



**INDEPENDENT REGULATORY REVIEW COMMISSION  
COMMONWEALTH OF PENNSYLVANIA  
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**September 10, 1998**

**Norbert O. Gannon, D.D.S., Chairman  
State Board of Dentistry  
116 Pine Street  
Harrisburg, PA 17105**

**Re: IRRC Regulation #16A-464 (#1959)  
State Board of Dentistry  
Continuing Dental Education & Biennial Renewals**

**Dear Chairman Gannon:**

Enclosed are our comments on your proposed regulation #16A-464. These comments outline areas of concern raised by the Commission. The comments also offer suggestions for your consideration when you prepare the final version of this regulation. These comments should not, however, be viewed as a formal approval or disapproval of the proposed version of this regulation.

If you or your staff have any questions on these comments or desire to meet to discuss them in greater detail, please contact James E. Smith at 783-5439. He has been assigned to review this regulation.

Sincerely,

A handwritten signature in black ink that reads "Robert E. Nyce".

**Robert E. Nyce  
Executive Director**

**REN:cae  
Enclosure  
cc: Judith Pachter Schulder  
Joyce McKeever  
Kim Pizzingrilli  
Dorothy Childress  
Office of General Counsel  
Office of Attorney General  
Pete Tartline**

# COMMENTS OF THE INDEPENDENT REGULATORY REVIEW COMMISSION

ON

## STATE BOARD OF DENTISTRY REGULATION NO. 16A-464

### CONTINUING DENTAL EDUCATION AND BIENNIAL RENEWALS

SEPTEMBER 10, 1998

We have reviewed this proposed regulation from the State Board of Dentistry (Board) and submit for your consideration the following objections and recommendations. Subsections 5.1(h) and 5.1(i) of the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) specify the criteria the Commission must employ to determine whether a regulation is in the public interest. In applying these criteria, our Comments address issues that relate to economic impact, implementation procedures, need and clarity. We recommend that these Comments be carefully considered as you prepare the final-form regulation.

#### **1. Economic impact of the regulation.**

The Board stated in the Regulatory Analysis Form that it cannot determine the exact costs associated with implementation. According to the Board, continuing education is mandated in 43 other states for dentists and 46 other states for dental hygienists. Therefore, the costs of continuing education courses should be available from other states and institutions. The costs experienced by other states may also be available. The Board should provide estimates of the costs associated with implementation when it submits the final-form rulemaking.

#### **2. Section 33.1. Definitions. - Clarity**

##### *Credit hour*

The definition of "credit hour" contains a substantive provision in the second sentence. The Board should move the second sentence to Section 33.401.

##### *Individual study*

The definition of "individual study" does not indicate that it must be offered by an approved program sponsor. The definition should be amended to specify that the individual study course must be administered by an approved program sponsor.

##### *Program sponsor*

The definition of "program sponsor" lacks clarity and is not consistent with 63 P.S. § 122(j.2)(1). The Act requires program sponsors to be approved by the Board. The proposed definition could be interpreted to mean individual programs are approved by the Board rather than the program sponsors. Therefore, the definition should be amended to more clearly state that the program sponsor is approved by the Board. We suggest moving the phrase "approved by

the Board" from the end of the definition and inserting it in the beginning of the definition so that the definition would state "The party approved by the Board who is responsible for...."

### **3. Subchapter B. Licensure of Dentists and Hygienists. - Clarity**

The title of Subchapter B, as printed in the *Pennsylvania Bulletin*, has a typographical error. The spelling of the word "hygienists" should be corrected for the final-form rulemaking.

### **4. Section 33.105. Biennial renewal of licenses and certificates. and Section 33.106. Reactivation of licenses and certificates. - Implementation procedures and Clarity**

#### *Date of implementation*

Section 3 of Act 113 of 1996 requires the Board to designate the biennial period in which continuing education will first be required, "after notice to licensees and certificate holders on the commencement of the biennial renewal period in which the requirement shall be effective." It is not clear from the proposed rulemaking when notice will be sent to licensees and certificate holders. The Board should explain how it intends to notify licensees and certificate holders of the new requirements.

The Board has not clearly explained when compliance with the requirements in the regulation will be required. The Board stated that the regulation will be effective upon publication in the *Pennsylvania Bulletin*. Since this date is unknown at this time, it is not clear whether CPR certification and continuing education credits will become a condition of biennial renewal in 1999 or 2001. The Board should amend the regulation to clearly state the specific renewal period when a licensee or certificate holder must have CPR certification and sufficient continuing education credit hours for renewal.

#### *CPR certification*

There are two concerns with the proposed requirements for CPR certification. First, the Board included the American Heart Association and the American Red Cross in the proposed rulemaking. It is our understanding that the National Safety Council also offers CPR certification. The Board should consider adding language to the regulation to allow certification from any other organizations which meet the provisions of 63 P.S. § 122(j.1).

Second, commentators stated that there are various levels of CPR certification. The Board should specify the minimum level of CPR certification that will be accepted to meet the requirement for renewal.

### **5. Section 33.401. Credit-hour requirements. - Need and Clarity**

Subsection (c) requires that at least 50 percent of the required credit hours be taken in lecture or clinical presentations. The Board reasons that interacting with an instructor and other participants is beneficial to the learning process. We question the need for this requirement. The Board should either provide more detailed support for this requirement or delete it.

Subsection (d) provides for recognition of other contributions to continuing education. In Paragraph (d)(1), the regulation would allow additional credit "...for each credit hour of

instruction...." The regulation is not clear whether an instructor is subject to the limitations of Subsection (e), which provides that credit will not be awarded for repeating a program in the same renewal period. It also is not clear whether the instructor would be allowed to claim credit for teaching the same course in subsequent biennial periods. The Board should revise Paragraph (d)(1) to state that additional credit hours for instructors are subject to the limitations of Subsection (e).

In Paragraph (d)(2), the Board will allow authors self-declaration for up to 25 percent of the required credit hours, and additional credit, up to 50 percent, based upon the complexity of the subject matter or work. The regulation is vague regarding what standard the work would have to meet to qualify for additional credit up to 50 percent. The regulation also does not specify who makes the judgement on the complexity of the work (i.e., self-declaration or the Board). The central concern is that any misunderstanding could threaten a license renewal, or the licensee could be subject to penalties for falsification. Therefore, the Board should explain the need to differentiate between 25 percent and 50 percent. The difference is a maximum of 7.5 credit hours for a dentist, 5 credit hours for a dental hygienist, and 2.5 credit hours for an enhanced function dental assistant. Given the time involved, the Board should amend this provision to allow authors to claim a single percentage on a self-declaration basis. If the Board sees a need to recognize special circumstances involving complex subject matters, the Board should consider developing a petition process to review claims for additional credit hours.

#### **6. Section 33.402. Continuing education subject areas. - Need and Clarity**

Subsection (a) lists examples of acceptable subjects for credit hours. The list includes emergency procedures in Paragraph (3). It is our understanding that the Board does not intend to include CPR certification training hours as continuing education credit hours. If this is the case, the Board should amend Paragraph (3) to state "Emergency procedures other than CPR certification."

Subsection (b) provides a list of nonclinical subjects, which will not be awarded credit hours. Included in the list of nonclinical subjects is communication skills in Paragraph (5). One commentator stated that dental hygienists need the ability to communicate with patients to promote changes in the patient's daily hygiene. The statute at 63 P.S. § 122(j.2)(1) only excludes courses in office management and practice building. The Board should explain the need to exclude all communications skills courses, or amend this prohibition to exclude only communications skills associated with office management or practice building.

#### **7. Section 33.403. Program sponsors. - Need and Clarity**

Subsection (b)(1) requires a program sponsor to disclose information in advance to participants. This provision is vague because it does not specify how far in advance of the program it would apply. Requiring disclosure in program announcements and registration materials would be reasonable. The Board should specify in the regulation how far in advance of a course the program sponsor is required to disclose the information listed.

Subsection (b)(3) states "Prior to developing errata sheets, the instructor is responsible for informing participants of changes." It appears the intent of this provision is to require instructors to inform participants of any program materials that may not be accurate. However,

the proposed language could be interpreted to prohibit an instructor from developing errata sheets until after the instructor informed participants of the changes. The Board should amend the language of this provision to focus on requiring the instructor to provide accurate materials rather than when errata sheets are developed.

Subsection (b)(6) requires program sponsors to retain accurate attendance records and written outlines for a five-year period. What does the Board intend to do with attendance records that are five years old? It would appear that record maintenance covering the current and most recent preceding biennial renewal period would be sufficient to allow the Board to audit compliance. The Board should explain why program sponsor records need to be kept for five years or modify the retention period to cover the current and most recent preceding biennial renewal period.

Subsection (c) provides the Board may withdraw the approval of a program sponsor. However, this Subsection omits two equally important provisions. First, the Board should indicate in the regulation that if it withdraws the approval of a program sponsor, it will amend the regulation to keep the list of approved program sponsors in the regulation accurate.

Second, Section 33.403 does not include provisions to petition the Board to add a program sponsor. The Board should add procedures to the rulemaking to provide guidance on how to petition the Board to add a program sponsor, and to state that a successful petition would result in a rulemaking.

#### **8. Section 33.404. Reporting continuing education credit hours. - Need and Clarity**

Subsection (b) contains the phrase "required hours." It would be clearer and more consistent with the definition in Section 33.1 to use the phrase "required credit hours."

Subsection (d) requires documentation to be maintained for four years. As discussed above, it may be sufficient to require maintenance of documentation for the current and most recent preceding biennial period, which would be a maximum of four years. The Board should explain the need to maintain records for four years.

The reference in Subsection (e) to Section 33.212(1) does not directly cover falsification by expanded function dental assistants because existing Section 33.212(1) only covers dentists and dental hygienists. We recognize that Section 33.212(1) is also proposed to be amended in a separate rulemaking. However, the other rulemaking would have to be completed in order for the reference to be correct. In the event that the other rulemaking is not completed prior to implementation of this rulemaking, the Board should consider also directly referencing the statute (63 P.S. § 123.1(a)(2)).

Finally, Subsections (e) and (f) address the penalties for falsification of information or failure to comply with Subsections (a) and (b), respectively. For clarity, the Board should consider combining Subsection (a) with Subsection (e) and combining Subsection (b) with Subsection (f).