



Fast Track Regulation Agency Background Document

Agency name	Board of Dentistry, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC60 -20-10 et seq.
Regulation title	Regulations Governing the Practice of Dentistry and Dental Hygiene
Action title	Application requirements
Document preparation date	12/30/05

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The proposed action will allow the Board to accept other evidence of qualification for licensure from an applicant if a transcript or other documentation cannot be produced by a third-party entity from which it is required. The proposal will also require an applicant to submit a current report from the National Practitioner Data Bank (NPDB), which is produced along with the report that is currently required from the Healthcare Integrity and Protection Data Bank (HIPDB).

Statement of agency final 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 9, 2005, the Board of Dentistry took action to amend 18 VAC 60-20-10 et seq., Regulations Governing the Practice of Dentistry and Dental Hygiene, through the fast-track regulatory process to add a requirement for submission of the NPDB report and authorize acceptance of alternative evidence of qualification for licensure.

Legal basis

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

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 Board is authorized to set qualifications for licensure in regulations in:

§ 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 Part I and Part II 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 failed a clinical examination required by the Board in the five years immediately preceding his application (iv) has not committed any act that would constitute grounds for denial as set forth in § 54.1-2706; and (v) 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 new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

The Board has determined that it is necessary to amend regulations to address two situations recently encountered in the processing of applications. First, there is a need to receive the NPDB report as well as the report from HIPDB because only the NPDB report contains the malpractice history of a dentist, which is necessary to assess whether there may be grounds for denial of the applicant’s request for licensure. When a self-report is requested by a health practitioner from HIPDB (currently required for submission with an application), the applicant also receives the NPDB report. Most applicants routinely submit both, but some decline to submit the NPDB report because it is not specified in regulation or because there is damaging information about malpractice paid claims. To determine whether an applicant can be expected to practice with skill and safety in Virginia, the Board believes both reports are essential.

Second, the issuance of temporary licenses to persons displaced by Katrina has highlighted a problem with current requirements for transcripts or other documentation. If a dental school has closed or all documents are lost in a disaster, the applicant would be unable to fulfill the current application requirements and thereby be barred from licensure in Virginia. The Board believes it is in the best interests of the health and safety of patients to permit qualified practitioners to be licensed, thus increasing the access to and supply of dental care. For example, when the Office of the Registrar at LSU Health Sciences Center at New Orleans could not produce a transcript for a student who graduated prior to 1999, they were able to verify that the applicant had received a Doctor of Dental Surgery in 1991. With the amended regulation, the Board would be able to act affirmatively on an application based on that verification.

Rationale for using fast track process

Please explain why the fast track process is being used to promulgate this regulation.

Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from (1) 10 or more persons, (2) any member of the applicable standing committee of either house of the General Assembly or (3) any member of the Joint Commission on Administrative

Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The Board believes these changes should be implemented as soon as possible in order to make an accurate assessment of an applicant's qualification for licensure and in the best interest of public health and safety. While the Executive Order for temporary licensure of Katrina-displaced applicants has allowed for deviation from application requirements, the temporary licenses will expire in one year. That situation has caused the Board to focus on a potential problem for other applicants seeking licensure in Virginia, so amending the rule through a fast-track process is the preferred method of addressing the need for changes.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

The proposed action will allow the Board to accept other evidence of qualification for licensure from an applicant if a transcript or other documentation cannot be produced by a third-party entity from which it is required. The proposal will also require an applicant to submit a current report from the National Practitioner Data Bank (NPDB), which is produced along with the report that is currently required from the Healthcare Integrity and Protection Data Bank (HIPDB).

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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

There are no disadvantages to the public of this amendment. Consumers of dental services will be better protected by having complete information on an applicant's history of criminal convictions, disciplinary actions and malpractice payments. Consumers are also better served by allowing the Board to license those applicants who are qualified but who may not be able to produce certain documentation that is unavailable from a third-party source.

There are no disadvantages to the agency or the Commonwealth; a clearly stated regulation should enable staff and the Board to process and act on applications more equitably.

There are no other pertinent matters of interest.

Economic impact

<p>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</p>	<p>The agency will incur some one-time costs (less than \$1,000) for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending copies of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings. There are no ongoing expenditures related to this amendment. 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.</p>
<p>Projected cost of the regulation on localities</p>	<p>None</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>The individuals that may be affected by the regulation are applicants for licensure.</p>
<p>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 (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>From 12/1/04 to 12/1/05, there were 238 hygienists licensed and 265 dentists. The number who would be considered as small businesses would be the majority of the 265 dentists who were licensed.</p>
<p>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>There are no costs for compliance with the proposed regulation. The NPDB report is automatically produced and sent with the HIPDB report for a total charge of \$16, so there is no additional cost.</p>

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.

The only viable alternative to requiring submission of the NPDB report in regulation is to continue requesting that information from an application if it is not provided with the application package. That delays action on the application, which is frustrating to applicants and creates additional work for staff. If the applicant refuses to submit the NPDB report, there is additional time and work spent in determining whether there is a history of malpractice that would cause the Board to deny the application.

Failure to amend regulations to accept alternative verification or documentation from a third-party in the application process if the original source document is unavailable could result in denial of licensure to applicants who are otherwise qualified and could provide dental services to citizens of the Commonwealth.

Regulatory flexibility analysis

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 regulatory methods, consistent with health, safety and welfare that will accomplish the objectives which are to license persons who are qualified but who do not represent a danger to patients with substandard care or have a history of disciplinary problems and malpractice paid claims.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

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

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes.

Current section number	Current requirement	Proposed change and rationale
100	All applications for any license or permit issued by the board shall include: 1. A final certified transcript of the grades from the college from which the applicant received the dental degree, dental hygiene degree or	Adds to #3 <u>a current report from the National Practitioner Data Bank (NPDB).</u> The HIPDB report provides information about convictions and disciplinary actions but not malpractice paid claims, which the Board needs to assess whether there may be grounds for denial. Only the NPDB report has that information, and

	<p>certificate, or post-doctoral degree or certificate;</p> <p>2. An original grade card issued by the Joint Commission on National Dental Examinations; and</p> <p>3. A current report from the Healthcare Integrity and Protection Data Bank (HIPDB).</p>	<p>since both reports are produced together, it is essential to have the applicant submit both.</p> <p>Subsection B is added to state: <u>If a transcript or other documentation required for licensure cannot be produced by the entity from which it is required, the board, in its discretion, may accept other evidence of qualification for licensure.</u></p> <p>This provision will allow the Board to accept other evidence if a third-party entity is unable to produce original documents such as a transcript.</p>
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