

# RULES AND REGULATIONS

## Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF DENTISTRY

[49 PA. CODE CH. 33]

### Expanded Function Dental Assistants

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

#### *Description and Need for the Final-Form Rulemaking*

This final-form rulemaking deletes the requirement for a clinical examination for expanded function dental assistants (EFDAs).

The act of December 27, 1994 (P. L. 1361, No. 160) (Act 160) amended The Dental Law (act) (63 P. S. §§ 120—130g) to require the certification and regulation of EFDAs. Act 160 required that EFDAs wishing to be certified by the Board shall have completed an education program and passed an examination approved by the Board.

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

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

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

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

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

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

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

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

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

#### *Paperwork Requirements*

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

#### *Effective Date*

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

#### *Statutory Authority*

The Board is authorized to adopt regulations concerning certification requirements for EFDAs under section 3(o) of the act (63 P. S. § 122(o)).

*Regulatory Review*

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

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on June 30, 2004, the final-form rulemaking was approved by the HPLC. On July 28, 2004, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on July 29, 2004, and approved the final-form rulemaking.

*Additional Information*

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

*Findings*

The Board finds that:

(1) Public notice of intention to adopt this rulemaking as amended by this order has been 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 thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) The final-form rulemaking adopted by this order is necessary and appropriate for the administration of the act.

*Order*

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

(a) The regulations of the Board, 49 Pa. Code Chapter 33, are amended by amending § 33.103 to read as set forth in Annex A.

(b) The Board shall submit this order and Annex A to the Office of Attorney General and the Office of General Counsel for approval as required by law.

(c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) The final-form rulemaking shall take effect upon publication in the *Pennsylvania Bulletin*.

VEASEY B. CULLEN, D.M.D.,  
*Chairperson*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 34 Pa.B. 4528 (August 14, 2004).)*

**Fiscal Note:** Fiscal Note 16A-4612 remains valid for the final adoption of the subject regulation.

**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 33. STATE BOARD OF DENTISTRY**

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

**§ 33.103. Examinations.**

(a) *Dentists.* Candidates for licensure shall pass the National Board Dental Examination (written examination) and the Northeast Regional Board (NERB) Dental Examination (clinical examination).

(b) *Dental hygienists.* Candidates for licensure shall pass the National Board Dental Hygiene Examination (written examination) and the NERB Dental Hygiene Examination (clinical examination).

(c) *Expanded function dental assistants.* Candidates for certification shall pass a written examination acceptable to the Board.

(d) *Additional requirement.* The Board will recognize successful completion of the NERB Dental Examination or NERB Dental Hygiene Examination or the expanded function dental assistant examination approved by the Board for up to 5 years from the date scores are reported to the Board. After 5 years, the Board will accept passing scores on the examinations only if the candidate has been engaged in postgraduate training or in the practice of dentistry, as a dental hygienist or as an expanded function dental assistant in another jurisdiction.

[Pa.B. Doc. No. 04-1631. Filed for public inspection September 3, 2004, 9:00 a.m.]

**STATE REAL ESTATE COMMISSION**

**[49 PA. CODE CH. 35]**

**Deletion of Examination Fees**

The State Real Estate Commission (Commission) amends Chapter 35 to read as set forth in Annex A. The final-form rulemaking deletes references to examination fees determined by contract and charged by a professional testing organization from the schedule of fees in § 35.203 (relating to fees) and examination provisions in §§ 35.271—35.275.

*Statutory Authority*

Section 812.1 of The Administrative Code of 1929 (71 P. S. § 279.3a) sets forth the powers and duties of the Commission with regard to the administration of examinations.

*Response to Public Comments and Regulatory Review and Amendments in Final-Form Rulemaking*

Notice of the proposed rulemaking was published at 34 Pa.B. 61 (January 3, 2004). Publication was followed by a 30-day public comment period during which the Commission received comment from the Pennsylvania Association of Realtors supporting the proposed rulemaking. The House Professional Licensure Committee (HPLC), the Senate Consumer Protection and Professional Licensure

Committee (SCP/PLC) and the Independent Regulatory Review Commission (IRRC) did not comment.

No changes have been made to the final-form rulemaking. The licensing examination fee of \$45 has been removed from § 35.203. References to the fees prescribed in § 35.203 for the licensing examination have been removed from §§ 35.271—35.275.

#### *Fiscal Impact and Paperwork Requirements*

The final-form rulemaking has no fiscal impact on the Commonwealth, its political subdivisions or the public, that is, the regulated community. The final-form rulemaking does not affect the legal, accounting, reporting or other paperwork requirements of the regulated community. The examination fees are set by and paid directly to the third-party testing vendor.

#### *Sunset Date*

The Commission continually monitors the effectiveness of its regulations through communication with the regulated population. Accordingly, no sunset date has been set.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 3, 2004, the Board submitted a copy of the notice of proposed rulemaking, published at 34 Pa.B. 61, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on June 30, 2004, the final-form rulemaking was approved by the HPLC. On July 28, 2004, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5(g) of the Regulatory Review Act, the final-form rulemaking was deemed approved by IRRC effective July 28, 2004.

#### *Contact Person*

Further information can be obtained by contacting Deborah Sopko, Administrative Assistant, State Real Estate Commission, P. O. Box 2649, Harrisburg, PA 17105-2649, [www.dos.state.pa.us/bpoa](http://www.dos.state.pa.us/bpoa).

#### *Findings*

The Commission 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 all comments were considered.

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

#### *Order*

The Commission, acting under its authorizing statutes, orders that:

(a) The regulations of the Commission, 49 Pa. Code Chapter 35, are amended by amending §§ 35.203 and 35.271—35.275 to read as set forth at 34 Pa.B. 61.

(b) The Commission shall submit this order and 34 Pa.B. 61 to the Office of General Counsel and the Office of Attorney General as required by law.

(c) The Commission shall certify this order and 34 Pa.B. 61 and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect on publication in the *Pennsylvania Bulletin*.

JOSEPH J. MCGETTIGAN,  
*Chairperson*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 34 Pa.B. 4528 (August 14, 2004).)*

**Fiscal Note:** Fiscal Note 16A-569 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 04-1632. Filed for public inspection September 3, 2004, 9:00 a.m.]