



Fast Track Proposed 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 Dental Practice
Action title	Requirements for radiation certification
Date this document prepared	6/6/11

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

The proposed amendments to Section 195 on radiation safety certification will reflect the Board's interpretation of current regulations to include options for: 1) a course and examination offered by dental assisting or dental hygiene program accredited by the Commission on Dental Accreditation; and 2) a specific course provided by the Dental Assisting National Board.

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 June 3, 2011, the Board of Dentistry amended Section 195 of 18VAC60-20-10 et seq., Regulations Governing Dental Practice.

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 General Assembly chapter number(s), 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. ...

The Dental Practice Act (Chapter 27 of Title 54.1) permits the practice of dental assistants:

§ 54.1-2712. *Permissible practices.*

The following activities shall be permissible:

1. Dental assistants or dental hygienists aiding or assisting licensed dentists in accordance with regulations promulgated pursuant to § [54.1-2729.01](#); ...

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail 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 of the amended regulation is to state more clearly the qualifications necessary for an unlicensed person to obtain certification in radiation safety. Without the amendments, dental hygiene and dental assisting programs are not clearly authorized to offer radiation safety courses. Persons who want to become dental assistants have fewer options to qualify them to place and expose dental x-rays, so there is concern about unavailability of qualified persons to perform those tasks in dental offices.

Additionally, the current regulations are unclear about which course and examination from the Dental Assisting National Board is acceptable. Without clarity in regulation, a person may present himself as “certified” by a short, three-hour refresher course, rather than the Radiation Health and Safety Review Course (12 hours) intended to cover the full scope of dental radiation safety. Such inadequate preparation could endanger the health and safety of dental patients throughout the Commonwealth.

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?

The fast-track process is necessary because all parties agree that recent changes to Section 195, eliminating “board-approved” courses and examinations, has resulted in a reduction in the availability of radiation safety certification for unlicensed persons who assist in dental offices. The rule proposed by fast-track action is supported by submission of three petitions for rule-making and numerous comments in support of those petitions.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the “Detail of changes” section.)

The changes to Section 195 are as follows:
No person not otherwise licensed by this board shall place or expose dental x-ray film unless he has one of the following: (i) ~~satisfactorily completed~~ satisfactory completion of a radiation safety course or and examination recognized given by an institution that maintains a program in dental assisting, dental hygiene or dentistry accredited by the Commission on Dental Accreditation of the American Dental Association, (ii) ~~been certified~~ certification by the American Registry of Radiologic Technologists, or (iii) ~~satisfactorily completed a radiation course and passed an~~ satisfactory completion of the Radiation Health and Safety Review Course provided by the Dental Assisting National Board or its affiliate and passage of the Radiation Health and Safety examination given by the Dental Assisting National Board. Any certificate issued pursuant to satisfying the requirements of this section shall be posted in plain view of the patient.

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) The primary advantage to the public is a regulation that clearly states the qualification options for persons who will be employed by dentists to expose x-rays in their offices. If clearly stated and accurate, the options for certification will more attainable and offer greater protection for the public. There are no disadvantages.
- 2) The primary advantage to the agency is clarity in the rules to reduce the number of questions and be responsive to petitions. There are no disadvantages.
- 3) There are no other pertinent matters.

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

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; the required certification in radiation safety is set forth in regulations of the Board of Dentistry.

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.

<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>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 \$500) for mailings to the Public Participation Guidelines mailing lists and conducting a public hearing. Every effort will be made to incorporate those into anticipated mailings and meetings already scheduled; b) there are no on-going expenditures.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>There are no costs to localities</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>Persons who want employments as dental assistants who currently practice in dental offices as chairside assistants or take dental xrays.</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>Since the agency does not regulate dental assistants who take dental x-rays, there is no estimate of the number of positions available and the number of persons who might seek training in radiation safety.</p>
<p>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. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. 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.</p>	<p>There are no costs for changes to existing regulations. Changes will increase the options available to persons who want to become chairside dental assistants qualified to expose x-rays.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>Greater availability of quality radiation safety courses through accredited dental assisting or dental hygiene programs</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. 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.

In January 2011, the State Council of Higher Education (SCHEV) sought clarification from the Board of Dentistry about courses offered in dental radiation that claim to be in compliance with regulatory requirements of the dental board. The Executive Director of the Board of Dentistry, after consultation with board counsel, informed SCHEV that, in fact, the Board has no statutory authority to approve radiation safety courses and that regulations incorrectly state that there are guidelines or criteria for such approval.

Given the dilemma created by the existence of a regulation for which statutory authority does not exist and the problems for students who want to be certified and for schools seeking to offer radiation safety courses, the Board acted to eliminate option (iii) in Section 195 that references compliance with guidelines of the Board. Three options for radiation safety certification remain: 1) completion of a course and examination recognized by the Commission on Dental Accreditation of the American Dental Association, (ii) certification by the American Registry of Radiologic Technologists, or (iii) satisfactorily completed a radiation course and passed an examination given by the Dental Assisting National Board.

Subsequently, the Board received three petitions for rulemaking asserting that the elimination of a board approved course and examination had created a dearth of available courses and a hardship for persons who wanted to be certified to expose x-rays. To resolve the problem in the short term, the Board decided to issue a guidance document stating that it interprets the “*course or examination recognized by the Commission on Dental Accreditation of the American Dental Association*” to include a “*course with examination provided by a dental assisting, dental hygiene or dentistry program accredited by the Commission on Dental Accreditation of the American Dental Association.*” (Guidance document 60-20)

This interpretation will allow CODA-accredited dental assisting and dental hygiene programs to offer a dental radiation course in order to certify persons to place or expose dental x-ray film in dental offices. Since CODA does not “recognize” courses or examination, the language in the regulation remains incorrect and confusing. The only alternative is to amend Section 195 to clarify the authority of institutions with CODA-accredited dental programs to offer courses in radiation safety.

Additionally, regulations of the Department of Health for radiation protection specify that an x-ray machine can only be operated by a licensee of the Department of Health Professions or, in the case of a dental assistant, by someone who complies with the radiation certification requirements for Section 195 of 18VAC60-20-10 et seq. Therefore, it is necessary for someone to be licensed or qualified under Section 195 in order to place and expose x-rays in dental offices.

Family impact

Please assess the impact of the proposed 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.

There is no impact on the family.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact in each section. Please describe the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.

Current section number	Current requirement	Proposed change and rationale
195	<p>Current regulation provides 3 options for an unlicensed person to qualify in radiation safety:</p> <p>(i) satisfactorily completed course or examination recognized by the Commission on Dental Accreditation of the American Dental Association, (ii) been certified by the American Registry of Radiologic Technologists, or (iii) satisfactorily completed a radiation course and passed an examination given by the Dental Assisting National Board</p>	<p>No person not otherwise licensed by this board shall place or expose dental x-ray film unless he has <u>one of the following</u>: (i) <u>satisfactorily completed satisfactory completion of a radiation safety course</u> or and <u>examination recognized given by an institution that maintains a program in dental assisting, dental hygiene or dentistry accredited by the Commission on Dental Accreditation of the American Dental Association</u>, (ii) been certified <u>certification</u> by the American Registry of Radiologic Technologists, or (iii) satisfactorily completed a radiation course and passed an <u>satisfactory completion of the Radiation Health and Safety Review Course provided by the Dental Assisting National Board or its affiliate and passage of the Radiation Health and Safety examination</u> given by the Dental Assisting National Board. Any certificate issued pursuant to satisfying the requirements of this section shall be posted in plain view of the patient.</p> <p><i>Rationale for changes:</i></p> <ul style="list-style-type: none"> <i>The first option is unworkable. The Commission on Dental Accreditation (CODA) does not "recognize" courses or examination. It accredits educational programs. The amended language will allow an institution that has a CODA-accredited dental program to offer a course in radiation safety to persons who are not enrolled in a regular course of study but need to be certified in radiation safety.</i> <i>The radiation course offered by the Dental Assisting National Board (DANB) has been specified because the Board has learned that there is a short refresher course in radiation safety which some persons might use to qualify</i>

		<p><i>them to expose dental x-rays. It is not intended for such qualification but only as a refresher to experienced assistants.</i></p> <ul style="list-style-type: none">• <i>It is necessary to add “or its affiliate” to the DANB course option because DANB has created a foundation under which educational courses are not offered. The foundation is affiliated with DANB but courses are not provided directly by DANB.</i>• <i>The section is edited to make it clearer that there are 3 options; a person may complete (i), (ii) <u>or</u> (iii)</i>
--	--	---