



## Proposed Regulation Agency Background Document

<b>Agency name</b>	Board of Dentistry, Department of Health Professions
<b>Virginia Administrative Code (VAC) citation</b>	18 VAC 60-20
<b>Regulation title</b>	Regulations Governing the Practice of Dentistry
<b>Action title</b>	Temporary license for dental residents
<b>Document preparation date</b>	9/14/04

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*.

### Brief summary

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

Chapter 754 of the Acts of the Assembly required the adoption of an “emergency” regulation by the Board of Dentistry to comply with statutory language in § 54.1-2711.1 and the second enactment clause in HB 1049 passed by the 2004 General Assembly. § 54.1-2711.1 B authorizes the Board to adopt regulations for licensure of persons enrolled in advanced dental education programs. The proposed action replaces the emergency regulation currently in effect by setting an application and renewal fee and establishing the requirements for issuance of a temporary license and for practice by a dentist under such a license.

### 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., the agency, board, or person. Describe 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, 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. ...*

In § [54.1-2711.1](#) of the Dental Practice Act, the Board of Dentistry is authorized to issue a temporary license, as prescribed in regulations:

*A. Upon recommendation by the dean of the school of dentistry, the Board may issue a temporary annual license to practice dentistry to persons enrolled in advanced dental education programs, 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. No such license shall be issued to a dental intern or resident or post-doctoral certificate or degree candidate who has not completed successfully the academic education required for admission to examination given by the Board. Such license shall expire upon the holder's graduation, withdrawal or termination from the relevant program.*

*B. 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.*

## 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 purpose of the action is to comply with the statutory mandate in the enactment clause of Chapter 754 of the 2004 Acts of the Assembly and prescribe those regulations necessary to carry out the provisions of § 54.1-2711.1 on the issuance of temporary annual licenses for persons enrolled in advanced dental education programs. By granting a limited license and requiring oversight from a licensed member of the dental program, the Board will authorize practice and the prescribing of controlled substances with appropriate provisions in place to protect the health and safety of citizens treated in dental clinics by persons holding a temporary resident license. Regulations clearly provide that licensure only extends for the duration of the time in a graduate or post-doctoral program and is confined to work in an outpatient clinic that is a recognized part of an advanced dental education program. The new provision in Chapter 27 of Title 54.1 and

proposed regulations to implement the law will authorize practice in dental programs on a par with licensure of interns and residents enrolled in advanced medical programs.

## 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.)*

Section 20 is amended to establish an application fee of \$55 and an annual renewal fee of \$35 for a temporary resident license. Section 91 is adopted to: 1) set out the educational requirements for issuance of a temporary license, including a recommendation from the dean or director of the advanced dental program; 2) establish the limitations on practice; 3) provide for renewal of the license based on continued recommendation by the program and limited to five times; and 4) specify that the temporary license holder is accountable to a licensed dentist who is a member of staff where the residency or internship is being served.

## 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.*

1) The advantages to the public include the expansion of dental services available to persons served in the dental school at MCV or in outpatient dental clinics that are a recognized part of an advanced dental education program. While resident or post-doctoral fellows have been working in those clinics, they have been unable to prescribe controlled substances without a license issued by the state. Such a license is necessary to obtain a controlled substance registration from the Drug Enforcement Administration, so their practice has been severely hampered. Now, dental residents will be able to practice in much the same way as medical residents who provide services at MCV and related clinics. With oversight by members of the dental school staff, limitations on employment outside the dental program and requirements for adherence to standards of the Commission on Dental Accreditation, the practice of dentists with a temporary resident license is more closely monitored than that of a dentist holding a full license for practice. With such requirements in place and with the temporary licensee subject to disciplinary action by the Board, there are no disadvantages to the public.

2) There are no advantages or disadvantages to the agency or the Commonwealth. Given the limited number of persons who will seek a resident license and the limited scope of their practice, the Board does not expect the licensing and disciplinary activities to become

burdensome. Processing of initial applications may be time-consuming, but thereafter, the annual renewals and handling new applications should be routine in nature.

3) There is no other pertinent matter of interest related to this action.

**Economic impact**

*Please identify the anticipated economic impact of the proposed regulation.*

<p><b>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</b></p>	<p>a) 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 some one-time costs (less than \$1,000) for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending notice of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings and Board meetings already scheduled. Since amendments to this chapter will establish a new group of regulated entities, there will be some on-going expenditures related to licensing and disciplining temporary license holders. The application fees should be sufficient to off-set any additional cost related to licensing, and the renewal fees may off-set costs related to discipline. Since temporary license holder must only practice in clinics of the dental program and must be responsible and accountable to a member of staff of that program, the disciplinary caseload is expected to be very small.</p>
<p><b>Projected cost of the regulation on localities</b></p>	<p>None</p>
<p><b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b></p>	<p>The entities that are likely to be affected by these regulations would be applicants and holders of a temporary resident license in dentistry.</p>
<p><b>Agency’s best estimate of the number of such entities that will be affected</b></p>	<p>The agency has no estimate of the number of entities affected since this is a new regulatory program.</p>
<p><b>Projected cost of the regulation for affected individuals, businesses, or other entities</b></p>	<p>Costs for affected individuals include \$55 to apply for the license and \$35 per year to renew. Anyone who renews the license after the expiration date will also pay a \$15 late fee.</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.*

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There are no alternatives to the adoption of regulations for the issuance of a temporary license for persons enrolled in advanced dental education programs, as it is mandated by Chapter 754 of the 2004 Acts of the Assembly. Legislation was introduced at the request of the Dean of the VCU-MCV School of Dentistry to address a problem encountered by residents working in dental clinics connected to the school. Without a license issued by the Board, residents do not have authorization under the Drug Control Act to prescribe and administer controlled substances. Therefore, it was necessary to defer the drug until a licensed dentist (usually a member of faculty) could be found to write the prescription. It was less than optimal care and, at best, caused patients to be inconvenienced.

Language in § 54.1-2711.1 was modeled after § 54.1-2937, which authorizes the Board of Medicine to grant a temporary license to medical interns and residents. Likewise, the requirements for applying for and renewing a temporary resident license are similar to those found in section 220 of 18VAC85-20, Regulations of the Board of Medicine for temporary licenses for interns and residents. Regulations require continued enrollment in an advanced dental education program in order to retain the temporary license for a period of 6 years. They also require accountability to a licensed dentist and prohibit employment outside the hospital or outpatient clinics of the dental school.

### Public comment

*Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.*

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The Notice of Intended Regulatory Action was published on August 9, 2004 with comment received until September 8, 2004. There was no public comment received during that period. The Dean of the School of Dentistry has been present at each meeting of the Board where regulations for temporary licenses have been discussed and has spoken his approval for the emergency regulations and proposed replacement regulations.

### Family impact

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

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There is no impact of the proposed regulatory action 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. Detail all new provisions and/or all changes to existing sections.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
20		Sets fees and renewal schedules for all regulated entities under the Board	<p>Currently, there are no fees established for a temporary resident's license, so the proposed rules set the schedule for annual expiration of a license at June 30<sup>th</sup>, set the application fee at \$55 and the annual renewal fee at \$35. A fee for a late renewal is set at \$15.</p> <p><i>Currently, other special licenses, such as a teacher's license, expire on June 30<sup>th</sup>. The Board has included the resident license among the list of those that have a June expiration date.</i></p> <p><i>Since the resident's license under Dentistry is modeled in law and regulation after the intern/resident license in Medicine, the Board proposes to charge the same fees. While the fees are a fraction of those charged to fully licensed dentists, there are severe limitations on practice by residents with a temporary license, so the lesser fee is deemed appropriate.</i></p>
n/a	91	n/a	<p>Subsection A sets the requirements for issuance of a temporary license to include:</p> <ol style="list-style-type: none"> <li>1. Successful completion of a D.D.S. or D.M.D. dental degree program required for admission to board-approved examinations and submission of a letter of confirmation from the registrar of the school or college conferring the professional degree, or official transcripts confirming the professional degree and date the degree was received.</li> </ol> <p><i>(Subsection A of § 54.1-2711.1 requires that an applicant for the license must have successfully completed the academic education required for admission to examination given by the Board, so the regulation specifies what evidence must be provided to verify completion.)</i></p> <ol style="list-style-type: none"> <li>2. Submission a recommendation from the dean of the dental school or the director of the accredited graduate program specifying the applicant's acceptance as an intern, resident or post-doctoral certificate or degree candidate in an advanced dental education</li> </ol>

			<p>program. The beginning and ending dates of the internship, residency or post-doctoral program must be specified.</p> <p><i>(Since enrollment in an advanced dental education program is a statutory requirement for a temporary license, the regulations set out the evidence required to verify such enrollment and the length of the program. The law specifies that the license expires upon the holder's graduation, withdrawal or termination from the relevant program.)</i></p> <p>Subsection B specifies that the temporary license applies only to practice in the hospital or outpatient clinics of the hospital or dental school where the internship, residency or post-doctoral time is served. Outpatient clinics in a hospital or other facility must be a recognized part of an advanced dental education program.</p> <p><i>(The temporary license is valid only during the course of enrollment in a program and does not permit practice outside the program.)</i></p> <p>Subsection C states that the temporary license may be renewed annually, for up to five times, upon the recommendation of the dean of the dental school or director of the accredited graduate program.</p> <p><i>(Renewal is allowed for up to 5 times to accommodate those dentists who may be enrolled in a six-year advanced residency in a specialty area of practice.)</i></p> <p>D. The temporary license holder shall be responsible and accountable at all times to a licensed dentist, who is a member of the staff where the internship, residency or post-doctoral candidacy is served. The temporary licensee is prohibited from employment outside of the advanced dental education program where a full license is required.</p> <p><i>(The temporary license does not authorize independent practice and is issued to individuals who have not been examined and found competent for a full license to practice dentistry. Therefore, the oversight by and accountability to a licensed member of the dental faculty is necessary to ensure public health and safety.)</i></p> <p>F. The temporary license holder shall abide by the accrediting requirements for an advanced dental education program as</p>
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			<p>approved by the Commission on Dental Accreditation of the American Dental Association.</p> <p><i>(Advanced dental education programs approved by the Commission on Dental Accreditation maintain standards for practice as applicable to each of the specialty programs. Adherence to those standards is necessary for continued, temporary licensure by the Board.)</i></p>
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