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| <h1>Regulatory Analysis Form</h1> <p>(Completed by Promulgating Agency)</p> <p><i>(All Comments submitted on this regulation will appear on IRRC's website)</i></p> | | <p>INDEPENDENT REGULATORY REVIEW COMMISSION</p> | |
| <p>(1) Agency: Department of State, Bureau of Professional and Occupational Affairs, State Board of Dentistry</p> | | <p>2018 FEB - 9 A 10:49 RECEIVED IRRC</p> | <p>3198 IRRC Number:</p> |
| <p>(2) Agency Number: 16A Identification Number: 4626</p> | | | |
| <p>(3) PA Code Cite: 49 Pa. Code §§ 33.1, 33.250—33.257 and 33.401</p> | | | |
| <p>(4) Short Title: Child Abuse Reporting Requirements</p> | | | |
| <p>(5) Agency Contacts (List Telephone Number and Email Address):</p> <p>Primary Contact: Cynthia Montgomery, Regulatory Counsel, Department of State, P.O. Box 69523, Harrisburg, PA 17106-5923 (phone 717-783-7200) (fax 787-0251) cymontgome@pa.gov.</p> <p>Secondary Contact: Kerry E. Maloney, Board Counsel, State Board of Dentistry, P.O. Box 69523, Harrisburg, PA 17106-9523 (phone 717-783-7200) (fax 787-0251) kmaloney@pa.gov.</p> | | | |
| <p>(6) Type of Rulemaking (check applicable box):</p> <p><input checked="" type="checkbox"/> PROPOSED REGULATION</p> <p><input type="checkbox"/> Final Regulation</p> <p><input type="checkbox"/> Final Omitted Regulation</p> | | <p><input type="checkbox"/> Emergency Certification Regulation;</p> <p><input type="checkbox"/> Certification by the Governor</p> <p><input type="checkbox"/> Certification by the Attorney General</p> | |
| <p>(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)</p> <p>This proposed rulemaking implements amendments to the Child Protective Services Law (CPSL) (23 Pa.C.S. §§ 6301—6386), including the requirement imposed by the act of April 15, 2014 (P.L. 411, No. 31) (Act 31 of 2014) on all health-related Boards, including the State Board of Dentistry (Board) to require training in child abuse recognition and reporting.</p> | | | |
| <p>(8) State the statutory authority for the regulation. Include specific statutory citation.</p> <p>Section 3(o) of the Dental Law (63 P.S. § 122(o)) sets forth the Board's general rulemaking authority. Section 6383(b)(2) of the CPSL (23 Pa.C.S. § 6383(b)(2)) requires the Board to promulgate regulations to implement the mandatory reporting requirements for board regulated practitioners.</p> | | | |

(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 6383(b)(2) of the CPSL requires the Board to promulgate regulations to implement the mandatory reporting requirements for board-regulated practitioners.

(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.

Throughout 2014, and continuing in 2015 and 2016, the General Assembly made numerous amendments to the CPSL, including the requirement imposed by Act 31 of 2014 on all health-related Boards to require licensees who are considered "mandated reporters" complete mandatory training in child abuse recognition and reporting. These amendments are required to update the Board's existing regulations on the subject of child abuse reporting to comport to the numerous amendments made to the CPSL, including the mandatory training requirements required by Act 31 of 2014, which the Board implemented as required at the beginning of 2015. All board-regulated practitioners will benefit by receiving mandatory training with regard to their responsibilities under the CPSL, and all Pennsylvania children will benefit from the increased protections provided by the amendments. Licensees will further benefit from regulations that are consistent with the CPSL, as amended, to avoid confusion as to their responsibilities in this area.

(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.

No. There are no federal standards on the topic.

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

This regulation will not adversely affect Pennsylvania's ability to compete with other states. All surrounding states also have regulations on reporting child abuse in the medical field.

In Connecticut, certain health professionals, including dentists, are mandated to report suspected child abuse or neglect to the Department of Children and Families' Child Abuse and Neglect Careline or a law enforcement agency. Reports must be made within twelve hours of the moment the practitioner suspects the abuse or neglect occurred. Failure to meet reporting responsibilities may subject the practitioner to criminal prosecution and possible action against the practitioner's license or certificate.

In Delaware, the law mandates licensees to make an immediate oral report to the Department of Services for Children, Youth and Their Families when they know of, or suspect, child abuse or neglect and to follow up with any requested written reports.

In Maine, any child abuse or child neglect reports must be made immediately by telephone to the Department of Health and Human Services. Many adults are mandated, or required by statute, to report knowledge or reasonable suspicion of incidents of child abuse, neglect or suspicious child deaths. Reports are also required if a health-care provider involved in the delivery or care of an infant knows or has reasonable cause to suspect the infant has been born affected by illegal substance abuse or is suffering from withdrawal symptoms resulting from prenatal drug exposure.

In Maryland, any dentist is required to report both orally and in writing any suspected child abuse or neglect. Oral reports must be made immediately and written reports must be made within 48 hours of contact in which the disclosure of the suspected abuse or neglect was given. When reporting abuse or neglect of a child involving mental injury, a description of the substantial impairment of the child's mental or psychological ability to function that was observed and identified and why it is believed to be attributable to an act of maltreatment or omission of proper care and attention must be stated. All reports of abuse must be made to the local departments of social services and the appropriate law enforcement agency. If a licensee knowingly fails to report suspected abuse of a child, they may be subject to professional sanctions by licensing boards.

In Massachusetts, all members of the medical field must report to the Department of Children and Families when they suspect that a child is being abused or neglected immediately by telephone and ask for the Protective Screening Unit. As a mandated reporter, it is also required by law to mail or fax a written report to the Department within 48 hours after making the oral report. These members of the medical field are also required to report when they have reason to believe the following: abuse inflicted upon the child that causes harm or substantial risk of harm to the child's health or welfare, including sexual abuse, neglect, including malnutrition, physical dependence upon an addictive drug at birth, being a sexually exploited child, or being a human trafficking victim.

In New Hampshire, all members of the medical field are required to report any suspicion that a child has been abused or neglected to the Central Intake Unit of the New Hampshire Division for Children, Youth and Families. It also defines many items that constitute an abused child, indicators of sexual, physical, emotional abuse, and indicators of neglect.

In New Jersey, any person having reasonable cause to believe that a child has been subjected to abuse or acts of abuse must immediately report to the State Central Registry. Any person who knowingly fails to report suspected abuse or neglect according to the law or to comply with the provisions of the law is a "disorderly person."

In New York, all persons in the medical profession are required by law to report suspected child abuse or maltreatment to the New York State Central Register of Child Abuse and Maltreatment. The law also assigns civil and criminal liability to those professionals who do not comply with their mandated reporter duties; including being criminally charged with a Class A misdemeanor, being subject to criminal penalties, and being sued in a civil court for monetary damages for any harm caused. Reasonable cause to suspect child abuse or maltreatment means that, based on one's observations, professional training and experience, a licensee believes the parent or person legally responsible for a child has harmed that child or placed that child in imminent danger or harm. In addition, New York now requires mandatory training similar to that required by Act 31 of 2014.

In Ohio, all health care professions are mandated to report if a child under the age of eighteen or a mentally retarded, developmentally disabled, or physically impaired person under the age of twenty-one has been abused or neglected. If a licensee has reason to believe that a child or mentally challenged person has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or other condition, the licensee may report to the entity or persons specified. A licensee making a report shall make it to the public children services agency or to a municipal or county peace officer.

In Virginia, any persons licensed in the practice of dentistry must report if they have reason to suspect a child is an abused or neglected child immediately to the local department of the county or city where the child resides, where the abuse or neglect is believed to have occurred or to the Department's child abuse and neglect hotline. A report is required for the following "reasons to suspect that a child is abused or neglected" including, but not limited to: a finding made by a health-care provider within 6 weeks of the birth of a child that the results of toxicology studies of the child indicate the presence of a controlled substance not prescribed for the mother by a physician, a finding made by a health care provider within 6 weeks of the birth of a child that the child was born dependent on a controlled substance that was not prescribed by a physician for the mother and has demonstrated withdrawal symptoms, a diagnosis made by a health care provider at any time following a child's birth that the child has an illness, disease, or condition that, to a reasonable degree of medical certainty, is attributable to in utero exposure to a controlled substance that was not prescribed by a physician for the mother or the child, or a diagnosis made by a health care provider at any time following a child's birth that the child has a fetal alcohol spectrum disorder attributable to in utero exposure to alcohol. Any person required to file a report who fails to do so, shall be fined not more than \$500 for the first failure and for any subsequent failures not less than \$1,000 and may be charged with a Class 1 misdemeanor.

In West Virginia, any licensee in a health profession it required to report any suspected child abuse or neglect. The purpose of required reporting is to identify suspected abused and neglected children as soon as possible so that they may be protected from further harm. When a licensee suspects that a child is being abused or neglected, or observes a child being subjected to conditions that are likely to result in abuse or neglect, or believes that a child has suffered serious physical abuse, sexual abuse, or sexual assault, a report must be made to the Child Protective Services unit in the county office of the Department of Health and Human Resources where the licensee is located or the State Police or other law enforcement agency that has jurisdiction to investigate the report.

Based on these requirements from other states, this regulation will not place Pennsylvania at a competitive disadvantage.

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

No. The regulation does not affect any other regulations of the agency or other state agencies. However, there are 15 additional boards that will be promulgating similar regulations in the upcoming months (all health-related boards, and the State Board of Funeral Directors).

(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.)

The Board began its discussions regarding the required updates at the end of 2014, and a draft of the proposed rulemaking was presented to the Board at its regularly scheduled public meeting on April 17, 2015. At that time the Board authorized Counsel to release an “exposure draft” of the proposal to the Board’s list of interested parties and stakeholders requesting input. On June 1, 2015, the exposure draft was distributed to nearly 140 individuals and entities that have expressed an interest in the Board’s regulatory agenda. The Board received input from the Pennsylvania Dental Association (PDA); Dr. Frank Falcone, a practicing oral and maxillofacial surgeon; and Virginia Saunders, Chairperson of the Allied Health, Science & Math Division, and Director of the Dental Hygiene Program at Manor College. These comments were considered by the Board at its regularly scheduled public meeting on July 10, 2015. The PDA asked questions about two of the definitions (specifically with regard to the definition of “child abuse” and the definition of “person responsible for a child’s welfare”), but in that these definitions were taken verbatim from the amended CPSL, no changes were made in response to these comments. The PDA made suggestions to aid clarity in § 33.256 (relating to child abuse recognition and reporting—mandatory training requirement) which were incorporated into the regulation. Dr. Falcone agreed that reporting of child abuse is imperative, but that 2 hours of training every biennial renewal cycle is excessive. He suggested the Board limit the requirement to those applying for new licenses. Likewise, Dr. Saunders expressed her belief that requiring 2 hours of continuing education on child abuse every biennial renewal cycle was completely unnecessary. She suggested requiring a “refresher” every 10 years, or sooner if substantial changes occur to the CPSL or the reporting requirements. This, in her opinion, would be more appropriate and less burdensome. In reviewing these comments, the Board noted that the requirement to complete 2 hours of continuing education as a condition of biennial renewal each cycle was imposed by the General Assembly, and not the Board, so no changes were made to the proposed rulemaking based on this comment. As an executive agency, the Board is required to implement the legislation as enacted by the General Assembly.

(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?

All Board-regulated practitioners will be affected by the regulation. At the present time, there are 9,601 actively licensed dentists, 9,059 actively licensed dental hygienists; 2,338 certified expanded function dental assistants; and 16 restricted faculty license holders. In addition, all applicants for a license or certificate issued by the Board would be affected by the mandatory training requirements set forth in the proposed regulation as required by Act 31. The Board processes about 2,000 applications a year.

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 742,056 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 2014, the majority of dentists, dental hygienists and dental assistants work in offices of dentists (about 95%). A small number work in state or federal government, offices of physicians, and outpatient care centers. All restricted faculty licensees work at one of the three universities in the Commonwealth that has a dental school (the University of Pittsburgh, Temple University or the University of Pennsylvania).

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 621210 (offices of dentists) is one with \$7.5 million or less in average annual receipts. Colleges, universities and professional schools (NAICS code 611310) are considered small businesses if they have \$27.5 million or less in average annual receipts. Because these three universities each have annual operating budgets over a billion dollars, none of the 16 restricted faculty licensees work for small businesses. The Board does not collect data relating to business size, but believes that, with the exception of the restricted faculty licensees, the vast majority of dentists, dental hygienists and expanded function dental assistants work in "small businesses" as the term is defined by the SBA and the Regulatory Review Act.

(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.

All Board-regulated practitioners will be affected by the regulation. At the present time, there are 9,601 actively licensed dentists, 9,059 actively licensed dental hygienists; 2,338 certified expanded function dental assistants; and 16 restricted faculty license holders. In addition, all applicants for a license or certificate issued by the Board would be affected by the mandatory training requirements set forth in the proposed regulation as required by Act 31. The Board processes about 2,000 applications a year.

(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.

The Board does not anticipate any significant fiscal impact or paperwork requirements relating to the proposed rulemaking. Because licensees and certificate holders are already required to complete mandatory continuing education, and the 2 hours of continuing education in child abuse recognition and reporting are incorporated in the existing requirement, there would be no increased burden. Only applicants for licensure and certification would incur an additional requirement, and because there are many low-cost and free options available to complete the training, the Board anticipates this impact to also be minimal. Because all approved Act 31 training providers are required to report attendance/participation electronically, there are no additional paperwork requirements imposed on licensees/certificate holders. In addition, the implementation of an electronic reporting system for mandatory reporters of suspected child abuse under the CPSL by the Department of Human Services has decreased the paperwork requirements related to the mandatory reporting requirements. The regulation benefits all licensees and certificate holders, by providing clarity regarding the reporting obligations; and benefits all Pennsylvania children by the increased protections provided.

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

Because any costs or adverse effects are minimal, the benefits to the regulated community of clarity regarding their reporting obligations and the increased protections to Pennsylvania children far outweigh the costs.

(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.

There should be no additional cost to the regulated community of board regulated practitioners to comply with the updated regulations or to complete the 2 hours of continuing education, as these are not new requirements. In fact, the new electronic reporting system will reduce any paperwork requirements. The only individuals who would incur additional costs are applicants for licensure/certification who will need to complete 3 hours of approved training in child abuse recognition and reporting as a condition of licensure. However, because there are numerous low-cost and free options available, this cost is minimal. Additionally, as more and more schools are submitting their courses for approval, more and more applicants will have completed the required training as part of their professional education and will incur no additional costs. At the present time, the cost for the required training ranges from free to \$100. So at an average of 2,000 applications per year, the cost to applicants could range from \$0 to \$200,000 per year. For purposes of this rulemaking, the Board is assuming that most applicants would choose a free or low cost option and estimates an average cost of no more than \$25 – or \$50,000 per year.

(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 compliance with the 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 costs to state government associated with implementation of the regulation include the costs associated with the electronic reporting system by which approved providers submit attendance/participation records to the Bureau and the administrative costs of assuring applicants have complied with the training requirements. The costs associated with the electronic reporting system included an initial system upgrade of \$35,000 incurred in fiscal year 2014-2015. Ongoing annual operating costs of approximately \$90,000 include the costs associated with reviewing application records to determine compliance, sending discrepancy letters, responding to inquiries, working with the IT consultant, managing the child abuse education resource account, approving new courses, etc. These costs are allocated to the 16 Boards that are impacted by the training requirements based on licensee population.

(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.

There are no additional legal, accounting or consulting procedures or additional reporting, recordkeeping or other paperwork requirements required of the regulated community. The Bureau/Board has additional recordkeeping responsibilities in receiving, retaining, and retrieving electronic records of completed child abuse training for applicants and licensees.

(22a) Are forms required for implementation of the regulation?

No forms are required for implementation of this regulation, as completion of the required child abuse training is being reported electronically to the Bureau by the course provider.

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here.** If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

N/A

(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 Year 17-18 | FY +1 Year 18-19 | FY +2 Year 19-20 | FY +3 Year 20-21 | FY +4 Year 21-22 | FY +5 Year 22-23 |
|-----------------------------|--------------------------------------|---------------------------------|---------------------------------|---------------------------------|---------------------------------|---------------------------------|
| SAVINGS: | \$ | \$ | \$ | \$ | \$ | \$ |
| Regulated Community | | | | | | |
| Local Government | | | | | | |
| State Government | | | | | | |
| Total Savings | N/A | N/A | N/A | N/A | N/A | N/A |
| COSTS: | | | | | | |
| Regulated Community | \$50,000 | \$50,000 | \$50,000 | \$50,000 | \$50,000 | \$50,000 |
| Local Government | | | | | | |
| State Government | \$90,000 | \$90,000 | \$90,000 | \$90,000 | \$90,000 | \$90,000 |
| Total Costs | \$140,000 | \$140,000 | \$140,000 | \$140,000 | \$140,000 | \$140,000 |
| 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 14-15 Actual | FY -2 15-16 Actual | FY -1 16-17 Projected | Current FY 17-18 Projected |
|---------------------------------|-----------------------------------|-----------------------------------|--------------------------------------|---|
| State Board of Dentistry | \$1,927,241.03 | \$2,004,069.35 | \$2,172,000.00 | \$2,237,000.00 |

(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.

The regulation should have no adverse impact on small business. The new streamlined electronic system for making reports of suspected child abuse has decreased the paperwork requirements; and although licensees who are employees of small businesses now have to complete mandatory training in child abuse recognition and reporting, the law and regulations provide that this requirement is incorporated in the existing continuing education requirements, so there is no increased burden. And many approved courses are free or low cost.

(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.

The Board has identified no special groups that needed special provisions. The CPSL applies equally to all mandated reporters.

(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.

No alternative regulatory provisions have been considered. The Board believes that these regulations provide the least burdensome acceptable means of complying with the CPSL.

(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.

Because there is no anticipated adverse impact on small business, a regulatory flexibility analysis was not conducted. No less stringent compliance or reporting requirements or less stringent schedules or deadlines for compliance for small businesses would be consistent with the goals of the CPSL. The new electronic reporting process established by the Department of Human Services simplifies the reporting process for all businesses. There are no design or operational standards in the regulation. Exempting small businesses or employees of small businesses from any of the requirements contained in the regulation would not be consistent with the intent of the CPSL.

(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 is the basis for this regulation.

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

- A. The length of the public comment period: **30 days**
- B. The date or dates on which any public meetings or hearings will be held: **No public hearings are scheduled. The Board discusses its regulatory proposals at regularly scheduled public board meetings. See item (30) for dates.**
- C. The expected date of delivery of the final-form regulation: **Spring 2018**
- D. The expected effective date of the final-form regulation: **Upon publication as final**
- E. The expected date by which compliance with the final-form regulation will be required: **Upon publication as final**
- F. The expected 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 remaining date in 2017: November 17, 2017; and on the following dates in 2018: January 19, March 16, May 18, July 20, September 14 and November 16, 2018. More information can be found on the Department's website at (www.dos.pa.gov).

FACE SHEET
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WITH THE LEGISLATIVE REFERENCE BUREAU

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2018 FEB -9 A 10: 49

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BY: *Angela M. Elliott*
(DEPUTY ATTORNEY GENERAL)

STATE BOARD OF DENTISTRY
(AGENCY)

BY: *Marissa H. Z. Koir*

DOCUMENT/FISCAL NOTE NO. 16A-4626

Jan. 29, 2018
DATE OF APPROVAL

DATE OF ADOPTION: _____

NOV 29 2017
DATE OF APPROVAL

BY: *John F. Erhard, III*
JOHN F. ERHARD, III, D.D.S.

Deputy General Counsel,
~~Chief Counsel,~~
~~Independent Agency~~
(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.

NOTICE OF PROPOSED RULEMAKING

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF DENTISTRY
49 PA. CODE, CHAPTER 33
§§ 33.1, 33.250—33.257 and 33.401

CHILD ABUSE REPORTING REQUIREMENTS

The State Board of Dentistry proposes to amend § 33.1, 33.250—33.255 and 33.401; and to add §§ 33.252a, 33.256 and 33.257 (relating to mandatory reporting of children under 1 year of age; child abuse recognition and reporting—mandatory training requirement; and child abuse recognition and reporting course approval process) to read as set forth in Annex A.

Effective date

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

Statutory authority

Section 3(o) of the Dental Law (63 P.S. § 122(o)) sets forth the Board's general rulemaking authority. Section 6383(b)(2) of the Child Protective Services Law (CPSL) (23 Pa.C.S. § 6383(b)(2)) requires the Board to promulgate regulations to implement the mandatory reporting requirements for board-regulated practitioners.

Background and purpose

Throughout 2014, and continuing in 2015 and 2016, the General Assembly made numerous amendments to the CPSL, including the requirement imposed by the act of April 15, 2014 (P.L. 411, No. 31) (Act 31 of 2014) on all health-related Boards to require training in child abuse recognition and reporting for licensees who are considered "mandated reporters" under the CPSL. Section 2 of Act 31 provided that these training requirements would apply to all persons applying for a license, or applying for renewal of a license, on or after January 1, 2015. The Board implemented the training requirements as mandated by Act 31 of 2014 at the beginning of 2015. These amendments are required to update the Board's existing regulations on the subject of child abuse reporting to be consistent with the CPSL, as amended.

Description of the proposed amendments

The Board proposes to amend § 33.1 (relating to definitions) to update the definitions of terms used in the CPSL. Specifically, the Board finds it necessary to define the terms "bodily injury," "child," "parent," "program, activity or service" and "serious physical neglect" and to amend the definitions of "child abuse," "person responsible for the child's welfare," "recent acts or omissions" and "sexual abuse or exploitation" to comport with amendments made to the CPSL. The Board has also added a definition for the term "mandated reporter" for ease of reference. All Board regulated practitioners are considered mandated reporters under the CPSL.

The Board further proposes to delete the following definitions because either they have been deleted from the CPSL or, although they remain in the CPSL, they are no longer used in the Board's regulations, as amended: "individual residing in the same home as the child," "perpetrator" and "serious physical injury." The Board also proposes to amend, where necessary throughout the proposal, the name of the Department of Public Welfare to the Department of Human Services, as the name of the agency has changed. Finally, the Board is amending the definition of "Board regulated practitioner" to include restricted faculty license holders, a new

category of licensee added by the act of July 2, 2014 (P.L. 828, No. 89). The Board is in the process of promulgating a separate rulemaking which includes provisions relating to restricted faculty licenses.

Although section 6311(a)(12) of the CPSL provides that “an individual supervised or managed” by a person licensed or certified to practice in any health-related field under the jurisdiction of the Department of State (such as a dental assistant or other unlicensed staff supervised or managed by a Board regulated practitioner) who has direct contact with children in the course of employment is considered a mandated reporter, the definition of “Board regulated practitioner” was not amended to include those individuals because the Board does not otherwise regulate these individuals and cannot enforce the requirements of the CPSL as to unlicensed/uncertified persons. However, the Board reminds its licensees and certificate holders that individuals they supervise or manage who have direct contact with children in the course of their employment are considered mandated reporters and should be aware of the reporting requirements under the CPSL.

The Board is proposing to amend § 33.250 (relating to suspected child abuse—mandated reporting requirement) to provide the general rule that all Board regulated practitioners are considered mandated reporters, and to set forth the mandated reporting requirements and reporting procedures as set forth in sections 6311 and 6313 of the CPSL, as amended. The Department of Human Services has implemented an electronic reporting process for mandated reporters, and the Board finds it necessary to amend § 33.251 (relating to photographs, medical tests and X-rays of child subject to report) to set forth the requirement to submit these types of materials to the county children and youth social service agency within 48 hours of making an electronic report in accordance with section 6314 of the CPSL.

The Board is amending § 33.252 (relating to suspected death as a result of child abuse—mandated reporting requirement) to incorporate an amendment made to section 6317 of the CPSL to permit such a report to be made to the appropriate coroner or medical examiner. The Board also proposes the addition of § 33.252a (relating to mandatory reporting of children under 1 year of age) to incorporate the amendment made to section 6386 of the CPSL. The Board has included this proposed addition because, although the Board believes it would be an extremely rare situation for a Board regulated practitioner to be treating a child under 1 year of age who is affected by drugs or alcohol, the amendments to section 6386 refer specifically to “a health care provider” and that term is defined in section 6303 of the CPSL as “A licensed hospital or health care facility or person who is licensed, certified or otherwise regulated to provide health care services under the laws of this Commonwealth, including a...dentist...” Under the canons of statutory construction, “including” is to be read as “including, but not limited to” and for that reason the Board has included all Board regulated practitioners as subject to this section.

Further, the Board is proposing to amend § 33.253 (relating to immunity from liability) to incorporate amendments made to section 6318 of the CPSL; and to amend § 33.254 (relating to confidentiality—waived) to incorporate the provisions of section 6311.1 of the CPSL, which was added in 2014. Likewise, the Board proposes to amend § 33.255 (relating to noncompliance) to update the criminal penalties for failure to make a required report to conform to the increased criminal penalties set forth in the amendments made to section 6319 of the CPSL.

The Board proposes to add two new sections pertaining to the mandatory training requirements set forth in Act 31 of 2014. Section 33.256 (relating to child abuse recognition and reporting—mandatory training requirement) sets forth the requirements in section 6383(b) of the CPSL that all individuals applying to the Board for an initial license or certificate are required to complete 3 hours of training in child abuse recognition and reporting which has been approved by the Department of Human Services; and that all licensees and certificate holders seeking renewal of a license or certificate complete 2 hours of continuing education in child abuse recognition and reporting as a requirement of renewal. The Board also would provide notice that these 2 hours of training would be accepted as a portion of the total continuing education required for biennial renewal, and not an additional requirement, as provided in section 6383(b)(3)(ii) of the CPSL.

This section would also include the process for applying for an exemption from these requirements as set forth in section 6383(b)(4) and (6) of the CPSL, for individuals who have already completed similar training or should otherwise not be subject to the training or continuing education requirement. The Board notes that section 6383(b)(4)(ii)(B) provides an exemption for individuals who have already completed child abuse recognition training required by the Public Welfare Code (now known as the Human Services Code), and the training was approved by the Department of Human Services. However, the Department of Human Services has confirmed that there is no provision in the Public Welfare/Human Services Code that requires such training. Instead, section 6383(c) of the CPSL (which is part of the Domestic Relations Code) sets forth the requirement that certain individuals and entities regulated by the Department of Human Services complete mandated reporter training. Therefore, the Board believes it is appropriate to include an exemption for a Board regulated practitioner who has already completed comparable training in child abuse recognition and reporting required by the Department of Human Services under section 6383(c). For example, if a dentist happened to be a foster parent and was, therefore, required to complete the training under section 6383(c), there would be no need to repeat the training as a condition of licensure or license renewal under section 6383(b). In addition, section 6383(b)(6) permits the Board to exempt a licensee from the training requirement “if the licensee submits documentation to the licensing board that the licensee should not be subject to the training or continuing education requirement.” The Board believes that this section also provides the authority of the Board to determine that those licensees who are required to complete comparable training under section 6383(c) should be exempt from the training requirement under section 6383(b), provided they submit acceptable documentation to the Board evidencing completion of comparable training.

The Board proposes to add § 33.257 (relating to child abuse recognition and reporting course approval process) to set forth the process developed by the Bureau of Professional and Occupational Affairs (Bureau), in conjunction with the Department of Human Services, for individuals, entities and organizations to apply for approval to deliver training required under Act 31. The Bureau has incorporated a requirement that to be approved to provide Act 31 training in child abuse recognition and reporting, an applicant must be able to report participation/attendance electronically to the Bureau. In this manner, the completion of the training is automatically imported into the licensee’s record with the Board at the time the course is completed. Then, at the time of renewal, the system verifies that the training was completed as required prior to renewing the license.

Finally, the Board is proposing an amendment to § 33.401 (relating to credit-hour requirements) to incorporate the mandatory 2 hours of continuing education in child abuse recognition and reporting at set forth in § 33.256 in the Board's continuing education regulations. It is important to note that the mandatory child abuse training is an exception to the Board's general rule that continuing education must be taken in subject areas listed in § 33.402 (relating to continuing education subject areas) from a program sponsor listed in § 33.403 (relating to program sponsors). For this reason, the Board will only accept 2 hours of continuing education in the area of child abuse recognition and reporting, so as not to dilute further the number of hours of general dental continuing education required by the Board.

Fiscal Impact and Paperwork Requirements

The Board does not anticipate any significant fiscal impact or paperwork requirements relating to these amendments. Because licensees and certificateholders are already required to complete mandatory continuing education, and these 2 hours are incorporated in the existing requirement, there would be no increased burden. Only applicants for licensure or certification would incur an additional requirement, and as there are many low-cost and free options available to complete the training, the Board anticipates this impact to also be minimal. Because all approved Act 31 training providers are required to report attendance/participation electronically, there are no additional paperwork requirements imposed on licensees. In addition, the implementation of an electronic reporting system for mandatory reporters of child abuse under the CPSL by the Department of Human Services, has decreased the paperwork requirements related to the mandatory reporting requirements.

Sunset Date

The Board continuously monitors the effectiveness of its regulations 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 February 9, 2018, the Board submitted a copy of this proposed rulemaking and a copy of a regulatory analysis form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. 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 comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, suggestions, or objections regarding this proposed rulemaking to Regulatory Counsel, Department of State at P.O. Box 69523, Harrisburg, PA 17106-9523 or by e-mail to RA-STRegulatoryCounsel@pa.gov, within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Comments should be identified as pertaining to rulemaking 16A-4626 (Child Abuse Reporting Requirements).

John F. Erhard, III, D.D.S.
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

§ 33.1 Definitions.

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

* * * * *

Board regulated practitioner—A dentist, restricted faculty license holder, dental hygienist, public health dental hygiene practitioner or expanded function dental assistant.

Bodily injury—Impairment of physical condition or substantial pain.

* * * * *

Child—An individual under 18 years of age.

Child abuse—[A term meaning any of the following:

(i) A recent act or failure to act by a perpetrator which causes nonaccidental serious physical injury to a child under 18 years of age.

(ii) An act or failure to act by a perpetrator which causes nonaccidental serious mental injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iii) A recent act, failure to act or series of acts or failures to act by a perpetrator which creates an imminent risk of serious physical injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iv) Serious physical neglect by a perpetrator constituting prolonged or repeated lack of supervision or the failure to provide the essentials of life, including adequate medical care, which endangers a child's life or development or impairs the child's functioning.]

Intentionally, knowingly or recklessly doing any of the following:

- (i) Causing bodily injury to a child through any recent act or failure to act.
- (ii) Fabricating, feigning or intentionally exaggerating or inducing a medical symptom or disease which results in a potentially harmful medical evaluation or treatment to the child through any recent act.
- (iii) Causing or substantially contributing to serious mental injury to a child through any act or failure to act or a series of such acts or failures to act.
- (iv) Causing sexual abuse or exploitation of a child through any act or failure to act.
- (v) Creating a reasonable likelihood of bodily injury to a child through any recent act or failure to act.
- (vi) Creating a likelihood of sexual abuse or exploitation of a child through any recent act or failure to act.
- (vii) Causing serious physical neglect of a child.
- (viii) Engaging in any of the following recent acts:
 - (A) Kicking, biting, throwing, burning, stabbing or cutting a child in a manner that endangers the child.
 - (B) Unreasonably restraining or confining a child.
 - (C) Forcefully shaking a child under 1 year of age.
 - (D) Forcefully slapping or otherwise striking a child under 1 year of age.
 - (E) Interfering with the breathing of a child.

(F) Causing a child to be present at a location while a violation of 18 Pa.C.S. § 7508.2 (relating to operation of methamphetamine laboratory) is occurring.

(G) Leaving a child unsupervised with an individual, other than the child's parent, who the actor knows or reasonably should have known:

(I) Is required to register as a Tier II or Tier III sexual offender under 42 Pa.C.S. Chapter 97, Subchapter H (relating to registration of sexual offenders), where the victim of the sexual offense was under 18 years of age when the crime was committed.

(II) Has been determined to be a sexually violent predator under 42 Pa.C.S. § 9799.24 (relating to assessments) or any of its predecessors.

(III) Has been determined to be a sexually violent delinquent child as defined in 42 Pa.C.S. § 9799.12 (relating to definitions).

(H) Causing the death of the child through any act or failure to act.

(I) Engaging a child in a severe form of trafficking in persons or sex trafficking, as those terms are defined under section 103 of the Trafficking Victims Protection Act of 2000 (114 Stat. 1466, 22 U.S.C. § 7102).

ChildLine—An organizational unit of the Department of [Public Welfare] Human Services, which operates a 24-hour a day Statewide toll free telephone system for receiving reports of suspected child abuse, referring reports for investigation and maintaining the reports in the appropriate file.

* * * * *

[Individual residing in the same home as the child—An individual who is 14 years of age or older and who resides in the same home as the child.]

* * * * *

Mandated reporter—A person who is required under section 6311 of the Child Protective Services Law (23 Pa.C.S. § 6311) to make a report of suspected child abuse. For purposes of this chapter, the term includes all board-regulated practitioners.

Parent—A biological parent, adoptive parent or legal guardian.

[Perpetrator—A person who has committed child abuse and is a parent of the child, a person responsible for the welfare of a child, an individual residing in the same home as a child or a paramour of a child’s parent.]

Person responsible for the child’s welfare—A person who provides permanent or temporary care, supervision, mental health diagnosis or treatment, training or control of a child in lieu of parental care, supervision and control. [The term does not include a person who is employed by or provides services or programs in a public or private school, intermediate unit or area vocational-technical school.]

Program, activity or service—Any of the following in which children participate and which is sponsored by a school or a public or private organization:

- (i) A youth camp or program.
- (ii) A recreational camp or program.
- (iii) A sports or athletic program.
- (iv) A community or social outreach program.
- (v) An enrichment or educational program.
- (vi) A troop, club or similar organization.

* * * * *

Recent [acts or omissions] act or failure to act—[Acts or omissions] An act or failure to act committed within 2 years of the date of the report to the Department of [Public Welfare] Human Services or county agency.

Serious mental injury—A psychological condition, as diagnosed by a physician or licensed psychologist, including the refusal of appropriate treatment, that does one or more of the following:

- (i) Renders a child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic or in reasonable fear that the child's life or safety is threatened.
- (ii) Seriously interferes with a child's ability to accomplish age-appropriate developmental and social tasks.

[*Serious physical injury*—An injury that causes a child severe pain or significantly impairs a child's physical functioning, either temporarily or permanently.]

Serious physical neglect—Any of the following when committed by a perpetrator that endangers a child's life or health, threatens a child's well-being, causes bodily injury or impairs a child's health, development or functioning:

- (i) A repeated, prolonged or egregious failure to supervise a child in a manner that is appropriate considering the child's developmental age and abilities.
- (ii) The failure to provide a child with adequate essentials of life, including food, shelter or medical care.

Sexual abuse or exploitation—[The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another person to engage in sexually explicit conduct or a simulation of sexually explicit conduct for the purpose of producing a visual depiction, including photographing, videotaping, computer depicting or filming, of sexually explicit

conduct or the rape, sexual assault, involuntary deviate sexual intercourse, aggravated indecent assault, molestation, incest, indecent exposure, prostitution, statutory sexual assault or other form of sexual exploitation of children.] Any of the following:

(i) The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another individual to engage in sexually explicit conduct, which includes the following:

(A) Looking at the sexual or other intimate parts of a child or another individual for the purpose of arousing or gratifying sexual desire in any individual.

(B) Participating in sexually explicit conversation either in person, by telephone, by computer or by a computer-aided device for the purpose of sexual stimulation or gratification of any individual.

(C) Actual or simulated sexual activity or nudity for the purpose of sexual stimulation or gratification of any individual.

(D) Actual or simulated sexual activity for the purpose of producing visual depiction, including photographing, videotaping, computer depicting or filming.

(ii) Any of the following offenses committed against a child:

(A) Rape as defined in 18 Pa.C.S. § 3121.

(B) Statutory sexual assault as defined in 18 Pa.C.S. § 3122.1.

(C) Involuntary deviate sexual intercourse as defined in 18 Pa.C.S. § 3123.

(D) Sexual assault as defined in 18 Pa.C.S. § 3124.1.

(E) Institutional sexual assault as defined in 18 Pa.C.S. 3124.2.

(F) Aggravated indecent assault as defined in 18 Pa.C.S. § 3125.

(G) Indecent assault as defined in 18 Pa.C.S. § 3126.

(H) Indecent exposure as defined in 18 Pa.C.S. § 3127

(I) Incest as defined in 18 Pa.C.S. § 4302.

(J) Prostitution as defined in 18 Pa.C.S. § 5902.

(K) Sexual abuse as defined in 18 Pa.C.S. § 6312.

(L) Unlawful contact with a minor as defined in 18 Pa.C.S. § 6318.

(M) Sexual exploitation as defined in 18 Pa.C.S. § 6320.

(iii) For the purposes of subparagraph (i), the term does not include consensual activities between a child who is 14 years of age or older and another person who is 14 years of age or older and whose age is within 4 years of the child's age.

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Subchapter C. MINIMUM STANDARDS OF CONDUCT AND PRACTICE

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§ 33.250. Suspected child abuse—mandated reporting requirements.

(a) *General rule.* Under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse), all Board regulated practitioners [who, in the course of their employment, occupation or practice of their profession, come into contact with children shall report or cause a report to be made to the Department of Public Welfare and to the appropriate county agency when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is a victim of child abuse] are considered mandated reporters. A mandated reporter shall make a report of suspected child abuse in accordance with this section if the mandated reporter has reasonable cause to suspect that a child is a victim of child abuse under any of the following circumstances:

(1) The mandated reporter comes into contact with the child in the course of employment, occupation and practice of the profession or through a regularly scheduled program, activity or service.

(2) The mandated reporter is directly responsible for the care, supervision, guidance or training of the child, or is affiliated with an agency, institution, organization, school, regularly established church or religious organization or other entity that is directly responsible for the care, supervision, guidance or training of the child.

(3) A person makes a specific disclosure to the mandated reporter that an identifiable child is the victim of child abuse.

(4) An individual 14 years of age or older makes a specific disclosure to the mandated reporter that the individual has committed child abuse.

(b) *Staff members of public or private agencies, institutions and facilities.* [Board regulated practitioners who are staff members of a dental or other public or private institution, school, facility or agency, and who, in the course of their employment, occupation or practice of their profession, come into contact with children shall immediately notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is a victim of child abuse. Upon notification by the Board regulated practitioner, the person in charge or the designated agent shall assume the responsibility and have the legal obligation to report or cause a report to be made in accordance with subsections (a), (c) and (d)] Whenever a Board regulated practitioner is required to make a report under subsection (a) in the capacity as a member of the staff of a medical, dental or other public or private institution, school, facility or agency, that

Board regulated practitioner shall report immediately in accordance with subsection (c) and shall immediately thereafter notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge.

(c) *Reporting procedure.* [Reports of suspected child abuse shall be made by telephone and by written report.

(1) *Oral reports.* Oral reports of suspected child abuse shall be made immediately by telephone to ChildLine, (800) 932-0313.

(2) *Written reports.* Written reports shall be made to the appropriate county agency within 48 hours after the oral report is made by telephone and must contain, at a minimum, the information required by the Department of Public Welfare in 55 Pa. Code § 3490.18 (relating to filing of a written report by a required reporter).]

A mandated reporter shall immediately make a report of suspected child abuse to the Department of Human Services by either:

(1) Making an oral report of suspected child abuse by telephone to ChildLine at (800) 932-0313, followed by a written report within 48 hours to the Department of Human Services or the county agency assigned to the case in a manner and format prescribed by the Department of Human Services. The written report submitted under this subparagraph may be submitted electronically.

(2) Making an electronic report of suspected child abuse in accordance with 23 Pa.C.S. § 6305 (related to electronic reporting) through the Department of Human Service's Child Welfare Information Solution self-service portal at www.compass.state.pa.us/cwis. A confirmation by the Department of Human Services of

the receipt of a report of suspected child abuse submitted electronically relieves the mandated reporter of the duty to make an additional oral or written report.

(d) *Written or electronic reports.* [Written reports shall be made in the manner and on forms prescribed by the Department of Public Welfare. The following information shall be included in the written reports, if available] A written or electronic report of suspected child abuse, shall include the following information, if known:

- (1) The names and addresses of the child, [and] the child's parents [or] and any other person responsible for the [care of the child, if known] child's welfare.
- (2) Where the suspected child abuse occurred.
- (3) The age and sex of the subject or subjects of the report.
- (4) The nature and extent of the suspected child abuse, including any evidence of prior abuse to the child or sibling of the child.
- (5) The name and relationship of the person or persons responsible for causing the suspected abuse[,if known,] and any evidence of prior abuse by those persons.
- (6) Family composition.
- (7) The source of the report.
- (8) The name, telephone number and e-mail address of the person making the report [and where that person can be reached].
- (9) The actions taken by the [reporting source, including the taking of photographs and X-rays, removal or keeping of the child or notifying the medical examiner or coroner] person making the report, including actions taken under 23 Pa.C.S. §§ 6314—6317.
- (10) Other information required by Federal law or regulation.

(11) Other information [which] that the Department of [Public Welfare] Human Services may require by regulation.

§ 33.251. Photographs, medical tests and X-rays of child subject to report.

A Board regulated practitioner may take or cause to be taken photographs of the child who is subject to a report and, if clinically indicated, cause to be performed a radiological examination and other medical tests on the child. Medical summaries or reports of the photographs, X-rays and relevant medical tests taken shall be sent to the county children and youth social service agency at the time the written report is sent, or within 48 hours after an electronic report is made under § 33.250(c)(2) (relating to suspected child abuse—mandated reporting requirements), or as soon thereafter as possible. The county children and youth social service agency shall have access to actual photographs or duplicates and X-rays and may obtain them or duplicates of them upon request.

§ 33.252. Suspected death as a result of child abuse—mandated reporting requirement.

A Board regulated practitioner who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the coroner or medical examiner of the county where death occurred or, in the case where the child is transported to another county for medical treatment, to the coroner or medical examiner of the county where the injuries were sustained.

§ 33.252a. Mandatory reporting of children under 1 year of age.

A Board regulated practitioner shall immediately make a report to the appropriate county agency if the Board regulated practitioner is involved in the care of a child under 1 year of age who is born and identified as being affected by any of the following:

(1) Illegal substance abuse by the child's mother.

(2) Withdrawal symptoms resulting from prenatal drug exposure unless the child's mother, during the pregnancy, was:

(i) Under the care of a prescribing medical professional.

(ii) In compliance with the directions for the administration of a prescription drug as directed by the prescribing medical professional.

(3) A Fetal Alcohol Spectrum Disorder.

§ 33.253. Immunity from liability.

Under 23 Pa.C.S. § 6318 (relating to immunity from liability) a Board regulated practitioner who participates in good faith in the making of a report of suspected child abuse, making a referral for general protective services, cooperating or consulting with an investigation including providing information to a child fatality or near fatality review team, testifying in a proceeding arising out of an instance of suspected child abuse or general protective services or [the taking of photographs] engaging in any action authorized under 23 Pa.C.S. §§ 6314—6317, shall have immunity from civil and criminal liability that might otherwise result by reason of the Board regulated practitioner's actions. For the purpose of any civil or criminal proceeding, the good faith of the Board regulated practitioner shall be presumed. The Board will uphold the same good faith presumption in any disciplinary proceeding that might result by reason of a Board regulated practitioner's actions [in participating in good faith in the making of a report, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse or the taking of photographs] under §§ 33.250—33.252a.

§ 33.254. Confidentiality—waived.

To protect children from abuse, the reporting requirements of [§§ 33.250—33.252 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays

of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement)] §§ 33.250—33.252a take precedence over the provisions of any client confidentiality, ethical principle or professional standard that might otherwise apply. In accordance with 23 Pa.C.S. § 6311.1, privileged communications between a mandated reporter and a patient does not apply to a situation involving child abuse and does not relieve the mandated reporter of the duty to make a report of suspected child abuse.

§ 33.255. Noncompliance.

(a) *Disciplinary action.* A Board regulated practitioner who willfully fails to comply with the reporting requirements in [§§ 33.250—33.252 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement)] §§ 33.250—33.252a will be subject to disciplinary action under section 4.1 of the act (63 P. S. § 123.1).

(b) *Criminal penalties.* Under 23 Pa.C.S. § 6319 (relating to penalties [for failure to report]), a Board regulated practitioner who is required to report a case of suspected child abuse or to make a referral to the appropriate authorities and who willfully fails to do so commits [a summary offense for the first violation and a misdemeanor of the third degree for a second or subsequent violation.] a criminal offense, as follows:

(1) An offense not otherwise specified in paragraphs (2), (3) or (4) is a misdemeanor of the second degree.

(2) An offense is a felony of the third degree if all of the following apply:

(i) The mandated reporter willfully fails to report.

(ii) The child abuse constitutes a felony of the first degree or higher.

(iii) The mandated reporter has direct knowledge of the nature of the abuse.

(3) If the willful failure to report continues while the mandated reporter knows or has reasonable cause to believe the child is actively being subjected to child abuse, the mandated reporter commits a misdemeanor of the first degree, except that if the child abuse constitutes a felony of the first degree or higher, the mandated reporter commits a felony of the third degree.

(4) A mandated reporter who commits a second or subsequent offense commits a felony of the third degree, except that if the child abuse constitutes a felony of the first degree or higher, the penalty for the second or subsequent offense is a felony of the second degree.

§ 33.256. Child abuse recognition and reporting—mandatory training requirement.

(a) Except as provided in subsection (c), individuals applying to the Board for an initial license or certificate shall submit proof of completion of 3 hours of training in child abuse recognition and reporting requirements which has been approved by the Department of Human Services.

(b) Except as provided in subsection (c), licensees and certificate holders seeking renewal of a license or certificate issued by the Board shall complete, as a condition of biennial renewal of the license or certificate, 2 hours of approved continuing education in child abuse recognition and reporting requirements, as a portion of the total continuing education required for biennial renewal. For credit to be granted, the continuing education course or program must be approved by the Bureau, in consultation with the Department of Human Services, as set forth in § 33.257 (relating to child abuse recognition and reporting course approval process).

(c) An applicant, licensee or certificate holder may apply in writing for an exemption from the training/continuing education requirements set forth in subsections (a) and (b) provided the applicant, licensee or certificate holder meets one of the following:

(1) The applicant, licensee or certificate holder submits documentation demonstrating that:

(i) The applicant, licensee or certificate holder has already completed child abuse recognition training as required by section 1205.6 of the Public School Code of 1949 (24 P.S. § 12-1205.6).

(ii) The training was approved by the Department of Education in consultation with the Department of Human Services.

(iii) The amount of training received equals or exceeds the amount of training or continuing education required under subsection (a) or (b), as applicable.

(2) The applicant, licensee or certificate holder submits documentation demonstrating that:

(i) The applicant, licensee or certificate holder has already completed child abuse recognition training required by section 6383(c) of the Child Protective Services Law (23 Pa.C.S. § 6383(c)).

(ii) The training was approved by the Department of Human Services.

(iii) The amount of training received equals or exceeds the amount of training or continuing education required under subsection (a) or (b), as applicable.

(3) The applicant, licensee or certificate holder submits documentation demonstrating that the applicant, licensee or certificate holder should not be subject to the training or

continuing education requirement. Each request for an exemption under this paragraph will be considered on a case-by-case basis.

§ 33.257. Child abuse recognition and reporting course approval process.

(a) An individual, entity or organization may apply for approval to provide mandated reporter training as required under 23 Pa.C.S. § 6383(b) by submitting the course materials set forth in subsection (b) simultaneously to the Department of Human Services (DHS), Office of Children, Youth and Families, and to the Bureau at the following addresses:

(1) Department of Human Services, Office of Children, Youth and Families, Health and Welfare Building, 625 Forster Street, Harrisburg, PA 17120; or electronically at RA-PWOCYFCPSL@pa.gov.

(2) Bureau of Professional and Occupational Affairs, 2601 North Third Street, P.O. Box 2649, Harrisburg, PA 17105-2649; or electronically at RA-stcpsl_course_app@pa.gov.

(b) Submissions shall include the following:

(1) Contact information (mailing address, email address and telephone number) for the agency/course administrator.

(2) General description of the training and course delivery method.

(3) Title of the course.

(4) Timed agenda and estimated hours of training.

(5) Learning objectives.

(6) Intended audience.

(7) All course related materials, including as applicable:

(i) Handouts.

- (ii) Narrated script or talking points.
- (iii) Interactive activities or exercises.
- (iv) Videos and audio/visual content.
- (v) Knowledge checks, quizzes or other means of assessing participant's understanding of the material.
- (vi) For online courses, a transcript or recording of audio training.
- (8) Citation of sources, including written permission to use copyrighted material, if applicable.
- (9) Anticipated credentials or experience of the presenter, or biography of presenter, if known.
- (10) Printed materials used to market the training.
- (11) Evaluation used to assess participants' satisfaction with the training.
- (12) Sample certificate of attendance/participation, which shall include:
 - (i) Name of participant.
 - (ii) Title of training.
 - (iii) Date of training.
 - (iv) Length of training (2 or 3 hours).
 - (v) Name and signature of the authorized representative of the provider. The signature may be an electronic signature.
 - (vi) Statement affirming the participant attended the entire course.
- (13) Verification of ability to report participation/attendance electronically to the Bureau in a format prescribed by the Bureau.

(c) The Bureau will notify the applicant in writing upon approval of the course and will post a list of approved courses on the Bureau's website and the Board's website.

* * * * *

Subchapter F. CONTINUING DENTAL EDUCATION

§ 33.401. Credit-hour requirements.

* * * * *

(b) [The] Except as provided in subsection (h), the required hours shall be taken in subject areas listed in § 33.402 (relating to continuing education subject areas) from a program sponsor listed in § 33.403 (relating to program sponsors).

* * * * *

(h) All licensees and certificate holders shall complete 2 of the required hours of continuing education in approved courses on child abuse recognition and reporting as set forth in § 33.256 (relating to child abuse recognition and reporting—mandatory training requirement).

* * * * *



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

February 9, 2018

The Honorable George D. Bedwick, Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harristown 2, 333 Market Street
Harrisburg, Pennsylvania 17101

Re: Proposed Regulation
State Board of Dentistry
16A-4626: Child Abuse Reporting Requirements

Dear Chairman Bedwick:

Enclosed is a copy of a proposed rulemaking package of the State Board of Dentistry pertaining to Child Abuse Requirements.

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, appearing to read "John F. Erhard, III".

John F. Erhard, III, D.D.S., Chairperson
State Board of Dentistry

JFE/KEM:jlt
Enclosure

cc: Ian J. Harlow, Commissioner of
Professional and Occupational Affairs
Kalonji Johnson, Director of Policy, Department of State
Cynthia Montgomery, Regulatory Counsel
Department of State
Kerry E. Maloney, Counsel
State Board of Dentistry
State Board of Dentistry

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

I.D. NUMBER: 16A-4626
SUBJECT: Child Abuse Reporting Requirements
AGENCY: DEPARTMENT OF STATE
 Bureau of Professional and Occupational Affairs
 State Board of Dentistry

TYPE OF REGULATION

- X 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 Disapproved Regulation
 - a. With Revisions
 - b. Without Revisions

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IRRC
 2018 FEB - 9 A 10:49

FILING OF REGULATION

| <u>DATE</u> | <u>SIGNATURE</u> | <u>DESIGNATION</u> |
|-------------|---|---|
| | | <i>HOUSE COMMITTEE ON PROFESSIONAL LICENSURE</i> |
| 2/9/18 |  | MAJORITY CHAIR <u>Mark T. Mustio</u> |
| 2/9/18 |  | MINORITY CHAIR <u>Harry Readshaw</u> |
| | | <i>SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE</i> |
| 2/9/18 |  | MAJORITY CHAIR <u>Robert M. Tomlinson</u> |
| 2/9/18 |  | MINORITY CHAIR <u>Lisa Boscola</u> |
| 2/9/18 |  | <i>INDEPENDENT REGULATORY REVIEW COMMISSION</i> |
| | | <i>ATTORNEY GENERAL (for Final Omitted only)</i> |
| 2/7/18 |  | <i>LEGISLATIVE REFERENCE BUREAU (for Proposed only)</i> |