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INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

October 29, 2008

John V. Reitz, D.D.S., Chairperson
State Board of Dentistry
2601 North 3rd Street
Harrisburg, PA 17110

Re: Regulation #16A-4617 (IRRC #2720)
State Board of Dentistry
Dental Hygiene Scope of Practice; Local Anesthesia

Dear Chairperson Reitz:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact me.

Sincerely,

Kim Kaufman
Executive Director

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Enclosure

cc: Honorable Robert M. Tomlinson, Chairman, Senate Consumer Protection and Professional Licensure Committee
Honorable Lisa M. Boscola, Minority Chairman, Senate Consumer Protection and Professional Licensure Committee
Honorable P. Michael Sturla, Majority Chairman, House Professional Licensure Committee
Honorable William F. Adolph, Jr., Minority Chairman, House Professional Licensure Committee
Honorable Pedro A. Cortes, Secretary, Department of State

Comments of the Independent Regulatory Review Commission



State Board of Dentistry Regulation #16A-4617 (IRRC #2720)

Dental Hygiene Scope of Practice; Local Anesthesia

October 29, 2008

We submit for your consideration the following comments on the proposed rulemaking published in the August 30, 2008 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the State Board of Dentistry (Board) to respond to all comments received from us or any other source.

1. Administration of local anesthesia by a dental hygienist. – Statutory authority; Protection of the public health, safety and welfare.

The General Dental Law (Law) states that a person engages in the practice of dentistry when he “administers anesthetic agents.” 63 P.S. § 121. It further limits the administration of general anesthesia, deep sedation, conscious sedation and nitrous oxide/oxygen analgesia to licensed dentists. 63 P.S. § 130c. As the Board noted in the preamble to its 1995 revisions to Chapter 33, the Law “only confers the authority upon dentists to administer anesthesia.” 25 Pa.B. 2494 (June 24, 1995). While the Law does not extend the privilege of administering anesthesia to dental hygienists, it does permit them to perform “intra-oral procedures which the hygienists have been educated to perform and which require their competence and skill but which do not require the professional competence and skill of the dentist.” 63 P.S. § 121.

In seeking to allow dental hygienists to administer local anesthesia, it appears the Board has determined that such action is an intra-oral procedure, rather than the administration of an anesthetic agent. On what basis did the Board make that determination? How does the administration of local anesthesia differ from administration of other anesthetic agents? Finally, how did the Board conclude that administration of local anesthesia is not a skill that requires the professional competence and skill of a dentist?

In addition to answering these questions, the final-form regulation should further explain the Board’s statutory authority for allowing dental hygienists to

administer local anesthesia, and how allowing them to do so protects the public health, safety and welfare.

2. Section 33.1. Definitions. – Clarity.

Act 51 of 2007 created the “public health dental hygiene practitioner” and the Board has defined that term in this proposal. We recommend that the term be added to the Board’s existing definition of “board regulated practitioner.”

The second sentence of the definition of “Local anesthesia” applies only to § 33.115 of the proposed regulation. We recommend that the sentence be moved to that section.

3. Section 33.115. Local anesthesia permit. – Clarity.

Subsection (c)(3) requires a dental hygienist seeking a local anesthesia permit to provide “acceptable documentation” to the Board. We recommend that the final-form regulation specify the type of documentation that would be acceptable to the Board. Similar language appears in Sections 33.116(b)(2) and (3).

Under Subsection (c)(3)(iii)(C), dental hygienists must “certify” certain information to the Board. We recommend that the regulation specify how certain information can be “certified.”

4. Section 33.116. Certification of public health dental hygiene practitioners. – Statutory authority; Need; Implementation procedures; Clarity.

Subsection (b)(3) requires public health dental hygiene practitioners to provide the Board with acceptable documentation that professional liability insurance has been obtained. We have four concerns. First, what is the Board’s statutory authority for requiring public health dental hygiene practitioners to obtain professional liability insurance?

Second, it is our understanding that no other practitioner regulated by the Board is required by statute or regulation to obtain professional liability insurance. What is the need for requiring public health dental hygiene practitioners to obtain professional liability insurance?

Third, a commentator has noted that some employers of public health dental hygiene practitioners provide liability coverage for the practitioner. Would the Board consider the coverage provided by an employer acceptable? If so, and as noted in our comment on § 33.115, what would be considered acceptable proof of coverage? This should be included in the final-form regulation.

Finally, if coverage provided by an employer is less than the minimum amount specified in the regulation, will supplemental coverage for the difference be required? This should be specified in the final-form regulation.

5. Section 33.205. Practice as a dental hygienist. – Clarity.

Under Subsection (a)(1), what are “subgingival agents”? Since this term is used in other sections of the proposed regulation, we recommend it be defined in § 33.1, relating to definitions.

6. Section 33.205b. Practice as a public health dental hygiene practitioner. – Consistency with other statutes and regulations; Clarity; Implementation procedures.

Subsection (c) lists the places that a public health dental hygiene practitioner can practice. We have three concerns.

First, what is meant by the following terms: schools; correctional facilities; and federally qualified health centers? We suggest that these terms be defined.

Second, under the Public School Code of 1949 (24 P.S. §§ 14-1401 and 14-1403) and the Department of Education’s regulations (28 Pa. Code § 23.35), dental hygienists can practice in school districts if they are certified to do so by the Department of Education. In developing the final-form regulation, the Board needs to ensure that it is consistent with these existing statutory and regulatory provisions that apply to dental hygienists that practice in school districts.

Third, Subsection (d) requires dental records to be maintained for five years. However, it is not clear what format these records may be kept in. Must they be written or are electronic records acceptable?

7. Section 33.302. Auxiliary personnel performing radiologic procedures. – Statutory authority; Protection of the public health, safety and welfare.

Under Subsection (a), what is the Board’s statutory authority for allowing public health dental hygiene practitioners to perform radiological procedures without the supervision of a dentist? Is the health and safety of the public adequately protected if a public health dental hygiene practitioner is allowed to perform these procedures, which would include diagnosis?

8. Miscellaneous Clarity.

Under § 33.116(c), should the phrase “local anesthesia permit” be replaced with the phrase “certificate of public health dental hygiene practitioner”?

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To: Tom Blackburn
Cynthia Montgomery
Agency: Department of State
Licensing Boards and Commissions
Phone: 3-7200
3-3394 (Cynthia Montgomery)
Fax: 7-0251
Date: October 29, 2008
Pages: 5

Comments: We are submitting the Independent Regulatory Review Commission's comments on the State Board of Dentistry's regulation #16A-4617 (IRRC #2720). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: Angela Johnston **Date:** 10/29/08