



**INDEPENDENT REGULATORY REVIEW COMMISSION
COMMONWEALTH OF PENNSYLVANIA
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September 10, 1998

**Norbert O. Gannon, D.D.S., Chairman
State Board of Dentistry
116 Pine Street
Harrisburg, PA 17105**

**Re: IRRC Regulation #16A-465 (#1960)
State Board of Dentistry
Expanded Function Dental Assistants**

Dear Chairman Gannon:

Enclosed are our comments on your proposed regulation #16A-465. These comments outline areas of concern raised by the Commission. The comments also offer suggestions for your consideration when you prepare the final version of this regulation. These comments should not, however, be viewed as a formal approval or disapproval of the proposed version of this regulation.

If you or your staff have any questions on these comments or desire to meet to discuss them in greater detail, please contact Chuck Tyrrell at 772-3455. He has been assigned to review this regulation.

Sincerely,

A handwritten signature in black ink that reads "Robert E. Nyce".

**Robert E. Nyce
Executive Director**

REN:kcg

Enclosure

**cc: Judith Pachter Schulder
Joyce McKeever
Kim Pizzingrilli
Dorothy Childress
Office of General Counsel
Office of Attorney General
Pete Tartline**

COMMENTS OF THE INDEPENDENT REGULATORY REVIEW COMMISSION

ON

STATE BOARD OF DENTISTRY REGULATION NO. 16A-465

EXPANDED FUNCTION DENTAL ASSISTANTS

SEPTEMBER 10, 1998

We have reviewed this proposed regulation from the State Board of Dentistry (Board) and submit for your consideration the following objections and recommendations. Subsections 5.1(h) and 5.1(i) of the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) specify the criteria the Commission must employ to determine whether a regulation is in the public interest. In applying these criteria, our Comments address issues that relate to legislative intent, reasonableness and clarity of the regulation. We recommend that these Comments be carefully considered as you prepare the final-form regulation.

1. Section 33.102. Professional education. – Legislative Intent and Clarity

Educational Requirements

This section indicates educational requirements necessary for an individual to take the certification exam. The regulation does not include the exemption from the educational requirements contained in the 1994 revisions to the Dental Law. Specifically, the Dental Law provides the following:

A person who on the effective date of this clause has been practicing as an expanded function dental assistant for at least five consecutive years prior to the effective date of this amendatory act and who presents a validation from the person's current dentist employer may qualify for certification without satisfying the educational requirements set forth in subclause (i) if the person passes the examination required by subclause (ii) (63 P.S. Section 122(d.1)(2)).

In order to be consistent with the legislative intent of the Dental Law, the Board should include this provision in the rulemaking.

Board Approval of Educational Standards

Subsection (c)(iii) outlines the educational requirement to be met by completing a program in expanded function dental assistance of at least 200 hours of clinical and didactic instruction. The regulation indicates that the program must either be accredited by the Commission on Dental Accreditation of the American Dental Association 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.” As drafted it is not clear whose standards the Board will be approving. It is our understanding the Board will be approving the accrediting agency’s educational standards.

Therefore, we recommend that the Board revise this section as follows:

Completion of a certification program in expanded function dental assistance of at least 200 hours of clinical and didactic instruction from dental assisting program that is either:

(a) Accredited by the Commission on Dental Accreditation of the American Dental Association, or

(b) Accredited by an accrediting agency approved by the United States Department of Education Council on Postsecondary Accreditation and whose educational standards are approved by the Board.

Clarity

Finally, there is an incorrect site in Subsection (c)(1). The Board has incorrectly cited 63 P.S. Section 120(d.1). The correct reference is 63 P.S. Section 122(d.1).

2. Section 33.103. Examination. – Clarity

Subsection (c) provides that candidates for certification must pass a Board acceptable examination comprised of both a written and clinical component. Subsection (d) indicates that “The Board will recognize successful completion of the NERB Dental or Dental Hygiene Examination or the expanded function dental assistant clinical examination for up to 5 years from the date the scores are reported to the Board.” To avoid the potential confusion that there is a NERB examination for EFDAs, we recommend the Board revise this provision as follows:

For Dentists and Dental Hygienists, the Board will recognize successful completion of the NERB Dental or Dental Hygiene Examination for up to five years from the date the scores are reported to the Board. For EFDAs, the Board will accept scores from the expanded function dental assistant clinical examination for up to five years from the date the scores are reported to the Board.

The Board also should amend the second sentence in this section by inserting “or certification” after “licensure” to recognize that EFDAs are not licensed, but instead receive certification.

3. Section 33.114. First certification examination. – Clarity

Subsection (b) provides that temporary permit holders who fail to register for the first examination shall immediately cease practicing. We question whether the EFDA should cease practicing on the date after the exam registration is due, the date of the examination, or some other date. The Board needs to amend the regulation to indicate the specific date the EFDA

should cease practicing. Furthermore, we question whether the Board should issue a notice to the temporary permit holder indicating that the individual may no longer practice.

Similarly, Subsection (d) provides that a temporary permit holder who registers for the examination, but fails to take it, shall be deemed to have failed the exam and must forfeit their permit. Because of the ten-day period where a permit holder may apply for a waiver in Subsection (e), the Board needs to clearly indicate when the temporary permit holder should cease practicing. Also, we question whether the Board should issue a notice in this instance indicating that the permit holder may no longer practice as an EFDA.

The regulation should also be amended to clarify that when a temporary permit holder fails the first exam, the individual may retake future examinations.

Finally, there is an incorrect citation in Section 33.114(d). This section should reference Subsection (e), not (d).

4. Section 33.205(a). Practice as an expanded function dental assistant. – Reasonableness and Legislative Intent

Subsection (a)(vii) provides that an EFDA may place and finish resin restorations. The Pennsylvania Dental Hygienists Association recommends amending this subsection to also include the placing and finishing of sealant material as a restorative procedure. It is our understanding that this procedure is currently being performed by EFDAs. We recommend that the Board consider the need for the regulation to reflect the current practice of EFDAs placing sealants as a restorative procedure.

Under Subsection (b), relating to prohibitions, the Board has not included the statutory prohibition against an EFDA taking impressions other than for study models or diagnostics. To be consistent with the Dental Law, we recommend the Board include this prohibition in the final regulation.



INDEPENDENT REGULATORY REVIEW COMMISSION

To: Joyce McKeever
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Licensing Boards and Commissions
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From: Kristine M. Shomper
Deputy Director for Administration
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Commission
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Date: September 10, 1998
of Pages: 5

Comments: We are submitting the Independent Regulatory Review Commission's comments on the State Board of Dentistry regulation #16A-465 (#1960). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: _____

Date: _____

9-10-98

