



## Fast Track Regulation 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>	Clarification of delegation of scaling and/or root planing
<b>Document preparation date</b>	9/10/07

This information is required for executive review ([www.townhall.state.va.us/dpbpages/apaintro.htm#execreview](http://www.townhall.state.va.us/dpbpages/apaintro.htm#execreview)) and the Virginia Registrar of Regulations ([legis.state.va.us/codecomm/register/regindex.htm](http://legis.state.va.us/codecomm/register/regindex.htm)), pursuant to the Virginia Administrative Process Act ([www.townhall.state.va.us/dpbpages/dpb\\_apa.htm](http://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](http://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](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 Board has acted in response to a petition for rulemaking to clarify that the acts of scaling and root planing, whether performed jointly or individually, may only be delegated to a dental hygienist.

### 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 September 9, 2007, the Board of Dentistry took action to amend 18VAC60-20-10 et seq., Regulations Governing the Practice of Dentistry and Dental Hygiene, through the fast-track regulatory process.

## 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, 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. ...*

## 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 clarified section 220 to state that scaling and/or root planing of teeth can only be delegated by a dentist to a dental hygienist. While the Board believes the current regulation is unambiguous, it has taken action to ensure that there is no confusion about the requirement to delegate scaling and/or root planing only to licensed dental hygienists. Currently, dental assistants are unregulated and limited in function to chairside duties assisting the dentist. Delegation of a treatment like scaling to an assistant with no specific training or accountability may be potentially harmful to a patient. To protect the public health and safety, the Board has acted to clarify the regulation.

## 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 fast-track process is being used to promulgate the amendments because there is general agreement that a clarification is necessary to resolve any possible misinterpretation of the rule by a licensee or his or her employees. There is no change in the Board’s policy or its current interpretation.

**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.)*

There are no substantive amendments.

**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 these amendments. Amendments to regulation are intended to ensure that practitioners and patients alike are protected by stating the prohibition on delegation of scaling and/or root planing to dental assistants.

The only advantage to the Commonwealth may be the avoidance of complaints filed against dentists for the improper use of assistants to perform scaling on patients in violation of the regulations on delegation of dental task. There are no disadvantages to the agency or the Commonwealth.

There are no other pertinent matters of interest.

**Economic impact**

<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>The agency will incur some one-time costs (less than \$1,000) for mailings and conducting a public hearing. Every effort will be made to incorporate those into anticipated mailings or distribute notices by email. There are no ongoing expenditures related</p>
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	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.
<b>Projected cost of the regulation on localities</b>	None
<b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b>	Since the <i>current</i> rule prohibits delegation of scaling and root planing to dental assistants, there should be no one affected by a clearer statement of the requirement.
<b>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.</b> 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.	There should be no effect.
<b>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.</b>	There would be no costs to the affected entities.

**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 alternatives would be to: 1) reject the petitioner’s request and state that the regulation is sufficiently specific and should not be subject to misinterpretation; or 2) adopt a guidance document that further specifies that either scaling or root planing or scaling and root planing (as one procedure) can only be delegated to a dental hygienist.

If either alternative was adopted, there may continue to be violations of the rule on delegation of those procedures. With the regulation more specifically stated, the Board would have firmer grounds for taking disciplinary action against a practitioner who improperly delegates scaling and/or root planing to an assistant.

**Family impact**

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

There is no potential 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.*

<b>Current section number</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
220	Lists the duties that can only be delegated to dental hygienists	<p>Subsection A lists those duties that can be delegated to a hygienist under direction with the dentist being present, including scaling and root planing of natural and restored teeth using hand instruments, rotary instruments and ultrasonic devices under anesthesia administered by the dentist.</p> <p><i>The amendment would specify scaling <u>and/or</u> root planing as duties that can only be delegated to a hygienist.</i></p> <p>Subsection B lists those duties that can only be delegated to dental hygienists and may be delegated by written order to be performed under general supervision without the dentist being present, including scaling and root planing of natural and restored teeth using hand instruments, rotary instruments and ultrasonic devices.</p> <p><i>The amendment would specify scaling <u>and/or</u> root planing as duties that can only be delegated to a hygienist.</i></p> <p><i>The Board is responding to a petition from a dental hygienist who reported that a dentist was delegating scaling to a dental assistant because “scaling” and “scaling and root planing” are two different procedures, and the regulations do specifically not prohibit delegation of only scaling to an assistant. The dentist also claimed that “everyone was doing it.”</i></p> <p><i>The Board believes the regulation is clear as currently written but wants to ensure that such “misinterpretation” of the regulation cannot be used as an excuse if there is a complaint filed about a dentist illegally delegating acts of dentistry to an unlicensed assistant.</i></p>