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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	Corrections in qualifications for restricted or temporary licenses
Date this document prepared	12/18/15

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

Amendments to Chapter 21, Regulations Governing the Practice of Dentistry were adopted for consistency with current law and with regulations in Chapter 20, which was repealed effective December 2, 2015. As a result of amendments to Chapter 27 of the Code of Virginia in 2012, changes in the qualifications for faculty licenses and temporary licenses for persons enrolled in advanced dental education programs were adopted as an exempt action. In the promulgation of the new chapter, 18VAC60-21-10 et seq., those changes were not transferred. While the provisions of the Code take precedence over the rules relating to qualifications for a faculty or temporary license, the current regulations need to be amended for consistency with the law.

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 11, 2015, the Board of Dentistry amended 18VAC60-21-10 et seq., Regulations Governing the Practice of Dentistry.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person'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 (§ 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 statutory authority for the Board to promulgate regulations to determine the qualifications for restricted or temporary licensure is found in Chapter 27 of Title 54.1:

§ 54.1-2711.1. Temporary licenses to persons enrolled in advanced dental education programs; Board regulations.

A. Upon recommendation by the dean of the school of dentistry or the dental program director, the Board may issue a temporary annual license to practice dentistry to persons enrolled in advanced dental education programs and persons serving as dental interns, residents or post-doctoral certificate or degree candidates in hospitals or schools of dentistry that maintain dental intern, residency or post-doctoral programs accredited by the Commission on Dental

Accreditation of the American Dental Association. Such license shall expire upon the holder's graduation, withdrawal or termination from the relevant program.

B. Temporary licenses issued pursuant to this section shall authorize the licensee to perform patient care activities associated with the program in which he is enrolled that take place only within educational facilities owned or operated by, or affiliated with, the dental school or program. Temporary licenses issued pursuant to this section shall not authorize a licensee to practice dentistry in nonaffiliated clinics or private practice settings.

C. The Board may prescribe such regulations not in conflict with existing law and require such reports from any hospital or the school of dentistry operating an accredited advanced dental education program in the Commonwealth as may be necessary to carry out the provisions of this section.

§ 54.1-2713. Licenses to teach dentistry; renewals.

A. Upon payment of the prescribed fee and provided that no grounds exist to deny licensure pursuant to § 54.1-2706, the Board may grant, without examination, a faculty license to teach dentistry in a dental program accredited by the Commission on Dental Accreditation of the American Dental Association to any applicant who meets one of the following qualifications:

- 1. Is a graduate of a dental school or college or the dental department of a college or university, has a current unrestricted license to practice dentistry in at least one other United States jurisdiction, and has never been licensed to practice dentistry in the Commonwealth; or*
- 2. Is a graduate of a dental school or college or the dental department of a college or university, has completed an advanced dental education program accredited by the Commission on Dental Accreditation of the American Dental Association, and has never been licensed to practice dentistry in the Commonwealth.*

B. The dean or program director of the accredited dental program shall provide to the Board verification that the applicant is being hired by the program and shall include an assessment of the applicant's clinical competency and clinical experience that qualifies the applicant for a faculty license.

C. The holder of a license issued pursuant to this section shall be entitled to perform all activities that a person licensed to practice dentistry would be entitled to perform and that are part of his faculty duties, including all patient care activities associated with teaching, research, and the delivery of patient care, which take place only within educational facilities owned or operated by or affiliated with the dental school or program. A licensee who is qualified based on educational requirements for a specialty board certification shall only practice in the specialty for which he is qualified. A license issued pursuant to this section shall not authorize the holder to practice dentistry in nonaffiliated clinics or in private practice settings.

D. Any license issued under this section shall expire on June 30 of the second year after its issuance or shall terminate when the licensee leaves employment at the accredited dental program. Such license may be renewed annually thereafter as long as the accredited program certifies to the licensee's continuing employment.

§ 54.1-2714. Restricted licenses to teach dentistry for foreign dentists.

A. The Board may grant, without examination, a restricted license for a temporary appointment to teach dentistry at a dental school in this Commonwealth to any person who:

- 1. Is a resident of a foreign country;*
- 2. Is licensed to practice dentistry in a foreign country;*
- 3. Holds a faculty appointment in a dental school in a foreign country;*

- 4. Is a graduate of a foreign dental school or college or the dental department of a foreign college or university;
 - 5. Is not licensed to practice dentistry in Virginia;
 - 6. Has not failed an examination for a license to practice dentistry in this Commonwealth;
 - 7. Has received a temporary appointment to the faculty of a dental school in this Commonwealth to teach dentistry;
 - 8. Is, in the opinion of the Board, qualified to teach dentistry; and
 - 9. Submits a completed application, the supporting documents the Board deems necessary to determine his qualifications, and the prescribed fee.
- B. A restricted license shall entitle the licensee to perform all operations which a person licensed to practice dentistry may perform but only for the purpose of teaching. No person granted a restricted license shall practice dentistry intramurally or privately or receive fees for his services.*
- C. A restricted license granted pursuant to this section shall expire 24 months from the date of issuance and may not be renewed or reissued.*

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose is a correction in qualifications for a restricted or temporary license for dental faculty or persons enrolled in an advanced dental education program. Regulations had been changed in 2012 for consistency with amendments to the Code of Virginia, but those changes were not made in promulgation of the new chapter. The amendments are necessary to avoid confusion in the qualifications, which are necessary to protect the public health and safety.

Rationale for using fast-track process

Please explain the rationale for using the fast-track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Since the amendments to Code occurred in 2012, the enabling language in the APA for adoption of exempt regulations is no longer applicable. Therefore, the only option is promulgation of a fast-track action in order to correct regulations for consistency with Code as soon as possible.

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.

Issues

Please identify the issues associated with the proposed regulatory action, 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, please indicate.

- 1) There are no advantages or disadvantages to the public.
- 2) There are no advantages or disadvantages to the agency or the Commonwealth.
- 3) There are no other pertinent matters of interest.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include 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 statement to that effect.

There are no applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities particularly affected.

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) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of 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 proposed regulation.

There are no alternative methods for accomplishing the purpose of this action.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures	There are no costs for implementation and no on-going expenditures.
Projected cost of the new regulations or changes to existing regulations on localities.	There are no costs for localities.
Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.	Since the law takes precedence over regulation, there are no individuals affected.
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.	There is no estimate of the number of entities affected.
All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.	There are no projected costs.
Beneficial impact the regulation is designed to produce.	Avoidance of inconsistency between the law and regulation.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. 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 regulation.

There are no alternatives to the proposal; this is the least burdensome alternative that meets the essential purpose of inclusiveness and access to dental education.

Public participation notice

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.

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent 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.

This action has no impact on the institution of the family and family stability.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.

Current section number	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
230	Sets out qualifications for a restricted license	<p>Title is amended to include temporary permits or licenses.</p> <p>Subsection B is amended by deletion of:</p> <ol style="list-style-type: none"> 1. Passage of a clinical competency examination is not required, but the applicant cannot have failed a clinical competency examination accepted by the board. 2. The holder of a faculty license may practice intramurally and may receive fees for service but cannot practice privately <p>The qualifications for a faculty license are specifically set out in subsection B of § 54.1-2713, so #1 in subsection B should be deleted.</p> <p>The provision in #2 is unnecessary because subsection C of § 54.1-2713 specifies the limitations of the practice of a person with a faculty license.</p>

		<p>Subsection C is added to include restricted licenses issued to foreign trained dentists to teach in an accredited dental program. The specific qualifications are set out in § 54.1-2714 of the Code, so regulations simply state that the Board has authority to issue such licenses in accordance with those provisions.</p> <p>Subsection D is amended to delete #1 which is inconsistent with the provisions of § 54.1-2711.1, which sets out the qualifications for issuance of a temporary license to a person enrolled in an advanced dental education program.</p>
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