

RULES AND REGULATIONS

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF OPTOMETRY [49 PA. CODE CH. 23] Application Fees

The State Board of Optometry (Board) amends § 23.91 (relating to fees) to read as set forth in Annex A.

Notice of proposed rulemaking was published at 29 Pa.B. 2300 (May 1, 1999). Publication was followed by a 30-day public comment period during which the Board received no comments from the general public. Following the close of the public comment period, the Board received comments from the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC). The Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) did not comment.

On July 1, 1999, IRRC sent comments and suggestions to the Board.

Effective Date

The amendment will be effective upon publication in the *Pennsylvania Bulletin*.

Statutory Authority

The Board is authorized to set fees by regulation under section 9 of the Optometric Practice and Licensure Act (63 P.S. § 422.9).

Response to IRRC Comment

The HPLC questioned under what circumstances the Board “certifies” an examination score. The HPLC and IRRC also requested an explanation of the difference between a verification and certification and an explanation of what accounts for the differential in fees. Finally, the HPLC inquired whether the new fees would place this Commonwealth at a competitive disadvantage with surrounding states. After comparing the proposed fees with those in surrounding states, the Board determined the new fees would not place this Commonwealth at a competitive disadvantage. Details of the Board’s analysis are in the Regulatory Analysis Form, which is available upon request.

Certification and Verification Fees

The certification of a score is made at the request of a licensee when the licensee is seeking to obtain licensure in another state based upon licensure in this Commonwealth which was issued on the basis of a uniform National or regional examination which was taken in this Commonwealth. Generally, the state of original licensure is the only source of the score of the licensee, as testing agencies do not maintain this information. The licensure laws of many states include provisions that licensure by reciprocity or endorsement based on licensure in another state will be granted only if the board or agency determines that the qualifications are the same or substantially similar. Many state agencies have interpreted this provision to require that licensees have attained a score equal to or exceeding the passing rate in that jurisdiction

at the time of original licensure. For this reason, these states require that the Commonwealth’s board and other boards certify the examination score the applicant achieved on the licensure examination.

As noted in proposed rulemaking, the difference between the verification and certification fees is the amount of time required to produce the document requested by the licensee. As noted, states request different information when making a determination as to whether to grant licensure based on reciprocity or endorsement from another state. The Bureau of Occupational and Vocational Standards (Bureau) has been able to create two documents from its records that will meet all of the needs of the requesting state. The licensee, when it applies to the other state, receives information as to what documentation and form is acceptable in the requesting state. The Bureau then advises the licensee of the type of document the Bureau can provide and the fee.

In the case of a “verification,” the staff produces the requested documentation by a letter, usually computer-generated, which contains the license number, date of original issuance and current expiration date and status of the license. The letters are printed for the Bureau’s central computer records and sent to the Board staff responsible for handling the licensee’s application. The letters are sealed, folded and mailed in accordance with the directions of the requestor. The Bureau estimates the average time to prepare this document to be 5 minutes.

The Bureau uses the term “certification fee” to describe the fee for a request for a document, again generally to support reciprocity or endorsement applications to other states, territories or countries, or for employment or training in another state. A certification document contains information specific to the individual requestor. It may include dates or locations where examinations were taken, or scores achieved or hours and location of training. The information is entered onto a document which is usually supplied by the requestor. The average time to prepare a certification is 45 minutes. This is because a number of resources, such as files, microfilm and rosters must be retrieved and consulted to provide the information requested. The Board staff then seals and issues this document.

Administrative Overhead

IRRC requested that the Bureau and the boards: (1) itemize the overhead cost to be recouped by the fees; and (2) reexamine the method that is used to determine the administrative overhead factor for each fee.

IRRC commented that although the Bureau’s method was reasonable, there was no assurance that the fees would recover the actual overhead cost because the charge was not related to the service, and because the charge was based on the actual rather than the projected expenditures. IRRC also commented that there was no certainty that the projected revenues would meet or exceed projected expenditures, as required under the boards enabling statutes.

In computing overhead charges, the boards and the Bureau include expenses resulting from service of support staff operations, equipment, technology initiatives or upgrades, leased office space and other sources not directly attributable to a specific board. Once determined, the Bureau’s total administrative charge is apportioned to each board based upon that board’s share of the total

active licensee population. In turn, the board's administrative charge is divided by the number of active licensees to calculate a "per application" charge which is added to direct personnel cost to establish the cost of processing. The administrative charge is consistently applied to every application regardless of how much time the staff spends processing the application.

This method of calculating administrative overhead to be apportioned to fees for services was first included in the biennial reconciliation of fees and expenses conducted in 1988-89. In accordance with the regulatory review, the method was approved by the Senate and House Standing Committees and IRRC as reasonable and consistent with the legislative intent of statutory provisions which require the board to establish fees which meet or exceed expenses.

IRRC suggested that within each board, the administrative charge should be determined by the amount of time required to process each application. For example, an application requiring 1/2 hour of processing time would pay 1/2 as much overhead charge as an application requiring 1 hour of processing time. The Bureau concurs with IRRC that by adopting this methodology the Bureau and the boards would more nearly and accurately accomplish their objective of setting fees that cover the cost of the service. Therefore, in accordance with IRRC's suggestions, the Bureau conducted a test to compare the resulting overhead charges obtained by applying IRRC's suggested time factor versus the current method.

This review of the boards' operation showed that approximately 25% of staff time was devoted to providing services described in the regulations. The current method recouped 22% to 28% of the administrative overhead charges versus the 25% recouped using a ratio-based time factor. However, when the time factor is combined with the licensing population for each board, the resulting fees vary widely even though different licensees may receive the same services. For example, using the time-factor method to issue a verification of licensure would cost \$34.58 for a landscape architect as compared with a cost of \$10.18 for a cosmetologist. Conversely, under the Bureau method the administrative overhead charge of \$9.76 represents the cost of processing a verification application for all licensees in the Bureau. Also, the Bureau found that employing a time factor in the computation of administrative overhead would result in a different amount of overhead charge being made for each fee proposed.

With regard to IRRC's suggestions concerning projected versus actual expenses, the boards note that the computation of projected expenditures based on amounts actually expended has been the basis for biennial reconciliations for the past 10 years. During these 5 biennial cycles, the experience of both the boards and the Bureau has been that established and verifiable data which can be substantiated by collective bargaining agreements, pay scales and cost benefit factors. This method has provided a reliable basis for fees. Also, the fees are kept at a minimum for licensees, but appear adequate to sustain the operations of the boards over an extended period. Similarly, accounting, recordkeeping and swift processing of applications, renewals and other fees were the primary basis for "rounding up" the actual costs to establish a fee. This rounding up process has in effect resulted in the necessary but minimal cushion or surplus to accommodate unexpected needs and expenditures.

For these reasons, the boards have not made changes in the method by which they allocate administrative expenditures and the resulting fees will remain as proposed.

Applications for Continuing Education Program Approval

The HPLC and IRRC questioned the Board's estimate of the number of applications by providers of continuing education programs for Board approval of those programs. The Board's estimate of 1,500 program approvals for the biennial period was based on the experiences in prior biennial periods.

The HPLC and IRRC further questioned the process by which continuing education programs are approved and whether the approval fee is actually paid by providers or licensees. A provider wishing to obtain Board approval for a continuing education program must submit an application for program approval to the Board. After the applicant's information is entered into the Board's computer system, the application is sent to the Board's Continuing Education Chairperson who reviews the application and approves or disapproves the course for continuing education credit. The application is then returned to the Board's administrative offices and the approval or disapproval entered into the Board's computer system. It is not uncommon for a single provider to request approval for numerous continuing education programs. The fee would be paid by the provider for each program to offset the expenses involved in reviewing each program for which approval is sought.

Certified Copy of License For Each Additional Practice Location

No comments were received on the portion of the proposal that would increase the fee for receipt of a certified copy of the license for additional practice locations by \$5, from the current charge of \$15 to \$20. This rate is comparable to the fee charged in surrounding states for the same service.

Compliance with Executive Order 1996-1, Regulatory Review and Promulgation

The Board reviewed this rulemaking and considered its purpose and likely impact upon the public and the regulated population under Executive Order 1996-1, Regulatory Review and Promulgation. The final-form regulation addresses a compelling public interest as described in this Preamble and otherwise complies with Executive Order 1996-1.

Fiscal Impact and Paperwork Requirements

The amendment will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The fees will have a modest fiscal impact on those members of the private sector who apply for services from the Board. The amendment will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

Sunset Date

The Board continually monitors the effectiveness of its regulations through communications 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 April 19, 1999, the Board submitted a

copy of the proposed rulemaking, published at 29 Pa.B. 2300 (May 1, 1999), to IRRC and to the Chairpersons of the HCPL and the SCP/PLC for review and comment.

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

Under section 5.1(d) of the Regulatory Review Act (71 P.S. § 745.5a(d)), this final-form regulation was deemed approved by the HPLC on March 27, 2000, and by the SCP/PLC on March 28, 2000. Under section 5.1(e) of the Regulatory Review Act, IRRC met on April 13, 2000, and approved the final-form regulation.

Further Information

Individuals who need information about the amendment may contact Deborah Smith, Administrative Assistant, State Board of Optometry, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-7155.

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 under those sections in 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 amendment does not enlarge the purpose of proposed rulemaking published at 29 Pa.B. 2300.

(4) This amendment is necessary and appropriate for administration and enforcement of the Board's authorizing statute.

Orders

The Board orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 23, are amended by amending § 23.91 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 amendment shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

JAY B. TANNER, O.D.,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 30 Pa.B. 2176 (April 29, 2000).)

Fiscal Note: Fiscal Note 16A-527 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 23. STATE BOARD OF OPTOMETRY FEES

§ 23.91. Fees.

The following is the schedule of fees for services charged by the Board:

License application	\$25
Certified copy of license for each additional practice location	\$25
Certification of scores or licensure, or both	\$25
Verification of licensure	\$15
Biennial renewal—optometrist license.....	\$135
Biennial renewal—certified copy of license for each additional practice location.....	\$20
Application for certification to prescribe and administer pharmaceutical agents for therapeutic purposes	\$25

[Pa.B. Doc. No. 00-784. Filed for public inspection May 12, 2000, 9:00 a.m.]

STATE BOARD OF VETERINARY MEDICINE

[49 PA. CODE CH. 31]

Professional Conduct for Veterinarians: Advertising

The State Board of Veterinary Medicine (Board) adopts an amendment to § 31.21 (relating to rules of Professional Conduct for Veterinarians) to read as set forth in Annex A.

Notice of proposed rulemaking was published at 28 Pa.B. 2927 (June 27, 1998). Publication was followed by a 30-day public comment period during which the Board received no comments from the general public. Neither the House Professional Licensure Committee (HPLC) nor the Senate Consumer Protection and Professional Licensure Committee made comments on the proposed rule.

On August 27, 1998, the Independent Regulatory Review Commission (IRRC) sent comments and suggestions to the Board.

Response to IRRC Comment

IRRC expressed its concern that anyone in need of emergency veterinary services be able to determine whether a particular veterinarian can meet their needs with respect to whether the veterinarian's practice could accommodate particular types of animals. In response to IRRC's comments, the Board has added the requirement that veterinarians disclose specific limitations when advertising emergency services.

Second, IRRC requested that veterinarians advertising emergency services designate whether their services are available only at the veterinarian's facility or whether the veterinarian is available to travel to the site where the animal is located. The Board has not added this require-

ment to its regulation for several reasons. First, the Board does not perceive a need for this designation because animal owners who generally take their animals to the veterinarian's facility will likely continue to do so in the case of an emergency whereas owners whose animals are usually visited by the veterinarian will likely continue to rely on the veterinarian to provide onsite emergency care. Second, the Board does not wish to limit the ability of a veterinarian to make the determination whether to travel to the animal or have the animal brought to the veterinary facility, as this may limit the veterinarian's ability to exercise professional judgment and may endanger rather than promote animal safety and welfare. Third, a designation would apply only to veterinarians offering on call services, because a veterinarian could not be on the premises during set hours if the veterinarian may be away from the facility to tend to an injured animal on site.

IRRC also requested that the Board specify a time certain which would be considered a reasonable time under the regulation and distinguish between the time it takes to respond to an initial contact seeking emergency service from the time it takes for the veterinarian to actually begin treating the animal. In response to this comment, the Board determined it would not specify a particular time that would be considered reasonable for purposes of the advertising regulation. Rather, the Board believes that veterinarians are already bound by professional responsibility in offering and providing treatment and must be allowed to exercise professional judgment in the provision of services.

Finally, IRRC suggested the proposed rulemaking be formatted to conform to the format of Principle 5. The Board agreed with the suggestion and made the change in final-form regulation.

Statutory Authority

The amendment is authorized under section 5(1) and (2) of the Veterinary Medicine Practice Act (act) (63 P. S. § 485.5(1) and (2)). Section 5(1) of the act empowers the Board to adopt reasonable rules and regulations governing the practice of veterinary medicine as are necessary to enable it to carry out and make effective the purpose and intent of the act. Section 5(2) of the act empowers the Board to adopt rules and regulations of professional conduct appropriate to establish and maintain a high standard of integrity, skills and practice in the profession of veterinary medicine.

Fiscal Impact

The amendment will have no fiscal impact on the Commonwealth or its political subdivisions. Veterinarians who advertise emergency services may incur additional costs in amending their advertisements if the advertisements do not list the hours during which the emergency services will be provided and indicate whether there is a veterinarian on the premises or on call and indicate limitations in the practice, if any. These costs may ultimately be passed on to the public.

Paperwork Requirements

The amendment will create no additional paperwork for the Board or the private sector.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of the notice of proposed rulemaking, published at 28 Pa.B. 2927 to IRRC and to the Chairpersons of the HPLC and the Senate Committee on Consumer Protection and Professional Licensure.

Publication of the notice of proposed rulemaking was followed by a 30-day public comment period during which the Board received no written comment from the public. Subsequent to the close of the public comment period, the Board received no comments from the House or Senate Committee. The Board received and considered comments from the IRRC.

This final-form regulation was approved by the HPLC on March 17, 2000, and was deemed approved by the Senate Consumer Protection and Professional Licensure Committee on March 20, 2000. IRRC met on March 23, 2000, and approved the final-form regulation in accordance with section 5.1(e) of the Regulatory Review Act (71 P. S. § 745.5(a)(e)).

Further Information

Individuals who need information about the regulation may contact Robert Kline, Administrative Assistant, State Board of Veterinary Medicine, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-4848.

Order

The Board finds that:

(1) Public notice of intention to adopt the amendment 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 under those sections at 1 Pa. Code §§ 7.1 and 7.2.

(2) The amendment is necessary and appropriate for the administration of the act.

The Board therefore orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 31, are amended by amending § 31.21, Principle 5, to read as set forth in Annex A with ellipses referring to the existing text of the regulation.

(b) The Board shall submit a copy of the 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 shall deposit them with the Legislative Reference Bureau as required by law.

(d) The amendment shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

BRIAN U. HARPSTER, V.M.D.,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 30 Pa.B. 1929 (April 8, 2000).)

Fiscal Note: Fiscal Note 16A-576 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 31. STATE BOARD OF VETERINARY MEDICINE

PROFESSIONAL CONDUCT

§ 31.21. Rules of Professional Conduct for Veterinarians.

Preamble

The Board is empowered under section 5(2) of the act (63 P. S. § 485.5(2)), to adopt rules and regulations of

professional conduct appropriate to establish and maintain a high standard of integrity, skill and practice in the profession of veterinary medicine. In accordance with this authority, the Board has determined that the following rules are necessary in the public interest to protect the public against unprofessional conduct on the part of veterinarians. The Board therefore adopts this professional conduct code for veterinarians practicing veterinary medicine in this Commonwealth. Some of the rules of conduct are imperatives, cast in the terms, "shall" or "may not." Veterinarians who fail to adhere to these rules will be subject to professional discipline. Other rules, generally cast in the terms "may" or "should," are intended as aspirational goals and define areas under which the veterinarian has professional discretion. No disciplinary action will be taken when a veterinarian acts within the bounds of discretion. References throughout this professional conduct code to imperative conduct on the part of veterinarians shall also apply to applicants for licensure and temporary permit holders where these persons render services under qualified supervision.

* * * * *

Principle 5. Advertising.

(a) Advertising by veterinarians is permissible when it does not include false, deceptive or misleading statements or claims. A false, deceptive or misleading statement or claim is one which does one or more of the following:

(1) Contains an unrealistic prediction of future success or a guarantee that satisfaction or a cure will result from the performance of professional services.

(2) Refers to secret drugs or secret methods of treatment for special services and which could be characterized as deceptive.

(3) States or implies that a veterinarian is a specialist, unless the veterinarian is a diplomate of an American Veterinary Medical Association—recognized specialty organization.

(4) Contains a material misrepresentation of fact.

(5) Contains a representation or implication that is likely to cause a reasonable person to misunderstand or be deceived, or fails to contain reasonable warnings or disclaimers necessary to make a representation or implication not deceptive.

(b) Testimonials and endorsements by veterinarians pertaining to veterinary products or veterinary equipment are permissible if all of the following guidelines are met:

(1) If an endorsement represents that the endorser uses the endorsed product, the endorser shall be a bona fide user of the product.

(2) The endorser shall be able to adequately substantiate that the endorser's experience with the product is representative of what consumers will generally achieve with the advertised product in actual conditions of use. Adequate substantiation implies publication of a report in a journal in which articles are open to peer review or in a publication recognized by reputation as a source of reliable scientific information.

(3) The endorser's qualifications shall be consistent with the expertise that the endorser is represented as possessing with respect to the endorsement.

(4) The endorsement shall be supported by an actual exercise of the endorser's expertise in evaluating product features or characteristics which shall include an examination or testing of the product as extensive as someone

with the same degree of expertise would need to evaluate the product features or characteristics to support the conclusions presented.

(c) Advertising by veterinarians for emergency veterinary services shall provide information as to whether a veterinarian is on the premises, or on call, and shall specify the hours during which emergency services are available.

(1) For the purposes of this section, "on the premises" means that a veterinarian is physically present at the veterinary establishment and is immediately available to render emergency services. "On call" means that a veterinarian is available to return calls requesting emergency services within a reasonable time and is available to render emergency services within a reasonable time.

(2) Veterinarians shall disclose specific limitations (that is, exotics/avian/large animal/small animal) when advertising emergency services.

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[Pa.B. Doc. No. 00-785. Filed for public inspection May 12, 2000, 9:00 a.m.]

STATE BOARD OF DENTISTRY

[49 PA. CODE CH. 33]

Expanded Function Dental Assistants

The State Board of Dentistry (Board) amends §§ 33.101—33.109, 33.201, 33.209, 33.211 and 33.212 and adds §§ 33.114 and 33.205a, to read as set forth in Annex A relating to expanded function dental assistants (EFDAs).

A. Description of Amendments

Substantive Amendments

§ 33.102(c) (relating to professional education)

Section 33.102(c) implements section 3(d.1)(1) of the Dental Law (act) (63 P. S. § 122(d.1)(1)). EFDAs are required to satisfy one of three educational pathways:

1. Graduate from an EFDA program at an accredited 2-year college or institution which offers an Associate Degree.

2. Graduate from an accredited dental hygiene school requiring the successful completion of at least 75 hours of clinical and didactic instruction in restorative functions.

3. Complete a certification program in EFDA of at least 200 hours of clinical and didactic instruction from an accredited dental assisting program.

In developing this rulemaking, the Board considered requiring accreditation by the Commission on Dental Accreditation of the American Dental Association (CODA) for each educational pathway, to parallel the requirements for dentists and dental hygienists. However, section 3(d.1)(1) of the act recognizes varying accrediting bodies. Therefore, under the Board's proposal, 2-year colleges, under subparagraph (i), would be accredited by an accrediting agency approved by the United States Department of Education Council on Postsecondary Accreditation. Dental hygiene schools, under subparagraph (ii), would receive CODA accreditation. Dental assisting programs, under subparagraph (iii), would be accredited by either CODA or an accredited agency approved by the United States Department of Education Council on Postsecondary Accreditation whose expanded function educational standards are approved by the Board.

§ 33.114 (relating to first certification examination)

Proposed § 33.114, which implements section 11.7(b) of the act (63 P. S. § 130h(b)), establishes the procedure for temporary permit holders to take the certification examination. Temporary permit holders are first required to take that examination. Those who fail are required to cease practicing and return their permits to the Board. Those who register for the examination and fail to appear are deemed to have failed the examination, unless they have received a waiver from the Board due to illness or bereavement. Those who pass will be permitted to continue practicing pending receipt of their certificate.

§ 33.205a (relating to practice as an expanded function dental assistant)

Section 33.205a, which implements section 2 of the act (63 P. S. § 121), delineates the scope of practice. Subsection (a) lists the procedures which expanded function dental assistants are statutorily authorized to perform. Each of these procedures may only be performed under the direct supervision of a dentist. Subsection (b) lists the procedures which expanded function dental assistants are statutorily prohibited from performing.

Technical Amendments

Sections 33.101—33.105, 33.107—33.109, 33.201, 33.209, 33.211 and 33.212 are amended to add provisions for expanded function dental assistants similar to those currently in existence for dentists and dental hygienists.

Notice of proposed rulemaking was published at 28 Pa.B. 3296 (July 11, 1998). Publication was followed by a 30-day public comment period during which the Board received comments from the House Professional Licensure Committee (HPLC), the Pennsylvania Dental Hygienists' Association (PDHA), Harcum College, a dentist and a dental hygienist. Following the close of the public comment period, the Board also received comments from the Independent Regulatory Review Commission (IRRC). The Senate Consumer Protection and Professional Licensure Committee offered no comments, suggestions or objections regarding the amendments.

The amendments reflected in Annex A are responsive to the comments and suggestions received by all commentators. In addition, the Board considered this rulemaking and its purpose under Executive Order 1996-1, Regulatory Review and Promulgation.

For ease of reference, the Board will address the comments in the order in which the amendments appear.

§ 33.102. Professional Education

IRRC proposed a revision of subsection (c)(1)(iii) to clarify the Board's approval process.

A public commentator also suggested that subsection (c)(1)(iii) delineate how the Board will conduct a review of these EFDA programs, by site visits or rubber-stamping a self-assessment document provided by the institution. Following additional public comment and considerable discussion, the Board has determined to retain the flexibility that this section provides.

A public commentator suggested that this section should reflect the duration of an EFDA program. The program content and duration are regulated by the accreditation process of the accrediting agency approved by the United States Department of Education Council on Post-Secondary Accreditation (§ 33.102(c)(1)(i)).

Subsection (c)(2) was revised to accommodate candidates from nonaccredited programs.

§ 33.102(c). Professional Education

IRRC suggested adding the exemption from the educational requirements contained in the 1994 revisions to the act. The Board has added paragraph (3) to meet this objective.

§ 33.102(c)(1)(iii)

IRRC proposed that this section be rewritten for clarity. The Board redrafted this section. The intent is to give guidance to the educational institutions that do not use CODA.

The citation reference under subsection (c)(1) has been corrected to 63 P. S. § 122(d)(1).

§ 33.103(d). Examinations

IRRC suggested that this section created a potential confusion because readers might believe a NERB examination is available for EFDAAs. Although not adopting IRRC's suggested language, the Board has amended this section to meet IRRC's concern about potential confusion.

IRRC also recommended that the Board amend the second sentence of this section by inserting "or certification" after "licensure" to recognize that EFDAAs are not licensed, but instead certified. The Board has deleted the words "for licensure" to achieve the same objective.

The HPLC suggested that the amendments to this section be postponed until there is an examination for EFDAAs that can be identified. The Board has carefully considered this suggestion but has retained this section for the following reasons: (1) Section 33.103, pertaining to examinations, would need to be amended as part of the comprehensive coverage of the entire rulemaking package as it pertains to EFDAAs. To leave this gap would be to cause more ambiguity than adding the new subsection (c). (2) The Northeast Regional Board Examination (NERB) is an examination developed and administered by a governing board composed of members of state licensing boards in the Northeast Region. In this regard, it is similar to the National Board Examination. Subsections (a) and (b) detail the NERB examination for dentists and dental hygienists. The EFDA examination will, in all likelihood, be similar to the radiologic procedure examination for auxiliary personnel in § 33.301, which is given by a third party testing administrator under contract with the Bureau. The proposed language is similar to that of existing § 33.301 and is more useful than identifying a particular contractor.

§ 33.107. Licensure and Certification by Criteria Approval

A public commentator recommended that the Board delete the sentence specifying that licensure and certification by criteria approval will be granted only to applicants whose licensing board confirms that it reciprocates with the Commonwealth. The Board has not deleted this provision as section 3(f) of the act requires that other states, territories or Canada recognize and endorse licenses issued by the Commonwealth.

§ 33.114. First certification examination

IRRC recommended that the Board amend the regulation to indicate the specific date on which a licensee must cease practicing. IRRC further suggested that the Board determine under what circumstances and when a waiver should be granted. The Board believes that this section can be simplified and IRRC's concerns met by revising the section as follows: (1) The Board will give notice to temporary permit holders of the date, time and location of the first expanded function dental assistant certification

examination. A temporary permit holder will be required to register for and achieve a passing score on the examination. (2) Failure to register or to sit for the examination (unless the Board grants a waiver under subsection (c)) shall be deemed a failure of the examination. Upon notice from the Board of the failure of the examination, the temporary permit holder must immediately cease to practice as an EFDA and return the temporary permit to the Board. (3) The Board would grant a waiver to a temporary permit holder who has not been present at the examination, and who provides the Board with documentation acceptable to the Board that illness or bereavement prevented the applicant from taking the examination as scheduled. A request for a waiver would be filed with the Board within 10 days of the examination date. If a waiver is not granted, the temporary permit holder must, upon notice, immediately cease practicing as an EFDA and return the permit to the Board.

The HPLC suggested that the Board insert language in response to a public commentator to clarify that a temporary permit holder can retake the examination. The Board believes that this additional language is unnecessary and duplicative. The Legislature, in providing for EFDAAs, provided for no limitation on the ability of anyone, whether a temporary permit holder or not, to take the examination as many times as the applicant chooses.

The HPLC also suggested that the word "scheduled" be inserted after the word "examination." The Board has not adopted this suggestion because inserting this language presents a problem in the sense that if the examination is not held as scheduled, a literal reading may result in temporary permit holders having to cease practice and return their temporary permits, contrary to legislative intent.

§ 33.205a. Practice as an EFDA

IRRC recommended that the Board consider a recommendation of the PDHA to amend subsection (a)(1)(vii) to include the placing and finishing of sealant material as a restorative procedure. The Board has amended this subsection to reflect current practice of EFDAAs, allowing the placement and finishing of composite restorations or sealant material, or both.

IRRC suggested that subsection (b) be amended to include the statutory prohibition against EFDAAs taking impressions other than for study models or diagnostics. The Board has added this suggestion.

A public commentator objected to creation of § 33.205a, for practice as an EFDA, as a subsection to § 33.205, practice as a dental hygienist. The Board believes that each section, § 33.205 and § 33.205a, is separate and distinct, and it is helpful to have them placed contiguously.

Section 33.205a(b)(4) and (6) were amended to more clearly conform to the mandates of section 2 of the act.

B. Compliance with Executive Order 1996-1

The Board reviewed this rulemaking and considered its purpose and likely impact upon the public and the regulated population under Executive Order 1996-1, Regulatory Review and Promulgation. The final-form regulations address a compelling public interest as described in this Preamble and otherwise comply with Executive Order 1996-1.

C. Fiscal Impact and Paperwork Requirements

1. *Commonwealth*—The amendments will require the Board to assure compliance with the certification requirements for EFDAAs. The costs associated with implementing these amendments, including an audit, will be borne by the general licensee/certificate holder population through biennial renewal fees which generate revenue for all Board activities. Additional paperwork will be incurred by the Board to amend renewal application forms.

2. *Political subdivisions*—There will be no adverse fiscal impact or paperwork requirements imposed.

3. *Private sector*—There will be no adverse fiscal impact or paperwork requirements imposed.

D. Statutory Authority

The amendments are promulgated under sections 2—5.1, 10—11.5 and 11.7 of the act (63 P. S. §§ 121—124.1, 129—129.1, 130, 130e and 130h).

E. Sunset Date

The Board continually monitors the effectiveness of its regulations through communications with the regulated population; accordingly, no sunset date has been set.

F. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 11, 1998, the Board submitted a copy of the notice of proposed rulemaking, published at 28 Pa.B. 3296 (July 11, 1998), to IRRC and the Chairpersons of the HPLC and the Senate Consumer Protection and Professional Licensure Committee for review and comment. In compliance with section 5(b.1) of the Regulatory Review Act, the Board also provided IRRC and the Committees with copies of the comments received, as well as other documentation.

In preparing these final-form regulations, the Board considered the comments received from IRRC and the public.

These final-form regulations were deemed approved by the House and Senate Committees on March 15, 2000. IRRC met on April 13, 2000, and deemed approved the final-form regulations in accordance with section 5.1(e) of the Regulatory Review Act (71 P. S. § 745.5a(e)).

G. 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, (717) 783-7162.

H. Findings

(1) Public notice of 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, at 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) These amendments do not enlarge the purpose of proposed rulemaking published at 28 Pa.B. 3296.

(4) These amendments are necessary and appropriate for administration and enforcement of the Board's authorizing statute.

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 §§ 33.101—33.109, 33.201, 33.209, 33.211 and 33.212 and adding §§ 33.114 and 33.205a to read as set forth in Annex A.

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

NORBERT O. GANNON, D.D.S.,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 30 Pa.B. 2176 (April 29, 2000).)

Fiscal Note: Fiscal Note 16A-465 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 B. LICENSURE OF DENTISTS AND DENTAL HYGIENISTS AND CERTIFICATION OF EXPANDED FUNCTION DENTAL ASSISTANTS

§ 33.101. General information.

(a) Only persons holding a current license issued by the Board may practice dentistry or may practice as a dental hygienist in this Commonwealth.

(b) Only persons holding a certificate issued by the Board may practice as an expanded function dental assistant in this Commonwealth.

(c) To secure a license or certificate, an applicant shall satisfy the requirements of the act and of this subchapter.

(d) Applications for licensure or certification shall be made on forms supplied by the Board and shall be accompanied by the application fee in § 33.3 (relating to fees).

§ 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 the Commission on Accreditation 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 3(d.1) of the act by submitting verification of one of the following:

(i) Graduation from an expanded function dental assisting 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 Accreditation of the American Dental Association.

(iii) Completion of a certification program in expanded function dental assisting 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 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) 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.

(3) 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.

§ 33.103. 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 an examination comprised of both a written and a clinical component 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.

§ 33.104. Initial licensure; licensure documents.

(a) Each new licensee is issued a wall certificate indicating initial licensure and a registration packet including a biennial renewal certificate and a wallet-size license card that show the expiration date of the license. Licenses expire on March 31 of each odd-numbered year, regardless of the date of issuance.

(b) Each new certificate holder is issued a wall certificate indicating initial certification and a registration packet including a biennial renewal certificate and a wallet-size certification card that show the expiration date of the certificate. Certificates expire on March 31 of each odd-numbered year, regardless of the date of issuance.

(c) Fees as prescribed by the Bureau of Professional and Occupational Affairs Fee Act (63 P. S. §§ 1401-101—1401-501), shall be charged for duplicate wall certificates and biennial renewal documents. A duplicate will be issued only upon submission by the licensee or certificate holder of a notarized statement specifying why the original is unavailable and stating that the duplicate will be returned if the original is recovered.

§ 33.105. Biennial renewal of licenses and certificates.

(a) Licenses and certificates are renewable for a 2-year period beginning April 1 of each odd-numbered year. The fee for biennial renewal is set by the Board. See § 33.3 (relating to fees). Upon renewal, licensees and certificate holders receive new biennial renewal certificates and wallet-size license cards that show the next expiration date of the license or certificate. These documents are the only evidence of valid, current licensure or certification.

(b) Dentists, dental hygienists and expanded function dental assistants who fail to renew their licenses or certificates are prohibited from practicing their profession in this Commonwealth.

§ 33.106. Reactivation of licenses and certificates.

(a) Dentists, dental hygienists and expanded function dental assistants who have failed to renew their licenses or certificates may apply for reactivation of licensure or certification on forms prescribed by the Board. The applicant shall pay the current biennial renewal fee and shall submit a notarized affidavit identifying the period of time in which the applicant did not practice in this Commonwealth.

(b) An applicant for reactivation of licensure or certification who practiced in this Commonwealth without a current license or certificate shall pay a late renewal fee of \$5 for each month or part of a month during which the unauthorized practice occurred, as provided in section 225 of the Bureau of Professional and Occupational Affairs Fee Act (63 P. S. § 1401-225). In addition, the applicant shall pay the biennial renewal fee for each biennium during which unauthorized practice occurred. The payment of late fees and biennial renewal fees does not preclude the Board from taking disciplinary action

against a dentist, dental hygienist or expanded function dental assistant who practiced without a current license or certificate.

§ 33.107. Licensure and certification by criteria approval.

Dentists, dental hygienists and expanded function dental assistants who are currently licensed or certified in another state or territory or in Canada may be granted licensure or certification in this Commonwealth if the credentials submitted meet the requirements of the act and of this subchapter. Licensure and certification by criteria approval will be granted only to applicants whose licensing boards confirm that they reciprocate with the Commonwealth. An applicant shall cause the licensing authority of each state where the applicant has practiced to submit to the Board a letter of good standing. The Board may grant a personal interview to resolve questions concerning an applicant's qualifications.

§ 33.108. Transfers out-of-state.

Dentists, dental hygienists and expanded function dental assistants who wish their licensure, certification or grades certified to another state shall pay the fee in § 33.3 (relating to fees).

§ 33.109. Licensee's and certificate holder's change of name or address; service of process and legal papers.

(a) A licensee's or certificate holder's name on file with the Board shall be the name that appears on the license or certificate unless that name is legally changed, in which case the licensee or certificate holder shall report the change to the Board in writing within 10 days.

(b) A licensee or certificate holder who changes an address on file with the Board shall notify the Board in writing within 10 days. Licensees or certificate holders who do not comply with this subsection shall bear full responsibility for failure to receive correspondence, including biennial renewal notifications, from the Board or the Department.

(c) A licensee's or certificate holder's most recent name and address on file with the Board will be deemed the licensee's or certificate holder's official name and address for purposes of service of process and other legal papers.

§ 33.114. First certification examination.

(a) The Board will give notice to temporary permit holders of the date, time and location of the first expanded function dental assistant certification examination. A temporary permit holder is required to register for and achieve a passing score on the examination.

(b) Failure to register or to sit for the examination (unless the Board grants a waiver under subsection (c)) shall be deemed a failure of the examination. Upon notice from the Board of the failure of the examination, the temporary permit holder shall immediately cease to practice as an expanded function dental assistant and shall return the temporary permit to the Board.

(c) The Board will grant a waiver to a temporary permit holder who has not been present at the examination, who provides the Board with documentation acceptable to the Board that illness or bereavement prevented the applicant from taking the examination as scheduled. A request for a waiver shall be filed with the Board within 10 days of the examination date. If a waiver is not granted, the temporary permit holder shall, upon notice,

immediately cease practicing as an expanded function dental assistant and return the permit to the Board.

Subchapter C. MINIMUM STANDARDS OF CONDUCT AND PRACTICE

§ 33.201. Use of titles and other designations.

(a) Dentists, dental hygienists and expanded function dental assistants may use only the following titles when formally holding themselves out to the public as members of their respective professions:

(1) *Dentists.*

(i) "Doctor" or "Dr." if the licensee's name and a title permitted under subparagraph (ii) or (iii) follows immediately. The Board specifically prohibits the use of the word "Doctor" or its abbreviation except in combination with one of these titles.

(ii) "Dentist," "Doctor of Dental Surgery," "Doctor of Dental Medicine," or a title such as "Orthodontist," signifying a specialty recognized by the Board in which the dentist has advanced training in conformity with § 33.203(d)(1) (relating to advertising), when preceded by the licensee's name.

(iii) "D.D.S." or "D.M.D." when preceded by the licensee's name.

(2) *Dental hygienists.*

(i) "Dental Hygienist" or "D. H." when preceded by the licensee's name.

(ii) "Registered Dental Hygienist" or "R.D.H." when preceded by the licensee's name.

(3) *Expanded function dental assistants.* "Expanded function dental assistant" or "EFDA" when preceded by the certificate holder's name.

(b) In addition to the titles approved under subsection (a), licensees may use, in conjunction with their names, designations of advanced degrees earned from accredited institutions and designations of advanced professional status—such as diplomate or fellow.

(c) References in this section to the licensee's or certificate holder's name shall be interpreted to mean the name appearing on the licensee's or certificate holder's current license or certificate but to allow for the use of initials preceding the licensee's or certificate holder's surname.

§ 33.205a. Practice as an expanded function dental assistant.

(a) *Scope of professional practice.*

(1) An expanded function dental assistant may offer to perform or perform the following services:

(i) Placing and removing rubber dams.

(ii) Placing and removing matrices.

(iii) Placing and removing wedges.

(iv) Applying cavity liners and bases.

(v) Placing and condensing amalgam restorations.

(vi) Carving and contouring amalgam restorations.

(vii) Placing and finishing composite resin restorations and/or sealant material or both.

(2) Each of the professional services identified in paragraph (1) shall be performed under the direct supervision of a dentist.

(b) *Prohibitions.* An expanded function dental assistant may not:

- (1) Examine, diagnose or plan treatment.
- (2) Cut hard or soft tissue.
- (3) Prescribe drugs, medicaments or lab authorizations.
- (4) Approve the final occlusion.
- (5) Perform pulp capping, pulpotomy and other endodontic procedures.
- (6) Perform final placement/cementation of fixed and removable prosthetic appliances.

(7) Administer local anesthesia, parenteral or inhalational sedation, nitrous oxide analgesia or general anesthesia.

(8) Take impressions other than for study models or diagnostic casts.

(c) *Supervision.* Expanded function dental assistants shall perform under the direct supervision of a dentist. Direct supervision means 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 by the expanded function dental assistant, and, before dismissal of the patient, evaluates the work performed by the expanded function dental assistant.

§ 33.209. Preparing, maintaining and retaining patient records.

(a) A dentist shall maintain a dental record for each patient which accurately, legibly and completely reflects the evaluation and treatment of the patient. A patient dental record shall be prepared and maintained regardless of whether treatment is actually rendered or whether a fee is charged. The record shall include, at a minimum, the following:

(1) The name and address of the patient and, if the patient is a minor, the name of the patient's parents or legal guardian.

(2) The date of each patient visit.

(3) A description of the patient's complaint, symptoms and diagnosis.

(4) A description of the treatment or service rendered at each visit and the identity of the person rendering it.

(5) Information as required in § 33.208 (relating to prescribing, administering and dispensing medications) and this section with regard to controlled substances or other medications prescribed, administered or dispensed.

(6) The date and type of radiographs taken and orthodontic models made, as well as the radiographs and models themselves. Notwithstanding this requirement, the dentist may release orthodontic models to the patient. This transaction shall be memorialized on a form which is signed by the patient. The signed form shall become part of the patient's record.

(7) Information with regard to the administration of local anesthesia, nitrous oxide/oxygen analgesia, conscious sedation or general anesthesia.

(8) The date of each entry into the record and the identity of the person providing the service if not the dentist of record—for example, dental hygienist, expanded function dental assistant, dental assistant, and the like.

(b) A patient dental record shall be retained by a dentist for a minimum of 5 years from the date of the last dental entry.

(c) Within 30 days of receipt of a written request from a patient or a patient's parents or legal guardian if the patient is a minor, an exact copy of the patient's written dental record, along with copies of radiographs and orthodontic models, if requested, shall be furnished to the patient or to the patient's new dentist. This service shall be provided either gratuitously or for a fee reflecting the cost of reproduction.

(d) The obligation to transfer records under subsection (c) exists irrespective of a patient's unpaid balance for dental services or for the cost of reproducing the record.

(e) Dentists shall provide for the disposition of patient records in the event of the dentist's withdrawal from practice, incapacity or death in a manner that will ensure their availability under subsection (c).

(f) The components of a patient dental record that are prepared by a dentist or an agent and retained by a health care facility regulated by the Department of Health or the Department of Public Welfare shall be considered a part of the patient dental record required to be maintained by a dentist, but shall otherwise be exempt from subsections (a)—(e). The components of a patient dental record shall contain information required by applicable Department of Health and Department of Public Welfare regulations—see, for example, 28 Pa. Code § 141.26 (relating to patient dental records)—and health care facility bylaws.

(g) This section does not restrict or limit the applicability of recordkeeping requirements in § 33.207 (relating to prescribing, administering and dispensing controlled substances) and § 33.208.

(h) A dentist's failure to comply with this section will be considered unprofessional conduct and will subject the noncomplying dentist to disciplinary action as authorized in section 4.1(a)(8) of the act (63 P. S. § 123.1(a)(8)).

§ 33.211. Unprofessional conduct.

(a) *Dentists.* Unprofessional conduct, as defined in section 4.1(a)(8) of the act (63 P. S. § 123.1(a)(8)), includes the following conduct by a dentist:

(1) Knowingly or negligently employing as a dentist, dental hygienist or expanded function dental assistant a person whose license or certificate is not current or has been suspended or revoked.

(2) Failing to carry out supervisory responsibility with regard to auxiliary personnel or dental residents/interns.

(3) Delegating to a person duties that the dentist knows, or has reason to know, the person is not competent to perform or not authorized to perform.

(4) Withdrawing dental services after a dentist-patient relationship has been established so that the patient is unable to obtain necessary dental care in a timely manner.

(5) Physically, sexually or verbally abusing a patient.

(6) Unnecessarily exposing a patient to ionizing radiation.

(7) Failing to follow current infection-control recommendations issued by the Federal Centers for Disease Control or to ensure that auxiliary personnel and other supervisees follow these Federal guidelines.

(8) Failing to provide necessary dental care to a patient in a timely manner or to apprise the patient of the need for the care.

(9) Failing to make available to a patient, within 30 days of a request, information sufficient to enable the patient to complete an insurance form.

(b) *Dental hygienists.* Unprofessional conduct, as defined in section 4.1(a)(8) of the act includes the following conduct by a dental hygienist:

(1) Practicing as a dental hygienist without the supervision of a dentist.

(2) Performing a service that the dental hygienist knows, or has reason to know, the hygienist is not competent to perform or not authorized to perform.

(3) Physically, sexually or verbally abusing a patient.

(4) Failing to follow current infection-control recommendations issued by the Federal Centers for Disease Control.

(5) Unnecessarily exposing a patient to ionizing radiation.

(c) *Expanded function dental assistants.* Unprofessional conduct, as defined in section 4.1(a)(8) of the act includes the following conduct by an expanded function dental assistant:

(1) Practicing as an expanded function dental assistant without the direct supervision of a dentist.

(2) Performing a service that the expanded function dental assistant is not competent or not authorized to perform.

(3) Physically, sexually or verbally abusing a patient.

(4) Failing to follow current infection-control recommendations issued by the Federal Centers for Disease Control.

(5) Providing ionizing radiation in violation of § 33.302 (relating to auxiliary personnel performing radiologic procedures).

§ 33.212. Misleading, deceptive, untrue or fraudulent representations.

As used in section 4.1(a)(2) of the act (63 P. S. § 123.1(a)(2)), the phrase "misleading, deceptive, untrue or fraudulent representations" includes the following conduct by dentists, dental hygienists and expanded function dental assistants:

(1) Misrepresenting or concealing a material fact in obtaining, renewing or seeking reinstatement of a license or certificate.

(2) Misrepresenting or concealing a material fact in obtaining payment for dental services.

(3) Writing a prescription for a controlled substance or other medication in the name of a person other than for whom the controlled substance or other medication is intended under §§ 33.207 and 33.208 (relating to prescribing, administering and dispensing controlled substances; and prescribing, administering and dispensing medications).

(4) Falsifying a patient's record regarding treatment or the issuance of a controlled substance or other medication.

[Pa.B. Doc. No. 00-786. Filed for public inspection May 12, 2000, 9:00 a.m.]

Title 58—RECREATION

GAME COMMISSION

[58 PA. CODE CH. 139]

Seasons and Bag Limits

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its April 4, 2000, meeting, adopted the following changes:

Amend § 139.2 (relating to definitions) by adding "field possession limit for deer," and § 139.4 (relating to seasons and bag limits for the license year) to provide dates for the 2000-2001 hunting license year. The amendments were proposed at 30 Pa.B. 1257 (March 4, 2000). These amendments were adopted under the authority of 34 Pa.C.S. §§ 101—2965 (relating to Game and Wildlife Code) (code).

Amendment of § 139.2

1. Introduction

To more effectively manage the wildlife resources of this Commonwealth, the Commission at its January 11, 2000, meeting proposed, and at its April 4, 2000, meeting finally adopted, changes to § 139.2 by adding the definition of "field possession limit—deer." The use of this term in the deer bag limits in § 139.4 will add a requirement to secure a harvested deer before seeking another on the same day. This change was adopted under sections 322(c)(1) and 2102(b)(1) of the code (relating to powers and duties of commission; and regulations).

2. Purpose and Authority

In the seasons and bag limits for 2000-2001, the Commission has adopted a provision allowing the taking of an antlerless deer in addition to an antlered deer or the taking of more than one antlerless deer in 1 day. To allow a more equitable harvest among competing hunters, however, the Commission decided to require that the carcass of a harvested deer shall first be secured at a motor vehicle, hunting camp, residence or deer processing facility before another can be taken. On final adoption, the Commission decided to also allow transfer of a deer to a pick-up point.

Section 322(c) of the code specifically empowers the Commission to "... fix seasons ... and daily, season and possession limits for any species of game or wildlife." Section 2102(b) of the code mandates that the Commission promulgate regulations relating to seasons and bag limits.

3. Regulatory Requirements

The change requires deer hunters to secure a harvested deer before seeking to take another.

4. Persons Affected

Properly licensed deer hunters possessing an antlerless deer license who wish to take more than one deer in 1 day will be affected by the change.

5. Comment and Response Summary

No comments were received specifically addressing the adopted change.

6. Cost and Paperwork Requirements

The change will not result in any additional cost or paperwork.

7. Effective Date

The change will be effective on final publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

Amendment § 139.4

1. Introduction

To effectively manage the wildlife resources of this Commonwealth, the Commission, at its January 11, 2000, meeting proposed, and at its April 4, 2000, meeting finally adopted, changes to § 139.4 to provide for seasons and bag limits for the 2000-2001 license year. These seasons and bag limits were adopted under sections 322(c)(1) and 2102(b)(1) of the code. Notable changes for the 2000-2001 year include a Statewide antlerless season that begins on a Saturday, the last day of the rifle buck season; an early Statewide muzzleloader antlerless deer season that also starts on a Saturday; and a proposed bobcat hunting and trapping season with the required permit.

2. Purpose and Authority

The Commission is required to set hunting and furtaking seasons and bag limits on an annual basis. Section 322 of the code specifically empowers the Commission to "... fix seasons ... and daily, season and possession limits for any species of game or wildlife." Section 2102(b) of the code mandates that the Commission promulgate regulations relating to seasons and bag limits.

Changes that have been adopted for the 2000-2001 season are primarily intended to increase the harvest of antlerless deer and to maximize recreational opportunities where game and wildlife populations allow. Major changes are as follows:

1. The start of the Statewide 3-day antlerless deer season will be moved to the last Saturday of the rifle buck season. A provision has also been built into the regulation to allow a 1-day extension of the antlerless season, if it is required.

2. An additional early Statewide muzzleloader antlerless deer season will be held.

3. Junior and senior license holders and holders of disabled person permits (to use a vehicle) will be allowed to shoot an antlerless deer during antlered deer season for each antlerless deer license they possess.

4. Hunters will be limited to one antlered deer per year, but may take one antlerless for each antlerless deer license held. Hunters shall, however, secure any deer they harvest before they can harvest another deer on the same day.

5. A bobcat hunting and trapping season will be established but a permit to harvest a bobcat will be required.

6. An additional week will be added to the fall turkey season in Turkey Management Area 7-A.

7. For final adoption, the Commission moved the start of the fall turkey season in Turkey Management Area No. 9-B from October 30 to October 28 and added a week to the mink and muskrat trapping season.

3. Regulatory Requirements

These seasons and bag limits establish when and where it is lawful to hunt and trap various game species and place limits on the numbers that can be legally taken.

4. Persons Affected

Persons wishing to hunt and trap in this Commonwealth will be affected by these seasons and bag limits.

5. Comment and Response Summary

a. The Commission received 408 comments on form letters from the agricultural community endorsing the proposed changes in the deer seasons. The Commission received 621 comments on the proposed 3-day muzzleloader season for antlerless deer 47 of which were for and 574 of which were opposed, but 69% of those in opposition were signatures on a petition. Two hundred and fifteen comments favored the early muzzleloader season but wanted the harvesting of an antlered deer during that season to be lawful. Fifty-three comments expressed support for an early muzzleloader season but wanted it not to be concurrent with the archery season.

The Commission received 468 comments with regard to starting the antlerless deer season on the last day of the antlerless deer season, 39 of which were in favor and 429 of which were opposed. Ninety percent of the opposition comments were signatures on a petition which expressed concerns about safety, despite the fluorescent orange requirement, with either sex being legal. The Commission received 69 comments on the concurrent antlered and antlerless seasons for junior, senior and disabled hunters, 22 of which were in favor and 47 were opposed. Finally, two comments opposed multiple daily harvests of deer. Given this interesting mix of comments, the Commission decided to leave the deer seasons as proposed.

b. The Commission received a total of 6,271 comments with regard to the proposed bobcat season, seven of which were in favor and 6,264 were opposed. Over 70% of the opposition comments were in the form of signatures on petitions. It was quite clear that the opposition was based on general opposition to hunting and trapping of any species.

Section 103(b) of the code (relating to ownership, jurisdiction and control of game and wildlife), mandates that: "the Commission shall utilize hunting and trapping as methods of effecting necessary management of game, furbearer and wildlife populations." The Commission closed the bobcat season in 1970 because of concerns about bobcat populations. Commission biologists have been studying bobcat populations for over 10 years and have concluded that populations are adequate to support very limited recreational harvests of bobcats. The Commission therefore adopted the seasons that had been proposed.

c. The Commission received 95 comments with regard to the proposed fall turkey hunting season in Turkey Management Area 9A, nine of which were in favor and 86 of which were opposed. Concerns about turkey populations in that area are prompted by the fact that the habitat is fragmented, which means populations are abundant in some areas and not in others. Overall, the Commission determined that the population was adequate to keep the season as proposed.

d. The Commission received three comments in favor of an early pheasant season opener. The season was adopted as proposed.

6. Cost and Paperwork Requirements

The adopted new seasons and bag limits will not result in additional costs either to the Commission or to hunters and furtakers.

7. Effective Dates

The amendment is effective July 1, 2000, to June 30, 2001.

Contact Person

For further information on the adopted changes, the contact person is William L. Hutson, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Game Commission finds that:

(1) Public notice of intention to adopt the administrative amendments adopted 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) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 139, are amended by amending §§ 139.2 and 139.4 to read as set forth in Annex A.

(B) The Executive Director of the Commission shall submit this order and Annex A, and deposit them with the Legislative Reference Bureau as required by law.

(C) This order amending §§ 139.2 and 139.4, shall become effective upon final publication in the *Pennsylvania Bulletin*.

VERNON R. ROSS,
Executive Director

Fiscal Note: Fiscal Note 48-116 remains valid for the final adoption of the subject regulations.

ANNEX A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 139. SEASONS AND BAG LIMITS

§ 139.2. Definitions.

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

Antlered deer—A deer having two or more points to one antler, or with one antler 3 inches or more in length.

Antlerless deer—A deer without antlers, or a deer with antlers both of which are less than 3 inches in length.

Closed season—Periods of the calendar year and hours during which it is unlawful to take game or wildlife.

Daily limit—The maximum number permitted to be taken by one person in 1 day during the open season.

Early small game hunting season—A designated period when only squirrels and grouse may be hunted and taken.

Field possession limit—deer—When multiple harvests of deer per day are authorized, only one deer at a time may be harvested and possessed in the field or forest. Before harvesting additional deer, the deer previously harvested shall be transported and secured at the hunt-

er's motor vehicle, permanent or temporary camp, residence, deer processing facility or pick-up point.

Hunting hours—The period each day of the open season, Sundays excepted, when game and wildlife may be lawfully taken.

Regular small game hunting season—The designated

period of time when resident small game species may be hunted and taken.

Season limit—The maximum number of wildlife which may be taken during a designated open season or license year.

§ 139.4. Seasons and bag limits for the license year.

2000-2001 OPEN HUNTING AND FURTAKING SEASONS, DAILY LIMIT, FIELD POSSESSION LIMIT AND SEASON LIMIT OPEN SEASON INCLUDES FIRST AND LAST DATES LISTED

Species	First Day	Last Day	Daily Limit	Field Possession Limit After First Day
Squirrels—(Combined species). Eligible junior hunters only, with or without the required license, when properly accompanied as required by law	Oct. 7	Oct. 9	6	12
Squirrels—(Combined species)	Oct. 14 Dec. 26	and Nov. 25 Feb. 10, 2001	6	12
Ruffed Grouse—(Statewide)	Oct. 14 Dec. 26	and Nov. 25 Jan. 27, 2001	2	4
Ruffed Grouse—There is no open season for taking ruffed grouse in that portion of State Game Lands No. 176 in Centre County which is posted "RESEARCH AREA—NO GROUSE HUNTING"				
Rabbits, Cottontail	Oct. 28 Dec. 26	and Nov. 25 Feb. 10, 2001	4	8
Ringneck Pheasant—Male only	Oct. 28	Nov. 25	2	4
Ringneck Pheasant—Male or female combined when hunting in designated hen shooting area only	Oct. 28 Dec. 26	and Nov. 25 Feb. 10, 2001	2	4
Bobwhite Quail—The hunting and taking of bobwhite quail is permitted in all counties except Adams, Chester, Cumberland, Dauphin, Delaware, Franklin, Fulton, Juniata, Lancaster, Lebanon, Perry, Snyder and York where the season is closed.	Oct. 28	Nov. 25	4	8
Hares (Snowshoe Rabbits) or Varying Hares	Dec. 26	Dec. 30	2	4
Woodchucks (Groundhog)		No closed season except during the antlered and antlerless deer season and until 12 noon daily during the spring gobbler turkey season		Unlimited
Species	First Day	Last Day	Daily Limit	Season Limit
Turkey—Male or Female			1	1
Management Areas #1-A, 1-B & 2	Oct. 28	Nov. 11		
Management Area #7-B	Oct. 28	Nov. 4		
Management Areas #3, 4, 5, 6, 7-A & 8	Oct. 28	Nov. 18		
Management Area #9-A	Oct. 30	Nov. 1		
Management Area #9-B	Oct. 28	Nov. 4		
Turkey (Spring Gobbler) Statewide Bearded Bird only	April 28, 2001	May 26, 2001	1	1

MIGRATORY GAME BIRDS

Except as further restricted by this chapter, the seasons, bag limits, hunting hours and hunting regulations for migratory game birds shall conform to regulations adopted by the United States Secretary of the Interior under authority of the Migratory Bird Treaty Act (16 U.S.C.A. §§ 703—711) as published in the *Federal Register* on or about August 27 and September 28 of each year. Exceptions:

- (a) Hunting hours in § 141.4 (relating to hunting hours).

(b) Nontoxic shot as approved by the Director of the United States Fish and Wildlife Service is required for use Statewide in hunting and taking of migratory waterfowl.

(c) Subject to approval by the United States Fish and Wildlife Service, an early and late season for Canada geese will be held as defined in § 141.25.

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Field Possession Limit After First Day</i>
Crows (Hunting permitted on Friday, Saturday and Sunday only)	July 1 Dec. 29	and Nov. 26 April 1, 2001		Unlimited
Starlings and English Sparrows		No closed season except during the antlered and antlerless deer seasons and until 12 noon daily during the spring gobbler turkey season		Unlimited
		FALCONRY		
Squirrels—(Combined species)	Sep. 1	Mar. 31, 2001	6	12
Quail	Sep. 1	Mar. 31, 2001	4	8
Ruffed Grouse	Sep. 1	Mar. 31, 2001	2	4
Cottontail Rabbits	Sep. 1	Mar. 31, 2001	4	8
Snowshoe or Varying Hare	Sep. 1	Mar. 31, 2001	2	4
Ringneck Pheasant—Male and Female—(Combined)	Sep. 1	Mar. 31, 2001	2	4

Migratory Game Birds—Seasons and bag limits shall be in accordance with Federal regulations.

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Deer Field Possession Limit</i>
DEER				
Deer (Archery), Antlered—(Statewide) with 2 or more points to an antler or a spike 3 or more inches long	Sept. 30 Oct. 25 Dec. 26	and and Jan. 13, 2001	Oct. 20 Nov. 11 Jan. 13, 2001	One antlered.**
Deer (Archery), Antlerless—(Statewide)	Sept. 30 Dec. 26	and Jan. 13, 2001	Nov. 11 Dec. 9	An antlerless deer with each required antlerless license.
Deer, Regular Antlered—(Statewide) with 2 or more points to an antler or a spike 3 or more inches long	Nov. 27		Dec. 9	One antlered.**
Deer, Antlerless—(Statewide) Junior and Senior License Holders * * * * and Disabled Person Permit (to use a vehicle) Holders Only, with required antlerless license	Nov. 27		Dec. 9	An antlerless deer with each required antlerless license.
Deer, Regular Antlerless—(Statewide)	Dec. 9		Dec. 12*	An antlerless deer with each required antlerless license.
Deer, Antlerless (Presque Isle State Park, Erie County)	Dec. 6		Dec. 8	One antlered.** An antlerless deer with each required antlerless license.
Deer, Antlerless only—(Statewide) (Flintlock Muzzleloading firearms only)	Oct. 21		Oct. 24	An antlerless deer with each required antlerless license.
Deer, Antlered or Antlerless—(Statewide) (Flintlock Muzzleloading firearms only)	Dec. 26		Jan. 13, 2001	One antlered ** or one antlerless-plus an additional antlerless deer with each required antlerless license.
Deer, Antlerless Only on those lands designated by the Executive Director as "Deer Damage Areas" and posted with approved signs	Nov. 27		Dec. 9	An antlerless deer with each required antlerless license.

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Deer Field Possession Limit</i>
Deer, Antlerless (Letterkenny Army Depot, Franklin County and New Cumberland Army Depot, York County and Fort Ritchie, Raven Rock Site, Adams County)		Hunting is permitted on days established by the United States Department of the Army		An antlerless deer with each required antlerless license.

SPECIAL REGULATIONS AREAS
SOUTHEASTERN PENNSYLVANIA AND ALLEGHENY COUNTY

Deer, Antlered with 2 or more points to an antler or a spike 3 or more inches long	Nov. 27	Dec. 9	One antlered deer.**
Deer, Antlerless	Nov. 27 and Dec. 26	Dec. 12 Jan. 13, 2001	An antlerless deer with each required antlerless license.

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Season Limit</i>
BEAR				

Bear, any age	Nov. 20	Nov. 22	1	1
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FURTAKING—TRAPPING

Minks and Muskrats—(Statewide)	Nov. 18	Jan. 14, 2001	Unlimited
Beaver—(Statewide)	Dec. 26	Mar. 31, 2001	
Zones 1, 2 & 3 (except Bradford, McKean, Potter, Susquehanna, Tioga and Wayne Counties)			10 20
Bradford, McKean, Potter, Susquehanna, Tioga and Wayne Counties			10 40
Zone 4 & 5			10 10
Zone 6			6 6
Coyotes, Foxes, Opossums, Raccoons, Skunks, Weasels—Statewide	Oct. 15	Feb. 24, 2001	Unlimited
Bobcat (Zones 2 & 3)	Oct. 15	Feb. 24, 2001	1 1***

FURTAKING—HUNTING

Coyotes—(Statewide)	No closed season. Coyotes may be taken during the regular antlered and antlerless deer seasons or extensions only by hunters who have a valid deer tag or during the spring gobbler turkey season by hunters who have a valid spring turkey tag and meet fluorescent orange and shot size requirements.	Unlimited
Opossums, Skunks, Weasels—Statewide	No closed season. These species may not be hunted prior to 12 noon during the spring gobbler turkey season.	
Raccoons and Foxes—(Statewide)	Oct. 14 Feb. 24, 2001	Unlimited
Bobcat (Zones 2 & 3)	Oct. 14 Feb. 24, 2001	1 1***

No open seasons on other wild birds or wild mammals.

* The Executive Director is hereby authorized to extend, by order, in accordance with § 139.3, this season by 1 day either Statewide or on a designated area basis when it appears, after polling the Commissioners and regional offices, that there has been an underharvest of antlerless deer. Public notice of the extension shall be given by extensive publication.

** Only one antlered deer (buck) may be taken during the hunting license year.

***Bobcat may only be taken by furtakers in possession of a Bobcat Hunting-Trapping Permit.

****Includes persons who have reached or will reach their 65th birthday in the year of the application for the license and hold a valid adult license or qualify for license and fee exemptions under section 2706 of the act (relating to resident license and fee exemptions).

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