

PROPOSED RULEMAKING

STATE BOARD OF DENTISTRY

[49 PA. CODE CH. 33] Volunteer License

The State Board of Dentistry (Board) proposes to amend Chapter 33, by adding § 33.110 (relating to volunteer license), to read as set forth in Annex A.

A. Effective Date

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

B. Statutory Authority

The Board is required to promulgate regulations governing the volunteer license category under section 5 of the Volunteer Health Services Act (act) (35 P. S. § 449.45) which became effective February 3, 1997. Section 5 of the act mandates regulations governing: (1) qualifications for placing an active license on volunteer status; (2) criteria under which a retired licensee who has allowed a license to become inactive may obtain a volunteer license; and (3) procedures under which a volunteer license holder may return to active status. The Board is authorized to adopt regulations necessary to the administration of its enabling statute under section 3(o) of The Dental Law (63 P. S. § 122(o)).

C. Background and Purpose

The purpose of the proposal is to implement the act. The act is intended to increase the availability of primary health services by establishing a procedure for retired dentists and dental hygienists and other health care practitioners to provide professional services as volunteers in approved clinics. Primary health services are defined in the act as including such services as regular checkups, immunizations, school physicals, health education, prenatal and obstetrical care, early periodic screening and diagnostic testing and health education.

An approved clinic is defined in the act as an organized community-based clinic which offers services to: (1) individuals and families who cannot pay for their care; (2) Medical Assistance clients; or (3) residents of medically underserved or health professionals shortage areas. Examples of these clinics include Federal or State qualified and approved health centers or nonprofit community-based clinics.

The act permits persons who have been issued a license by the State Boards of Medicine, Osteopathic Medicine, Dentistry, Podiatry, Nursing, Optometry and Chiropractic to practice a component of the healing arts to apply for volunteer status. A volunteer license will be issued to a retired individual who documents to the satisfaction of the Board that he will practice without remuneration in approved clinics.

Section 6 of the act (35 P. S. § 449.46) exempts holders of a volunteer license from biennial renewal fees mandated by § 33.105 (relating to biennial renewal of licenses). However, volunteer licenses will be subject to biennial renewal conditioned upon completion of any continuing education which the Board requires for biennial renewal generally.

D. Description of Amendments

The volunteer license category would be added to Subchapter B (relating to licensure of dentists, dental hygienists and expanded function dental assistants). New § 33.110 would provide the statutory references to the act, as well as the statutory basis for the volunteer license category. The Board has interpreted the act as permitting a volunteer license holder to practice exclusively in an organized community-based clinic without remuneration. The Board has interpreted the volunteer license category as being available to persons licensed or certified by the Board as dentists, dental hygienists or expanded function dental assistants.

The criteria for obtaining a volunteer license are set forth in subsection (b). Both active licensees and persons who have retired with inactive licenses would be able to receive a volunteer license to practice as a volunteer without remuneration in an approved clinic. Under section 3 of the act (35 P. S. § 449.43), an active licensee must possess a "current, active, unrestricted license" to qualify for a volunteer license. Section 4 of the act (35 P. S. § 449.44) permits a licensee to apply who retired with a license in "good standing." The Board has interpreted this qualification to mean a license which at the time of the application is not subject to an outstanding disciplinary action such as revocation or suspension. Accordingly, the Board uses the term "unrestricted license" as a qualification for the issuance of a volunteer license in subsection (b)(2). The act's definition of an "approved clinic" is included in subsection (b)(3).

Procedures to apply for a volunteer license are set forth at subsection (c). Applicants would be required to provide basic license information. In addition, the applicant would be required to execute a verification that the applicant intends to practice exclusively within the scope of a volunteer license. Also, to provide proper enforcement of the limitation of the act, applicants will be required to file with the Board a letter of agreement from the clinic that the applicant will work in the clinic. Subsection (d) would make this notification a continuing obligation during the biennial period of the license.

Biennial renewal of the volunteer license would be governed under subsection (e). Subsection (e)(1) and (2) would require the licensee to meet the continuing education requirements for biennial renewal, but exempt the volunteer license from a biennial renewal fee.

Subsection (f) provides for return to active, remunerative practice by a volunteer by applying to the Board and meeting the general reactivation requirements of § 33.106 (relating to reactivation of licenses).

Subsection (g) notifies the volunteer license holder that he continues to be subject to the disciplinary provisions of The Dental Law. In addition, subsection (g) proposes that a violation of the act or the regulations adopted thereunder may constitute separate grounds for discipline.

Subsection (h) would permit volunteer dentists to apply for permits to administer general anesthesia, conscious sedation or nitrous oxide. The Board believes that retired dentists who have not used anesthetic modalities for a number of years should complete some level of education and supervised clinical experience before reactivating a permit. The Board believes that anesthesia and conscious sedation modalities represent the greatest risk to the patient. An unrestricted permit or a restricted permit I is

required to administer these modalities in a facility not subject to State or Federal facility regulations. Therefore, the Board proposes to require volunteer applicants who apply within 2 years of the date of expiration of an unrestricted permit or restricted permit I to complete a course in the anesthetic modality under subsection (h)(2). Similarly, under subsection (h)(3), volunteer applicants who apply within 5 years of the date of expiration of a restricted permit II to administer nitrous oxide/oxygen would be required to complete a refresher course. All other applicants for a restricted or unrestricted permit would be required to meet the education requirements of § 33.335(a)(1), § 33.336(a)(1) or § 33.337(a)(1) (relating to requirements for unrestricted permit; requirements for restricted permit I; and requirements for restricted permit II), regardless of whether they previously held a permit.

Subsection (i) would cross reference the supervision requirements of The Dental Law and the regulations for volunteer dental hygienists or expanded function dental assistants.

E. Compliance with Executive Order 1996-1

In accordance with the requirements of Executive Order 1996-1, in drafting and promulgating the regulation, the Board solicited input and suggestions from the regulated community by providing drafts to organizations and entities which represent the professionals and to non-profit organizations who represent qualified providers of volunteer services.

F. Fiscal Impact and Paperwork Requirements

1. Commonwealth—The regulation will create a new license for which no fee will be charged. As such, the expenses of the program will be borne as a part of the Board's overall operating expenses which are financed through biennial renewals of active licensees and may have a fiscal impact on overall Board costs. The net effect, however, is estimated to be minimal owing to the relatively small number of licensees who will seek a volunteer license. Additional paperwork will be incurred by the Board and the private sector to generate and file application forms.

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

3. Private sector—The regulation will have a positive fiscal impact on individual licensees who restrict their professional activities to volunteer work since these individuals are exempt from maintaining professional liability insurance required under the Health Care Services Malpractice Act (40 P. S. §§ 1301.101—1301.1006) and the biennial renewal fee for licensure. The regulation should impose no additional fiscal or paperwork requirements.

G. Sunset Date

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 8, 1997, the Board submitted a copy of this proposed regulation to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. In addition to submitting the regulation, the Board has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Board in compliance with Executive

Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed regulation, it will notify the Board within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulation, by the Board, the General Assembly and the Governor of objections raised.

I. Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed regulation to Judith Pachter Schuler, Board Counsel, State Board of Dentistry, P. O. Box 2649, 116 Pine Street, Harrisburg, PA 17105-2649, within 30 days of publication of this proposed rulemaking. Reference No. 16A-468 (Volunteer License), when submitting comments.

EDWIN F. WEAVER, III, D.D.S.,
Chairperson

Fiscal Note: 16A-468. No fiscal impact; (8) recommends adoption.

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 EXPANDED FUNCTION DENTAL ASSISTANTS

§ 33.110. Volunteer license.

(a) *Purpose and scope.* The following subsections implement the Volunteer Health Services Act (35 P. S. §§ 449.41—449.50) and provide for the issuance of a volunteer license to a qualified individual who retires from active practice and seeks to provide professional services as a volunteer. A volunteer license authorizes the holder to practice only in an organized community-based clinic and without remuneration.

(b) *License.* A volunteer license may be issued to a licensee or certificateholder of the Board who meets one of the following conditions:

(1) Holds a currently renewed, active, unrestricted license, registration or certificate in this Commonwealth and retires from active practice at the time he applies for a volunteer license.

(2) Retires from the active practice of dentistry, or as a dental hygienist or as an expanded function dental assistant in this Commonwealth in possession of an unrestricted license, registration or certificate which was allowed to lapse by not renewing it. A retired licensee, registrant or certificateholder shall meet any requirements of the act or the regulations pertaining to continued education or continued competency to be eligible for renewal. As used in this section, an "unrestricted license, registration or certification" is one which is not restricted or limited by order of the Board under its disciplinary power.

(3) Documents to the satisfaction of the Board that he will practice without personal remuneration in approved

clinics. As used in this section, an "approved clinic" is an organized community-based clinic offering primary health care services to individuals and families who cannot pay for their care, to Medical Assistance clients, or to residents of medically underserved areas or health professionals shortage areas. The term may include a State health center, nonprofit community-based clinic or Federally qualified health center, as designated by Federal rulemaking or as approved by the Department of Health or the Department of Public Welfare.

(c) *Applications.* An applicant for a volunteer license shall complete an application obtained from the Board. In addition to providing information requested by the Board, the applicant shall provide:

(1) An executed verification on forms provided by the Board certifying that the applicant intends to practice exclusively:

(i) Without personal remuneration for professional services.

(ii) In an organized community-based clinic offering primary health care services to one or more of the following:

(A) Individuals and families who cannot pay for their care.

(B) Medical Assistance clients.

(C) Residents of medically underserved areas or health professional shortage areas.

(2) A letter signed by the director or chief operating officer of the community-based clinic that the applicant has been authorized to provide volunteer services in the named clinic by the governing body or responsible officer of the clinic.

(d) *Validity of license.* A volunteer license shall be valid for the biennial period for which it is issued, subject to biennial renewal. During each biennial renewal period, the volunteer license holder shall notify the Board of any change in clinic or volunteer status within 30 days of the date of the change, or at the time of renewal, whichever occurs first.

(e) *Biennial renewal.* A volunteer license shall be renewed biennially on forms provided by the Board.

(1) As a condition of biennial renewal, the applicant shall satisfy the same continuing education requirements as the holder of an active, unrestricted license.

(2) The applicant shall be exempt from payment of the biennial renewal fee in § 33.3 (relating to fees).

(f) *Return to active practice.* A volunteer license holder who desires to return to active practice shall notify the Board and apply for biennial registration on forms provided by the Board.

(g) *Disciplinary provisions.* A volunteer license holder shall be subject to the disciplinary provisions of the act and this chapter. Failure of the licensee to comply with the Volunteer Health Services Act or this section may also constitute grounds for disciplinary action.

(h) *Permits to administer general anesthesia, conscious sedation or nitrous oxide/oxygen analgesia.*

(1) A dentist who applies for a volunteer license under subsection (b) who holds a current permit to administer anesthetic modalities may also apply for reissuance of an unrestricted or restricted permit of the type issued to the dentist as an active licensee under § 33.333 (relating to types of permits).

(2) A retired dentist who applies under subsection (b)(1) and (2) for a volunteer license who, within 2 years of the date of application, held an unrestricted permit or a restricted permit I, may apply for reissuance of the permit, but shall be required to complete a refresher course in advanced training in anesthesiology and related subjects, or in conscious sedation (whichever is applicable) as approved by the Board, that conforms to the American Dental Association guidelines of either § 33.335(a)(1) (relating to requirements for unrestricted permit) or § 33.336(a)(1) (relating to requirements for restricted permit I).

(3) A retired dentist who applies under subsection (b)(1) and (2) and for a volunteer license who, within 5 years of the date of application, held a restricted permit II may also apply for reissuance of the permit, but shall be required to complete a refresher course in nitrous oxide/oxygen approved by the Board that conforms to § 33.337(a)(1) (relating to requirements for restricted permit II).

(4) A dentist who applies for a volunteer license who does not qualify for a permit under paragraphs (1)—(3) and who wishes to administer general anesthesia, conscious sedation or nitrous oxide/oxygen analgesia under § 33.332(a) (relating to requirement of permit to administer general anesthesia, conscious sedation or nitrous oxide/oxygen analgesia) shall satisfy the education requirements of § 33.335(a)(1), § 33.336(a)(1) or § 33.337(a)(1).

(5) Volunteer license holders will not be subject to any fee for the issuance, reissuance or renewal of a permit under this subsection.

(i) *Supervision.* Volunteer dental hygienists shall meet the supervision requirements of § 33.205(c)(1) (relating to practice as a dental hygienist). Volunteer expanded function dental assistants shall meet the supervision requirements of section 2 of the act (63 P. S. § 121).

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