consider at its next meeting.

2) The Virginia Poverty Law Center supported the proposed regulations for general supervision to expand the availability of dental care to needy persons. They also supported the EIA comment regarding the restriction of two hygienists per dentist in private settings as unnecessary and arbitrary.

Board response: The Board has voted to place the ratio issue on the agenda for the Regulatory/Legislative Committee to consider at its next meeting.

3) Virginians for Improving Access to Dental Care supported the adoption of general supervision requirements for dental hygienists and particularly the Board's decision to allow general supervision of an unlimited number of volunteer hygienists in public health programs and free clinics.

Board response: The Board has amended section 200 to clarify that more than one or two hygienists could work in free clinics or public health programs as volunteers under written orders from a dentist and under general supervision.

A Public Hearing before the Board was held on April 4, 2003, at which time two persons commented. An attorney from the Virginia Poverty Law Center and the President of the Virginia Dental Hygienists' Association presented oral testimony, which was identical to written comment provided and which is summarized above.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

Chapter 170 of the 2002 Acts of the Assembly provides for practice by dental hygienists under general supervision by a dentist. Amendments to implement the provisions of Chapter 170 are outlined as follows:

18 VAC 60-20-10. Definitions.

To clarify the use of the term “general supervision,” the Board has added a definition that is consistent with the meaning attributed in § 54.1-2722 of the Code of Virginia. “General supervision” is defined as meaning that the dentist has evaluated the patient and issued a written order for specific, authorized services to be provided by a dental hygienist when the dentist is not present in the facility while the authorized services are being provided.

18 VAC 60-20-200. Utilization of dental hygienists.

The amended regulation restricts to two the number of hygienists that a dentist can have practicing under direction or general supervision at one and the same time. To allow for expansion of dental services by hygienists working under general supervision, the amended regulation makes an exception for practice by dental hygienists under general supervision occurring in a free clinic or public health setting or someone practicing as a volunteer.

18 VAC 60-20-210. Requirements for direction and general supervision.

- Current regulations provide that dental hygienists and assistants may only engage in their respective duties under the direction and control of the dentist, and the dentist has to be present and evaluate the patient during the time the patient is in the facility. Since the amended law now permits practice under general supervision, the requirement for the dentist to always be present in the facility has been eliminated. There is also a proposed exception to the requirement that a hygienist be employed by a licensed dentist or governmental agency to permit voluntary practice under general supervision.
- Since the Board has determined that there are certain procedures that should not be delegated to a dental hygienist under general supervision, it has provided that the duties performed under direction must only be performed when the dentist is present in the facility and available to evaluate the patient during the time services are being provided.
- Those duties that may be delegated to a dental hygienist under general supervision can only be performed if 1) the treatment has been ordered by a licensed dentist licensed in writing with the services to be rendered within a specific time period, not to exceed seven months; 2) the dental hygienist has consented to providing services under general supervision.; 3) the patient or a responsible adult has been informed prior to the appointment that no dentist will be present, that only topical Schedule VI anesthesia can be administered, and that only those services prescribed by the dentist will be provided; and 4) written basic emergency procedures have been established and the hygienist is capable of implementing those procedures. General supervision cannot replace the use of direction when, in the professional judgment of the dentist, direction is necessary to meet the individual needs of the patient.

18 VAC 60-20-220. Dental hygienists.

- Amended regulations provide that the following duties can only be delegated to dental hygienists under direction with the dentist being present. Those include any scaling and root planing requiring the administration of anesthesia; the performance of an initial examination of teeth and surrounding tissues for assisting the dentist in the diagnosis; and subgingival irrigation or subgingival application of Schedule VI medicinal agents.
- In addition, there is a new listing of duties that can only be delegated to dental hygienists and may be delegated by written prescription to be performed under general supervision without the dentist being present. In accordance with § 54.1-3408, the written protocol for practice by a dental hygienist under general supervision may include the use of certain topical schedule VI drugs. The duties they can perform include scaling and root planing of natural and restored teeth; polishing of natural and restored teeth; and performing a clinical examination of teeth and surrounding tissues including the charting of carious lesions, periodontal pockets or other abnormal conditions for further evaluation and diagnosis by the dentist. The dentist may delegate under general supervision any other duties appropriate to the education and experience of the dental hygienist and the practice of the supervising dentist, with the exception of those specifically restricted to be performed under direction and those listed as nondelegable.
- Nothing in this section should be interpreted so as to prevent a licensed dental hygienist from providing services currently within his scope of practice including educational services, assessment, screening or data collection for the preparation of preliminary written records for evaluation by a licensed dentist.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The regulatory action will not strengthen or erode the authority and rights of parents, encourage or discourage economic self-sufficiency, strengthen or erode the marital commitment or increase or decrease disposable family income. The ability of dental hygienists to provide prescribed services in settings where a dentist is not readily available may benefit some persons who have limited access to such services.