

Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY
REVIEW COMMISSION

(All Comments submitted on this regulation will appear on IRRC's website)

2013 SEP 20 AM 11:09

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(1) Agency
Department of State, Bureau of Professional and Occupational Affairs, State Board of Dentistry

(2) Agency Number: 16A
Identification Number: 16A-4627

IRRC Number: 2997

(3) PA Code Cite: 49 Pa. Code §§ 33.3 and 33.339

(4) Short Title: Fees

(5) Agency Contacts (List Telephone Number and Email Address):

Primary Contact: **Cynthia K. Montgomery, Regulatory Counsel, Department of State, P.O. Box 2649, Harrisburg, PA 1105-2649 (phone 717-783-7200) (fax 787-0251) cymontgome@pa.gov.**

Secondary Contact: **Jason McMurray, Counsel, State Board of Dentistry, P.O. Box 2649, Harrisburg, PA 17105-2649, phone - 717-783-7200, fax -787-0251, showell@pa.gov.**

(6) Type of Rulemaking (check applicable box):

- Proposed Regulation
- FINAL REGULATION**
- Final Omitted Regulation

- Emergency Certification Regulation;
 - Certification by the Governor
 - Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The proposed rulemaking would increase application fees and biennial renewal fees in order to produce adequate revenue to meet projected expenditures, as required by law.

(8) State the statutory authority for the regulation. Include specific statutory citation.

Section 4(b) of the Dental Law (act) (63 P.S. § 123(b)) requires the Board to increase fees by regulation to meet or exceed projected expenditures if the revenues raised by fees, fines and civil penalties are not sufficient to meet expenditures over a 2-year period.

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

Yes, Section 4(b) of the act mandates a fee increase when expenditures outpace revenue.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

At the December 16, 2011, Board meeting, representatives from the Department of State's Bureau of Finance and Operations (BFO) presented a summary of the Board's revenue and expenses for fiscal years 2009-2010 and 2010-2011, and projected revenue and expenses through 2014-2015. At that time, BFO explained that at the current fee levels, the Board projects revenue of approximately \$ 3,231,560 in a given 2-year period, while budgeted expenditures for the next 2 years are projected at \$ 3,512,000. BFO projects that, without an increase to the biennial renewal fees, the Board's existing fund balance will be depleted and it will incur growing deficits of approximately \$155,000 by FY 15-16 and nearly \$625,000 by FY 17-18, necessitating a fee increase in 2015 to ward off future deficits. Therefore, the Board determined that it was necessary to raise fees to meet or exceed projected expenditures, in compliance with section 4(b) of the act. As a result, the Board voted at its July 27, 2012 meeting to increase fees to meet projected expenditures, as set forth in Annex A. The proposed new biennial renewal and application fees will enable the Board to recoup/avoid the projected deficits and meet its estimated expenditures for a number of years to come.

(11) 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 regulations:

There are no federal licensure standards for dentists.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

The Board compared the proposed fees to those of comparable fees from the contiguous states of Delaware, Maryland, New Jersey, New York, Ohio, Virginia, and West Virginia, as follows. The new fees should not adversely affect the Commonwealth's ability to compete with these other states.

	<u>Proposed</u>	<u>DE</u>	<u>MD</u>	<u>NJ</u>	<u>NY</u>	<u>OH</u>	<u>VA</u>	<u>WV</u>
Application fee for dentists	\$200	\$240	\$450	\$125	\$377	\$337	\$400	\$185
Application fee for dental hyg.	\$ 75	\$59	\$275	\$75	\$128	\$147	\$175	\$75
Application fee for EFDAs	\$ 75	N/A	\$50	\$35	\$103	\$20	\$100	\$25
Renewal fee for dentists	\$263	\$263	\$560	\$390	\$210	\$245	\$285	\$185
Renewal fee for dental hyg.	\$ 42	\$*	\$182	\$120	\$50	\$105	\$75	\$75
Renewal fee for EFDAs	\$ 26	N/A	N/A	\$90	\$50	\$25	\$50	N/A
Renewal fee – PHDHP	\$ 42	N/A	N/A	N/A	N/A	N/A	N/A	\$25
Renewal fee – local anesthesia	\$ 42	N/A	\$50	N/A	\$100	\$0	\$100	\$25
Application fee – radiology	\$ 75	N/A	N/A	\$60	N/A	\$25	\$35	N/A
Application fee – postgraduate	\$ 75	\$65	\$225	\$78	\$105	\$10	\$60	\$200
Application fee – faculty	\$ 75	N/A	\$225	N/A	\$645	\$100	\$400	\$200
Renewal - Unrestricted anesth.	\$210	N/A	N/A	N/A	\$100	N/A	\$285	\$300
Renewal - Restricted I	\$210	N/A	N/A	N/A	N/A	N/A	\$285	\$300
Renewal - Restricted II	\$ 53	N/A	N/A	N/A	N/A	N/A	N/A	\$15

* Unavailable.

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

No.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

Because an increase in fees is mandated by section 4(b) of the act, pre-draft input was not solicited. However, the proposal was discussed at public meetings of the Board on December 16, 2011, January 27, 2012, March 9, 2012, April 27, 2012, and July 27, 2012, which were routinely attended by professional associations who represent the regulated community and other organizations who have an interest in the regulatory agenda of the Board, including the Pennsylvania Dental Association, the Pennsylvania Dental Hygienists Association, the Pennsylvania Dental Assistants Association, the Pennsylvania Academy of General Dentistry. In addition, the Board invited these and other interested professional organizations to submit comments following publication of the notice of proposed rulemaking. No public comments were received. The Board did receive comments from the House Professional Licensure Committee and the Independent Regulatory Review Commission. The Board discussed the final rulemaking, updated financial information and all of the comments at its public meeting on July 19, 2013, and voted to promulgate the final rulemaking unchanged.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

Anyone applying for a license as a dentist, dental hygienist, expanded function dental assistant, or filing a notification application as a post graduate trainee or dental faculty member, or applying to sit for the dental radiology examination will be affected by the increased application fees. The Board processes about 2,000 applications a year. All currently licensed dentists, dental hygienists, and expanded function dental assistants will be affected by the increased biennial renewal fees. There are currently 9,764 actively licensed dentists, 8,774 actively licensed dental hygienists, and 1,853 actively licensed expanded function dental assistants. Of the currently licensed dentists, 360 hold unrestricted anesthesia permits; 192 hold restricted I anesthesia permits; and 2,218 hold restricted II anesthesia permits. Of the currently licensed dental hygienists, 1,918 hold local anesthesia permits; and 467 hold certificates as public health dental hygiene practitioners.

According to the Small Business Administration (SBA), there are approximately 982,692 businesses in Pennsylvania; of which 978,831 are small businesses; and 3,861 are large businesses. Of the 978,831 small businesses, 236,775 are small employers (those with fewer than 500 employees) and the remaining 772,056 are non-employers. Thus, the vast majority of businesses in Pennsylvania are considered small businesses.

According to the Pennsylvania Department of Labor and Industry in 2008, the majority of dentists, dental hygienists and dental assistants work in offices of dentists (about 95%). Small businesses are defined in Section 3 of the Regulatory Review Act, (71 P.S. § 745.3) which provides that a small business is defined by the SBA's Small Business Size Regulations under 13 CFR Ch. 1 Part 121. These size standards have been established for types of businesses under the North American Industry Classification System (NAICS). In applying the NAICS standards to the types of businesses where dentists, dental hygienists and expanded function dental assistants work, a small business classified under NAICS code 62120 (offices of dentists) is one with \$7.0 million or less in average annual receipts. The Board does not collect data relating to business size, but

believes that the vast majority of its licensees work in “small businesses” as the term is defined by the SBA and the Regulatory Review Act.

The Board imposes licensure fees on individual applicants/licensees. The small businesses will be impacted to the degree that the business elects to pay the licensure fees for its employees. A small business could avoid these costs by requiring employees to pay their own licensure fees. However, as three out of four dentists are self-employed, those small businesses will be impacted by the increased fees for the dentist/owner, even if all other employees pay their own licensure fees.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

Applicants for licenses and other credentials issued by the Board will be required to comply with the regulation. The Board processes about 2,000 applications a year. All currently licensed dentists, dental hygienists, and expanded function dental assistants will be required to comply with the regulation. There are currently 9,764 actively licensed dentists, 8,774 actively licensed dental hygienists, and 1,853 actively licensed expanded function dental assistants. The Board does not license dental offices, so the business entities will not be required to comply with the regulation, but employers may choose to pay the licensure fees on behalf of their employees.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

Individuals applying for licenses and other credentials will pay increased fees. All currently licensed dentists, dental hygienists and expanded function dental assistants will pay 5% more to renew their licenses/permits/certifications in 2014 and beyond. Small businesses will be impacted to the degree they elect to pay their employees’ licensure fees.

These increases are necessary to ensure the fiscal integrity of the board and to assure that the board’s mandate to protect the health, safety and welfare of the public is carried out. The regulations benefit all consumers of dental services in the Commonwealth by assuring that the Dental Board is able to carry out its mission in the interest of the public health, safety and welfare.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The increase is mandated by section 4(b) of the Dental Law (act) (63 P.S. § 123(b)), which requires the Board to increase fees by regulation to meet or exceed projected expenditures if the revenues raised by fees, fines and civil penalties are not sufficient to meet expenditures over a 2-year period. The regulation benefits every citizen of the Commonwealth in that it will ensure the fiscal integrity of the Board and allow the Board to carry out its mission. The cost to the regulated community is outweighed by the Board’s duty to license and regulate its licensees in the public interest and to protect the public health, safety and welfare.

(19) 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. Explain how the dollar estimates were derived.

Costs to the regulated community relating to application fees are estimated to be \$160,000 per year. The Board processes an average of 2,000 applications per year. The average fee increase for an application is approximately \$80. (Ranges from a low of \$40 to a high of \$180). 2,000 applications x \$80 average fee increase = 160,000.

Costs associated with the increase in biennial renewal fees is estimated to be \$ 163,277 every 2 years beginning in 2015. These costs are calculated as follows:

Dentists: \$13 increase x 9,764 actively licensed dentists = \$126,932

Dental Hygienists: \$2 increase x 8,774 actively licensed dental hygienists = \$17,548

Expanded Function Dental Assistants: \$1 increase x 1,853 actively licensed EFDAs = \$1,853

Public Health Dental Hygiene Practitioners: \$2 increase x 467 actively licensed PHDHPs = \$934

Local Anesthesia Permits: \$2 increase x 1,918 active permit holders = \$3,836

Unrestricted Anesthesia Permits: \$10 increase x 360 active permit holders = \$3,600

Restricted I Anesthesia Permits: \$10 increase x 192 active permit holders = \$1,920

Restricted II Anesthesia Permits: \$3 increase x 2,218 active permit holders = \$6,654

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no costs or savings to local governments associated with the proposed rulemaking.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

The Board will not incur an increase in administrative costs by implementing the rulemaking. Indeed, the regulatory amendment will permit the Board to recoup the costs of its operations. There will be very small costs associated with revising forms to reflect the new fees. There are no other costs or saving to state government associated with compliance with the proposed rulemaking.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

The Board does not anticipate any legal, accounting or consulting procedures, or additional reporting, recordkeeping or other paperwork to be required for the implementation of the regulation.

(23) 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 12-13	FY +1 FY 13-14	FY +2 FY 14-15	FY +3 FY 15-16	FY +4 FY 16-17	FY +5 FY 17-18
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings	N/A	N/A	N/A	N/A	N/A	N/A
COSTS:						
Regulated Community	\$0	\$80,000	\$323,277	\$160,000	\$323,277	\$160,000
Local Government						
State Government						
Total Costs	\$0	\$80,000	\$323,277	\$160,000	\$323,277	\$160,000
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	N/A	N/A	N/A	N/A	N/A	N/A

(23a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3 FY 10-11 actual	FY -2 FY 11-12 actual	FY -1 FY 12-13 projected	Current FY FY 13-14 budgeted
State Board of Dentistry	\$1,640,141.24	\$1,771,264.22	\$1,678,000	\$1,728,000.00

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

- (a) Because 3 out of 4 dentists in the Commonwealth (75%) report that they are “self-employed” and there are approximately 9,764 actively licensed dentists, the Board estimates that there are at least 7,323 small businesses that will be subject to the regulation.**
- (b) There are no projected reporting, or recordkeeping costs required for compliance. There are no additional administrative costs required for compliance. (The administrative costs would be those associated with filling out the biennial renewal form or online renewal application and either writing a check or processing the payment of the fee. These costs would be the same regardless of the increase in the fee.) Also, some of these fees can be avoided by the small businesses by simply requiring employees to pay their own biennial renewal fees.**
- (c) Small businesses that elect to pay the licensure fees on behalf of its employees can expect to pay 5% more to renew licenses and permits in 2015 and beyond.**
- (d) When the Bureau of Finance and Operations (BFO) first alerted the Board that fee increases were necessary, the Board asked BFO to provide some alternatives that would not only address biennial renewal fees, but also look at application fees, because the Board’s application fees seemed unusually low compared to other states (see the chart in item no. 12 above). At the April 27, 2012, Board meeting, BFO presented numerous scenarios with various combinations of biennial renewal fee increases and application fee increases. The Board considered three general options: only raising biennial renewal fees; only raising application fees; and various combinations raising both biennial renewal fees and application fees. Board adopted what it perceived to be the least burdensome acceptable alternative fee structure. See item no. 26 below.**

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

No special provisions have been developed to meet the particular needs of any affected group.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

Of the biennial renewal fees targeted for increase in this proposed rulemaking, the local anesthesia permit and PHDHP certification renewal fees were established in 2009 and this is the first proposed increase. (See 39 Pa. B. 6982). The last time any biennial renewal fees were increased was in 2005, when only the dental license and Restricted II anesthesia permit renewal fees were increased. Dentist biennial renewal fees were increased from \$100 to \$250 and Restricted II anesthesia permits were increased from \$25 to \$50. (See 35 Pa.B. 2899). Prior to that, the biennial renewal fees for expanded function dental assistants were adopted in 1998 (at 28 Pa.B. 2590) and have never been increased. Dental hygienist biennial renewal fees have not been raised since 1995, when they increased from \$25 to \$40. (See 25 Pa.B. 2492). The remaining anesthesia permit renewal fees were adopted in 2005 (See 35 Pa.B. 2880) and have not been increased.

As to application fees, in 1998, the application fees for dentists and dental hygienists were increased from \$15 to \$20; and the EFDA application fee was established at \$20 at that time. These fees have not been increased in the last 14 years. The dental radiology, dental faculty notification and post graduate training notification fees were established in 2004 and have never been increased.

When the Bureau of Finance and Operations (BFO) first alerted the Board that fee increases were necessary, the Board was looking at increases in biennial renewal fees in the range of 25 to 35%. Later, the Board asked BFO to provide some alternatives that would not only address biennial renewal fees, but also look at application fees, because the Board's application fees seemed unusually low compared to other states (see the chart in item no. 12 above). Historically, the Board's application fees were set at an amount necessary to cover the administrative costs related to the processing of an application. However, the cost estimates proved low because legal costs associated with review of applications with legal impediments to licensure were not considered; nor were hearing costs in cases where an application is denied and the applicant requests a hearing. Only the administrative costs, and not the legal costs, were considered in estimating the average cost of an application. In addition, as noted above, once these fees were initially set, the Board did not routinely review them and raise them to cover increasing costs, instead looking to biennial renewal fees for the bulk of the Board's operating funds. This time, the Board asked BFO to look at all fees in providing a recommendation to the Board. At the April 27, 2012, Board meeting, BFO presented numerous scenarios with various combinations of biennial renewal fee increases and application fee increases. It was determined that by raising application fees to be more realistic and consistent with surrounding states, the percentage increase to biennial renewal fees, born by all licensees, could be lower. At the July 2012 meeting, the Board adopted what it perceived to be the least burdensome acceptable alternative fee structure.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

a) & b) All licensees renew biennially. The Board did not consider less stringent reporting requirements or deadlines for small businesses or for licensees that work for small businesses.

c) There are no compliance or reporting requirements that could be consolidated or simplified. The biennial renewal process is the same whether a particular licensee is employed by a small business or a large business.

d) The regulations do not contain design or operational standards that need to be altered for small businesses.

e) To exclude any applicants or licensees from the requirements contained in the regulation (an increased fee) based on the size of their employers would not be consistent with public health and welfare because it would prevent the Board from obtaining adequate revenue to meet projected expenditures and it would not be able to carry out its legislative mandate.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

No data, other than the Board's financial information, is the basis for this regulation. The Department's Bureau of Finance and Operations compiled the financial information relied upon by the Board in fashioning the new fees.

(29) Include a schedule for review of the regulation including:

A. The date by which the agency must receive public comments: **Within 30 days of publication as proposed (by May 6, 2013)**

B. The date or dates on which public meetings or hearings will be held: **No public hearings are scheduled. The Board discusses its regulatory proposals at regularly scheduled public meetings. This regulation was discussed at public board meetings on December 16, 2011, January 27, 2012, March 9, 2012, April 27, 2012, July 27, 2012, and July 19, 2013.**

C. The expected date of promulgation of the proposed regulation as a final-form regulation: **Fall of 2013.**

D. The expected effective date of the final-form regulation: **Upon publication as final.**

E. The date by which compliance with the final-form regulation will be required: **The increased application fees will be implemented upon publication as final, the biennial renewal fees will apply to the March 31, 2015 biennial renewal.**

F. The date by which required permits, licenses or other approvals must be obtained: **N/A**

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The Board continually reviews the efficacy of its regulations, as part of its annual review process under Executive Order 1996-1. The Board reviews its regulatory proposals at regularly scheduled public meetings. The Board will meet on the following dates: September 6, October 25 and December 13, 2013; January 24, March 21, May 2, July 11, September 5, October 24 and December 12, 2014. More information can be found on the Department's website at (www.dos.state.pa.us).

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

2013 SEP 20 AM 11: 09

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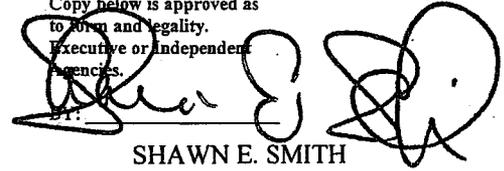
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BY: _____
(DEPUTY ATTORNEY GENERAL)

State Board of Dentistry

(AGENCY)


SHAWN E. SMITH

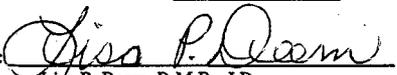
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SEP 05 2013

DATE OF APPROVAL

DATE OF ADOPTION: _____

DATE OF APPROVAL

BY: 
Lisa P. Deem, D.M.D., J.D.

(Executive Deputy General Counsel
Strike inapplicable title)

TITLE: Chairperson
(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.

FINAL RULEMAKING

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

49 PA. CODE, CHAPTER 33, §§ 33.3 and 33.339

FEES

The State Board of Dentistry (Board) hereby amends §§ 33.3 and 33.339 (relating to fees; and fees for issuance of permits), to read as set forth in Annex A.

Effective Date

The amendments will be effective upon publication of the final-form rulemaking in the Pennsylvania Bulletin. While the increased application fees will be implemented immediately thereafter, it is anticipated that the increased biennial renewal fees will be implemented with the March 31, 2015, biennial renewal.

Statutory Authority

Section 4(a) and (b) of the Dental Law (act) (63 P.S. § 123(a) and (b)) provide that fees shall be fixed by the Board by regulation and require the Board to increase fees to meet or exceed projected expenditures if the revenues raised by fees, fines and civil penalties are not sufficient to meet expenditures over a 2-year period.

Background and Need for Amendment

Under section 4(b) of the act, the Board is required by law to support its operations from the revenue it generates from fees, fines and civil penalties. In addition, the act provides that the Board shall increase fees if the revenue raised by fees, fines and civil penalties is not sufficient to meet expenditures over a 2-year period. The Board raises the majority of its revenue through biennial renewal fees. A small percentage of its revenue comes from application fees and civil penalties.

At the December 16, 2011, Board meeting, representatives from the Department of State's Bureau of Finance and Operations (BFO) presented a summary of the Board's revenue and expenses for fiscal years 2009–2010 and 2010–2011, and projected revenue and expenses through 2014–2015. At the current fee levels, the Board receives revenue of approximately \$ 3,231,560 over a 2-year period, while budgeted expenditures for fiscal years 2012–2013 and 2013–2014 were projected to be approximately \$ 3,512,000 – a deficit of \$280,440. Therefore, the Board determined that it was necessary to raise fees to meet or exceed projected expenditures, in compliance with section 4(b) of the act. The Board looked at a number of scenarios and, as a result, the Board voted at its July 27, 2012, meeting to increase the various application fees to more realistically cover the costs associated with processing applications and to be consistent with other states and also approved a modest 5% increase in biennial renewal fees, as set forth in Annex A.

Summary of Comments and the Board's Response

The Board published a notice of proposed rulemaking in the Pennsylvania Bulletin on April 6, 2013, for thirty days of public comment. See, 43 Pa.B. 1857. No public comments were received by the Board. On May 24, 2013, the House Professional Licensure Committee (HPLC) sent a request for information pertaining to the major cost centers of the Board and any significant increases in its expenditures. On June 5, 2013, the Independent Regulatory Review Commission sent a letter to the Board indicating that the Commission would review the Board's response to the HPLC's comment as part of the Commission's determination of whether this regulation is in the public interest.

The major cost centers of the Board are Board Administration, Legal Office, Hearing Expenses; Enforcement and Investigation; and the Professional Health Monitoring Program. These five areas comprise 90% of the Board's budget. Since the last fee increase in 2005, Board Administration has actually gone down from \$359,736.39 in fiscal year 2006–2007 to \$307,497.23 in fiscal year 2011–2012. However, the Board is currently staffed below its full complement, with vacancies that are expected to be filled in the near future, so this cost center is expected to return to at least \$360,000 for fiscal year 2013–2014. The Professional Health Monitoring Program costs incurred by the Board have steadily increased since 2005, from \$27,574.96 in fiscal year 2006–2007 to \$64,640.52 in fiscal year 2011–2012. These costs depend entirely upon how many individuals either voluntarily enter the impair professionals program; or are ordered to participate in the program by the Board as a result of a disciplinary matter. With regard to the Voluntary Recovery Program (VRP), the Board has had 20 new participants enter the program during those years (ranging from a high of seven entering in fiscal year 2007–2008 to a low of one entrant in fiscal year 2008–2009). With regard to the Disciplinary Monitoring Unit (DMU), approximately 23 individuals were ordered to participate in the program during those years (ranging from two to seven in a given year). Once in the program, a participant must have 3 years of continuous, sustained recovery in order to complete the program and return to unmonitored practice.

Enforcement and investigation costs have increased from \$456,871.30 in fiscal year 2006–2007 to \$659,488.98 in fiscal year 2011–2012. Legal office expenses have likewise risen from \$300,247.67 in fiscal year 2006–2007 to \$462,385.17 in fiscal year 2011–2012. Hearing expenses have fluctuated dramatically from year to year, ranging from a low of \$48,018.13 during fiscal year 2008–2009 to a high of \$119,908.23 in fiscal year 2011–2012, with an average of approximately \$77,500. These costs are all dependent upon the number of complaints filed, the number of those complaints that merit investigation, and the number of investigations that result in prosecutions. They also depend to a degree on the number of matters that are resolved through consent agreements and those that require hearings to be conducted. The complexity and seriousness of the matters also affect the costs. Serious standard of care related matters require expert review, which drives costs

up. The Board averages approximately 450 new complaints filed against its licensees each year. Each complaint must be reviewed or investigated to determine if a violation of the act or regulations has occurred. The legal office must then prosecute those matters where a violation is alleged. The Board incurs hearing expenses for each matter actually prosecuted, and the Board incurs additional legal costs defending any appeals. Ultimately, the number of complaints and disciplinary actions drive the bulk of the Board's costs, and the Board has no control over the number of complaints filed against its licensees or the number of disciplinary actions brought by the Commonwealth.

Because it has been a year since the Board last considered the fee increase, and in order to fully inform its deliberations relating to the final-form rulemaking, the Board asked BFO for an updated financial picture. The Board again reviewed its financial condition at its meeting on July 19, 2013, and the situation has not changed dramatically. One notable change is that the renewable license count has dropped slightly from 25,852 last year to 25,227 this year, which affects the amount of revenue that will be generated from the fee increase, however, this drop is not significant enough to require a larger increase at this time. Still, without the increase, the Board anticipates that its deficits will continue to mount. For that reason, the Board voted at its July 19, 2013, meeting to promulgate the final-form rulemaking unchanged.

Specifically, the application fees for initial licensure as a dentist will increase to \$200; for dental hygienists and expanded function dental assistants the application fees will increase to \$75. In addition, the application fee for dental radiology authorization will increase to \$75, as will the notification application for postgraduate trainees and faculty members. These application fee increases will be implemented upon publication of the final-form rulemaking. Biennial renewal fees for dentists will increase to \$263; for dental hygienists to \$42; and for EFDAs to \$26. Biennial renewal fees for public health dental hygiene practitioners will likewise increase to \$42; as will the biennial renewal fee for local anesthesia permits for dental hygienists. Finally, the biennial renewal fee for unrestricted and restricted I anesthesia permits will increase to \$210; and for restricted II anesthesia permits to \$53. All increases to biennial renewal fees will be implemented when licenses/certificates/permits renew as of March 31, 2015.

Fiscal Impact

The proposed amendments will increase the biennial renewal fees for licensees of the Board. There are currently approximately 25,300 licensees that will be required to pay more to renew their licenses when they expire in 2015, and thereafter. In addition, increased application fees will impact individuals who apply for initial licenses. Small businesses will be impacted to the extent that they elect to pay the fees on behalf of their licensed employees. Because 3 out of 4 dentists are self-employed, and 95% of licensees work in dental offices, the vast majority of the Board's licensees work in small businesses. The Board processes an average of approximately 2,000 applications each

year. The proposed regulation should have no other fiscal impact on the private sector, the general public or political subdivisions of the Commonwealth.

Paperwork Requirements

The proposed rulemaking will require the Board to alter some of its forms to reflect the new fees; however, the amendment will not create additional paperwork for the regulated community or for the private sector.

Sunset Date

The act requires the Board to monitor its revenue and costs on a fiscal year and biennial basis. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 25, 2013, the Board submitted a copy of the notice of proposed rulemaking, published at 43 Pa.B. 1857 (April 6, 2013), to the House Professional Licensure Committee (HPLC), the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) and the Independent Regulatory Review Commission (IRRC) for review and comment.

In compliance with section 5(c) of the Regulatory Review Act (71 P.S. § 745.5(c)), the Board also provided IRRC, SCP/PLC, and HPLC with copies of comments received as well as other documents when requested. In preparing the final-form regulation, the Board has considered all comments received.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), this final-form regulation was (deemed) approved by the HPLC on _____, 2013, and deemed approved by SCP/PLC on _____, 2013. Under section 5(g) of the Regulatory Review Act (71 P.S. § 745.5(g)), the final regulation was approved by IRRC on _____, 2013.

Contact Person

Further information may be obtained by contacting Lisa Burns, Board Administrator, State Board of Dentistry, P.O. Box 2649, Harrisburg, PA 17105-2649.

Findings

The State Board of Dentistry finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and no public comments were received.

(3) This final-form rulemaking is necessary and appropriate for administering and enforcing the authorizing act identified this Preamble.

Order

The State Board of Dentistry, acting under its authorizing statutes, orders that:

(a) The regulations of the Board at 49 Pa. Code §§ 33.3 and 33.339 are amended to read as set forth in Annex A.

(b) The Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General 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) This order shall take effect on publication in the *Pennsylvania Bulletin*.

Lisa P. Deem, D.M.D., J.D.
Chairperson

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

* * * * *

§ 33.3. Fees.

Following is the schedule of fees charged by the Board:

Application fee—dentists[, dental hygienists and expanded function dental assistants.....	\$20]	<u>\$200</u>
<u>Application fee—dental hygienists.....</u>		<u>\$75</u>
<u>Application fee—expanded function dental assistants.....</u>		<u>\$75</u>

* * * * *

Criteria approval application fee—dentists[, dental hygienists and expanded function dental assistants].....	[\$35]	<u>\$200</u>
<u>Criteria approval application fee—dental hygienists.....</u>		<u>\$75</u>
<u>Criteria approval application fee—expanded function dental assistants.....</u>		<u>\$75</u>

* * * * *

Biennial renewal fee—dentists[(for the renewal period beginning April 1, 2005, and thereafter)].....	[\$250]	<u>\$263</u>
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Biennial renewal fee—dental hygienists.....[~~\$40~~] \$42

Biennial renewal fee—expanded function dental assistants.....[~~\$25~~] \$26

* * * * *

Biennial renewal fee—certificate of public health dental hygiene practitioner.....[~~\$40~~] \$42

Biennial renewal fee—local anesthesia permit.....[~~\$40~~] \$42

[Temporary permit—expanded function dental assistants.....\$15]

Application fee – dental radiology authorization..... [~~\$20~~] \$75

Notification application – postgraduate training or faculty member..... [~~\$25~~] \$75

(b) For fees related to anesthesia permits, refer to § 33.339 (relating to fees for issuance of permits).

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**Subchapter E. ADMINISTRATION OF GENERAL ANESTHESIA, DEEP SEDATION,
CONSCIOUS SEDATION AND NITROUS
OXIDE/OXYGEN ANALGESIA**

* * * * *

§ 33.339. Fees for issuance of permits.

The following fees are charged for the issuance of permits under this subchapter:

(1) *Unrestricted permit.*

* * * * *

(ii) Renewal [~~\$200~~] \$210

* * * * *

(2) *Restricted permit I.*

* * * * *

(ii) Renewal [\$200] \$210

* * * * *

(3) *Restricted permit II.*

* * * * *

(ii) Renewal [\$50] \$53

* * * * *

STATE BOARD OF DENTISTRY

16A-4627 – Fees

There were no public comments received during the 30-day public comment period (April 6, 2013 – May 6, 2013).



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

September 20, 2013

The Honorable Silvan B. Lutkewitte, III, Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harristown 2, 333 Market Street
Harrisburg, Pennsylvania 17101

Re: Final Regulation
State Board of Dentistry
16A-4627: FEES

Dear Chairman Lutkewitte:

Enclosed is a copy of a final rulemaking package of the State Board of Dentistry pertaining to Fees.

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 "Lisa P. Deem, DMD".

Lisa P. Deem, DMD, JD, Chairperson
State Board of Dentistry

LPD/CKM:rs

Enclosure

cc: Kathy J. Barley, Acting Commissioner
Professional and Occupational Affairs
Patricia Allen, Director of Policy, Department of State
Steven V. Turner, Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel
Department of State
Jason E. McMurry, Counsel
State Board of Dentistry
State Board of Dentistry

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

I.D. NUMBER: 16A-4627
SUBJECT: FEES
AGENCY: DEPARTMENT OF STATE
 BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
 STATE BOARD OF DENTISTRY

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

2013 SEP 20 AM 11:09

RECEIVED
IRRC

FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
		<i>HOUSE COMMITTEE ON PROFESSIONAL LICENSURE</i>
9/20/13	<i>Annie Kelly</i>	MAJORITY CHAIR <u>Julie Harhart</u>
		MINORITY CHAIR _____
		<i>SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE</i>
9-20-13	<i>Julie B. Heintzelman</i>	MAJORITY CHAIR <u>Robt. M. Tomlinson</u>
		MINORITY CHAIR _____
		<i>INDEPENDENT REGULATORY REVIEW COMMISSION</i>
9/20/13	<i>K Cooper</i>	ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)