

# Regulatory Analysis Form

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(1) Agency

**Department of State, Bureau of Professional and Occupational Affairs, State Board of Dentistry**

(2) I.D. Number (Governor's Office Use)

**16A-4612**

IRRC Number: **2308**

(3) Short Title

**Deletion of Clinical Requirement for Expanded Function Dental Assistant (EFDA) Examination**

(4) PA Code Cite

**49 Pa. Code, §33.103**

(5) Agency Contacts & Telephone Numbers

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**

(6) Type of Rulemaking (check one)

Proposed Rulemaking

Final Order Adopting Regulation

Policy Statement

(7) Is a 120-Day Emergency Certification Attached?

No

Yes: By the Attorney General

Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

**The final rulemaking deletes the requirement for expanded function dental assistant (EFDA) certification applicants to take a clinical examination.**

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

**The Board is authorized to adopt regulations concerning the EFDA certification examination under Sections 3(d.1)(1), 3(e) and 3(o) of the Dental Law (Act) (63 P.S. §§122(d.1)(1), 122(e), and 122(o)).**

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(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.

No.

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

**Concerns were raised by legislators, permit holders and licensees regarding the necessity of a clinical examination for EFDA certification. A clinical exam greatly increases an exam fee due to the additional costs for facility rental, increased proctors and manual grading. A high exam fee can impede competent EFDAs from practice and exacerbate shortages in the dental field. The written exam and supervising dentist can insure capability. Other comparable occupations rely solely on a written test.**

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

**Failure to amend the regulation will subject EFDA certification applicants to a clinical examination that the Board has determined is not necessary to protect the public health and safety. Public health and safety is adequately protected by the written examination and the appropriate supervision by the dentist who employs the EFDA.**

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

**EFDA certification applicants will benefit from a less costly, written examination only. The public health and safety is protected by the written exam and the supervision of the dentist, and enhanced by facilitating the entrance of competent EFDAs into the dental field at a time when dental health professional shortages are being experienced.**

## Regulatory Analysis Form

(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.)

**An adverse effect is not anticipated.**

(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.)

**EFDA certification examination applicants will be required to take only a written examination.**

(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.

**In accordance with Executive Order 1996-1, the Board sent a draft of this proposal on April 6, 2001 to 138 dental associations, schools and interested individuals for predraft comment and held a public hearing on July 20, 2001. The Board considered these comments. A copy of the list of persons and groups who were involved is attached to this Regulatory Analysis Form.**

**Thirty-three EFDAs commented in the pre-draft stage supporting the elimination of the clinical exam, two persons supported eliminating the clinical exam for temporary permit holders only, and two persons supported retention of both the clinical and written exams.**

(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.

**At this time, specific estimates are not available.**

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(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.

**This rulemaking will not involve any direct costs or savings to local government and will not involve any legal, accounting or consulting procedures.**

(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.

**There should be no additional costs or savings to state government but this amendment should establish a less costly examination for EFDA certification applicants since the most costly component of an examination is usually the clinical component, which is being eliminated.**

### Regulatory Analysis Form

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

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

As described more fully in the preamble, the cost of an examination containing a clinical component as required by the current regulation would have resulted in a potential cost to candidates of \$700 to \$900. The Board anticipates that the removal of the clinical component will result in a significantly lower examination fee. However, as explained above, it is not possible to anticipate the cost pending a request for proposals from vendors.

### Regulatory Analysis Form

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

Program	FY -3	FY -2	FY -1	Current FY
State Board of	00-01	01-02	02-03	03-04
Dentistry	\$790,226.64	\$905,209.04	Projected Exp.	Budget
			\$1,007,324.75	\$1,042,000.00

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

**See Item (20a).**

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

**No nonregulatory alternatives were considered because a current regulation must be amended to effect this change.**

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

**No alternate regulatory schemes were considered.**

## Regulatory Analysis Form

(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.

**The Board is not aware of any federal standards that relate to the issues addressed in this rulemaking.**

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

**New Jersey regulations require “dental assistants” to pass the Dental Assisting National Board (DANB) certification examination. Maryland requires “dental assistants” to be certified by DANB or recognized by the Board of Dental Examiners. Delaware allows the supervising dentist to train “auxiliary personnel-expanded duties.” New York requires “certified dental assistants” to pass an examination given by an organization that administers examinations for certifying dental assistants. Ohio requires EFDAs to pass the Ohio State Dental Board designated examination (only Ohio has an EFDA clinical exam). West Virginia allows the supervising dentist to assign duties to an EFDA if satisfied of competency.**

**Attached is a chart of additional information prepared by the American Dental Association (ADA). No competitive disadvantage is expected.**

(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 other regulations of the promulgating agency or other state agencies would be affected by this regulation.**

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

**An early draft of this proposed rulemaking was sent out for public comment in accordance with paragraph (16) above. See paragraph (16) above regarding public hearing. The Board holds monthly meetings at 2601 North Third Street, Harrisburg, Pennsylvania 17105 at which all information relative to this rulemaking will be discussed.**

**Meeting dates are available on the Department of State’s website, [www.dos.state.pa.us](http://www.dos.state.pa.us).**

## Regulatory Analysis Form

(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.

No.

(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.

N/A

(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?

**Because of the length of time and difficulties that have ensued in contracting with a third party testing organization to administer the EFDA certification exam, the Board urges that the final amendment be adopted as soon as possible.**

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

**The final rulemaking has not been given a sunset date. The Board regularly evaluates the effectiveness of proposed amendments following adoption as final rulemaking.**



# STATE BOARD OF DENTISTRY

[49 PA. CODE CH. 33]

## Expanded Function Dental Assistants

The State Board of Dentistry (Board) proposes to amend § 33.103 (relating to examinations) to read as set forth in Annex A.

### A. *Effective Date*

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

### B. *Statutory Authority*

The Board is authorized to adopt regulations concerning certification requirements for expanded function dental assistants under section 3(o) of the Dental Law (act) (63 P. S. § 122(o)).

### C. *Background and Purpose*

The act of December 27, 1994 (P. L. 1361, No. 160) (Act 160) amended the act to require the certification and regulation of expanded function dental assistants (EFDA). Act 160 required that EFDAs desiring to be certified by the Board must have completed an education program and passed an examination approved by the Board.

The Board, through a final-form rulemaking published at 30 Pa.B. 2359 (May 13, 2000), determined that the examination would include both written and clinical (performance) components to ensure that certificate holders possess the requisite knowledge and skill to properly and safely perform their job functions. In part, the Board included a clinical component at the request of many EFDAs who believed that this was a necessary requirement. The public, including individuals, dentists, dental hygienists, EFDAs and numerous professional associations, participated in the lengthy rulemaking process. Both written and clinical components to an examination were seen as necessary to insure protection of public health and safety.

Efforts to develop an examination for EFDAs had been underway for several years. Numerous attempts were made to contract with vendors, either through the use of Requests for Proposals (RFP) or through sole source contracting. However, despite these efforts, the Department of State was only able to enter into contract negotiations with one potential bidder for the development of an EFDA examination.

The Board had concerns regarding the cost of the examination. Those concerns were also expressed by anticipated certificate holders and professional associations. A performance component greatly increases the cost of the examination due the need to rent a facility and to hire additional proctors for necessary manual grading. Additionally, the examination must be initially administered to approximately 1,800 temporary permit holders. Because no National examination for EFDAs exists, the costs of developing and administering a Commonwealth examination must be included in the costs for candidates from this Commonwealth. After the first examination is given, approximately 100 candidates will be tested each year. When an examination is developed for a small candidate population, the costs will be higher because those costs cannot be distributed over a large continuous population of candidates.

Due in some part to the prospect of an examination fee between \$700-900, permit holders and members of the Legislature sought input after the RFP process had been completed. After examining these concerns, the Board decided to take some additional time to address the issue of the necessity of a clinical examination.

Accordingly, the Board held a public hearing on July 20, 2001, to receive testimony from interested parties concerning the EFDA examination. Based upon the testimony received, as well as written comment, the Board was persuaded that the clinical portion of the examination requirement should be deleted. The Board believes that the public can be adequately protected with a written examination and that supervising dentists and EFDA programs requiring clinical experience can ensure capability.

The quality of a dental restoration is ultimately determined by the competency of the supervising dentist. If a restoration is below standard, it can be redone without harm to the patient and with minimal inconvenience. In addition, competency testing for other comparable occupations indicates that a written examination can adequately test for clinical competency.

### D. *Description of Proposed Rulemaking*

The proposed rulemaking deletes the clinical examination requirement for expanded function dental assistants in § 33.103(c) (relating to examination).

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

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

In accordance with Executive Order 1996-1, the Board sent a draft of this proposed rulemaking on April 6, 2001, to 138 dental associations, schools and interested persons for pre-draft comment and held a public hearing on July 20, 2001. The list of these entities is available upon request from the contact person listed. Thirty-three EFDAs commented in the pre-draft stage supporting the elimination of the clinical examination. At the public hearing, six persons testified in support of the elimination of the clinical examination, two persons supported eliminating the clinical examination for temporary permit holders only and two persons supported retention of both the clinical and written examinations.

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

This proposed rulemaking will have a beneficial fiscal impact upon EFDA certification applicants as the cost of the certification examination should be considerably reduced. At this stage, it is not possible to estimate the fiscal impact with precision. Cost data will be available when a contract is finalized for the administration of the written examination.

### 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 October 10, 2002, the Board submitted a copy of this proposed rulemaking 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 rulemaking, 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 rulemaking, it will notify the Board 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 rulemaking to which an objection is made. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, 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 rulemaking to Deborah B. Eskin, Counsel, State Board of Dentistry, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference No. 16A-4612 (Deletion of Expanded Function Dental Assistants) when submitting comments.

NORBERT O. GANNON, D.D.S.,  
Chairperson

**Fiscal Note:** 16A-4612. 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

#### § 33.103. 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.

\* \* \* \* \*

[Pa.B. Doc. No. 02-1883. Filed for public inspection October 25, 2002, 9:00 a.m.]

#### [49 PA. CODE CH. 33]

#### Sexual Misconduct

The State Board of Dentistry (Board) proposes to add § 33.211a (relating to sexual misconduct) to read as set forth in Annex A. This proposed rulemaking identifies when sexual exploitation by Board regulated practitioners with patients will be deemed unprofessional conduct.

#### Effective Date

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

#### Statutory Authority

Under section 3(c), (d), (d.1) and (o) of the Dental Law (63 P.S. §§ 122(c), (d), (d.1) and (o)), the Board has authority to establish standards of professional conduct for Board regulated practitioners under its jurisdiction. These individuals include dentists, dental hygienists and expanded function dental assistants.

#### Background and Purpose

It should be axiomatic that it is unprofessional conduct for a Board regulated practitioner to sexually exploit patients. Past decisions of the Board, the draft code of ethics committee of the American Dental Association and responsible professional publications addressing the issue denounce sexual exploitation of a patient by a practitioner. However, complaints are filed each year by consumers who have been harmed by Board regulated practitioners who engage in this conduct.

#### Description of Proposed Amendments

The proposed rulemaking would add § 33.211a to make sexual misconduct an unprofessional conduct.

The purpose of the proposed rulemaking is to better protect patients by providing guidance to the profession and the public as to prohibited sexual conduct between practitioners and patients. The proposed rulemaking would prohibit sexual exploitation by a Board regulated practitioner of a current patient. "Sexual exploitation" is defined by § 33.211a as sexual behavior with a current patient that uses trust, knowledge, emotions or influence derived from the professional relationship.

The proposed rulemaking provides that Board regulated practitioners who engage in prohibited sexual conduct with patients will not be eligible for placement in the Board's impaired professional program in lieu of disciplinary or corrective actions. The impaired professional program is unable to effectively monitor Board regulated practitioners who have engaged in sexual misconduct.

The proposed rulemaking would also provide that patient consent will not be considered a defense to disciplinary action in these cases. The imbalance of power inherent in the health care practitioner-patient relationship not only serves as the basis for the prohibition but also undermines the patient's ability to consent to sexual behavior as an equal when trust, knowledge, emotions or influence derived from the professional relationship are used.

#### Fiscal Impact and Paperwork Requirements

The proposed rulemaking should have no fiscal impact on the Commonwealth or its political subdivisions. Likewise, the proposed rulemaking should not necessitate any legal, accounting, reporting or other paperwork requirements.

#### Sunset Date

The Board continuously monitors the cost effectiveness of its regulations. Therefore, no sunset date has been assigned.

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

In compliance with Executive Order 1996-1, the Board extended an invitation to comment on early drafts of this

proposed rulemaking to numerous parties who have indicated an interest in the Board's regulatory activities. The list of these persons is available upon request from the contact person listed in this Preamble. Two comments were received and considered by the Board at the March 15, 2002, Board meeting.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on October 10, 2002, the Board submitted a copy of this proposed rulemaking 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 rulemaking, 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. 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 rulemaking, it will notify the Board 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 rulemaking to which an objection is made. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of objections raised.

*Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to Deborah B. Eskin, Counsel, State Board of Dentistry, 116 Pine Street, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days of publication of this proposed rulemaking.

NORBERT O. GANNON, D.D.S.,  
Chairperson

**Fiscal Note:** 16A-4613. 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 C. MINIMUM STANDARDS OF CONDUCT AND PRACTICE

§ 33.211a. Sexual misconduct.

Unprofessional conduct, as defined in section 4.1(a)(8) of the act (63 P.S. § 123.1(a)(8)), includes sexual misconduct by a dentist, dental hygienist and EFDA as follows:

(1) *Definitions.* The following words and terms, when used in the section, have the following meanings, unless the context clearly indicates otherwise:

*Sexual behavior*—Any sexual conduct that has no diagnostic or therapeutic purpose, including words, actions or any combination thereof which are or are intended to be, sexual in nature, or which may be construed by a reasonable person as sexual in nature.

*Sexual exploitation*—Any sexual behavior, with a current patient, that uses trust, knowledge, emotions or influence derived from the professional relationship.

(2) *Disciplinary action.* Sexual exploitation by a Board regulated practitioner of a current patient constitutes unprofessional conduct, is prohibited, and subjects the practitioner to disciplinary action.

(3) *Impaired professional program.* A practitioner who engages in conduct prohibited by this section will not be eligible for placement into an impaired professional program in lieu of disciplinary action or correction.

(4) *Consent.* Consent is not a defense to conduct prohibited by this section.

(5) *Exclusion.* This section does not apply to a spouse or equivalent domestic partner.

[Pa.B. Doc. No. 02-1884. Filed for public inspection October 25, 2002, 9:00 a.m.]

State Board of Dentistry  
List of Associations for Regulatory Notices

Updated - May 12, 2000

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## EXPANDED FUNCTIONS FOR DENTAL ASSISTANTS

*NOTE: While the information contained in this chart is of general interest, one cannot rely on this chart to obtain a number of states that allow a particular function because the information may not be complete. Note also that there maybe a discrepancy in the way states characterize "expanded functions." For example: one state may consider coronal polishing an expanded function, and another may consider it a regular function.*

The following states authorize a dental assistant to perform functions which are beyond the scope of an assistant's "traditional" duties, as defined by the state and which generally require specific training: \*This information is accurate according to the records available to DSGA and may not wholly reflect the current status.

STATE	TITLE	EXPANDED FUNCTIONS(S)	QUALIFICATIONS
ARIZONA	Dental Assistant	Take x-rays	Approved course and exam
ARKANSAS	Registered Dental Assistant	Monitor nitrous oxide Polish Crowns Take x-rays	Approved course Approved course and exam
CALIFORNIA	Registered Dental Assistant	Various, Polish crowns	Approved program (or 18 months experience) and exam
COLORADO	Dental Auxiliary	Limited hygiene functions under personal direction, denture services under general supervision, administer nitrous (statute § 12-35-125(c)) Polish crowns	None
CONNECTICUT	Dental Assistant	Take x-rays	Exam
FLORIDA	Dental Assistant	Take x-rays Monitor nitrous oxide	Apvd. course and 3 months exp. Approved course plus CPR
	Expanded Duty Dental Assistant	Ortho functions Polish crowns	Formal Education or on-the-job training
GEORGIA	Expanded Duty Dental Assistant	Perio, ortho functions, take x-rays Polish crowns	Approved courses
	Dental Assistant	Monitor Nitrous Oxide Take x-rays	
DAHO	Dental Assistant	Help administer nitrous oxide, take impressions	Approved course
ILLINOIS	Dental assistants	Coronal Polishing	
IOWA	Dental Assistant	Performs tasks under supervision.	Approved course and exam
	Registered DA	May under perform tasks under general supervision. Take x-rays, Polish Crowns	Approved course, exam, training
	Expanded Function Dental Assistant	Under general supervision may monitor nitrous, place temporary restorations, take impressions	Formal training in a board approved ADA-CDA accredited program, DANB certified, experience. Begins July 1, 2002
KANSAS	Dental Assistant	Help administer nitrous oxide, Coronal scaling & Polishing	Approved course plus experience
KENTUCKY	Dental Assistant	Take x-rays	Approved course
	Auxiliary Personnel	Various, except those listed	Dentists judgment
LOUISIANA	Dental Assistant	Take x-rays	Approved course or 1 year experience
	Expanded Duty Dental Assistant	Coronal Polishing, place or remove matrices, temp. separating devices, periodontal dressings, retraction cords, apply sealants.	Approved course and exam

STATE	TITLE	EXPANDED FUNCTIONS(S)	QUALIFICATIONS
MAINE	Dental Assistant	Take x-rays	Dental radiography license
	Certified Dental Assistant	Various, Polish crowns	Exam
MARYLAND	Dental Assistant	Take x-rays	Approved course, exam and name on roster
	Dental Assistant Recognized as Qualified in Orthodontics	Ortho functions	Approved program and exam
MASSACHUSETTS	Certified Dental Assistant	Polish crowns, Various	
MICHIGAN	Registered Dental Assistant	Various	Approved program and exam
MINNESOTA	Registered Dental Assistant	Various, including monitor nitrous oxide, Polish crowns	Approved program and exam
MISSISSIPPI	Dental Assistants	Take x-rays, Polish crowns	Certificate, approved program, or on-the-job training
MISSOURI	Dental Assistant	Help administer, monitor nitrous oxide	Approved program and exam
	Certified Dental Assistant	Same, Polish crowns	Same
MONTANA	Dental Assistant	Polish coronal surfaces Take x-rays	Approved course Approved program and exam
	Orthodontic Auxiliary	Various ortho functions	None
	Expanded Duty Dental Assistant	Various	Approved program and exam
NEBRASKA	Dental Auxiliary	Take x-rays, Coronal polishing	Approved program
NEVADA	Dental Assistant	Polish coronal surfaces, apply sealants and other	Dentist's judgment
NEW HAMPSHIRE	Certified Dental Assistant	Apply fluoride, topical anesthesia and other	Approved program
	Graduate Dental Assistant	Same	Accredited school
	Qualified Dental Assistant	Take x-rays, apply sealants, ortho functions	Approved course or exam
NEW JERSEY	Registered Dental Assistant	Various	Approved program or 2 years experience
NEW MEXICO	Dental Assistant	Polish coronal surfaces	Approved program and continuing education
	Dental Assistant Certified for Dental Radiography	Take x-rays	Approved program, exam and continuing education
	Certified Dental Assistant	Same plus Sealants	Same
NORTH CAROLINA	Dental Assistant I	Take x-rays, help administer nitrous oxide	Approved course
	Dental Assistant II	Make impressions, apply sealants, polish clinical crown with slow speed handpiece  Help administer nitrous oxide	Formal education or experience  Approved course

STATE	TITLE	EXPANDED FUNCTIONS(S)	QUALIFICATIONS
NORTH DAKOTA	Dental Assistants Certified Dental Assistant	Take x-rays Take x-rays, ortho functions, monitor nitrous oxide, coronal polishing, take impressions for athletic mouthguard and passive post-treatment retainers	Certificate or approved course
OHIO	Advanced Qualified Personnel (Expanded Function Dental Auxiliaries)	Place restorative materials, sealants, monitor nitrous oxide, coronal polishing.	Formal training and exam leading to Ohio classification as Certified Dental Assistant eligible to take state board exam for Expanded Function DA status.
OKLAHOMA	Dental Assistant Expanded Duty DA	Take x-rays, help administer nitrous oxide, polish coronal surfaces Apply Sealants	Approved program Expanded Duty Permit required to apply sealants.

STATE	TITLE	EXPANDED FUNCTIONS(S)	QUALIFICATIONS
OREGON	Dental Assistant	Take x-rays	Approved course and exam
	Expanded Function Dental Assistant	Various, Polish crowns of all ages including kids $\leq$ 12 years of age with no calculus. Place sealants.	Approved course (may be in-office) and exam
	Expanded Function Orthodontic Dental Assistant	Various ortho functions	Approved course (may be in-office) and exam
PENNSYLVANIA	Expanded Function Dental Assistant	Place and remove rubber dams and matrices, place and contour amalgam and other restorative materials	Formal education and exam or 5 years prior experience and exam
RHODE ISLAND	Certified Dental Assistant	Sealants, various, Polish crowns	Academic training
SOUTH CAROLINA	Dental Assistant	Take x-rays	Approved course
	Expanded Duty Dental Assistant	Various. Polish crowns	Certificate, approved program or 2 years experience
SOUTH DAKOTA	Dental Assistant or Advanced Dental Assistant	Polish crowns	
TENNESSEE	Practical Dental Assistant	Various	On-the-job-training
	Registered Dental Assistant	Monitor nitrous oxide, coronal polishing, apply sealants	Training and exam
	Certified Dental Assistant	Monitor nitrous oxide, coronal polishing	Training and exam
TEXAS	Dental assistants who are registered	Take x-rays	Certified by DANB or pass exam
	DAs who are Sealant Certified	Apply sealants	2 yrs. experience, 16 hours clinical & didactic instruction, 6 hrs CE annually
VERMONT	Certified Dental Assistant	Functions for which CDA is trained Polish crowns	Formal program and optional exam
	Expanded Function Dental Assistant	Functions for which EFDA is trained	Formal program
	Traditional Dental Assistant	Take x-rays	Approved course
UTAH	Dental Assistant	Take x-rays, Polish crowns Help Administer Nitrous Oxide	Formal Course Direct Supervision
VIRGINIA	Dental Assistant	Apply fluoride or desensitizing agent, Polish crowns	Approved training and certificate
WASHINGTON	Dental Assistant	Perio, ortho function; Take x-rays; coronal polishing; apply sealants under supervision Various	None
	School Sealant DA	Apply sealants under general supervision	Washington
WEST VIRGINIA	Dental Assistant	Take x-rays Place and remove rubber dams	None
WISCONSIN	Dental Assistant	Coronal polishing	None
WYOMING	Dental Assistant	Polish crowns but not as a prophylaxis procedure.	

American Dental Association  
Department of State Government Affairs  
December 20, 2001  
11-Expanded Functions DA

**Comments of the Independent Regulatory Review Commission**

**on**

**State Board of Dentistry Regulation No. 16A-4612**

**Expanded Function Dental Assistants**

**February 24, 2003**

We submit for your consideration the following objections and recommendations regarding this regulation. Each objection or recommendation includes a reference to the criteria in the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) which have not been met. The State Board of Dentistry (Board) must respond to these Comments when it submits the final-form regulation. If the final-form regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

**Section 33.103. Examinations. – Clarity.**

This proposed regulation, in Subsection (c), requires expanded function dental assistants (EFDA) to “pass an examination acceptable to the Board.” However, Subsections (a), (b) and (d) set forth the specific types of examinations (written and clinical) dentists and dental hygienists must pass.

For clarity and consistency, the Board should set forth which type of examination it will require a person applying to become an EFDA to pass.

**Regulation 16A-4612**

**State Board of Dentistry**

**PROPOSAL:** Regulation 16A-4612 amends 49 PA Code, Chapter 33, regulations of the State Board of Dentistry. The amendment would delete the requirement that a certification examination for expanded function dental assistants (EFDAs) include a clinical component.

The proposed Rulemaking was originally published in the Pennsylvania Bulletin on October 26, 2002, and was resubmitted for Committee review on January 29, 2003. The Professional Licensure Committee has until February 13, 2003 to submit comments on the regulation.

**ANALYSIS:** Act 160 of 1994 amended the Dental Law to require EFDAs to pass a certification examination. Although an EFDA certification examination has yet to be implemented, the Board originally promulgated Regulation 33.103 to require any prospective exam to be comprised of both written and clinical components. Due to a number of factors, including a small candidate population and the lack of a national exam for EFDAs, the Board estimates that the exam application fee would be between \$700 and \$900. The Board believes that the clinical portion of the exam contributes to the prohibitive cost. After a public hearing on the issue held on July 20, 2001, the Board concluded that the clinical portion of the exam would not be necessary to adequately protect the public.

**RECOMMENDATIONS:** It is recommended that the Professional Licensure Committee take no formal action until final form regulations are promulgated.

House of Representatives  
Professional Licensure Committee  
January 31, 2003



FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

#2308

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

Copy below is approved as to form and legality. Executive or Independent Agencies.

BY: \_\_\_\_\_  
(DEPUTY ATTORNEY GENERAL)

STATE BOARD OF DENTISTRY  
(AGENCY)

BY: *Tanya C. [Signature]*

DOCUMENT/FISCAL NOTE NO. 16A-4612

5/25/04

DATE OF APPROVAL

DATE OF APPROVAL

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

BY: *[Signature]*  
Veasey B. Cullen, D.M.D.

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

TITLE: Chairman  
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

[ ] Check if applicable  
Copy not approved.  
Objections attached.

[ ] Check if applicable. No Attorney General approval or objection within 30 day after submission.

NOTICE OF FINAL RULEMAKING  
COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS  
STATE BOARD OF DENTISTRY  
49 Pa. Code, Chapter 33

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

The State Board of Dentistry (Board) amends §33.103 (relating to examinations to read as set forth in Annex A.

### **Description and Need for Proposed Rulemaking**

This final form rulemaking deletes the requirement for a clinical examination for Expanded Function Dental Assistants (EFDAs).

The act of December 27, 1994 (P.L. 1361, No. 160) (Act 160) amended the Dental Law to require the certification and regulation of expanded function dental assistants. Act 160 required that expanded function dental assistants desiring to be certified by the State Board of Dentistry must have completed an education program and passed an examination approved by the Board.

The Board, through a final form rulemaking published at 30 Pa. B. 2359 (May 13, 2000), determined that the examination would include both written and clinical (performance) components to ensure that certificate holders possess the requisite knowledge and skill to properly and safely perform their job functions. In part, the Board included a clinical component at the request of many EFDAs who believed that this was a necessary requirement. The public, including individuals, dentists, dental hygienists, EFDAs and numerous professional associations participated in the lengthy rulemaking process. Both written and clinical components to an examination were seen as necessary to insure protection of public health and safety.

Efforts to develop an examination for EFDAs had been underway for several years. Numerous attempts were made to contract with vendors, either through the use of Requests for Proposals (RFPs) or through sole source contracting. However, despite these efforts, the Department of State was only able to enter into contract negotiations with one potential bidder for the development of an EFDA examination.

The Board had concerns regarding the cost of the examination. Those concerns were also expressed by anticipated certificate holders and professional associations. A performance component greatly increases the cost of the examination due the need to rent a facility and to hire additional proctors for necessary manual grading. Additionally, the examination must be initially administered to approximately 1,800 temporary permit holders. Because no National examination for EFDAs exists, the costs of developing and administering a Pennsylvania examination must be included in the costs for Pennsylvania candidates. After the first examination is given, only approximately 100 candidates will be tested each year. When an examination is developed for a small candidate population, the costs will be higher because those costs cannot be distributed over a large continuous population of candidates.

Due in some part to the prospect of an examination fee between \$700-\$900, permit holders and members of the Legislature sought input after the RFP process had been completed. After examining these concerns, the Board decided to take some additional time to address the issue of the

necessity of a clinical examination.

Accordingly, the Board held a public hearing on July 20, 2001 to receive testimony from interested parties concerning the EFDA examination. Based upon the testimony received, as well as written comment, the Board was persuaded that the clinical portion of the examination requirement should be deleted. The Board believes that the public can be adequately protected with a written examination and that supervising dentists and EFDA programs requiring clinical experience can ensure capability.

The quality of a dental restoration is ultimately determined by the competency of the supervising dentist. If a restoration is below standard, it can be redone without harm to the patient and with minimal inconvenience. In addition, competency testing for other comparable occupations indicates that a written examination can adequately test for clinical competency.

### **Summary of Comments and Responses to Proposed Rulemaking**

The Board published notice of proposed rulemaking at 32 Pa. B. 5283 (October 26, 2002) with a 30-day public comment period. The Board received comments from the Independent Regulatory Review Commission (IRRC), as part of its review of proposed rulemaking under the Regulatory Review Act (71 P.S. §§ 745.1-745.12). The Board did not receive comments from the House Professional Licensure Committee (HPLC) or the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) as part of their review of proposed rulemaking under the Regulatory Review Act. No public comments were received following the 30-day public comment period. During the pre-draft stage, the Board held a public hearing on July 20, 2001. Thirty-three persons supported the amendment, two persons supported eliminating the clinical exam for temporary permit holders only, and two persons supported retention of both the clinical and written exams.

The IRRC suggested that the Board clarify the type of examination required (written or clinical) as done with dentists and dental hygienists in § 33.103(a), (b) and (d). The Board has changed the proposed language to require that candidates for certification must pass a written examination acceptable to the Board.

### **Paperwork Requirements**

The final-form rulemaking will allow the Bureau to contract with a professional testing organization to administer the written examination. The final-form rulemaking will not create additional paperwork requirements for licensees.

### **Effective Date**

The final-form rulemaking will become effective upon publication in the *Pennsylvania*

*Bulletin.*

**Statutory Authority**

The Board is authorized to adopt regulations concerning certification requirements for expanded function dental assistants under Section 3(o) of the Dental Law (act), (63 P.S. § 122 (o)).

**Regulatory Review**

Under section 5(a) of the Regulatory Review Act, (71 P.S. § 745.5(a)), on October 10, 2002, the Board submitted a copy of the notice of proposed rulemaking, published at 32 Pa. B. 5283, to IRRC and the Chairpersons of the House Professional Licensure Committee (HPLC) and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing this final-form rulemaking, the Board has considered all comments received from IRRC, the HPLC, the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on \_\_\_\_\_, the final-form rulemaking was approved by the HPLC. On \_\_\_\_\_, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on \_\_\_\_\_, and approved the final rulemaking.

**Additional Information**

Persons who require additional information about the final-form rulemaking should submit inquiries to Lisa Burns, Administrator, State Board of Dentistry, by mail to P. O. Box 2649, Harrisburg, PA 17105-2649, by telephone at (717) 783-7162, or by e-mail at [www.dos.state.pa.us/dent](http://www.dos.state.pa.us/dent).

**Findings**

The Board finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the Commonwealth Documents Law and regulations thereunder, 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) The final-form rulemaking adopted by this order is necessary and appropriate for the administration of the Dental Law.

**Order**

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

- (a) The regulations of the Board at 49 Pa. Code § 33.103(c) are amended to read as set forth in Annex A.
- (b) The Board shall submit this order and Annex A to the Office of Attorney General and the Office of General Counsel for approval as required by law.
- (c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.
- (d) The final-form rulemaking shall take effect upon publication in the *Pennsylvania Bulletin*.

Veasey B. Cullen, D.M.D., Chairman  
State Board of Dentistry

**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**

\*\*\*

**§ 33.103. Examinations.**

\*\*\*

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

\*\*\*



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

Post Office Box 2649  
Harrisburg, Pennsylvania 17105-2649  
(717) 783-7162  
June 22, 2004

The Honorable John R. McGinley, Jr., Chairman  
INDEPENDENT REGULATORY REVIEW COMMISSION  
14th Floor, Harristown 2, 333 Market Street  
Harrisburg, Pennsylvania 17101

Re: Final Regulation  
State Board of Dentistry  
16A-4612: Certification of Expanded Function Dental Assistants

Dear Chairman McGinley:

Enclosed is a copy of a final rulemaking package of the State Board of Dentistry pertaining to Certification of Expanded Function Dental Assistants.

The Board will be pleased to provide whatever information the Commission may require during the course of its review of the rulemaking.

Sincerely,

A handwritten signature in black ink that reads "Veasey B. Cullen, Jr. D.M.D.".

Veasey B. Cullen, Jr., D.M.D., Chairman  
State Board of Dentistry

VBC/DBE:kp

Enclosure

c: Basil L. Merenda, Commissioner  
Bureau of Professional and Occupational Affairs  
Linda C. Barrett, Chief Counsel  
Department of State  
Joyce McKeever, Deputy Chief Counsel  
Department of State  
Cynthia Montgomery, Regulatory Counsel  
Department of State  
Herbert Abramson, Senior Counsel in Charge  
Department of State  
Deborah B. Eskin, Counsel  
State Board of Dentistry  
State Board of Dentistry

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

I.D. NUMBER: 16A-4612  
SUBJECT: Licensure of Dentists & Dental Hygienists & Certification of Expanded  
Function Dental Assistants  
AGENCY: DEPARTMENT OF STATE #2308

**TYPE OF REGULATION**

- Proposed Regulation
- 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
6/22/04	<i>Sandra J. Hayer</i>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
6/22/04	<i>Mary Walmer</i>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
6/22/04	<i>Joseph J. Hoffner</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)