

RULES AND REGULATIONS

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF DENTISTRY [49 PA. CODE CH. 33] EFDA Program Approval

The State Board of Dentistry (Board) amends §§ 33.1, 33.3 and 33.102 (relating to definitions; fees; and professional education) and adopts § 33.117 (relating to EFDA program approval) to read as set forth in Annex A.

Effective Date

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

Statutory Authority

The final-form rulemaking is authorized by section 3(a) and (b), (d.1)(1) and (o) of The Dental Law (act) (63 P. S. § 122(a), (d.1)(1) and (o)). Section 3(a) of the act authorizes the Board to “establish and alter, from time to time, the standards of preliminary and professional education and training required for . . . certification for expanded function dental assistants.” Section 3(b) of the act authorizes the Board to “investigate and determine the acceptability and to approve and disapprove institutions and colleges of this State and of other states and countries for the education of students desiring to be . . . certified as expanded function dental assistants, and to revoke approvals where such institutions and colleges no longer deemed are proper.” Section 3(d.1)(1) of the act provides the general authority for the Board to provide for and to regulate the certification of expanded function dental assistants (EFDA). Section 3(o) of the act provides the general authority of the Board “to adopt, promulgate, and enforce such rules and regulations as may be deemed necessary by the board”

Background and Purpose

The act of December 27, 1994 (P. L. 1361, No. 160) (Act 160) amended the act to require the certification and regulation of EFDAs. Act 160 required dental assistants who wished to be certified as EFDAs to complete an education program and pass an examination approved by the Board. The Board, through regulations published at 30 Pa.B. 2359 (May 13, 2000), determined that the examination would include both a written component and a clinical component to ensure that certificateholders possess the requisite knowledge and skills to properly and safely perform their job functions. At the time, many interested parties and stakeholders, including dentists, dental hygienists, dental assistants and their professional associations, participated in the development of the rulemaking. A major impetus for including the clinical component came from the dental assisting community itself who felt that a clinical exam was necessary.

Ultimately, after years of attempts at obtaining a suitable examination through requests for proposals as well as through sole-source contracting, the Board was unable to identify a vendor who could provide a valid, reliable and defensible clinical exam that was also affordable to candidates. Because there is not a widely available regional or National examination for EFDAs, the

costs of developing and administering a Pennsylvania-specific examination for EFDAs would have to be borne by a rather small pool of candidates. Due in part to the projected costs of the clinical component of the examination, temporary permit holders and members of the General Assembly asked the Board to take another look at the clinical component requirement. As a result, the Board held a public hearing on July 21, 2001. Based upon the testimony received, as well as written comments, the Board was persuaded that the clinical component could be eliminated while still meeting its goals of public protection by placing more emphasis on standardizing EFDA education. Thereafter, the Board initiated a proposed rulemaking to eliminate the clinical component of the examination and developed nonbinding guidelines for EFDA education programs.

In the intervening years, the Board developed five drafts of the EFDA curriculum guidelines by working with members of the dental community as well as dental educators. Eventually, the Board determined that the guidelines should be promulgated as regulations to assure that EFDA education programs meet minimum requirements and that candidates for EFDA certification demonstrate competence in performing each of the dental procedures permitted under the act prior to graduation from an EFDA program.

Summary of Comments and the Board's Response

Notice of proposed rulemaking was published at 39 Pa.B. 5916 (October 10, 2009) followed by 30 days of public comment. During the public comment period, the Board received public comments from the Pennsylvania Academy of General Dentistry (PAGD) and the Pennsylvania Association of Private School Administrators (PAPSA). In addition, as part of its review under the Regulatory Review Act (71 P. S. §§ 745.1—745.12), on October 21, 2009, the House Professional Licensure Committee (HPLC) submitted comments. On December 9, 2009, the Independent Regulatory Review Commission (IRRC) submitted comments. The Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) did not comment. The following represents a summary of the comments received and the Board's response.

PAGD

The PAGD recommended that the Board require that EFDA programs only admit individuals to an EFDA training program who either worked as a dental assistant for 2 years or who have 1 year of experience and are certified by the Dental Assisting National Board (DANB) as a certified dental assistant (CDA). The PAGD observed that EFDAs are expected to perform at a higher level within the dental team and their job duties require a greater sense of professional understanding. However, it is possible for an individual to complete general dental assisting training and EFDA training back-to-back without intervening experience working in a dental office. The PAGD observed that “some EFDAs that have gone for back-to-back training cannot even properly suction let alone place complex restorations.”

The Board understands and shares the PAGD's concerns that EFDAs must enter the dental office with a basic understanding of how the dental team interacts and with proper knowledge of procedures and materials. This is precisely why the Board initially planned to offer a clinical examination and ultimately designed these regulations to assure that EFDA education would include a

clinical component and would require a licensed dentist evaluator to “sign off” regarding the clinical competence of the candidate. Unfortunately, the Board does not believe it has the statutory authority to impose an experience requirement on EFDA applicants, nor can it impose one indirectly by setting an admission standard for EFDA education programs. It is up to the educators to assure that they are properly preparing EFDA candidates to function in a dental office, regardless of the amount of practical experience the candidate has upon entering the EFDA training program.

Additionally, as set forth in section 2 of the act (63 P. S. § 121), EFDAs shall work under the direct supervision of a dentist, meaning that “a dentist is in the dental office or treatment facility, personally diagnoses the condition to be treated, personally authorizes the procedure and remains in the dental office or treatment facility while the procedure is being performed and, before dismissal of the patient, personally evaluates the work performed.” Further, it is considered unprofessional conduct for an EFDA to practice without the direct supervision of a dentist or to perform a service that the EFDA is not competent to perform. See § 33.211(c)(1) and (2) (relating to unprofessional conduct). Likewise, it is considered unprofessional conduct for a dentist to fail to properly supervise the EFDA or to delegate duties to the EFDA that the dentist knows, or has reason to know, the EFDA is not competent to perform. See § 33.211(a)(2) and (3). Therefore, the supervising dentist is another layer of patient safety protection. For these reasons, the Board did not make changes to the final-form rulemaking in response to the PAGD’s comment.

PAPSA

PAPSA, which represents nine Pennsylvania schools with EFDA programs, offered five comments. First, PAPSA asked if existing programs that were previously approved by the Board under the prior curriculum guidelines would need to apply for approval based on these regulations or would they be grandfathered. EFDA programs will need to apply for approval under this final-form rulemaking and renew those approvals on a biennial basis.

PAPSA also asked whether the EFDA program must be an associate degree program or must the school offer an associate degree in some of its programs. An EFDA program does not need to be an associate degree program. There are three alternative educational paths provided in section 3(d.1) of the act: 1) an EFDA program at an accredited 2-year college or other accredited institution which offers an associate degree; 2) an accredited dental hygiene program which requires the successful completion of at least 75 hours of clinical and didactic instruction in restorative functions; or 3) an EFDA certification program of at least 200 hours clinical and didactic instructions from an accredited dental assisting program. The Board has always interpreted the first pathway as a 2-year or associate degree EFDA program. The third pathway is for other EFDA programs that are less than a 2-year or associate degree program.

PAPSA also asked if each program must be accredited or if institutional accreditation is acceptable. The Board believes that programmatic accreditation is necessary to fulfill its goals of assuring that the educational standards for EFDAs are high enough to assure public protection by standardizing EFDA education to overcome the lack of a clinical examination. The Board understands that the American Dental Association’s Commission on Dental Accreditation (CODA) does not currently accredit EFDA

programs. For that reason, the Board will approve an EFDA program that is either offered by a school whose dental assisting program is accredited by CODA or that is accredited by an accrediting agency approved by the United States Department of Education Council on Postsecondary Accreditation whose educational standards are approved by the Board. PAPSA goes on to ask if other allied medical program accrediting agencies such as the Accrediting Bureau of Health Education Schools (ABHES) would be included as an accrediting option to CODA. The Board notes that ABHES offers both institutional and programmatic accreditation. Because ABHES currently only offers programmatic accreditation for three types of programs (medical assisting, medical laboratory technology and surgical technology), programmatic accreditation by ABHES would not be possible at this time. If an EFDA program applies for approval and is accredited by another accrediting body, the Board will review the educational standards of that particular accrediting body to determine if Board approval is warranted as provided in § 33.102(c)(1)(iii)(B).

PAPSA also asked for clarification of the clinical instruction component of an approved EFDA education program. PAPSA felt it was unclear whether clinical instruction can be done on the school premises, including laboratory or preclinical instruction. The clinical component of the EFDA curriculum may be done on school premises, for example when a school has its own clinic or through an internship or externship at a dental facility that has contracted with the school. PAPSA also asked if a student is doing an internship or externship at a separate dental facility, whether the instructor shall be present at all times. The student shall be directly supervised by a licensed dentist at any time the student is performing expanded functions on patients. That licensed dentist may be the instructor or may be a licensed dentist overseeing the internship or externship experience. It is anticipated that the licensed dentist shall sign off regarding the clinical competence of the student before the student graduates and documentation of clinical competence shall be maintained by the school and included with the EFDA applicant’s application materials.

Finally, PAPSA questioned why certification as a CDA by the DANB was the only alternative for EFDA faculty and suggested that the Board consider those individuals who hold the registered dental assistant (RDA) credential from the American Medical Technologists (AMT). In considering this comment, the Board compared the requirements of these two credentials.

To be eligible for the CDA certification from DANB, an individual shall comply with one of the following: 1) be a graduate of a dental assisting program accredited by CODA; 2) complete a minimum of 3,500 hours of work experience as a dental assistant for 2 to 4 years; or 3) be a former DANB CDA, a graduate of a CODA-accredited D.D.S. or D.M.D. program or be a graduate from a foreign dental degree program. The candidate shall have CPR certification and pass the three components of the CDA exam (general chairside assisting; radiation health and safety; and infection control) within a 5-year period. The three components consist of a total of 320 multiple-choice items and candidates have a total of 4 hours to complete the exams. To maintain the CDA credential, which is renewable annually, the dental assistant shall do the following: earn 12 continuing dental education credits; maintain current CPR certification; apply and respond to background information questions; and pay a fee.

To be eligible for the RDA credential from the AMT, an individual shall have done one of the following: 1) gradu-

ated from a dental assisting program accredited by an organization approved by the United States Department of Education (which would include CODA); 2) graduated from a dental assisting program in an institution accredited by a regional accrediting commission or by a National accrediting organization approved by the United States Department of Education; 3) completed a dental assisting training program offered and approved by the Armed Forces and have completed a minimum of 1 year of full-time (or equivalent) experience in the dental assisting profession; or 4) been employed in the occupation of dental assisting for a minimum of 3 years full time (5,250 hours of experience) and present a recommendation from an employer of the applicant who is a dentist. The applicant shall also be of good moral character, hold current CPR certification and pass the AMT Certification Exam for Registered Dental Assistant. The RDA exam consists of 200-210 multiple-choice items covering the following four topics: office assisting skills (office procedures, patient management and communication, ethics and professional conduct); dental sciences (dental anatomy and terminology, patient education, local anesthesia, medical emergencies, sterilization and dental materials); clinical procedures (instruments and equipment, chairside procedures and laboratory); and radiography. The exam shall be completed in 3 hours. To maintain the RDA credential, which is renewable every 3 years, the dental assistant shall accrue a combination of employment experience, continuing education, professional leadership experience, experience in presenting educational instruction or experience in the authorship of written works; complete a compliance evaluation worksheet and attestation; and pay the required fee.

While the two certifications might look similar, there are significant differences. First, the DANB is an organization that is dedicated solely to the dental assisting profession, whereas the AMT primarily offers medical certifications including medical technologist, medical lab technician, medical assistant, phlebotomist, medical administrative specialist, allied health instructor and clinical lab consultant. The only dental-related certification offered by the AMT is the RDA. In addition, to qualify for the CDA credential based on education, the dental assistant shall have graduated from a dental assisting program accredited by CODA. To qualify for the RDA credential based on education, a dental assistant only needs to graduate from an institution accredited by an accrediting organization approved by the United States Department of Education; programmatic accreditation by CODA is not required, although would be accepted. The Board notes that there are currently eight schools in this Commonwealth that have dental assisting programs accredited by CODA. Further, to maintain the CDA credential, which is renewable annually, a CDA shall complete 12 hours of continuing dental education each year. To maintain the RDA credential, which is renewable every 3 years, an RDA shall participate in AMT's continued certification program and obtain 30 points for approved activities during the 3-year renewal cycle. Although continuing dental education is one of the approved activities for the purpose of earning continued certification program points, employment as a dental assistant also qualifies. Simply being employed as a dental assistant for the 3-year renewal cycle could earn the 30 required points without a need for continuing dental education. For these reasons, the Board finds that the CDA credential should remain the requirement for EFDA educators in this Commonwealth.

HPLC

The HPLC submitted two comments for the Board's consideration. First, the HPLC questioned whether there should be a renewal process for an EFDA program after initial approval of its application. The Board considered this comment and agreed that approval of EFDA education programs should be renewed every 2 years to allow approved EFDA programs to report changes to programs that may have occurred since initial approval. The final-form rulemaking has been amended to provide for the renewal of EFDA program approval every 2 years and to include the fees for renewal. With the input from the Bureau of Professional and Occupational Affairs' (Bureau) Revenue Office, it was determined that the biennial fee for renewing the approval of an EFDA program would be initially set at \$100 until there is enough historical data to determine if the fee is adequate. This fee should be enough to evaluate changes in a program, such as changes to curriculum, faculty, and so on.

The discussion regarding renewal lead the Board to consider the possibility of conducting site visits to confirm the information submitted by the EFDA program applying for approval. After much discussion, the Board determined that it would go forward with the rulemaking as drafted and evaluate the need of site visits by the Board, or an agent of the Board, and if the Board determines that site visits are necessary, to adopt a requirement by regulation at some point in the future. At that time, the fees would be reevaluated.

The HPLC also asked if § 33.117(c)(7) should be amended to provide that a student is required to attain a passing grade on written and oral examinations, rather than "written or oral examinations." The HPLC is concerned that the language could be interpreted in a way as to permit a student, for example, to pass written examinations but fail oral examinations. In response, the Board amended the language to require the student to attain a passing grade on examinations. This change was made in recognition of the fact that not all schools offer both written and oral examinations. Whether the examinations are written or oral, or some other method such as computer-based or even practical examinations, the student shall attain a passing grade to demonstrate competency.

IRRC

IRRC reiterated the HPLC's comment regarding renewal. IRRC believes that a renewal process would be a reasonable requirement that would ensure these programs continue to provide the education and training needed for EFDAs. As previously discussed, the Board amended the final-form rulemaking to provide for renewal of program approval biennially. IRRC also questioned the \$80 EFDA program approval application fee, which is based on a 2-hour review of an application. IRRC asked the Board to explain how a 2-hour review of an application for approval, which requires review of several dozen requirements, adequately protects the public health and safety. The Board, in consultation with the Bureau's Revenue Office, reviewed the proposed fee and agrees with IRRC that the fee, and the 2-hour review that is contemplated by the fee, is inadequate. A revised fee has been calculated to be \$200 based on review by the Board's administrative and legal staff and presentation to the Board at a regular Board meeting. In addition, the Board determined that a biennial renewal fee of \$100 should be adopted so that these approved programs will continue to be reviewed by the Board on a regular basis.

IRRC also questioned the use of the phrases “Board-approved EFDA program” and “Board-approved certification program” in § 33.102(c)(1)(i) and (iii). As previously noted, there are three educational pathways to becoming an EFDA. One is to take a CODA-accredited dental hygiene program that meets certain requirements. The other two require an individual to participate in a Board-approved EFDA program. The difference is that under subparagraph (i) the program is one that confers an associate degree. Subparagraph (iii) contemplates those EFDA programs that offer a diploma or certificate. This type of program is generally used by those individuals who are already trained as dental assistants and who would only need additional training in the expanded functions. The review process is the same for either associate degree or certificate/diploma programs. The Board amended these sections in the final-form rulemaking to aid clarity. IRRC also asked how a person would know if an EFDA program had been approved by the Board and suggested that the Board publish a list of approved EFDA programs on its web site. In response, the Board amended § 33.102(c)(2) to state that the approved list will be maintained on the Board’s web site. In addition, each approved EFDA program will be provided an approval number, which will be searchable on the Department of State’s LicensePA web site (www.licensepa.state.pa.us). Therefore, a prospective student will be able to verify online whether a program has been approved and whether its approval has been renewed as required.

In regard to § 33.117, IRRC suggested that the requirement for applicants to provide “other information requested by the Board” is overly broad and should be limited to information related to the EFDA program. The Board understands this concern and amended the final-form rulemaking to clarify its intent. IRRC also commented that subsection (c)(3)(viii), which requires the applicant to identify a program director who is involved in the maintenance of records related to the EFDA program, is also vague because it does not list the records that shall be kept and it does not specify how long the records shall be maintained. The intent of the Board in this section was merely to have the EFDA program identify the individual who is involved in and responsible for the enumerated tasks. The Board did not intend to mandate a specific list of documents that must be maintained, nor dictate how long the EFDA program shall maintain those records. For that reason, the Board did not amend the final-form rulemaking in response to this comment.

IRRC also commented that the requirement that an EFDA instructor have completed or is in the process of completing a course in education methodology is vague because almost anyone could claim to be in the process of completing it but as written would never have to complete it. In response, the Board amended subsection (c)(4)(iv) to require an EFDA educator complete the course in education methodology within 18 months of hire, if the EFDA educator have not already done so.

Additionally, IRRC questioned the use of the phrase “adequate physical facilities and equipment” as vague and asked for more detail. In considering this comment, the Board reviewed the regulations of the Department of Education to determine what existing requirements might apply to EFDA education programs. The Board notes that the State Board of Private Licensed Schools addresses equipment and facilities in 22 Pa. Code §§ 73.91 and 73.92 (relating to equipment; and facilities). Because many of the schools that offer EFDA programs are

already required to follow the existing regulations, the Board determined that it should adopt similar language. Therefore, the final-form rulemaking has been amended to be consistent with the regulations of the Department of Education, State Board of Private Licensed Schools.

IRRC also questioned whether the phrase “all restorative materials” was overly broad. The Board reviewed this comment and amended the final-form rulemaking to clarify that the Board intended EFDAs to demonstrate competency in using restorative materials commonly used in direct restorations such as amalgam and composite resin, not those materials used in indirect restorations or fabricated in a laboratory, such as the metals, metal alloys, gold or porcelain used in crowns, inlays, onlays or veneers.

Finally, IRRC noted that EFDA program directors are required to provide “documentation” of the student’s competency attainment to the Board as part of the student’s application for certification and asked that the final-form rulemaking specify what type of documentation will be required. The Board intends to have the program director certify on a form provided by the Board that the student has demonstrated each of the competencies in § 33.117(c)(7)(i)—(iii) as part of the application process, and to maintain supporting documentation for 5 years after the student graduates from the EFDA program. Supporting documentation could consist of the source records of the school, such as the exams themselves, instructor’s grade reports, evaluations of the student’s clinical competence by the licensed dentist evaluator and any other record that the school uses to document competency that is used by the program director as a basis for the certification provided to the Board. The Board amended the final-form rulemaking to clarify its intent.

In addition to these comments received during the regulatory review process, while discussing the draft final rulemaking with stakeholders and interested parties at a regularly scheduled meeting of the Board on April 29, 2011, it was pointed out that the act of April 29, 2010 (P. L. 176, No. 19) (Act 19) amended the act to expand the scope of practice of EFDAs to include performing coronal polishing, performing fluoride treatments and taking impressions of teeth for limited purposes. It was suggested that these functions be added to § 33.117 with regard to content of approved EFDA program curriculum and with regard to demonstration of required competencies. The Board agreed and has added these functions to the final-form rulemaking, noting that a separate rulemaking will address other aspects of the implementation of Act 19.

Description of Amendments to the Final-Form Rulemaking

Section 33.3 is amended to change the EFDA program approval application fee to \$200 and to add a biennial renewal fee of \$100. Section 33.102(c)(1)(iii) has been amended to clarify that the Board requires EFDA programs, both associate degree programs, as well as those that offer a certificate or diploma, to go through the approval process. Subsection (c)(2) has been amended to provide that the list of approved EFDA programs will be available on the Board’s web site.

Section 33.117(b)(9) is amended to clarify the requirement for applicants for Board approval to provide other information regarding the EFDA program requested by the Board. Section 33.117(c)(4)(iii) is amended to clarify that EFDA faculty shall have completed a course in education methodology no later than 18 months after

employment as a faculty member. Section 33.117(c)(5) has been amended to conform the facilities and equipment requirements to those of the Department of Education, State Board of Private Licensed Schools.

Section 33.117(c)(6)(ii) is amended to add coronal polishing, fluoride treatments and the taking of impressions of the teeth to the curriculum requirements. Section 33.117(c)(7)(i) is amended to provide that students shall demonstrate competence in general education subjects by attaining passing grades on examinations, rather than “written or oral examinations” to allow the EFDA programs the flexibility to use either type of examination or other types of examinations such as computer-based examinations or practical examinations. Section 33.117(c)(7)(ii) has been amended to clarify that EFDA students shall demonstrate competency using restorative materials commonly used in direct restorations, such as amalgam and composite resin, and to include the requirement that EFDA students demonstrate competency in performing coronal polishing, fluoride treatments and taking impressions of teeth for study models, diagnostic casts and athletic appliances. Section 33.117(c)(7)(iv)(C) and (D) has been amended to clarify that the EFDA program director shall certify as to the EFDA student’s competence and maintain supporting documentation for a minimum of 5 years. Finally, subsection (e) has been added to § 33.117 to address the topic of biennial renewal of EFDA program approval.

Fiscal Impact and Paperwork Requirements

The final-form rulemaking should not have fiscal impact on the Commonwealth or its political subdivisions because the costs associated with processing EFDA program approval applications will be borne by applicants, who will pay a \$200 initial fee and a biennial renewal fee of \$100. The Board anticipates that 10 to 12 schools will apply for approval and renew their approvals biennially.

The final-form rulemaking requires the Board to develop an application for EFDA program approval, but should not result in additional legal, accounting or reporting requirements for the Commonwealth. The regulated community will have the additional legal and paperwork requirements of applying for approval and renewing that approval biennially.

Sunset Date

The Board continuously monitors the cost effectiveness of its regulations. Therefore, a sunset date has not been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 10, 2009, the Board submitted a copy of the notice of proposed rulemaking, published at 39 Pa.B. 5916, 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 Board 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 December 14, 2011, the final-form rulemaking was approved by the HPLC. On October 19, 2011, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory

Review Act, IRRC met on December 15, 2011, and approved the final-form rulemaking.

Contact Person

Further information may be obtained by contacting Cynthia Montgomery, Regulatory Counsel, State Board of Dentistry, P. O. Box 2649, Harrisburg, PA 17105-2649.

Findings

The Board 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) The amendments to the final form rulemaking do not enlarge the purpose of proposed rulemaking published at 40 Pa.B. 5916.

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

Order

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

(a) The regulations of the Board, 49 Pa. Code Chapter 33, are amended by amending §§ 33.1, 33.3 and 33.102 and by adding § 33.117 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

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

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

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

PHILIP T. SIEGEL, D.D.S.,
Chairperson

(Editor’s Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 41 Pa.B. 7045 (December 31, 2011).)

Fiscal Note: Fiscal Note 16A-4616 remains valid for the final adoption of the subject regulations.

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:

* * * * *

Direct supervision—Supervision by a dentist who examines the patient, authorizes the procedure to be performed, is physically present in the dental facility and

available during performance of the procedure, and examines and takes full professional responsibility for the completed procedure.

EFDA program—An expanded function dental assisting training program.

General supervision—In a dental facility, supervision by a dentist who examines the patient, develops a treatment plan, authorizes the performance of dental hygiene services to be performed within 1 year of the examination, and takes full professional responsibility for the performance of the dental hygienist. In facilities identified in § 33.205(c)(2) and (3) (relating to practice as a dental hygienist), general supervision is defined in § 33.205(d)(2).

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§ 33.3. Fees.

(a) Following is the schedule of fees charged by the Board:

Application fee—dentists, dental hygienists and expanded function dental assistants	\$20
Application fee—certificate of public health dental hygiene practitioner	\$20
Application fee—local anesthesia permit	\$20
Criteria approval application fee—dentists, dental hygienists and expanded function dental assistants..	\$35
Fictitious name registration fee	\$35
Verification of license, permit or registration fee—dentists, dental hygienists and expanded function dental assistants	\$15
Certification of scores, permit or registration fee—dentists, dental hygienists and expanded function dental assistants	\$25
EFDA program approval application fee	\$200
Biennial renewal fee—dentists (for the renewal period beginning April 1, 2005, and thereafter)	\$250
Biennial renewal fee—dental hygienists	\$40
Biennial renewal fee—expanded function dental assistants	\$25
Biennial renewal fee—EFDA program approval ...	\$100
Biennial renewal fee—certificate of public health dental hygiene practitioner	\$40
Biennial renewal fee—local anesthesia permit	\$40
Temporary permit—expanded dental assistants ...	\$15
Application fee—dental radiology authorization ...	\$20
Notification application—postgraduate training or faculty member	\$25

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

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

§ 33.102. Professional education.

(a) *Dentists.*

(1) Candidates for licensure as dentists shall show compliance with section 3(c) of the act (63 P. S. § 122(c)) which requires a diploma from an “approved institution or college,” by submitting certification of graduation from a dental school accredited or provisionally accredited by the Commission on Accreditation of the American Dental Association.

(2) Candidates for licensure who received their professional education outside the United States in a nonaccredited school may satisfy the education requirement by submitting their credentials to an accredited or provisionally accredited school and obtaining additional preclinical and clinical training that will lead to the awarding of the D.M.D. or D.D.S. degree by that school.

(b) *Dental hygienists.*

(1) Candidates for licensure as dental hygienists shall show compliance with section 3(d) of the act by submitting certification of graduation from a dental hygiene school accredited or provisionally accredited by an approved United States Department of Education-recognized regional accrediting agency or the Commission on Dental Accreditation (CODA) of the American Dental Association, if the school’s dental hygiene course of study comprises a minimum of 2 years of at least 32 weeks of at least 30 hours each week or its equivalent.

(2) Candidates for licensure who received their professional education outside the United States in a nonaccredited school may satisfy the education requirement by submitting their credentials to an accredited or provisionally accredited school and obtaining additional training that will lead to the awarding of a degree in dental hygiene by that school.

(c) *Expanded function dental assistants.*

(1) Candidates for certification as expanded function dental assistants shall show compliance with section 3(d.1) of the act by submitting verification of one of the following:

(i) Graduation from a Board-approved EFDA program at a 2-year college or other institution accredited or provisionally accredited by an accrediting agency approved by the United States Department of Education Council on Postsecondary Accreditation which offers an Associate Degree.

(ii) Graduation from a dental hygiene school which required the successful completion of at least 75 hours of clinical and didactic instruction in restorative functions accredited or provisionally accredited by the Commission on Dental Accreditation (CODA) of the American Dental Association.

(iii) Completion of a Board-approved EFDA program, which offers a certificate or diploma, consisting of at least 200 hours of clinical and didactic instruction from a dental assisting program accredited by one of the following:

(A) The Commission on Dental Accreditation (CODA) of the American Dental Association.

(B) An accrediting agency approved by the United States Department of Education Council on Postsecondary Accreditation whose expanded function educational standards are approved by the Board.

(2) The Board will approve EFDA programs that meet the criteria in § 33.117 (relating to EFDA program approval). A list of Board-approved EFDA programs will be maintained on the Board’s web site.

(3) Candidates for certification who receive their professional education outside the United States or from a nonaccredited program may satisfy the education requirement by submitting their credentials to a program listed in paragraph (1) and obtaining additional training that will lead to the awarding of a degree by that school.

(4) This subsection does not apply to persons who are not required to meet the educational requirements under section (3)(d.1)(2) of the act.

§ 33.117. EFDA program approval.

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

Clinical evaluation—An evaluation system based on observation of a student’s performance of clinical skills in contexts that resemble those the student will be expected to encounter as an expanded function dental assistant in a dental office.

Clinical instruction—A learning experience in a clinical setting where the student performs expanded functions on patients under the supervision of an instructor.

Clinical setting—

(i) A setting in which expanded function dental assisting procedures are performed through direct patient care.

(ii) The term does not include a setting where procedures are performed on typodonts, manikins or by other simulation methods.

Competencies—Statements describing the necessary requirements to perform each procedure in § 33.205a (relating to practice as an expanded function dental assistant) to the level required to meet the acceptable and prevailing standard of care within the dental community in this Commonwealth.

Competent—Having sufficient knowledge, skill and expertise in performing expanded functions to meet and maintain the acceptable and prevailing standard of care within the dental community in this Commonwealth.

Laboratory or preclinical instruction—A learning experience in which students perform expanded functions using study models, typodonts, manikins or other simulation methods under the supervision of the instructor.

(b) *Application.* EFDA programs shall apply for Board approval on forms to be provided by the Board and pay the fee in § 33.3 (relating to fees). The application must include the following information:

- (1) The EFDA program goals and objectives.
- (2) The criteria for measuring competencies.
- (3) Documentation of accreditation as required under section 3(d.1) of the act (63 P. S. § 122(d.1)).
- (4) The curriculum vitae and job description of the EFDA program director.
- (5) The curriculum vitae and job description of each faculty member assigned to the EFDA program.
- (6) A description of the physical facilities and equipment used by the EFDA program for laboratory, preclinical and clinical instruction.
- (7) A copy of the formal written agreement for the use of off-campus laboratory, preclinical or clinical facilities, if applicable.
- (8) Course outlines, course descriptions or syllabi for the EFDA program curriculum.
- (9) Other information related to the EFDA program requested by the Board.

(c) *Requirements for approval.* The Board will approve EFDA programs that meet the following requirements:

(1) *Planning and assessment.*

(i) The EFDA program shall delineate its program goals and objectives for preparing individuals in the expanded function dental assisting procedures in § 33.205a to a level consistent with the acceptable and prevailing standard of care within the dental community in this Commonwealth.

(ii) The EFDA program shall develop specific criteria for measuring levels of competency for the procedures in § 33.205a which reflect the acceptable and prevailing standards and expectations of the dental community. Students shall be evaluated by faculty according to these predetermined criteria.

(iii) The EFDA program shall record and retain student clinical evaluations as documentation of student competency for a minimum of 5 years from the student’s graduation or completion of the EFDA program.

(2) *Institutional accreditation.* The EFDA program shall comply with the accreditation requirements of section 3(d.1) of the act and § 33.102(c) (relating to professional education).

(3) *Program director.* The EFDA program shall identify a program director who is responsible for and involved in the following:

- (i) Student selection.
- (ii) Curriculum development and implementation.
- (iii) Ongoing evaluation of program goals, objectives, content and outcomes assessment.
- (iv) Annual evaluations of faculty performance including a discussion of the evaluation with each faculty member.
- (v) Evaluation of student performance and maintenance of competency records for 5 years from graduation or completion of the EFDA program.
- (vi) Participation in planning for and operation of facilities used in the EFDA program.
- (vii) Evaluation of the clinical training and supervision provided in affiliated offices and off-campus facilities, as applicable.
- (viii) Maintenance of records related to the EFDA program, including instructional objectives and course outcomes.

(ix) Instruction of licensed dentists overseeing off-campus clinical procedures performed by expanded function dental assistant students to ensure that the policies and procedures of the off-campus facility are consistent with the philosophy and objectives of the EFDA program.

(4) *Faculty.* An EFDA program faculty member shall either be a dentist who holds a current license in good standing from the Board or meets the following criteria:

- (i) Holds a current expanded function dental assistant certificate issued by the Board.
- (ii) Has a minimum of 2 years of practical clinical experience as an expanded function dental assistant.
- (iii) Holds National certification as a certified dental assistant issued by the Dental Assisting National Board.
- (iv) Has completed a course in education methodology of at least 3 credits or 45 hours offered by an accredited institution of postsecondary education or complete a course in educational methodology no later than 18 months after employment as a faculty member.

(5) *Facilities and equipment.*

(i) The EFDA program shall provide physical facilities which provide space adequate to the size of its student body and sufficient to enable it to meet its educational objectives for laboratory, preclinical and clinical instruction.

(ii) The EFDA program shall provide equipment suitable to meet the training objectives of the course or program and shall be adequate in quantity and variety to provide the training specified in the course curriculum or program content.

(iii) If the EFDA program contracts for off-campus laboratory, preclinical or clinical instruction facilities, the following conditions must be met:

(A) There must be a formal written agreement between the EFDA program and the laboratory, preclinical or clinical facility.

(B) In off-campus clinical facilities, a licensed dentist shall oversee dental procedures performed on patients by EFDA program students. The licensed dentist shall receive instruction to ensure that the policies and procedures of the off-campus facility are consistent with the philosophy and objectives of the EFDA program.

(iv) The standards in this paragraph are equally applicable to extramural dental offices or clinic sites used for clinical practice experiences, such as internships or externships.

(6) *Curriculum.* The curriculum of an EFDA program must consist of the following components:

(i) *General education.* The EFDA program shall include general education subjects as determined by the educational institution with a goal of preparing the student to work and communicate effectively with patients and other health care professionals.

(ii) *Dental sciences.* The EFDA program shall include content in general dentistry related to the expanded functions in section 11.10(a) of the act (63 P. S. § 130k(a)) and as set forth in § 33.205a, including courses covering the following topics:

- (A) Dental anatomy.
- (B) Occlusion.
- (C) Rubber dams.
- (D) Matrix and wedge.
- (E) Cavity classification and preparation design.
- (F) Bases and liners.
- (G) Amalgam restoration.
- (H) Composite restoration.
- (I) Sealants.
- (J) Crown and bridge provisional fabrication.
- (K) Dental law and ethics.
- (L) Coronal polishing.
- (M) Fluoride treatments, including fluoride varnish.
- (N) Taking impressions of teeth for study models, diagnostic casts and athletic appliances.

(iii) *Clinical experience component.* The EFDA program shall include a minimum of 120 hours of clinical experience performing expanded function dental assisting procedures as an integral part of the EFDA program. The clinical experience component shall be designed to achieve

a student's clinical competence in each of the expanded function dental assisting procedures in § 33.205a.

(7) *Demonstrating competency.*

(i) *General education.* Students of the EFDA program shall be required to demonstrate competency in general education subjects by attaining a passing grade on examinations.

(ii) *Laboratory and preclinical instruction.* Students in the EFDA program shall be required to demonstrate competency by attaining a score of at least 80% in laboratory and preclinical courses. Students shall be required to demonstrate the knowledge and skills required to:

(A) Carve the anatomy of all teeth.

(B) Establish proper contact areas, embrasures, marginal adaptation, as well as facial and lingual heights of contour to restore the proper tooth form and function in restorative materials commonly used for direct restorations, such as amalgam and composite resin.

(C) Apply the basic concepts and terms of occlusion and carving concepts in the restoration of proper occlusal relationships.

(D) Describe the problems associated with improper contouring of restorations.

(E) Identify and differentiate G.V. Black's cavity classifications.

(F) Select, prepare, assemble, place and remove a variety of matrices and wedges.

(G) Place and finish Class I—VI restorations with correct marginal adaptation contour, contact and occlusion.

(H) Assemble, place and remove rubber dams.

(I) Place sealants.

(J) Crown and bridge provisional fabrication.

(K) Understand the act and this chapter as they apply to an expanded function dental assistant's responsibilities.

(L) Perform coronal polishing.

(M) Perform fluoride treatments, including fluoride varnish.

(N) Take impressions of teeth for study models, diagnostic casts and athletic appliances.

(iii) *Clinical experience.* EFDA program students shall be evaluated and deemed clinically competent by at least one licensed dentist evaluator in a clinical setting. The EFDA program director shall instruct the dentist clinical evaluators regarding the required competencies to ensure consistency in evaluation. Clinical competency is achieved when the dentist evaluator confirms the student has sufficient knowledge, skill and expertise in performing expanded functions to meet and maintain the acceptable and prevailing standard of care within the dental community in this Commonwealth.

(iv) *Documenting competency.*

(A) The EFDA program faculty and program director shall document the student's general education, preclinical and laboratory competency attainment.

(B) The licensed dentist evaluator shall document the student's clinical competency attainment prior to graduation from the EFDA program.

(C) The EFDA program director shall sign a statement certifying the student's competency attainment in general education, laboratory and preclinical instruction, and clinical experience to the Board as part of the student's application for certification as an expanded function dental assistant.

(D) The EFDA program shall retain supporting documentation evidencing the student's competency attainment for a minimum of 5 years from graduation or completion of the EFDA program.

(d) *Refusal or withdrawal of approval.* The Board may refuse to approve an EFDA program or may remove an EFDA program from the approved list if it fails to meet and maintain the requirements set forth in this section, in accordance with the following:

(1) The Board will give an EFDA program notice of its provisional denial of approval or of its intent to remove the program from the approved list.

(2) The notice will set forth the requirements that are not being met or maintained by the EFDA program.

(3) A program served with a provisional denial or notice of intent to remove will be given 45 days in which to file a written answer to the notice.

(4) The EFDA program will be provided an opportunity to appear at a hearing to demonstrate why approval should not be refused or withdrawn.

(5) The Board will issue a written decision.

(6) The Board's written decision is a final decision of a governmental agency subject to review under 2 Pa.C.S. § 702 (relating to appeals).

(e) *Biennial renewal of EFDA program approval.* EFDA program approvals are renewable for a 2-year period beginning on April 1 of each odd-numbered year. An EFDA program shall apply for renewal of Board approval on forms provided by the Board and pay the fee for biennial renewal in § 33.3. Upon applying for renewal, the EFDA program shall update all of the information required under subsection (b)(1)—(9) or certify that there have not been changes to the EFDA program.

[Pa.B. Doc. No. 12-227. Filed for public inspection February 10, 2012, 9:00 a.m.]

Title 52—PUBLIC UTILITIES

PHILADELPHIA PARKING AUTHORITY

[52 PA. CODE CH. 1055]

Corrective Amendment to 52 Pa. Code § 1055.3

The Philadelphia Parking Authority has discovered a discrepancy between the agency text of 52 Pa. Code § 1055.3 (relating to limousine age and mileage parameters) as deposited with the Legislative Reference Bureau and the official text as published at 41 Pa.B. 6499, 6646 (December 3, 2011) and as currently appearing in the *Pennsylvania Code*. The word "not" was inadvertently omitted from the first sentence in subsection (b).

Therefore, under 45 Pa.C.S. § 901: The Philadelphia Parking Authority has deposited with the Legislative Reference Bureau a corrective amendment to 52 Pa. Code § 1055.3. The corrective amendment to 52 Pa. Code

§ 1055.3 is effective December 3, 2011, the date the defective official text was printed in the *Pennsylvania Bulletin*.

The correct version of 52 Pa. Code § 1055.3 appears in Annex A.

Annex

TITLE 52. PUBLIC UTILITIES

PART II. PHILADELPHIA PARKING AUTHORITY

Subpart C. LIMOUSINES

CHAPTER 1055. VEHICLES AND EQUIPMENT REQUIREMENTS

Subchapter A. GENERAL PROVISIONS

§ 1055.3. Limousine age and mileage parameters.

(a) *Method of age computation.* The age of a limousine will be determined by comparing its model year to the current model year.

(b) *Age.* A vehicle which is more than 8 years old may not continue in operation as a limousine, except that the Director may authorize the operation of antique vehicles as limousines upon review of a petition for waiver as provided in § 1005.23 (relating to petitions for issuance, amendment, repeal or waiver of Authority regulations) and completion of a compliance inspection. For example, the last day on which a 2006 model year vehicle may be operated in limousine service is December 31, 2014.

(c) *Mileage.*

(1) A vehicle may not be first introduced for limousine service with a cumulative mileage registered on the odometer of 51,000 miles or more, except that a limousine with a model year age of 5 or less and a cumulative mileage registered on the odometer of less than 75,000 miles may qualify for certification by the Authority contingent upon completion of a compliance inspection.

(2) Except as provided in paragraph (3), a vehicle shall be removed from limousine service prior to the date the cumulative mileage registered on the vehicle's odometer reaches 350,000 miles.

(3) The owner of a vehicle with a model year of 5 or less that is otherwise precluded from continued Philadelphia limousine service under paragraph (2) may continue in service for 1 year upon the successful completion of a compliance inspection.

(d) *Imputed mileage.*

(1) A vehicle with an odometer reading that differs from the number of miles the vehicle has actually traveled or that has had a prior history involving the disconnection or malfunctioning of an odometer or which appears to the Authority to have an inaccurate odometer reading based on prior inspection records, will be assigned an imputed mileage for each month from the last reliable odometer recording through the date of inspection, as provided in paragraph (2). A certificate holder may seek review of the determination to assign imputed mileage as provided in § 1005.24 (relating to appeals from actions of the staff).

(2) The imputed mileage will be calculated by adding the mileage of the vehicle recorded at the two most recent State inspections or two most recent compliance inspections, or a combination of any two, and dividing that sum by 24. The quotient is the imputed monthly mileage.

(3) Unless otherwise provided by the Authority, a vehicle may not be introduced for limousine service or continue in limousine service if a reliable baseline odometer reading cannot be ascertained.

(e) *Reporting of odometer malfunctions.* A certificate holder or limousine driver who knows or suspects that the odometer reading of a limousine differs from the number of miles the limousine has actually traveled shall disclose that status to the Enforcement Department immediately.

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