

# RULES AND REGULATIONS

## Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

### STATE BOARD OF DENTISTRY

#### [ 49 PA. CODE CH. 33 ]

#### Fees

The State Board of Dentistry (Board) amends §§ 33.3 and 33.339 (relating to fees; and fees for issuance of permits).

#### *Effective Date*

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

#### *Statutory Authority*

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

#### *Background and Need for Amendment*

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

At the December 16, 2011, Board meeting, representatives from the Department of State's Bureau of Finance and Operations (BFO) presented a summary of the Board's revenue and expenses for Fiscal Year (FY) 2009-2010 and FY 2010-2011, and projected revenue and expenses through FY 2014-2015. At the current fee levels, the Board receives revenue of approximately \$3,231,560 over a 2-year period, while budgeted expenditures for FYs 2012-2013 and 2013-2014 were projected to be approximately \$3.512 million, a deficit of \$280,440. Therefore, the Board determined that it was necessary to raise fees to meet or exceed projected expenditures, in compliance with section 4(b) of the act. The Board looked at a number of scenarios and, as a result, the Board voted at its July 27, 2012, meeting to increase the various application fees to more realistically cover the costs associated with processing applications and to be consistent with other states and also approved a modest 5% increase in biennial renewal fees.

#### *Summary of Comments and the Board's Response*

The Board published a proposed rulemaking at 43 Pa.B. 1857 (April 6, 2013) with a 30-day public comment period. Public comments were not received by the Board. On May 24, 2013, the House Professional Licensure Committee (HPLC) sent a request for information per-

taining to the major cost centers of the Board and any significant increases in its expenditures. On June 5, 2013, the Independent Regulatory Review Commission (IRRC) sent a letter to the Board indicating that it would review the Board's response to the HPLC's comment as part of IRRC's determination of whether this final-form rulemaking is in the public interest.

The major cost centers of the Board are as follows: Board administration, legal office and hearing expenses; enforcement and investigation; and the Professional Health Monitoring Program. These five areas comprise 90% of the Board's budget. Since the last fee increase in 2005, Board administration has actually gone down from \$359,736.39 in FY 2006-2007 to \$307,497.23 in FY 2011-2012. However, the Board is currently staffed below its full complement, with vacancies that are expected to be filled in the near future, so this cost center is expected to return to at least \$360,000 for FY 2013-2014. Professional Health Monitoring Program costs incurred by the Board have steadily increased since 2005, from \$27,574.96 in FY 2006-2007 to \$64,640.52 in FY 2011-2012. These costs depend entirely upon how many individuals either voluntarily enter the impaired professionals program or are ordered to participate in the program by the Board as a result of a disciplinary matter. With regard to the Voluntary Recovery Program, the Board had 20 new participants enter the program during those years (ranging from a high of 7 entering in FY 2007-2008 to a low of 1 entrant in FY 2008-2009). With regard to the Disciplinary Monitoring Unit, approximately 23 individuals were ordered to participate in the program during those years (ranging from 2 to 7 in a given year). Once in the program, a participant must have 3 years of continuous, sustained recovery to complete the program and return to unmonitored practice.

Enforcement and investigation costs have increased from \$456,871.30 in FY 2006-2007 to \$659,488.98 in FY 2011-2012. Legal office expenses have likewise risen from \$300,247.67 in FY 2006-2007 to \$462,385.17 in FY 2011-2012. Hearing expenses have fluctuated dramatically from year to year, ranging from a low of \$48,018.13 during FY 2008-2009 to a high of \$119,908.23 in FY 2011-2012, with an average of approximately \$77,500. These costs are dependent upon the number of complaints filed, the number of those complaints that merit investigation and the number of investigations that result in prosecutions. They also depend to a degree on the number of matters that are resolved through consent agreements and those that require hearings to be conducted. The complexity and seriousness of the matters also affect the costs. Serious standard of care related matters require expert review, which drives costs up. The Board averages approximately 450 new complaints filed against its licensees each year. Each complaint is reviewed or investigated to determine if a violation of the act or regulations has occurred. The legal office then prosecutes those matters when a violation is alleged. The Board incurs hearing expenses for each matter actually prosecuted, and the Board incurs additional legal costs defending any appeals. Ultimately, the number of complaints and disciplinary actions drive the bulk of the Board's costs, and the Board does not have control over the number of complaints filed against its licensees or the number of disciplinary actions brought by the Commonwealth.

Because it has been a year since the Board last considered the fee increase, and to fully inform its

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

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

#### *Fiscal Impact*

The final-form rulemaking will increase the biennial renewal fees for licensees of the Board. There are currently approximately 25,300 licensees that will be required to pay more to renew their licenses when they expire in 2015 and thereafter. In addition, increased application fees will impact individuals who apply for initial licenses. Small businesses will be impacted to the extent that they elect to pay the fees on behalf of their licensed employees. Because three out of four dentists are self-employed and 95% of licensees work in dental offices, the vast majority of the Board's licensees work in small businesses. The Board processes an average of approximately 2,000 applications each year. The final-form rulemaking should not have other fiscal impact on the private sector, the general public or political subdivisions of this Commonwealth.

#### *Paperwork Requirements*

This final-form rulemaking will require the Board to alter some of its forms to reflect the new fees. However, the final-form rulemaking will not create additional paperwork for the regulated community or for the private sector.

#### *Sunset Date*

The act requires the Board to monitor its revenue and costs on a fiscal year and biennial basis. Therefore, 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 March 25, 2013, the Board submitted

a copy of the notice of proposed rulemaking, published at 43 Pa.B. 1857, to IRRC and the Chairpersons of the HPLC and the Senate Consumer Protection and Professional Licensure Committee (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 November 6, 2013, the final-form rulemaking was deemed approved by the HPLC and the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 7, 2013, and approved the final-form rulemaking.

#### *Contact Person*

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

#### *Findings*

The 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 no public comments were received.

(3) 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 §§ 33.3 and 33.339 to read as set forth at 43 Pa.B. 1857.

(b) The Board shall submit this order and 43 Pa.B. 1857 to the Office of General Counsel and the Office of Attorney General as required by law.

(c) The Board shall certify this order and 43 Pa.B. 1857 and deposit them with the Legislative Reference Bureau as required by law.

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

LISA P. DEEM, D.M.D., J.D.,  
Chairperson

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 43 Pa.B. 6988 (November 23, 2013).)*

**Fiscal Note:** Fiscal Note 16A-4627 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 13-2366. Filed for public inspection December 20, 2013, 9:00 a.m.]