

		<b>This space for use by IRRC</b>  <div style="text-align: center; font-weight: bold; font-size: 1.2em;">RECEIVED</div> <div style="text-align: center;">2000 MAY 23 PM 1:23</div> <div style="text-align: center; font-size: 0.8em;">STATE OF PENNSYLVANIA DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS REVIEW COMMISSION</div> <div style="text-align: right; margin-top: 20px;">JD</div>
<b>(1) Agency</b>  Department of State, Bureau of Professional and Occupational Affairs, State Board of Dentistry		<b>IRRC Number:</b> 1959
<b>(2) I.D. Number (Governor's Office Use)</b>  16A-464		
<b>(3) Short Title</b>  Continuing Professional Education		
<b>(4) PA Code Cite</b>  §§33.1, 33.105-33.106, 33.401-33.404	<b>(5) Agency Contacts &amp; Telephone Numbers</b>  Primary Contact: Deborah B. Eskin, Counsel State Board of Dentistry (717) 783-7200 Secondary Contact: Joyce McKeever, Deputy Chief Counsel, Department of State (717) 783-7200	
<b>(6) Type of Rulemaking (check one)</b>  <input type="checkbox"/> Proposed Rulemaking <input checked="" type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Proposed Rulemaking Omitted	<b>(7) Is a 120-Day Emergency Certification Attached?</b>  <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor	
<b>(8) Briefly explain the regulation in clear and nontechnical language.</b>  <p>Act 113 of 1996 adds three subjects to the Dental Law, Act of May 1, 1933, P.L. 216, <u>as amended</u>: (1) continuing education; (2) certification in cardiopulmonary resuscitation (CPR) and (3) reactivation. New Section 3(j) of the Act, 63 P.S. §122(j), requires dentists, dental hygienists and expanded function dental assistants to complete continuing education and obtain certification in CPR as a condition of biennial renewal. In accordance with these amendments, the regulation establishes a framework for the continuing education requirement including acceptable subject matter, the list and responsibilities of approved sponsors and proper documentation. Additionally, the regulation amends biennial renewal and reactivation provisions.</p>		
<b>(9) State the statutory authority for the regulation and any relevant state or federal court decisions.</b>  <p>Sections 3(j), 3(j.1), 3(j.2), 3(o) and 3.1 of the Act, 63 P.S. §§122(j), 122(j.1), 122(j.2), 122(o) and 122.1.</p>		

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

**Yes. Sections 3(j), 3(j.1), 3(j.2), 3(o) and 3.1 of the Act, 63 P.S. §§122(j), 122(j.1), 122(j.2), 122(o) and 122.1.**

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

**The regulation establishes the framework for the continuing education requirement; requires current certification in infant, child and adult cardiopulmonary resuscitation for license renewal; and implements the reactivation provisions required by the Act.**

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

**Without this regulation, dentists, hygienists and extended function dental assistants will lack direction with respect to their responsibility to obtain continuing education and CPR training.**

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

**Consumers of dental care will benefit from the regulation because: (1) the continuing education requirement assures that dentists, dental hygienists and expanded function dental assistants update their clinical skills biennially; (2) the certification in CPR assures that these professionals are competent to perform CPR on their patients, when necessary.**

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

**No groups of individuals or entities are known to be subject to adverse effects as a consequence of these regulations.**

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

**Dentists, dental hygienists and expanded function dental assistants will be required to complete continuing education and be certified in CPR as a condition of biennial renewal and reactivation. Board records show 11,681 persons hold active licenses to practice as a dentist, while 3,444 hold inactive dentist licenses. There are 6,804 individuals with active dental hygienist licenses while 1,338 hold inactive licenses. Expanded function dental assistants are not yet permanently certified; therefore, no number is available for this category.**

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

**The Board sought input from the public by disseminating numerous drafts of the proposed regulation to the 108 entities listed on the attached list.**

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

**The costs associated with implementing these regulations, including an audit, will be borne by the general licensee/certificate holder population through biennial renewal fees which generate revenue for all Board activities. In addition to the above costs, some costs may be incurred in processing any disciplinary matter against a licensee/certificate holder who fails to complete the required continuing education or be certified in CPR.**

**As this is a new program, the Board cannot determine the exact costs associated with implementation. However, the Board will review the costs during its biennial reconciliation. In the short term, the Board expects to have sufficient capital to absorb the increase.**

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

**Local governments would not be affected by this regulation.**

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

**The Board estimates that it will incur a minimal increase in its administrative cost in reviewing biennial renewal applications and auditing compliance with the continuing education requirement.\***

**Aside from the administrative costs, no legal, accounting or consulting activities are anticipated. However, the Board will review the costs during its biennial reconciliation. In the short term, the Board expects to have sufficient capital through biennial renewal fees to absorb the increase.**

**\* As this is a new program, the Board cannot determine the exact costs associated with implementation.**

# Regulatory Analysis Table

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY	FY +1	FY +2	FY +3	FY +4	FY +5
<b>SAVINGS:</b>	\$N/A	\$N/A	\$N/A	\$N/A	\$N/A	\$N/A
Regulated						
Local Government						
State Government						
Total Savings						
<b>COSTS:</b>	N/A	N/A	N/A	N/A	N/A	N/A
Regulated						
Local Government						
State Government						
Total Costs						
<b>REVENUE LOSSES:</b>	N/A	N/A	N/A	N/A	N/A	N/A
Regulated						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

N/A

(20b) Provide the past three year expenditure history for programs affected by the regulation.

N/A

Program	FY -3	FY -2	FY -1	Current FY

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

**This regulation implements the continuing education, CPR and reactivation provisions in Act 113 of 1996. Therefore, there is no expenditure history. Costs of reviewing continuing education and CPR compliance will be borne by Board licensees/certificate holders through the biennial renewal fee. However, the Board will review the costs during its biennial reconciliation. In the short term, the Board expects to have sufficient capital to absorb the increase.**

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

**No non-regulatory alternatives were considered because Act 113 of 1996 requires the Board to promulgate this regulation.**

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

**See No. 22 above.**

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

**No federal licensure standards apply.**

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

**Forty-three (43) states require continuing education for dentists and forty-six (46) states require continuing education for dental hygienists as a condition of biennial renewal. This regulation levels the playing field for Pennsylvania licensees and certificate holders because Pennsylvania licensees and certificate holders were not able to be licensed in some other states because the Act lacked the continuing education requirement.**

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

**No.**

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

**The Board will consider comment from the public on these regulations during the course of its regularly scheduled meetings. Board meetings scheduled for the year are as follows: January 11-12, 1999; March 8-9, 1999; April 12-13, 1999; June 7-8, 1999; July 12-13, 1999; August 30-31, 1999; October 4-5, 1999 and November 15-16, 1999. Meetings are held in the Board's offices at 116-124 Pine Street, Harrisburg, Pennsylvania.**

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

**The regulation will add new reporting, record keeping and paperwork requirements for biennial renewal.**

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

**The Board has perceived no special needs of any subset of its licensees/certificate holders for whom special provisions should be made.**

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

**The regulation will be effective on publication of the final form regulation in the Pennsylvania Bulletin.**

(31) Provide the schedule for continual review of the regulation.

**The Board will review the effectiveness of the regulation during the course of implementation of the continuing education requirement.**



# PROPOSED RULEMAKING

## STATE BOARD OF DENTISTRY

[49 PA. CODE CH. 33]

### Continuing Dental Education and Biennial Renewals

The State Board of Dentistry (Board) proposes to amend §§ 33.1, 33.105 and 33.106 and add §§ 33.401—33.404 to read as set forth in Annex A relating to biennial renewals and continuing education requirements.

#### A. Effective Date

The proposed amendments would be effective upon publication of final-form regulations in the *Pennsylvania Bulletin*. The continuing education requirement will apply to the 1999-2001 renewal period.

#### B. Statutory Authority

The proposed amendments for continuing education, certification in cardiopulmonary resuscitation (CPR) and restoration are governed by sections 3(j.1) and (j.2) and 3.1 of the Dental Law (act) (63 P. S. §§ 122(j.1) and (j.2) and 122.1).

#### C. Background and Purpose

Section 3 of the act was amended in 1996, to require two conditions of biennial license or certification renewal for dentists, dental hygienists and expanded function dental assistants:

1. Licensees and certificate holders must obtain current certification in CPR from a bona fide charitable organization.

2. Dentists must complete 30 hours of continuing education credit, dental hygienists must complete 20 hours of continuing education credit and expanded function dental assistants must complete 10 hours of continuing education credit.

The amendments also added section 3.1 to the act setting forth additional requirements for restoration of licenses and certificates. The CPR and continuing education requirements for the lapsed period must be satisfied before a license or certificate may be restored. Also, licensees and certificate holders who fail to renew their licenses/certificates for more than 5 years, may be required to take the licensure examination.

The proposed amendments implement these provisions.

#### D. Description of Amendments

##### Definitions

Section 33.1 (relating to definitions) would be amended to add definitions of "certificate of completion," "credit hour," "individual study" and "program sponsor."

##### Biennial renewals/reactivation

New § 33.105(b) (relating to biennial renewal of licenses and certificates) would implement section 3(j) of the act (63 P. S. § 122(j)), setting forth two additional conditions for biennial renewal: maintain current certification in CPR from the American Heart Association or the American Red Cross, and effective with the 1999-2001 renewal period, satisfy the continuing education requirements specified in §§ 33.401—33.404.

New § 33.106 would implement section 3.1 of the act relating to reactivation. In addition to the existing requirements for reactivation, proposed subsection (a) requires that dentists, dental hygienists and expanded function dental assistants maintain current CPR certification. Effective with the 1999-2001 renewal period, licensees and certificate holders would also be required to complete all of the continuing education required for the renewal periods during which the license or certificate was not renewed. Proposed subsection (b) specifies that applicants who have failed to renew for more than 5 years may be subject to reexamination.

#### Continuing Education

Proposed § 33.401 (relating to credit-hour requirements) establishes the parameters of the continuing education requirement. Subsection (a) delineates the number of credit hours which must be completed in the preceding biennium. Because the Board believes that the credit hour requirement is not onerous, licensees/certificate holders would be precluded from a carry forward of excess credit hours in subsequent biennial periods. Subsection (b) specifies that the credit hours must be completed in the subject areas permitted under § 33.402 (relating to continuing education subject areas) from the program sponsors listed in § 33.403 (relating to program sponsors).

Proposed subsections (c) and (d) identify four sources of continuing education credit: lecture or clinical presentations, individual study, serving as an instructor and authoring a book, article or continuing education program. The Board believes that interacting with an instructor and other participants is beneficial to the learning process. Therefore, the Board believes that at least 50% of the required credit hours should be taken in lecture or clinical presentations.

The proposed amendments would allow instructors to account for the time preparing their presentations as satisfying the continuing education requirement. In the Board's judgment, instructors routinely spend 2 hours of preparation to every 1 hour of class instruction. Proposed paragraph (1) would permit instructors to claim an additional 2 credit hours as preparation time for each credit hour of instruction.

Proposed paragraph (2) sets out the credit calculation for authorship of professional works. Like the credit awarded to instructors, authors of books, continuing education programs and professional articles would be permitted to claim up to one-half of the required hours. The Board proposes to cap these awards at 50% because it believes that the legislative intent of the new amendments was to require licensees and certificate holders to learn from others.

Proposed subsection (f) sets forth the exceptions to the credit hour requirement. Licensees and certificate holders would be exempt from the credit hour requirement for the biennial period during which the applicant passed the licensure/certification examination. In addition, licensees and certificate holders who cannot meet the continuing education requirement due to illness, emergency or hardship would be able to seek a waiver from the Board. Licensees or certificate holders whose licenses or certificates are suspended would not be exempt from the continuing education requirement.

Section 33.402 requires licensees and certificate holders to complete their credit hours in subjects which contribute directly to the maintenance of clinical competence.

In accordance with section 3(j.2)(1) of the act, credit will not be awarded for billing, office management and practice building. Also, credit will not be awarded for money management, business matters, insurance reimbursement, finance, communication, memory training, speed reading or computer training. The Board acknowledges that these subjects may be personally beneficial to dentists, dental hygienists and expanded function dental assistants, however, the Board believes because they do not enhance clinical competency, they fall within the gamut of the topic areas prohibited by section 3(j.2)(1) of the act.

Section 3(j.2)(1) of the act requires the Board to approve program sponsors by regulation. Section 33.403(a) identifies the 11 preapproved sponsors. The Board has selected these sponsors because of the quality of their programs, the comprehensive review process which their programs undergo, and the availability of their programs. In addition, people who develop programs routinely use these entities as sponsors. This rulemaking will allow new programs to obtain sponsorship. Included within these 11 selected are the state, district, local and constituent professional societies.

Proposed subsection (b) delineates program sponsor responsibilities. In addition to assuring quality programs, presenters, facilities and materials, program sponsors would be required to provide participants with a certificate of completion after assuring satisfactory completion and attendance of the programs. A program sponsor's approval could be withdrawn under proposed subsection (c), in accordance with 2 Pa.C.S. §§ 501—508 (relating to practice and procedure of Commonwealth agencies).

Section 33.404 (relating to reporting continuing education credit hours) describes the reporting requirements. Licensees and certificate holders would be required to certify that they have met the continuing education requirements on their application for biennial renewal. In addition, they would be required to list the title of the course, the program sponsor, the dates attended and the credit hours claimed. Documentation, listed in § 33.404(c), which would evidence completion of the continuing education requirement, would only have to be provided to the Board upon request. Failure to provide documentation when requested or falsification of the requested information would constitute a violation of the act and could result in disciplinary action.

#### *E. Compliance with Executive Order 1996-1.*

In accordance with the requirements of Executive Order 1996-1 (February 6, 1996), in drafting the proposed amendments the Board solicited input and suggestions from the regulated community by providing drafts to organizations and entities which represent the professions, educational institutions and interested individuals.

#### *F. Fiscal Impact and Paperwork Requirements*

1. *Commonwealth*—The proposed amendments will require the Board to assure compliance with the continuing education requirement before renewing a license or certificate. The costs associated with implementing these amendments, including an audit, will be borne by the general licensee/certificate holder population through biennial renewal fees which generate revenue for all Board activities. Additional paperwork will be incurred by the Board to amend renewal application forms.

2. *Political subdivisions*—There will be no adverse fiscal impact or paperwork requirements imposed.

3. *Private sector*—There will be no adverse fiscal impact or paperwork requirements imposed.

#### *G. Sunset Date*

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

#### *H. Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on July 1, 1998, the Board submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. In addition to submitting the proposed amendments, the Board has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Board in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed amendments, it will notify the Department within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria that have not been met by the portion of the proposed amendments to which an objection is made. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the amendments, by the Department, the General Assembly and the Governor of objections raised.

#### *I. Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendments to Judith Pachter Schuler, Counsel, State Board of Dentistry, 116 Pine Street, Post Office Box 2649, Harrisburg, PA 17105-2649, within 30 days of publication of this proposed rulemaking. Please reference No. 16A-464 (Continuing Education), when submitting comments.

EDWIN F. WEAVER, III, D.D.S.,  
Chairperson

**Fiscal Note:** 16A-464. No fiscal impact; (8) recommends adoption.

#### **Annex A**

### **TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

#### **PART I. DEPARTMENT OF STATE**

#### **Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

#### **CHAPTER 33. STATE BOARD OF DENTISTRY**

#### **Subchapter A. GENERAL PROVISIONS**

#### **§ 33.1. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

\* \* \* \* \*

*Continuing education certificate*—A document prepared by the program sponsor which contains the title of the course, the dates attended or completed and the hours of education completed.

**Credit hour**—A minimum unit of continuing education consisting of 60 minutes of instruction. Programs longer than 60 minutes will be credited in 30 minute increments.

\* \* \* \* \*

**Individual study**—A course of continuing education which permits the participant to learn without interacting with an instructor or interactive learning methodologies and which requires a passing grade on a written examination or workbook.

\* \* \* \* \*

**Program sponsor**—The party responsible for the development and presentation of the continuing dental education program approved by the Board.

\* \* \* \* \*

## Subchapter B. LICENSURE OF DENTISTS AND DENTAL HYGIENISTS.

### § 33.105. Biennial renewal of licenses and certificates.

(a) Licenses and certificates are renewable for a 2-year period beginning April 1 of each odd-numbered year. The fee for the biennial renewal is set by the Board. See § 33.3 (relating to fees). Upon [renewing their licenses] renewal, licensees and certificate holders receive new biennial renewal licenses or certificates, as appropriate, and wallet-size [license] cards [that show the next] which include the expiration date [of the license. These documents are the only evidence of valid, current licensure].

(b) As a condition of biennial renewal, licensees and certificate holders shall maintain current certification in cardiopulmonary resuscitation from the American Heart Association continuing education requirements specified in Subchapter F (relating to continuing dental education).

(c) Dentists and dental hygienists who fail to renew their licenses and expanded function dental assistants who fail to renew their certificates are prohibited from practicing their profession in this Commonwealth.

### § 33.106. Reactivation of licenses and certificates.

(a) Dentists and dental hygienists who have failed to renew their licenses and expanded function dental assistants who have failed to renew their certificates may apply for reactivation [of licensure] on forms prescribed by the Board. The applicant for reactivation [of licensure] shall pay the current biennial renewal fee, maintain current certification in cardiopulmonary resuscitation from the American Heart Association or the American Red Cross, and shall submit a notarized affidavit identifying the period of time in which the applicant did not practice in this Commonwealth. Effective with the 1999-2001 renewal period, licensees and certificate holders shall also complete the continuing education requirements for the renewal periods during which the license or certificate was not renewed.

(b) [An] In addition to the requirements in subsection (a), an applicant for reactivation who has failed to renew for more than 5 years may be subject to reexamination under section 3 of the act (63 P. S. § 122).

(c) An applicant for reactivation [of licensure] who practiced in this Commonwealth without a current license or certificate shall pay a late renewal fee of \$5 for each month or part of a month during which the unauthorized practice occurred, as provided in section 225 of the Bureau of Professional and Occupational Affairs Fee Act (63 P. S. § 1401-225). In addition, the applicant shall pay the biennial renewal fee for each biennium during which unauthorized practice occurred. The payment of late fees and biennial renewal fees does not preclude the Board from taking disciplinary action against a dentist or dental hygienist who practiced without a current license or an expanded function dental assistant who practiced without a current certificate.

(Editor's Note: The following subchapter is new. It has been printed in regular type to enhance readability.)

## Subchapter F. CONTINUING DENTAL EDUCATION

Sec.

- 33.401. Credit-hour requirements.
- 33.402. Continuing education subject areas.
- 33.403. Program sponsors.
- 33.404. Reporting continuing education credit hours.

### § 33.401. Credit-hour requirements.

(a) An applicant shall complete the following continuing education credit hours during the preceding biennial period:

- (1) Dentists—30 hours.
- (2) Dental hygienists—20 hours.
- (3) Expanded function dental assistants—10 hours.

(b) The required hours shall be taken in the subject areas listed in § 33.402 (relating to continuing education subject areas) from a program sponsor listed in § 33.403 (relating to program sponsors).

(c) At least 50% of the required credit hours shall be taken in lecture or clinical presentations.

(d) A maximum of 50% of the required credit hours may be taken through individual study, serving as an instructor or author of a book, article or continuing education program.

(1) Instructors will be awarded two additional credit hours as preparation time for each credit hour of instruction up to 50% of the required hours.

(2) Authors will be awarded up to 25% of the required hours on a self-declaration basis. Additional credit, up to 50% of the required hours, may be awarded based on the complexity of the subject matter or work.

(e) Credit will not be awarded for repeating a program in the same renewal period unless the subject matter has substantially changed during that period.

(f) A licensee or certificate holder suspended for disciplinary reasons is not exempt from the continuing education requirements in subsection (a).

(g) Exceptions are as follows:

(1) An applicant is exempt from the continuing education requirement in subsection (a) for only the biennial period during which the applicant passed the licensure or certification examination.

(2) An applicant who cannot meet the continuing education requirement due to illness, emergency or hardship may apply to the Board in writing for a waiver. The request shall explain why compliance is impossible. Waiver requests will be evaluated by the Board on a case-by-case basis.

**§ 33.402. Continuing education subject areas.**

(a) The required credit hours shall be completed in subjects which contribute directly to the maintenance of clinical competence of a dentist, dental hygienist or expanded function dental assistant. Examples of acceptable subjects include:

- (1) Diagnosis and treatment of oral pathosis.
- (2) Clinical and technological subjects.
- (3) Emergency procedures.
- (4) Infection control.
- (5) Abuse and neglect.
- (6) Medical and scientific subjects.
- (7) Laws and regulations pertaining to dentists, dental hygienists and expanded function dental assistants.

(b) Credit hours will not be awarded in nonclinical subjects, including:

- (1) Billing.
- (2) Office management.
- (3) Practice building.
- (4) Insurance reimbursement.
- (5) Communication skills.

**§ 33.403. Program sponsors.**

(a) The Board has approved the following as program sponsors:

- (1) An accredited dental, dental hygiene or expanded function dental assisting school or program.
- (2) Medical or osteopathic medical school or college accredited by an accrediting body recognized by the State Board of Medicine or the State Board of Osteopathic Medicine.
- (3) The American Dental Association Continuing Education Review Program, the American Dental Association's speciality associations, the American Dental Hygienists Association and the American Dental Assistants Association.
- (4) The National Dental Association and its speciality societies and the National Dental Hygienists Association.
- (5) The American Medical Association and the American Osteopathic Medical Association.
- (6) The Pennsylvania Academy of Dental Hygiene Studies.
- (7) The Academy of General Dentistry National Sponsor Approval Program.
- (8) The Veterans' Administration.
- (9) The United States military services.
- (10) The National Institutes of Health.
- (11) The United States Public Health Services.

(b) Program sponsors shall:

(1) Disclose in advance to prospective participants the objectives, prerequisites, experience level, content, required advanced preparation, teaching method and number of continuing education credits involved in the program.

(2) Conduct programs in subjects which contribute directly to the maintenance of clinical competence of a dentist, dental hygienist or expanded function dental assistant.

(3) Provide program materials which are accurate and consistent with currently accepted standards relating to the program's subject matter. Prior to developing errata sheets, the instructor is responsible for informing participants of changes.

(4) Provide sufficient physical facilities for the number of participants and the teaching methods to be utilized.

(5) Evaluate the program, through questionnaires of the participants and instructors, to determine its effectiveness.

(6) Retain accurate attendance records and written outlines for a 5-year period.

(7) Provide participants with a continuing education certificate after assuring satisfactory completion and attendance of the program.

(c) The Board may, following notice and hearing under 2 Pa.C.S. §§ 501—508 (relating to practice and procedure of Commonwealth agencies), withdraw the approval of a program sponsor for cause.

**§ 33.404. Reporting continuing education credit hours.**

(a) The applicant shall provide the requested information concerning the required hours on an application for biennial renewal.

(b) The applicant shall provide a copy of the documentation supporting the completion of the required hours when requested to do so by the Board.

(c) Acceptable documentation consists of the following:

(1) A continuing education certificate or sponsor-generated printouts.

(2) A certified transcript of courses taken for credit in an accredited university or college. For noncredit courses taken, a statement of hours of attendance, signed by the instructor.

(3) Evidence of publication for published articles, books or continuing education programs.

(4) Evidence obtained from the program sponsor of having been an instructor, including an agenda.

(d) The responsibility for documenting the continuing education requirements rests with the applicant. The documentation shall be maintained for 4 years after the completion of the program.

(e) Falsification of information required under subsection (a) constitutes a violation of § 33.212(1) (relating to misleading, deceptive, untrue or fraudulent representations).

(f) Failure to comply with subsection (b) may result in disciplinary or corrective action.

[Pa.B. Doc. No. 98-1098. Filed for public inspection July 10, 1998, 9:00 a.m.]

[49 PA. CODE CH. 33]

**Expanded Function Dental Assistants**

The State Board of Dentistry (Board) proposes to amend §§ 33.101—33.104, 33.107—33.109, 33.201, 33.209 and 33.211—33.212 and by adding §§ 33.120 and 33.205a, to read as set forth in Annex A relating to expanded function dental assistants.

#### A. Effective Date

The proposed amendments will be effective upon publication of final-form regulations in the *Pennsylvania Bulletin*.

#### B. Statutory Authority

The proposed amendments are governed by sections 2—5.1, 10, 10.1, 11, 11.5 and 11.7 of the Dental Law (act) (63 P. S. §§ 121—124.1, 129—129.1, 130, 130e and 130h).

#### C. Background and Purpose

On December 27, 1994, the act was amended throughout to provide for Board certification and regulation of expanded function dental assistants. The proposal will incorporate the certification process into the Board's regulations and conform existing regulations to the act by including the new certification class of expanded function dental assistants.

#### D. Description of Amendments

##### Substantive Amendments

New § 33.102(c) (relating to professional education) would implement section 3(d.1)(1) of the act. Expanded function dental assistants would be required to satisfy one of three educational pathways:

1. Graduate from an expanded function dental assisting program at an accredited 2-year college or institution which offers an associate degree.
2. Graduate from an accredited dental hygiene school requiring the successful completion of at least 75 hours of clinical and didactic instruction in restorative functions.
3. Complete a certification program in expanded function dental assisting of at least 200 hours of clinical and didactic instruction from an accredited dental assisting program.

In developing these proposed amendments, the Board considered requiring accreditation by the Commission on Dental Accreditation of the American Dental Association (CODA) for each educational pathway, to parallel the requirements for dentists and dental hygienists. However, section 3(d.1)(1) of the act, recognizes varying accrediting bodies. Therefore, under the Board's proposal, 2-year colleges, under subsection (c)(1)(i), would be accredited by an accrediting agency approved by the United States Department of Education Council on Postsecondary Accreditation. Dental hygiene schools, under subsection (c)(1)(ii), would receive CODA accreditation. Dental assisting programs, under subsection (c)(1)(iii), would be accredited by either CODA or an accredited agency approved by the United States Department of Education Council on Postsecondary Accreditation whose expanded function educational standards are approved by the Board.

Proposed § 33.114 (relating to first certification examination), which implements section 11.7(b) of the act would establish the procedure for temporary permit holders to take the certification examination. All temporary permit holders would be first required to take that examination. Those who fail would be required to cease practicing and return their permits to the Board. Those who register for the examination and fail to appear would be deemed to have failed the examination, unless they have received a waiver from the Board due to illness or bereavement. Those who pass will be permitted to continue practicing pending receipt of their certificate.

New § 33.205a (relating to practice as an expanded function dental assistant) which implements section 2 of

the act, would delineate the scope of practice. Proposed subsection (a) lists the procedures which expanded function dental assistants are statutorily authorized to perform. Each of these procedures may only be performed under the direct supervision of a dentist. Proposed subsection (b) would list the procedures which expanded function dental assistants are statutorily prohibited from performing.

#### Technical Amendments

Sections 33.101—33.104, 33.107—33.109, 33.201, 33.209 and 33.211—33.212 would be amended to add provisions for expanded function dental assistants similar to those currently in existence for dentists and dental hygienists.

#### E. Compliance with Executive Order 1996-1

In accordance with the requirements of Executive Order 1996-1 (February 6, 1996), in drafting and promulgating the regulation the Board solicited input and suggestions from the regulated community by providing drafts to organizations and entities which represent the professions, educational institutions and interested individuals.

#### F. Fiscal Impact and Paperwork Requirements

1. *Commonwealth*—There will be no adverse fiscal impact in creating this certification class because expanded function dental assistant applicants will be charged initial certification and biennial renewal fees. Additional paperwork will be incurred by the Board to generate and file application forms.

2. *Political subdivisions*—There will be no adverse fiscal impact or paperwork requirements imposed.

3. *Private sector*—The amendments should impose no additional fiscal requirements. Additional paperwork will be required of expanded function dental assistants in filing initial and renewal applications.

#### G. Sunset Date

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

#### H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 1, 1998, the Board submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee (Committees). In addition to submitting the proposed amendments, the Board has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Board in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed amendments, it will notify the Board within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review of objections raised prior to final publication of the amendments by the Board, the General Assembly and the Governor.

#### I. Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed

amendments to Judith Pachter Schulder, Counsel, State Board of Dentistry, 116 Pine Street, Post Office Box 2649, Harrisburg, PA 17105-2649, within 30 days of publication of this proposed rulemaking. Please reference No. 16A-465 (Expanded function dental assistant), when submitting comments.

EDWIN F. WEAVER, III, D.D.S.,  
Chairperson

Fiscal Note: 16A-465. No fiscal impact; (8) recommends adoption.

#### Annex A

### TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

#### PART I. DEPARTMENT OF STATE

#### Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

#### CHAPTER 33. STATE BOARD OF DENTISTRY

#### Subchapter B. LICENSURE OF DENTISTS AND DENTAL HYGIENISTS AND CERTIFICATION OF EXPANDED FUNCTION DENTAL ASSISTANTS

##### § 33.101. General information.

\* \* \* \* \*

(b) Only persons holding a certificate issued by the Board may practice as an expanded function dental assistant in this Commonwealth.

(c) To secure a license [to practice dentistry or to practice as a dental hygienist] or certificate, an applicant shall satisfy the requirements of the act and of this subchapter.

[(c)] (d) Applications for licensure or certification shall be made on forms supplied by the Board and shall be accompanied by the application fee in § 33.3 (relating to fees).

##### § 33.102. Professional education.

\* \* \* \* \*

##### (c) Expanded function dental assistants.

(1) Candidates for certification as expanded function dental assistants shall show compliance with 3(d.1) of the act (63 P.S. § 120(d.1)) by submitting verification of one of the following:

(i) Graduation from an expanded function dental assisting program at a 2-year college or other institution accredited or provisionally accredited by an accrediting agency approved by the United States Department of Education Council on Postsecondary Accreditation which offers an associate degree.

(ii) Graduation from a dental hygiene school which required the successful completion of at least 75 hours of clinical and didactic instruction in restorative functions accredited or provisionally accredited by the Commission on Accreditation of the American Dental Association.

(iii) Completion of a certification program in expanded function dental assisting of at least 200 hours of clinical and didactic instruction from a dental assisting program accredited by the Commission on Dental Accreditation of the American Dental Association or an accrediting agency approved by the United States Department of Educa-

tion Council on Postsecondary Accreditation whose expanded function educational standards are approved by the Board.

(2) Candidates for certification who receive their professional education outside the United States may satisfy the education requirement by submitting their credentials to a program listed in paragraph (1) and obtaining additional training that will lead to the awarding of a degree by that school.

##### § 33.103. Examinations.

\* \* \* \* \*

(c) *Expanded function dental assistants.* Candidates for certification shall pass an examination comprised of both a written and a clinical component acceptable to the Board.

(d) [NERB] *Recognition of examinations.* The Board will recognize successful completion of the NERB Dental or Dental Hygiene Examination or the expanded function dental assistant clinical examination for up to 5 years from the date scores are reported to the Board. After 5 years, the Board will accept [NERB] passing scores on the examinations only if the candidate for licensure has been engaged in [post-graduate] post graduate training or in the practice of dentistry [or], as a dental hygienist or as an expanded function dental assistant in another jurisdiction.

[(d) *Effective date.* Subsection (c) is effective June 24, 1996.]

##### § 33.104. Initial licensure/certification; licensure/certification documents.

\* \* \* \* \*

(b) Each new certificate holder is issued a wall certificate indicating initial certification and a registration packet including a biennial renewal certificate and a wallet-size certification card that show the expiration date of the certificate. Certificates expire on March 31 of each odd-numbered year, regardless of the date of issuance.

(c) Fees as prescribed by the Bureau of Professional and Occupational Affairs Fee Act (63 P.S. §§ 1401-101—1401-501), shall be charged for duplicate wall certificates and biennial renewal documents. A duplicate will be issued only upon submission by the licensee or certificate holder of a notarized statement specifying why the original is unavailable and stating that the duplicate will be returned if the original is recovered.

##### § 33.107. Licensure and certification by criteria approval.

Dentists [and], dental hygienists and expanded function dental assistants who are currently licensed or certified in another state or territory or in Canada may be granted licensure or certification in this Commonwealth if the credentials submitted meet the requirements of the act and of this subchapter. Licensure and certification by criteria approval will be granted only to applicants whose licensing boards confirm that they reciprocate with [Pennsylvania] the Commonwealth. An applicant shall cause the licensing authority of each state where the applicant has practiced to submit to the Board a letter of good standing. The Board may grant a personal interview to resolve questions concerning an applicant's qualifications.

§ 33.108. Transfers out-of-State.

Dentists [ and ], dental hygienists and expanded function dental assistants who wish their licensure, certification or grades certified to another state shall pay the [ certification of licensure ] fee [ set out ] in § 33.3 (relating to fees).

§ 33.109. Licensee's and certificate holder's change of name or address; service of process and legal papers.

(a) A licensee's or certificate holder's name on file with the Board shall be the name that appears on the license or certificate unless that name is legally changed, in which case the licensee or certificate holder shall report the change to the Board in writing within 10 days.

(b) A licensee or certificate holder who changes an address on file with the Board shall notify the Board in writing within 10 days. Licensees or certificate holders who do not comply with this subsection shall bear full responsibility for failure to receive correspondence, including biennial renewal notifications, from the Board or the Department.

(c) A licensee's or certificate holder's most recent name and address on file with the Board will be deemed the licensee's or certificate holder's official name and address for purposes of service of process and other legal papers.

§ 33.114. First certification examination.

(a) Temporary permit holders shall register and take the first expanded function dental assistant examination.

(b) Temporary permit holders who fail to register for the first examination shall immediately cease practicing as an expanded function dental assistant in this Commonwealth and return their temporary permits to the Board.

(c) Temporary permit holders who fail the first examination shall, upon notice, immediately cease practicing as an expanded function dental assistant in this Commonwealth and return their temporary permits to the Board.

(d) Temporary permit holders who register but fail to sit for the examination, shall be deemed to have failed the examination and shall forfeit their temporary permits unless granted a waiver under subsection (d).

(e) Temporary permit holders who fail to appear for the examination by reason of illness or bereavement shall apply to the Board for a waiver within 10 days of the examination. Documentation, including a letter from a physician supporting the applicant's claim of illness or bereavement, shall accompany the request for a waiver. A waiver which is granted will extend the temporary permit until the results of the next scheduled examination.

Subchapter C. MINIMUM STANDARDS OF CONDUCT AND PRACTICE

§ 33.201. Use of titles and other designations.

(a) Dentists [ and ], dental hygienists and expanded function dental assistants may use only the following titles when formally holding themselves out to the public as members of their respective professions:

\* \* \* \* \*

(3) *Expanded function dental assistants.* "Expanded function dental assistant" or "EFDA" when preceded by the certificate holder's name.

\* \* \* \* \*

(c) References in this section to the licensee's or certificate holder's name shall be interpreted to mean the name appearing on the licensee's or certificate holder's current [ biennial renewal registration ] license or certificate but to allow for the use of initials preceding the licensee's or certificate holder's surname.

§ 33.205a. Practice as an expanded function dental assistant.

(a) *Scope of professional practice.*

(1) An expanded function dental assistant may offer to perform or perform the following services:

- (i) Placing and removing rubber dams.
- (ii) Placing and removing matrices.
- (iii) Placing and removing wedges.
- (iv) Applying cavity liners and bases.
- (v) Placing and condensing amalgam restorations.
- (vi) Carving and contouring amalgam restorations.
- (vii) Placing and finishing composite resin restorations.

(2) Each of the professional services identified in paragraph (1) shall be performed under the direct supervision of a dentist.

(b) *Prohibitions.* An expanded function dental assistant may not:

- (1) Examine, diagnose or plan treatment.
- (2) Cut hard or soft tissue.
- (3) Prescribe drugs, medicaments or lab authorizations.
- (4) Evaluate or adjust final occlusion.
- (5) Perform pulp capping, pulpotomy and other endodontic procedures.
- (6) Place or adjust fixed and removable prosthetic appliances.
- (7) Administer local anesthesia, parenteral or inhalational sedation, nitrous oxide analgesia or general anesthesia.

§ 33.209. Preparing, maintaining and retaining patient records.

(a) A dentist shall maintain a dental record for each patient which accurately, legibly and completely reflects the evaluation and treatment of the patient. A patient dental record shall be prepared and maintained regardless of whether treatment is actually rendered or whether a fee is charged. The record shall include, at a minimum, the following:

\* \* \* \* \*

(4) A description of the treatment or service rendered at each visit and the identity of the [ dentist or dental auxiliary ] person rendering it.

\* \* \* \* \*

(8) The date of each entry into the record and the identity of the person providing the service if not the



dentist of record—for example, dental hygienist, expanded function dental assistant, dental assistant, and the like.

\* \* \* \* \*

§ 33.211. Unprofessional conduct.

\* \* \* \* \*

(c) *Expanded function dental assistants.* Unprofessional conduct, as defined in section 4.1(a)(8) of the act (63 P. S. § 123.1(a)(8)), includes the following conduct by an expanded function dental assistant:

(1) Practicing as an expanded function dental assistant without the direct supervision of a dentist.

(2) Performing a service that the expanded function dental assistant is not competent or not authorized to perform.

(3) Physically, sexually or verbally abusing a patient.

(4) Failing to follow current infection-control recommendations issued by the Federal Centers for Disease Control.

(5) Providing ionizing radiation in violation of § 33.302 (relating to auxiliary personnel performing radiologic procedures).

§ 33.212. Misleading, deceptive, untrue or fraudulent representations.

As used in section 4.1(a)(2) of the act (63 P. S. § 123.1(a)(2)), the phrase "misleading, deceptive, untrue or fraudulent representations" includes the following conduct by dentists [and], dental hygienists and expanded function dental assistants.

(1) Misrepresenting or concealing a material fact in obtaining [ or ], renewing [ a license to practice dentistry or as a dental hygienist ] or [ in ] seeking reinstatement of [ the ] a license or certificate.

\* \* \* \* \*

[Pa.B. Doc. No. 98-1099. Filed for public inspection July 10, 1998, 9:00 a.m.]



CDL-1

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(DEPUTY ATTORNEY GENERAL)

STATE BOARD OF DENTISTRY  
(AGENCY)

*Murray E. Dunlop*

DOCUMENT/FISCAL NOTE NO. 16A-464

DATE OF ADOPTION: \_\_\_\_\_

12/22/99  
DATE OF APPROVAL

BY: *Norbert O. Gannon D.D.S.*  
Norbert O. Gannon, D.D.S.

(Deputy General Counsel  
(~~Chief~~ Counsel,  
Independent Agency  
(Strike inapplicable  
title)

TITLE: CHAIRMAN  
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

[ ] Check if applicable  
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applicable. No Attorney  
General approval or  
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after submission.

ORDER OF FINAL RULEMAKING  
COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS  
STATE BOARD OF DENTISTRY  
49 PA. CODE, CHAPTER 33  
CONTINUING DENTAL EDUCATION AND BIENNIAL RENEWALS

The State Board of Dentistry (Board) amends §§33.1, 33.105 and 33.106 and adds §§33.401-33.404 to read as set forth in Annex A relating to biennial renewals and continuing education requirements.

Section 3(j.1) and j.2) of the Dental Law (Act), (63 P.S. §§122(j.1) and (j.2) as amended in 1996, requires two conditions of biennial license or certification renewal for dentists, dental hygienists and expanded function dental assistants:

1. Licensees and certificate holders must obtain current certification to administer cardiopulmonary resuscitation (CPR).
2. Dentists must complete 30 hours of continuing education credit, dental hygienists must complete 20 hours of continuing education credit and expanded function dental assistants must complete 10 hours of continuing education credit.

The amendments also added section 3.1 to the act (63 P.S. §122.1) setting forth additional requirements for restoration of licenses and certificates. The CPR and continuing education requirements for the lapsed period must be satisfied before a license or certificate may be restored. Also, licensees and certificate holders who fail to renew their licenses/certificates for more than 5 years may be required to take the licensure examination.

The regulatory amendments implement these provisions.

Notice of proposed rulemaking was published at 28 Pa. B. 3293 (July 11, 1998). Publication was followed by a 30-day public comment period during which the Board received comments from the Pennsylvania Dental Hygienists' Association, Inc. (PDHA), the Pennsylvania Dental Association (PDA) and a dentist, a dental hygienist and an expanded function dental assistant. Following the close of the public comment period, the Board also received comments from the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC). The Senate Consumer Protection and Professional Licensure Committee offered no comments, suggestions or objections to the amendments.

In final rulemaking the Board considered the comments and suggestions of all commentators. In addition, the Board considered this rulemaking and its purpose under the directives of Executive Order 1996-1, Regulatory Review and Promulgation.

For ease of reference, the Board will address the comments and the Board's responses, in the order in which the amendments appear.

### **§33.1. Definitions.**

The IRRC commented that because the definition of “credit hour” contains a substantive provision in the second sentence, the definition should be moved to §33.401 upon review of both sections, the Board is of the view that the definition will get lost in §33.401. Therefore, the definition of “credit hour” is retained in §33.1.

The IRRC suggested that the definition of “individual study” be amended to specify that the individual study course must be administered by an approved program sponsor. The Board has followed this suggestion and amended the definition accordingly.

The IRRC commented that the definition of “program sponsor” lacks clarity and is not consistent with Section 3(j.2)(1) (63 P.S. §122(j.2)(1)). The IRRC further suggested that the proposed definition could be interpreted to mean that individual programs, rather than the program sponsors, are approved by the Board, and suggested the definition be amended to state that the program sponsor is approved by the Board. The Board has implemented the IRRC’s suggestion as it clarifies the Board’s intent. The PDHA suggested that the current definition of a program sponsor be labeled a “program provider” and a new definition for “program sponsor” be established. The Board has not adopted this suggestion as the intent is to have the program sponsors oversee the individual program provider, thus freeing the Board from oversight responsibilities for numerous program providers.

### **Subchapter B**

The IRRC pointed out that subchapter B, as printed in the Pennsylvania Bulletin, has “hygienists” misspelled. This has been corrected.

### **§33.105. Biennial renewal of licenses and certificates.**

The HPLC requested that the Board clarify that the continuing education credits are to be earned during the two years proceeding the 2001-2003 biennial and that both certification and CPR in continuing education credits be completed to renew a license effective for the 2001-2003 biennial period. Section 33.105(b) must be amended accordingly. The IRRC suggested that this section does not adequately explain how the Board intends to notify licensees and certificate holders of the new requirements for continuing education. The regulation specifies that during the 1999-2001 renewal period, the continuing education requirements in §§33.401-33.404 must be satisfied. The Board has revised and added clarifying language. As written, the section tracks the amendment to the Dental Law and provides for an enforcement mechanism beginning with the 2001-2003 renewal period.

As proposed, the CPR requirement would be met by current certification from the American Heart Association or the American Red Cross. The HPLC suggested that the language of Section 3(j.1) of the act (63 P.S. §122(j.1)) should be broadly, rather than narrowly, construed. Accordingly,

the Board has revised the requirement, so that any organization, charitable or for-profit, may provide qualifying courses. The Board has added a new sentence which provides that the content of certification courses be substantially similar to those offered by the American Heart Association and the American Red Cross, which the Board believes furthers the statutory intent in referencing certification by a bona fide charitable organization in Section 3(j.1).

The Board also believes that this language will assure minimum standards and consistency among organizations which provide CPR certification courses.

IRRC suggested that the Board add the National Safety Council as an approved entity. Because the Board adopted the HPLC statutory interpretation, this change has not been adopted. IRRC also suggested that the Board should specify the minimum level of CPR certification acceptable. The Board has amended the proposed to provide that the certification must include infant, child and adult CPR. The Board believes that this requirement furthers the legislative intent of the language "CPR or basic life support".

The PDHA recommended that basic cardiac life support for the health care provider be the required form of CPR certification, as it is more extensive and covers infant, child and adult CPR, as opposed to basic CPR, which includes only resuscitation on adults. The Board concurs and has amended §33.105.

The PDHA objected to subsection (b), providing that applicants for reactivation who have failed to renew for more than 5 years may be subject to reexamination. The objection was based upon allowing the Board the authority to determine who is subject to reexamination. The Board notes that the legislature has provided the Board with this discretion in Section 3.1(b) of the act, 63 P.S. §122.1(b), wherein these persons "may be required to submit to a reexamination in accordance with Section 3".

#### **§33.401. Credit-hour requirements.**

A commentator and the PDHA suggested that the Board allow credit hours to be carried over from a previous biennial period. Because of the minimal number of credit hours required and the administrative cost of tracking carryover hours, the Board has determined not to allow carryover.

The PDHA recommended that subsection (b) be amended to read "the required hours shall be taken from a program approved by a program sponsor". The Board believes that this change is not warranted in a section outlining subject areas.

The IRRC and the PDHA questioned the need for the requirement in subsection (c) that at least 50% of the required credit hours be taken in lecture or clinical presentation. The Board believes that this requirement is necessary and that the opportunity to interact with the instructor and other participants is crucial to learning clinical subject matter whether in didactic or "hands-on" learning

experiences.

The IRRC suggested that subsection (d)(1) be amended to require that additional credit hours for instructors are subject to the limitations of subsection (e). Subsection (d)(1) has been amended accordingly.

The PDHA suggested that the term “instructor” be defined. The Board prefers not to limit the definition of “instructor”, to include instructors at educational institutions and allow them to receive credit for teaching.

The PDHA recommended that section (d)(1) be amended to “instructors will be awarded two hours of preparation time plus one hour of instruction time for each hour spent instructing”. Subsection (d)(1) has been amended to clarify that actual instruction would be covered.

The IRRC commented that subsection (d)(2) is vague regarding what standard authors’ work would have to meet to qualify for additional credit up to 50%. In response, the Board has amended this subsection.

A commentator suggested that “instructors” in subsection (d) should have the same license or certificate as those they teach. The Board believes that such a requirement is unnecessarily restrictive and would prohibit physicians, dentists and others from providing qualified instructors.

A commentator suggested that subsection (d) be amended to reference §33.402. The Board does not believe a cross-reference in this case is necessary.

#### **§33.402. Continuing education subject hours.**

The IRRC suggested that subsection (a)(3) be amended to clarify that CPR certification training hours would not be included as continuing education credit hours. This section has been revised accordingly.

The IRRC, the PDHA and a commentator suggested that subsection (b)(5), wherein credit hours would not be awarded for communication skills, should not be excluded since dental hygienists need the ability to communicate with patients to promote changes in the patients’ daily hygiene. The Board concurs with the assessment that all practitioners should work to improve their ability to communicate with patients. However, the Board believes that the continuing education requirement should be limited to substantive areas of clinical practice. By so doing, the Board believes that the regulation will more nearly track the legislative intent to ensure that practitioners keep abreast of technological and scientific developments.

**§33.403. Program sponsors.**

The IRRC and PDHA suggested that subsection (b)(1) should specify how far in advance the program sponsor is required to disclose the information. The Board believes that requiring advance notification and more specificity is not needed with this requirement.

The IRRC suggested that the last sentence in subsection (b)(3) be amended to focus on requiring the instructor to provide accurate materials rather than when errata sheets are developed. This subsection has been revised by omitting the last sentence which requires instructors, prior to developing errata sheets, to be responsible for informing participants of changes.

The IRRC requested an explanation as to why subsection (b)(6) requires attendance records and outlines to be kept for a five year period, when the most recent preceding biennial period should suffice to allow the Board to audit complaints. The five year period was selected for clarity. Program sponsors may not necessarily know exactly when a biennial period runs. In accordance with the recommendation of the House Professional Licensure Committee, the Board has changed the requirement to four years, which would cover the same amount of time as that suggested by the IRRC, i.e., the current and most recent renewal period.

The IRRC suggested that the Board should provide that if the approval of a program sponsor identified in §33.403(a) is withdrawn, the section will be amended accordingly. The Board concurs with the suggestion and has changed this subsection to reflect the comment.

The IRRC suggested that §33.403 should provide guidance on obtaining approval as a program sponsor and adding sponsors in rulemaking. The Board has added a subsection (d) implementing this suggestion.

The PDHA recommended that the responsibilities of program sponsors be amended to be the responsibilities of program providers. The Board believes that these responsibilities should be those of program sponsors, as provided in the proposed regulations.

The House Professional Licensure Committee suggested that subsection (b)(4) be amended to reference another regulation concerning the provision of adequate facilities that provide physical access to licensees in the conformance with applicable law. The subsection has been amended to clarify that physical facilities must be adequate to both the type as well as the number of participants. The Board believes that other laws and regulations adequately cover handicapped accessibility.

The PDHA recommended that subsections (a)(2) and (5) include the equivalent nursing associations. These sections have been amended accordingly.

The PDHA suggested that a provision be added for special, temporary or one-time program sponsors and for adding new sponsors. As previously discussed, a new subsection (d) has been added for new sponsors.

#### **§33.404. Reporting continuing education credit hours.**

The IRRC suggested amending subsection (b) to use the phrase “required credit hours” instead of “required hours”. The Board has amended this section accordingly.

The IRRC suggested amending subsection (d) to require maintenance and documentation for the current and most recent preceding biennial period, which would be a maximum of four years. As discussed in reference to subsection (b)(6) of §33.403, the Board believes that a specific period of years is clearer and that a four year period is needed to cover documentation for any discrepancies or legal concerns that may later arise.

The IRRC suggested referencing the statute in subsection (e) to cover falsification by expanded function dental assistants, in case the regulations governing expanded function dental assistants are not completed prior to completion of these regulations. The Board agrees and has inserted a reference to the statute.

The IRRC suggested combining subsection (a) with (e) and subsection with (b) with (f) because they concern the same subject matter. The Board had structured the subsections to combine affirmative requirements and sanctions and prefers to retain the structure of the subsections as proposed to enable the requirements of subsections (e) and (f) to stand alone.

#### **Compliance with Executive Order 1996-1, Regulatory Review and Promulgation**

The Board reviewed this rulemaking and considered its purpose and likely impact upon the public and the regulated population under the directives of Executive Order 1996-1, Regulatory Review and Promulgation. The final regulation addresses a compelling public interest as described in this Preamble and otherwise complies with Executive Order 1996-1.

#### **Fiscal Impact and Paperwork Requirements**

1. *Commonwealth* — The amendments will require the Board to assure compliance with the continuing education requirement before renewing a license or certificate. The costs associated with implementing these amendments, including an audit, will be borne by the general licensee/certificate holder population through biennial renewal fees which generate revenue for all Board activities. Additional paperwork will be incurred by the Board to amend renewal application forms.

2. *Political subdivisions* — There will be no adverse fiscal impact or paperwork requirements imposed.

3. *Private sector* — There will be no adverse fiscal impact or paperwork requirements imposed.

### **Statutory Authority**

The amendments for continuing education, certification in cardiopulmonary resuscitation (CPR) and restoration are governed by sections 3(j.1) and (j.2) and 3.1 of the Dental Law (act) (63 P.S. §§122j.1) and (j.2) and 122.1).

### **Sunset Date**

The Board continually monitors the effectiveness of its regulations through communications with the regulated population; accordingly, no sunset date has been set.

### **Regulatory Review**

Under Section 5(a) of the Regulatory Review Act, the Act of June 30, 1989 (P.L. 73, No. 19), (71 P.S. §§745.1 — 745.15), the agency submitted a copy of the Notice of Proposed Rulemaking, published at 28 Pa. B. 3293, on \_\_\_\_\_, 1999, to the IRRC and the Chairmen of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee for review and comment. In compliance with Section 5(b.1), the agency also provided the IRRC and the committees with copies of all comments received, as well as other documentation.

In preparing this final form regulation the agency has considered all comments received from the IRRC and the public.

This final form regulation was (deemed) approved by the House Committee on \_\_\_\_\_ and (deemed) approved by the Senate Committee on \_\_\_\_\_. The IRRC met on \_\_\_\_\_ and (deemed) approved the regulation in accordance with Section 5(c) of the Act.

### **Contact person**

Further information may be obtained by contacting Lisa Burns, Administrative Assistant, State Board of Dentistry, at P. O. Box 2649, Harrisburg, PA 17105-2649; telephone (717) 783-7162.

### **Findings**

(1) Public notice of rulemaking was given under sections 201 and 202 of the Act of July 31, 1968 (P.L. 769) (45 P.S. §§1201 and 1202) and the regulations promulgated thereunder at 1 Pa. Code §§7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.



(3) This amendment does not enlarge the purpose of proposed rulemaking published at 28 Pa. B. 3293.

(4) This amendment is necessary and appropriate for administration and enforcement of the Board's authorizing statute.

**Order**

The Board, acting under its authorizing statute, orders that:

(1) The regulations of the Board, 49 Pa. Code Chapter 33 are amended as set forth in Annex A.

(2) The Board shall submit this order and Annex A to the Office of General Counsel and to the Office of Attorney General as required by law.

(3) The Board shall certify this Order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(4) This order shall take effect upon publication in the Pennsylvania Bulletin.

ANNEX A  
TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS  
PART I. DEPARTMENT OF STATE  
Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS  
CHAPTER 33. STATE BOARD OF DENTISTRY

Subchapter A. GENERAL PROVISIONS

**§33.1. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

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Continuing education certificate--A document prepared by the program sponsor which contains the title of the course, the dates attended or completed and the hours of education completed.

Credit hour--A minimum unit of continuing education consisting of 60 minutes of instruction. Programs longer than 60 minutes will be credited in 30 minute increments.

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Individual study--A course of continuing education OFFERED BY AN APPROVED PROGRAM SPONSOR, which permits the participant to learn without interacting with an instructor or interactive learning methodologies and which requires a passing grade on a written examination or workbook.

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Program sponsor--The party APPROVED BY THE BOARD WHO IS responsible for the development and presentation of the continuing dental education program [approved by the Board].

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**Subchapter B. LICENSURE OF DENTISTS AND DENTAL ~~{HYGIENTS}~~ HYGIENISTS.**

**§33.105. Biennial renewal of licenses and certificates.**

(a) Licenses and certificates are renewable for a 2-year period beginning April 1 of each odd-numbered year. The fee for the biennial renewal is set by the Board. See §33.3 (relating to fees). Upon [renewing their licenses] renewal, licensees and certificate holders receive new biennial renewal licenses or certificates, as appropriate, and wallet-size [license] cards [that show the next]

which include the expiration date [of the license. These documents are the only evidence of valid, current licensure].

(b) As a condition of biennial renewal, COMMENCING WITH THE 2001-2003 RENEWAL PERIOD, licensees and certificate holders shall maintain current certification in INFANT, CHILD AND ADULT cardiopulmonary resuscitation [from the American Heart Association or the American Red Cross.] AND continuing education requirements specified in §§33.401-33.404 (relating to continuing dental education). LICENSEES AND CERTIFICATE HOLDERS SHALL CERTIFY THEIR COMPLIANCE WITH THIS SUBSECTION WHEN RENEWING THEIR LICENSES ON AND AFTER APRIL 1, 2001. COURSES FOR CERTIFICATION IN CARDIOPULMONARY RESUSCITATION (CPR) SHALL BE SUBSTANTIALLY SIMILAR IN CONTENT TO THE CPR COURSES OFFERED BY THE AMERICAN HEART ASSOCIATION AND THE AMERICAN RED CROSS AND HAVE A SIMILAR RENEWAL PERIOD.

(c) Dentists and dental hygienists who fail to renew their licenses and expanded function dental assistants who fail to renew their certificates are prohibited from practicing their profession in this Commonwealth.

**§33.106. Reactivation of licenses and certificates.**

(a) Dentists and dental hygienists who have failed to renew their licenses and expanded function dental assistants who have failed to renew their certificates may apply for reactivation [of licensure] on forms prescribed by the Board. The applicant for reactivation [of licensure] shall pay the current biennial renewal fee, [maintain] PROVIDE EVIDENCE OF current certification in cardiopulmonary resuscitation [from the American Heart Association or the American Red Cross], and shall submit a notarized affidavit identifying the period of time in which the applicant did not practice in this Commonwealth. Effective with the 1999-2001 renewal period, licensees and certificate holders shall also complete the continuing education requirements for the renewal periods during which the license or certificate was not renewed.

(b) [An] In addition to the requirements in subsection (a), an applicant for reactivation who has failed to renew for more than 5 years may be subject to reexamination under section 3.1(B) of the act (63 P.S. §122.1.(B)).

(c) An applicant for reactivation [of licensure] who practiced in this Commonwealth without a current license or certificate shall pay a later renewal fee of \$5 for each month or part of a month during which the unauthorized practice occurred, as provided in section 225 of the Bureau of Professional and Occupational Affairs Fee Act (63 P.S. §1401-225). In addition, the applicant shall pay the biennial renewal fee for each biennium during which unauthorized practice occurred. The payment of late fees and biennial renewal fees does not preclude the Board from taking disciplinary action against a dentist or dental hygienist who practice without a current license or an expanded

function dental assistant who practice without a current certificate.

## **Subchapter F. CONTINUING DENTAL EDUCATION**

### **§33.401. Credit-hour requirements.**

(a) An applicant shall complete the following continuing education credit hours during the preceding biennial period:

- (1) Dentists — 30 hours.
- (2) Dental hygienists — 20 hours.
- (3) Expanded function dental assistants — 10 hours.

(b) The required hours shall be taken in the subject areas listed in §33.402 (relating to continuing education subject areas) from a program sponsor listed in §33.403 (relating to program sponsors).

(c) At least 50% of the required credit hours shall be taken in lecture or clinical presentations.

(d) A maximum of 50% of the required credit hours, LISTED IN §33.402 (RELATING TO CONTINUING EDUCATION SUBJECT AREAS, may be taken through individual study, serving as an instructor or author of a book, article or continuing education program.

(1) Instructors will be awarded two additional credit hours as preparation time for each credit hour of instruction, AND FOR ACTUAL INSTRUCTION, up to 50% of the required hours. ADDITIONAL CREDIT HOURS FOR INSTRUCTORS ARE SUBJECT TO THE LIMITATIONS OF SUBSECTION (E).

(2) Authors will be awarded [up to 25%] 50% of the required hours FOR ARTICLES PUBLISHED IN A PEER-REVIEWED PROFESSIONAL JOURNAL. [on a self-declaration basis. Additional credit, up to 50% of the required hours, may be awarded based on the complexity of the subject matter of work.]

(e) Credit will not be awarded for repeating a program in the same renewal period unless the subject matter has substantially changed during that period.

(f) A licensee or certificate holder suspended for disciplinary reasons is not exempt from the continuing education requirements in subsection (a).

(g) Exceptions are as follows:

(1) An applicant is exempt from the continuing education requirement in subsection (a) for only the biennial period during which the applicant passed the licensure or certification examination.

(2) An applicant who cannot meet the continuing education requirement due to illness, emergency or hardship may apply to the Board in writing for a waiver. The request shall explain why compliance is impossible. Waiver requests will be evaluated by the Board on a case-by-case basis.

**§33.402. Continuing education subject areas.**

(a) The required credit hours shall be completed in subjects which contribute directly to the maintenance of clinical competence of a dentist, dental hygienist or expanded function dental assistant. Examples of acceptable subjects include:

- (1) Diagnosis and treatment of oral pathosis.
- (2) Clinical and technological subjects.
- (3) Emergency procedures EXCLUDING HOURS REQUIRED FOR CPR CERTIFICATION.
- (4) Infection control.
- (5) Abuse and neglect.
- (6) Medical and scientific subjects.
- (7) Laws and regulations pertaining to dentists, dental hygienists and expanded function dental assistants.

(b) Credit hours will not be awarded in nonclinical subjects, including:

- (1) Billing.
- (2) Office management,
- (3) Practice building.
- (4) Insurance reimbursement.
- (5) Communication skills.

**§33.403. Program sponsors.**

(a) The Board has approved the following as program sponsors:

- (1) An accredited dental, dental hygiene or expanded function dental assisting school or program.

(2) Medical or osteopathic medical school or college accredited by an accrediting body recognized by the State Board of Medicine, ~~[or the]~~ State Board of Osteopathic Medicine, OR STATE BOARD OF NURSING.

(3) The American Dental Association Continuing Education Review Program, the American Dental Association's speciality associations, the American Dental Hygienists Association and the American Dental Assistants Association.

(4) The National Dental Association and its speciality societies and the National Dental Hygienists Association.

(5) The American Medical Association, ~~[and the]~~ American Osteopathic Medical Association, AND THE AMERICAN NURSING ASSOCIATION.

(6) The Pennsylvania Academy of Dental Hygiene Studies.

(7) The Academy of General Dentistry National Sponsor Approval Program.

(8) The Veterans' Administration.

(9) The United States military services.

(10) The National Institutes of Health.

(11) The United States Public Health Services.

(b) Program sponsors shall:

(1) Disclose in advance to prospective participants the objectives, prerequisites, experience level, content, required advanced preparation, teaching method and number of continuing education credits involved in the program.

(2) Conduct programs in subjects which contribute directly to the maintenance of clinical competence of a dentist, dental hygienist or expanded function dental assistant.

(3) Provide program materials which are accurate and consistent with currently accepted standards relating to the program's subject matter. ~~[Prior to developing errata sheets, the instructor is responsible for informing participants of changes.]~~

(4) Provide sufficient AND ADEQUATE physical facilities for the number AND TYPE of participants and the teaching methods to be utilized.

(5) Evaluate and program, through questionnaires of the participants and instructors, to determine its effectiveness.

(6) Retain accurate attendance records and written outlines for a [5] 4 year period.

(7) Provide participants with a continuing education certificate after assuring satisfactory completion and attendance of the program.

(c) The Board may, following notice and hearing under 2 Pa. C.S. §§501-508 (relating to practice and procedure of Commonwealth agencies), withdraw the approval of a program sponsor for cause AND AMEND §33.403(A) ACCORDINGLY.

(D) A PARTY DESIRING TO BE AN APPROVED PROGRAM SPONSOR SHALL FILE A WRITTEN PETITION WITH THE BOARD OUTLINING THE PARTY'S QUALIFICATIONS AND EXPERIENCE. UPON BOARD APPROVAL, §33.403(a) WILL BE AMENDED ACCORDINGLY.

**§33.404. Reporting continuing education credit hours.**

(a) The applicant shall provide the requested information concerning the required hours on an application for biennial renewal.

(b) The applicant shall provide a copy of the documentation supporting the completion of the required CREDIT hours when requested to do so by the Board.

(c) Acceptable documentation consists of ANY ONE of the following:

(1) A continuing education certificate or sponsor-generated printouts.

(2) A certified transcript of courses taken for credit in an accredited university or college. For noncredit courses taken, a statement of hours of attendance, signed by the instructor.

(3) Evidence of publication for published articles, books or continuing education programs.

(4) Evidence obtained from the program sponsor of having been an instructor, including an agenda.

(d) The responsibility for documenting the continuing education requirements rests with the applicant. The documentation shall be maintained for 4 years after the completion of the program.

(e) Falsification of information required under subsection (a) constitutes a violation of §33.212(1) (relating to misleading, deceptive, untrue or fraudulent representations) AND 63 P.S. §123.1(A)(2).

(f) Failure to comply with subsection (b) may result in disciplinary or corrective action.



**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS  
STATE BOARD OF DENTISTRY**

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May 23, 2000

The Honorable John R. McGinley, Chairman  
INDEPENDENT REGULATORY REVIEW COMMISSION  
14th Floor, Harrisburg 2  
333 Market Street  
Harrisburg, PA 17120

**RE: Final Regulations of the State Board of Dentistry  
Pertaining to Continuing Dental Education and Biennial Renewals (16A-464)**

Dear Chairman McGinley:

Enclosed is a copy of a regulation of the State Board of Dentistry.

The State Board of Dentistry, as always, will be pleased to provide your committee with any assistance it may require during the course of its review of this regulation.

Sincerely,

Norbert O. Gannon, D.D.S., Chairman  
State Board of Dentistry

NOG:DBE:eco

c: John T. Henderson, Jr., Chief Counsel  
Department of State  
  
Dorothy Childress, Commissioner  
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State Board of Dentistry  
  
State Board of Dentistry



**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT**

I.D. NUMBER: 16A-464

RECEIVED

SUBJECT: State Board of Dentistry - Continuing Dental Education and Biennial Renewals: 23

AGENCY: DEPARTMENT OF STATE

REVIEW COMMISSION

**TYPE OF REGULATION**

Proposed Regulation

X Final Regulation

Final Regulation with Notice of Proposed Rulemaking Omitted

120-day Emergency Certification of the Attorney General

120-day Emergency Certification of the Governor

Delivery of Tolled Regulation

a. With Revisions

b.

Without Revisions

**FILING OF REGULATION**

DATE

SIGNATURE

DESIGNATION

5-23-00 Lori A. Clark HOUSE COMMITTEE ON PROFESSIONAL LICENSURE

5/23/00 Tammy Weaver SENATE COMMITTEE ON CONSUMER PROTECTION &  
PROFESSIONAL LICENSURE

5/23/00 J. Villancourt INDEPENDENT REGULATORY REVIEW COMMISSION

ATTORNEY GENERAL

LEGISLATIVE REFERENCE BUREAU

December 30, 1999