



## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Board of Dentistry, Department of Health Professions
<b>Virginia Administrative Code (VAC) citation</b>	18VAC60-20-10 et seq.
<b>Regulation title</b>	Regulations Governing the Practice of Dentistry and Dental Hygiene
<b>Action title</b>	Fee increase
<b>Document preparation date</b>	7/22/05

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

The issue to be addressed is the need of the Board of Dentistry to increase fees to cover expenses for essential functions of the licensing dentists and dental hygienists, investigation of complaints against licensees, and adjudication of disciplinary cases required for public safety and security in the Commonwealth.

In FY02, the Board ended the fiscal year with a deficit of \$327,499. With a fee increase that took effect in February of 2003, the Board was able to realize slightly more revenue than it expended in FY03 but continued to operate with a deficit. By the conclusion of the FY02-FY04 biennium, the deficit had risen to \$401,103. Current projections indicate that expenditures for the FY04-FY06 biennium will exceed revenue by approximately \$313,694. Even with a portion of the Controlled Substance Registration fund allocated to the budget of the Board of Dentistry, the projected cash shortfall on June 30, 2006 is \$601,768. Therefore, it is essential that the Board increase its fees at the earliest possible time.

§ 54.1-113 of the *Code of Virginia* requires that at the end of each biennium, an analysis of revenues and expenditures of each regulatory board shall be performed. It is necessary that each board have sufficient revenue to cover its expenditures. Since the fees from licensees will no longer generate

sufficient funds to pay operating expenses for the Board, consideration of a fee increase is essential. In order to have sufficient funding for the operation of the Board by fiscal year 2007, it is necessary to begin the promulgation of amendments to regulations.

No preliminary regulatory language has been developed; the agency will develop alternative fee structures that will address the deficit in funding for the Board to consider in its adoption of proposed regulations. Expenditures related to various functions of the Board will be examined to determine if fees directly related to those activities are sufficient to cover the expenses. As in the past, the Board will apply the Principles for Fee Development adopted by the agency in 1999 to ensure equitable distribution of costs and fees that are proportional to the activities they support.

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

**18 VAC 60-20-10 et seq. Regulations Governing the Practice of Dentistry** are promulgated under the general authority of Title 54.1, Chapter 24 of the Code of Virginia.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations in accordance with the Administrative Process Act which are reasonable and necessary and the authority to **levy and collect fees** that are **sufficient to cover all expenses** for the administration of a regulatory program.

*§ 54.1-2400. General powers and duties of health regulatory boards.--The general powers and duties of health regulatory boards shall be:*

- 5. To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
- 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 **contemplated regulation is mandated by § 54.1-113**; however the Board must exercise some discretion in the amount and type of fees that will be increased in order to comply with the statute.

*§ 54.1-113. Regulatory boards to adjust fees.--Following the close of any biennium, when the account for any regulatory board within the Department of Professional and Occupational Regulation or the Department of Health Professions maintained under § 54.1-308 or § 54.1-2505 shows expenses allocated to it for the past biennium to be more than ten percent greater or less than moneys collected on behalf of the board, it shall revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.*

**Substance**

*Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed. Include the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. Delineate any potential issues that may need to be addressed as the regulation is developed.*

**Need for Fee Increases**

Fee increases are primarily related to increased costs for enforcement. Both the number and complexity of disciplinary costs have grown in the past few years, resulting in large deficits in the overall budget. For the calendar year of 2002, the Board had 318 cases open; by June, 30 2005, it has 537 open cases. The cost for enforcement allocated by the Department to Dentistry has increased from \$236,469 in FY02 to a projection of \$557,584 in FY05. Also associated with disciplinary cases is the cost for administrative proceedings which increased from \$60,715 in FY02 to a projection of \$109,914 in FY05. Direct and allocated costs are also related to increased need for funds for staff pay and related benefit increases over the past few years, especially in health insurance, and for the general costs of doing business, such as operation of the DHP data system under VITA.

Fee increases for licensees regulated by the Board of Dentistry are necessary in order for the Board and the Department to continue performing essential functions of approving applicants, licensing dentists and hygienists and of protecting the public from continued practice by incompetent or unethical practitioners. Funding from fees has failed to keep up with expenditures in the past several biennia.

**Comparison of fees in other states**

Comparative data on dentistry fees in other states would indicate that fees in Virginia are generally in the mid-range for renewals and applications, but other states impose additional fees that are not currently charged to Virginia dentists and dental hygienists. A comparison of fees for **dentists** in neighboring states is as follows:

<b>State</b>	<b>Fees (also in Virginia)</b>	<b>Fees (not charged in Virginia)</b>
Virginia	Application - \$225 Annual renewal - \$150	
Maryland	Application - \$450 Biennial renewal - \$415	Specialty identification - \$150 Anesthesia/sedation permit - \$1050 for initial application & \$450 for renewal Facility permit - \$1050 for initial application & \$450 for renewal Corporate name - \$150
North Carolina	Application - \$675 Annual renewal - \$229	Licensure by credentials - \$2000 Anesthesia/sedation permit & renewal - \$50 each Anesthesia/sedation evaluation - \$275

		Anesthesia/sedation site inspection - \$175
Tennessee	Application - \$410 Biennial renewal - \$310	Licensure by credentials - \$560 Specialty certification - \$150 Initial sedation/anesthesia permit - \$300 Biennial sedation/anesthesia permit - \$100 <i>In addition, Tennessee uses civil penalties imposed on licensees as revenue to Board</i>
Kentucky	Application - \$280 Biennial renewal - \$230	Anesthesia permit - \$30 Specialty examination - \$60
West Virginia	Application - \$50 (in-state) \$100 (out-of-state) Annual renewal - \$125	Dental corporations – application \$200 Annual registration - \$150 Dental specialty license - \$300

**Renewal Schedule**

Dentists and dental hygienists licensed by the Board renew their licenses every year by March 31st. While this action will not be concluded in time for renewal in 2006, it is essential to have an increased fee in place in 2006 to begin collecting the increased application fee and have the higher renewal fee in effect prior to notices being sent for the 2007 renewal.

**Alternatives**

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.*

In taking action to respond to deficits incurred by a regulatory board, the Board of Dentistry may consider three options as follows:

**1. Increase fees through the promulgation of regulations.**

As required by law, the Board is obligated to establish and collect fees that are necessary to fund operations of the Board and the Department. An alternative is to seek the revenue from licensees and applicants to fully fund appropriated expenditures. Costs of services will be paid by patients who use the services of providers, but licensure fees represent a miniscule percentage of the over-all costs of health care. The cost of operation of regulatory boards does not significantly affect the cost or access to health care. However, failure to fully fund the licensing and disciplinary services through fees will have a detrimental affect on quality and availability of care.

**2. General Fund Support.**

If the alternative is not to increase professional fees to meet increased cost of operations, then the only other source of funding the cash deficit is the General Fund. To permit General Fund support, the *Code of Virginia* would need to be amended to allow such funding as the *Code*

restricts board revenue to fees. There are, however, potential and serious consequences with General Fund support.

1. Increasing General Fund support as more boards acquire deficits in the future.
2. Negative public reaction.
3. The use of general revenues (taxes) to support health regulatory boards which does not target costs to providers and consumers of services.

### **3. Reduce department/board operations and staff and remain at current fee level.**

In order to prevent deficit spending, the department would basically need to lay off staff to reduce expenses associated with operations. The net result being a delay in the performance of or the elimination of the following responsibilities:

- Investigations and discipline
- License renewals
- Regulation
- Inspections of dental offices as needed

Delays in licensing and investigation could place patients at risk as dentists who should not be practicing would continue to practice, and the supply of practitioners needed for the health care system would be delayed or curtailed. It is believed that these consequences would not be acceptable to the administration, the General Assembly, or to the general public.

The last time amendments to increase fees were proposed in February of 2002, it was projected that there would be a deficit at the end of FY03 of (\$139,334), but with increased fees, the Board would realize a small surplus by the end of FY04 of \$37,570. By the time the final regulations were adopted and actually in effect in February of 2003, expenditures were higher than projected and revenues were smaller for FY02, so the projected deficit for FY03 was (\$320,008). The Board considered an additional increase at the time final regulations were adopted, but to do so would have necessitated additional opportunity for public comment. That would have delayed the adoption of final rules and would have resulted in an inability to have the increased fees in effect for March 2003 renewal. Without the fee increase in 2003, the deficit would have been even more significant. In adopting the proposed fee increase as final, the Board recognized and noted at that time that an additional fee increase was likely necessary in the near future.

## Family impact

*Assess the potential impact of the proposed regulatory action on the institution of the family and family stability.*

There is no impact of the proposed regulatory action on the institution of the family and family stability.