

# PROPOSED RULEMAKING

## DEPARTMENT OF GENERAL SERVICES

[4 PA. CODE CH. 61]  
Instructions to Bidders

The Department of General Services (Department), acting under sections 506, 2401.1 and 2408 of The Administrative Code of 1929 (71 P. S. §§ 186, 631.1 and 638), Executive Order 1996-1, "Regulatory Review and Promulgation" and section 201 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1201), proposes to delete Chapter 61 (relating to instructions to bidders).

### *Purpose*

Since the bid instructions are established by regulation, they do not allow for flexibility. The instructions to bidders tell the bidders how to prepare and submit their bids. These provisions must be customized by the Department for individual projects. The Department has substantially modified these bid instructions in the years since 1975 without amending the regulations. Since the regulatory instructions are not the current Department instructions to bidders, this chapter is obsolete and must be deleted.

### *Fiscal Impact*

There will be some savings in administrative time and expense. The Department would incur significant time and expense if it were required to proceed with the regulatory process each time it wanted to revise its instructions to bidders. If Chapter 61 is not deleted and the Department decides to change its instructions twice a year and it is required to pursue the regulatory process, the estimated administrative cost to the Department is \$18,000 per year.

### *Paperwork Requirements*

The proposed rulemaking will impose no new or different paperwork requirements.

### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 9, 2002, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House State Government Committee and the Senate State Government Committee. In addition to submitting the proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed rulemaking, it will notify the Department within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria that have not been met by the portion of the proposed rulemaking to which an objection is made. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of objections raised.

### *Effective Date*

This proposed rulemaking will be effective upon closure of the public comment period, the regulatory review process and subsequent final-form publication in the *Pennsylvania Bulletin*.

### *Public Comment/Contact Person*

Written comments should be submitted to Gary F. Ankabrandt, Assistant Chief Counsel, Office of Chief Counsel, Department of General Services, 603 North Office Building, Harrisburg, PA 17125. Written comments must be received within 30 days of this publication of notice of proposed rulemaking in the *Pennsylvania Bulletin*.

KELLY POWELL LOGAN,  
*Secretary*

**Fiscal Note:** 8-4. No fiscal impact; (8) recommends adoption.

### Annex A

#### TITLE 4. ADMINISTRATION

#### PART III. DEPARTMENT OF GENERAL SERVICES

#### Subpart C. CONSTRUCTION AND PROCUREMENT

#### ARTICLE II. CONSTRUCTION

#### CHAPTER 61. (Reserved)

*(Editor's Note:* The Department is proposing to delete the text of Chapter 61, which appears in 4 Pa. Code pages 61-1—61-12, serial pages (235019)—(235030).)

#### §§ 61.1—61.16. (Reserved).

[Pa.B. Doc. No. 02-1879. Filed for public inspection October 25, 2002, 9:00 a.m.]

### [4 PA. CODE CH. 63] General Conditions of Contract

The Department of General Services (Department), acting under sections 506, 2401.1 and 2408 of The Administrative Code of 1929 (71 P. S. §§ 186, 631.1 and 638), Executive Order 1996-1, "Regulatory Review and Promulgation" and section 201 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1201) proposes to delete Chapter 63 (relating to general conditions of contract).

### *Purpose*

Since the general contract conditions are established by regulation, they do not allow for flexibility. These provisions must be customized by the Department for individual projects as required. The Department has substantially modified these general conditions of contract in the years since 1975 without amending the regulations. Since the regulatory contract terms are not the Department's current general conditions of contract, this chapter is proposed to be deleted.

### *Fiscal Impact*

There will be some savings in administrative time and expense. The Department would incur significant time and expense if it were required to proceed with the regulatory process each time it wanted to revise its contract terms. If the chapter is not deleted and the

Department decides to change its instructions twice a year and is required to pursue the regulatory process, the estimated administrative cost to the Department is \$18,000 per year.

#### *Paperwork Requirements*

The proposed rulemaking will impose no new or different paperwork requirements.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 6, 2001, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House State Government Committee and the Senate State Government Committee. In addition to submitting the proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed rulemaking, it will notify the Department within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria that have not been met by the portion of the proposed rulemaking to which an objection is made. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of objections raised.

#### *Effective Date*

The proposed rulemaking will be effective upon closure of the public comment period, the regulatory review process and subsequent final-form publication in the *Pennsylvania Bulletin*.

#### *Public Comment/Contact Person*

Written comments should be submitted to Gary F. Ankabrandt, Assistant Chief Counsel, Office of Chief Counsel, Department of General Services, 603 North Office Building, Harrisburg, PA 17125. Written comments must be received within 30 days of this publication of notice of proposed rulemaking in the *Pennsylvania Bulletin*.

KELLY POWELL LOGAN,  
*Secretary*

**Fiscal Note:** 8-3. No fiscal impact; (8) recommends adoption.

### **Annex A**

#### **TITLE 4. ADMINISTRATION**

#### **PART III. DEPARTMENT OF GENERAL SERVICES**

#### **Subpart C. CONSTRUCTION AND PROCUREMENT**

#### **ARTICLE II. CONSTRUCTION**

#### **CHAPTER 63. (Reserved)**

*(Editor's Note:* The Department is proposing to delete the text of Chapter 63, which appears in 4 Pa. Code pages 63-1—63-58, serial pages (235033)—(235090).)

§§ 63.1—63.3. (Reserved).

§ 63.11. (Reserved).

§§ 63.12. (Reserved).

§§ 63.21—63.23. (Reserved).

§§ 63.31—63.50. (Reserved).

§§ 63.61—63.64. (Reserved).

§§ 63.71—63.74. (Reserved).

§§ 63.81—63.84. (Reserved).

§§ 63.91—63.93. (Reserved).

§§ 63.101—63.107. (Reserved).

§§ 63.111—63.113. (Reserved).

§ 63.121. (Reserved).

§ 63.122. (Reserved).

§§ 63.131—63.134. (Reserved).

§§ 63.141—63.143. (Reserved).

§§ 63.151—63.153. (Reserved).

§§ 63.161—63.163. (Reserved).

§§ 63.171—63.197. (Reserved).

§ 63.201. (Reserved).

§ 63.211. (Reserved).

[Pa.B. Doc. No. 02-1880. Filed for public inspection October 25, 2002, 9:00 a.m.]

### **[4 PA. CODE CH. 65]**

#### **State Art Commission**

The Department of General Services (Department), acting under sections 506 and 2402.2 of The Administrative Code of 1929 (71 P. S. §§ 186 and 631.1), section 6(e) of the Sunset Act (71 P. S. § 1795.6(e)), Executive Order 1996-1, "Regulatory, Review and Promulgation" and section 201 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1201), proposes to delete Chapter 65 (relating to State Art Commission).

#### *Purpose*

The State Art Commission (Commission) was terminated by section 6(e) of the Sunset Act (expired). The chapter sets out the criteria the Commission used in reviewing projects. It further sets out those submittals which must be made to the Commission. Since the Commission was sunsetted it no longer meets.

#### *Fiscal Impact*

There will be no fiscal impact. With the sunset of the Commission in 1987, this chapter is obsolete.

#### *Paperwork Requirements*

The proposed rulemaking will impose no new or different paperwork requirements.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 9, 2002, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House State Government Committee and the Senate State Government Committee. In addition to submitting the proposed rulemaking, the

Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed rulemaking, it will notify the Department within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria that have not been met by the portion of the proposed rulemaking to which an objection is made. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of objections raised.

#### *Effective Date*

This proposed rulemaking will be effective upon closure of the public comment period, the regulatory review process and subsequent final-form publication in the *Pennsylvania Bulletin*.

#### *Public Comment/Contact Person*

Written comments should be submitted to Gary F. Ankabrandt, Assistant Chief Counsel, Office of Chief Counsel, Department of General Services, 603 North Office Building, Harrisburg, PA 17125. Written comments must be received within 30 days of this publication of notice of proposed rulemaking in the *Pennsylvania Bulletin*.

KELLY POWELL LOGAN,  
*Secretary*

**Fiscal Note:** 8-2. No fiscal impact; (8) recommends adoption.

### **Annex A**

#### **TITLE 4. ADMINISTRATION**

#### **PART III. DEPARTMENT OF GENERAL SERVICES**

#### **Subpart C. CONSTRUCTION AND PROCUREMENT**

#### **ARTICLE II. CONSTRUCTION**

#### **CHAPTER 65. (Reserved)**

*(Editor's Note: The Department is proposing to delete the text of Chapter 65, which appears in 4 Pa. Code pages 65-1—65-3, serial pages (240653)—(240655).)*

#### **§§ 65.1—65.6. (Reserved).**

[Pa.B. Doc. No. 02-1881. Filed for public inspection October 25, 2002, 9:00 a.m.]

# **STATE BOARD OF COSMETOLOGY**

**[49 PA. CODE CH. 7]**

**Sanitation/Disinfection**

The State Board of Cosmetology (Board) proposes to amend § 7.1 by adding new definitions and by amending §§ 7.71, 7.71a, 7.71b, 7.91, 7.92, 7.94, 7.114 and 7.129 to reflect current knowledge and procedures for sanitation and disinfection in cosmetology, cosmetician and manicur-

ing salons and cosmetology schools, and to remove several minimum equipment requirements not necessary for public health or safety.

#### *Effective Date*

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

#### *Statutory Authority*

The proposed rulemaking is authorized under sections 11 and 14 of the Beauty Culture Law (act) (63 P. S. §§ 517 and 520).

#### *Background and Purpose*

The purpose of the proposed rulemaking is to update and implement standards for disinfection and sanitation that reflect current knowledge and practices for preventing the spread of pathogens in cosmetology, cosmetician and manicuring salons and cosmetology schools.

The Board has jurisdiction over sanitation and disease control measures in cosmetology, manicuring and cosmetician shops. Under section 14 of the act, the Board is required to establish sanitary rules for licensed shops which are designed to prevent the creation or spread of infectious disease. The substantive requirements of the Board's regulations on sanitation and disease control were last amended in 1975. Since that date, advances in the chemical treatment of pathogens have made products available to Board licensees and others which substantially reduce the threat of disease transmission. Also, the generally accepted terminology for controlling the spread of disease has been revised to more precisely reflect the level of disease control. These terms are now commonly used on products and in State and Federal regulations. The proposed rulemaking will conform the Board's regulations to those standards and make it easier for shop owners and managers to comply with both State and Federal standards.

First, the Board proposes to delete the term "sterilization" and to add the terms "disinfect" and "cleanse." Sterilization now is used in connection with infection control to refer to infection control in highly sensitive environments such as hospitals. The general rule for controlling the spread of infectious diseases in nonhospital settings, such as beauty salons, is that surfaces of equipment should be both cleaned and disinfected. The Environmental Protection Agency regulates and registers chemicals and products which disinfect. These changes are reflected in the definitions added to § 7.1.

The Board also proposes new requirements concerning the cleaning and disinfection of whirlpool footspas and noncirculating footspas. These new requirements are similar to those enacted in California in May 2001.

Finally, the Board proposes to revise the minimum equipment for shops to eliminate three requirements. The Board has determined the requirements are not necessary for the health and safety of licensees or clients.

#### *Description of Proposed Amendments*

##### *Sanitation/Disinfection*

As sterilization is not required of tools and instruments used in cosmetology salons or schools or cosmetician or manicuring salons, references to sterilization have been removed. Section 7.1 (relating to definitions) contains definitions for "cleanse," "disinfect" and "EPA registered disinfectant."

Section 7.91 (relating to sanitation and safety generally) would be amended to require safe storage of sharp implements.

Section 7.92 (relating to sterilization of equipment) contains the primary requirements for sanitation and disinfection of equipment and implements, which must be subjected to a four-step cleanse/disinfect/rinse and dry/store procedure and adds new requirements for cleaning and disinfecting both circulating and noncirculating footspas.

Section 7.94 (relating to sanitary use of supplies) would be amended to reflect the new cleanse and disinfection requirement, as opposed to sterilization.

*Minimum Equipment Requirements*

Sections 7.71, 7.71a, 7.71b and 7.114 concern minimum equipment and supplies for cosmetology shops, cosmetician shops, manicuring shops and schools. These sections have been amended to delete requirements the Board believes unnecessary for health and safety and make editorial changes.

The Board proposes to delete the requirements for dry sterilizers in licensed shops. Shops would be required to have wet disinfection containers and dry storage containers.

*Compliance with Executive Order 1996-1*

In accordance with Executive Order 1996-1, "Regulatory Review and Promulgation," the Board solicited input from the regulated community as well as the Pennsylvania Cosmetology Association, the Pennsylvania Association for Vocational Teachers Educating in Cosmetology, the Pennsylvania Association of Private School Administrators, the Pennsylvania Chamber of Commerce, the Arts and Fashion Group, the Beauty and Barber Service Institute, CIDESCO, Get Nailed and RBR Productions, Inc.

The Board reviewed this proposed rulemaking and considered its purpose and likely impact upon the public and the regulated population under the directives of Executive Order 1996-1. The proposed rulemaking addresses a compelling public interest as described in this Preamble and otherwise complies with Executive Order 1996-1.

*Fiscal Impact and Paperwork Requirements*

The proposed rulemaking will have no fiscal impact nor will they impose any additional paperwork requirements on the Commonwealth or its political subdivisions.

*Sunset Date*

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

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 10, 2002, the Board submitted a copy of this proposed rulemaking 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 proposed rulemaking, 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. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed

rulemaking, it will notify the Board within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria that have not been met by the portion of the proposed rulemaking to which an objection is made. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of objections raised.

*Public Comment*

Interested persons are invited to submit written comments, suggestion or objections regarding the proposed rulemaking to Deborah B. Eskin, Counsel, State Board of Cosmetology, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days of publication of this proposed rulemaking. Reference No. 16A-454 (Sanitation/Disinfection) when submitting comments.

FRANKLIN K. SCHOENEMAN,  
*Chairperson*

**Fiscal Note:** 16A-454. 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 7. STATE BOARD OF COSMETOLOGY  
GENERAL PROVISIONS**

**§ 7.1. Definitions.**

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

\* \* \* \* \*

**Cleanse**—To clean and remove debris by washing with soap and water.

**Disinfect**—To destroy pathogenic microorganisms by complete immersion in an Environmental Protection Agency (EPA) registered, bactericidal, virucidal, fungicidal and tuberculocidal disinfectant that is mixed and used according to the manufacturer's directions.

**EPA registered disinfectant**—A product used to destroy pathogenic microorganisms that is registered under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (7 U.S.C.A. §§ 136—136y).

\* \* \* \* \*

**Noncirculating footspa**—A pedicure basin using noncirculating water.

**Whirlpool footspa**—A pedicure basin using circulating water.

**PHYSICAL REQUIREMENTS OF A BEAUTY SHOP**

**§ 7.71. Equipment and supplies for a cosmetology shop.**

(a) A cosmetology shop **with one cosmetologist** shall contain the following **minimum equipment and supplies [ , which is considered the minimum equipment needed for a shop with one cosmetologist ]**:

\* \* \* \* \*

(2) One [ **dresserette** ] **styling station** with mirror.

\* \* \* \* \*

- (8) [ One container for hair pins or clips.
- (9) One neck strip dispenser.
- (10) ] A closed storage area for soiled [ linen ] towels.
- [ (11) ] (9) \* \* \*
- [ (12) ] (10) One closed towel cabinet for clean [ linen ] towels.
- [ (13) ] (11) One [ dry sterilizer ] container for wet disinfection.
- [ (14) One wet sterilizer.
- (15) A reception desk. ]
- (12) One clean, dry and closed container for storage.

(b) For each additional cosmetologist, sufficient supplies and equipment shall be [ increased ] available so that each cosmetologist can render services safely and efficiently.

§ 7.71a. Equipment and supplies for a cosmetician shop.

(a) A cosmetician shop with one cosmetician shall contain the following minimum equipment and supplies [ , which is considered the minimum equipment needed for a shop with one cosmetician ]:

\* \* \* \* \*

- (2) One [ dresserette ] styling station with mirror.
- \* \* \* \* \*
- (5) A closed storage area for soiled [ linen ] towels.
- (6) One closed towel cabinet for clean [ linen ] towels.
- \* \* \* \* \*
- (8) One [ dry sterilizer ] container for wet disinfection.
- (9) [ One wet sterilizer.
- (10) ] One magnifying lamp.
- [ (11) A reception desk. ]
- (10) One clean, dry and closed container for storage.

(b) For each additional cosmetician, sufficient equipment and supplies shall be [ increased ] available so that each cosmetician can render services safely and efficiently.

§ 7.71b. Equipment and supplies for a manicuring shop.

(a) A manicuring shop with one manicurist shall contain the following minimum equipment and supplies [ , which is considered the minimum equipment needed for a shop with one manicurist ]:

\* \* \* \* \*

- (6) A closed storage area for soiled [ linen ] towels.
- (7) One closed towel cabinet for clean [ linen ] towels.
- (8) Clean [ linen ] towels.
- (9) One [ wet sterilizer ] container for wet disinfection.

(10) [ One dry sterilizer.

(11) A reception desk. ] One clean, dry and closed container for storage.

(b) For each additional manicurist, sufficient equipment and supplies shall be [ increased ] available so that each manicurist can render services safely and efficiently.

HEALTH AND SAFETY IN SHOPS

§ 7.91. Sanitation and safety generally.

(a) A shop shall be well lighted and well ventilated.

(b) All areas of the shop, including the floors and lavatories, shall be maintained in a safe, orderly and sanitary condition.

(c) Sharp implements shall be stored upright with the points down or in a protective case.

§ 7.92. [ Sterilization of equipment ] Sanitation and disinfectant of equipment and implements.

[ Razors, tweezers, combs, hairbrushes, and other tools, instruments, utensils and appliances that come into contact with a client shall be sanitized immediately after each use and maintained in a sanitary condition at all times. ]

(a) Equipment and implements that come in contact with a client's skin, scalp, hair or nails shall be subject to the following procedure after each client use:

(1) Step 1: Cleanse. All equipment and implements shall first be cleansed.

(2) Step 2: Disinfect. All equipment and implements shall be disinfected following cleaning.

(3) Step 3: Rinse and dry. The cleansed and disinfected objects shall be rinsed with clean water and dried with a clean towel.

(4) Step 4: Store. If not immediately used on a client, the cleansed, disinfected, rinsed and dried objects shall be stored in a clean, dry and closed container.

(b) Only cleansed, disinfected, rinsed and dried equipment and implements shall be used on clients.

(c) Equipment and implements which have come in contact with any unclean surface shall be subjected to the cleanse/disinfect/rinse and dry procedure prior to any client use.

(d) The following paragraphs apply to cleaning and disinfecting whirlpool footspas:

(1) Before use upon each patron, each whirlpool footspa shall be cleansed and disinfected in the following manner:

(i) All water shall be drained and all debris removed from the spa basin.

(ii) The spa basin shall be cleansed with soap or detergent and water, and rinsed.

(iii) The spa basin shall be disinfected.

(iv) The spa basin shall be wiped dry with a clean towel.

(2) At the end of each day, each whirlpool footspa shall be cleansed and disinfected in the following manner:

(i) The screen shall be removed, all debris trapped behind the screen removed, and the screen and the inlet cleansed.

(ii) Before replacing the screen, the screen shall be disinfected by one of the following methods:

(A) Flushing with a chlorine bleach solution of 1 teaspoon of 5% chlorine bleach to 1 gallon of water.

(B) Total immersion in an EPA-registered disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity, used according to the manufacturer's instructions.

(iii) The spa system shall be flushed with low sudsing soap and warm water for at least 10 minutes, after which the spa shall be rinsed and drained.

(3) Every other week, after cleansing and disinfecting as provided in paragraph (2), each whirlpool footspa shall be cleansed and disinfected in the following manner:

(i) The spa basin shall be filled completely with water and 1 teaspoon of 5% bleach for each 1 gallon of water.

(ii) The spa system shall be flushed with the bleach and water solution for 5 to 10 minutes and allowed to sit for 6 to 10 hours.

(iii) The spa system shall be drained and flushed with water before use upon a patron.

(4) A record shall be made of the date and time of each cleansing and disinfecting as required by paragraphs (2) and (3), which indicates whether the cleansing was a daily or biweekly cleaning. This record shall be made at or near the time of cleansing and disinfecting. Cleansing and disinfecting records shall be made available upon request by either a patron or a Bureau representative.

(e) The requirements for cleansing and disinfecting noncirculating footspas are set forth in this subsection. Before use upon each patron, each whirlpool footspa shall be cleansed and disinfected in the following manner:

(1) All water shall be drained and all debris removed from the spa basin.

(2) The spa basin shall be cleansed with soap or detergent and water.

(3) The spa basin shall be disinfected.

(4) The spa basin shall be wiped dry with a clean towel.

(f) A violation of this section may result in a citation, a civil penalty or disciplinary action. Each footspa not in compliance with this section may result in a separate violation.

§ 7.94. Sanitary use of supplies.

\* \* \* \* \*

(d) An [ article ] implement, tool, instrument or utensil that has been dropped on the floor or otherwise rendered unsanitary shall be [ sterilized ] cleansed and disinfected before it is reused.

LICENSURE AND ADMINISTRATION OF SCHOOLS OF COSMETOLOGY

§ 7.114. School equipment and supplies.

(a) A school enrolling 25 students or less shall have, at a minimum, the following equipment and supplies:

\* \* \* \* \*

(4) Four [ dry sterilizers ] containers for wet disinfection.

(5) [ Four wet sterilizers.

6 ] Four facial chairs.

[ (7) Four complete sets of cold wave equipment. ]

[ (8) ] (6) \* \* \*

[ (9) ] (7) Twelve [ dresserettes ] styling stations, mirrors and chairs.

[ (10) ] (8) \* \* \*

[ (11) ] (9) Four closed containers for soiled [ linen ] towels.

[ (12) ] (10) [ Three closed ] Closed waste containers.

[ (13) ] (11) \* \* \*

[ (14) ] (12) One bulletin board [ with dimensions of at least 2 feet by 2 feet ].

[ (15) ] (13) One chalkboard [ with dimensions of at least 4 feet by 4 feet ].

[ (16) ] (14) One [ linen cabinet ] closed towel cabinet for clean towels.

[ (17) ] (15) \* \* \*

[ (18) ] (16) [ Three timer ] Timer clocks.

[ (19) ] (17) \* \* \*

(18) Four clean, dry and closed containers for storage.

(19) One first-aid kit.

(b) These minimum equipment and supply requirements shall increase proportionately as the number of students enrolled in the school increases.

§ 7.129 Curriculum requirements.

(a) Except as provided in subsection (b), a school's cosmetology curriculum, excluding electives, shall comprise 1250 hours, and cover the following subjects; the accompanying breakdown of hours by subject is recommended:

BASIC COSMETOLOGY CURRICULUM

Recommended Hours

Professional Practices	
Bacteriology, [ Sterilization ], Disinfection,	
Sanitation	50

\* \* \* \* \*

[Pa.B. Doc. No. 02-1882. Filed for public inspection October 25, 2002, 9:00 a.m.]

# STATE BOARD OF DENTISTRY

[49 PA. CODE CH. 33]

## Expanded Function Dental Assistants

The State Board of Dentistry (Board) proposes to amend § 33.103 (relating to examinations) to read as set forth in Annex A.

### A. *Effective Date*

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

### B. *Statutory Authority*

The Board is authorized to adopt regulations concerning certification requirements for expanded function dental assistants under section 3(o) of the Dental Law (act) (63 P. S. § 122(o)).

### C. *Background and Purpose*

The act of December 27, 1994 (P. L. 1361, No. 160) (Act 160) amended the act to require the certification and regulation of expanded function dental assistants (EFDA). Act 160 required that EFDAs desiring to be certified by the Board must have completed an education program and passed an examination approved by the Board.

The Board, through a final-form rulemaking published at 30 Pa.B. 2359 (May 13, 2000), determined that the examination would include both written and clinical (performance) components to ensure that certificate holders possess the requisite knowledge and skill to properly and safely perform their job functions. In part, the Board included a clinical component at the request of many EFDAs who believed that this was a necessary requirement. The public, including individuals, dentists, dental hygienists, EFDAs and numerous professional associations, participated in the lengthy rulemaking process. Both written and clinical components to an examination were seen as necessary to insure protection of public health and safety.

Efforts to develop an examination for EFDAs had been underway for several years. Numerous attempts were made to contract with vendors, either through the use of Requests for Proposals (RFP) or through sole source contracting. However, despite these efforts, the Department of State was only able to enter into contract negotiations with one potential bidder for the development of an EFDA examination.

The Board had concerns regarding the cost of the examination. Those concerns were also expressed by anticipated certificate holders and professional associations. A performance component greatly increases the cost of the examination due to the need to rent a facility and to hire additional proctors for necessary manual grading. Additionally, the examination must be initially administered to approximately 1,800 temporary permit holders. Because no National examination for EFDAs exists, the costs of developing and administering a Commonwealth examination must be included in the costs for candidates from this Commonwealth. After the first examination is given, approximately 100 candidates will be tested each year. When an examination is developed for a small candidate population, the costs will be higher because those costs cannot be distributed over a large continuous population of candidates.

Due in some part to the prospect of an examination fee between \$700-900, permit holders and members of the Legislature sought input after the RFP process had been completed. After examining these concerns, the Board decided to take some additional time to address the issue of the necessity of a clinical examination.

Accordingly, the Board held a public hearing on July 20, 2001, to receive testimony from interested parties concerning the EFDA examination. Based upon the testimony received, as well as written comment, the Board was persuaded that the clinical portion of the examination requirement should be deleted. The Board believes that the public can be adequately protected with a written examination and that supervising dentists and EFDA programs requiring clinical experience can ensure capability.

The quality of a dental restoration is ultimately determined by the competency of the supervising dentist. If a restoration is below standard, it can be redone without harm to the patient and with minimal inconvenience. In addition, competency testing for other comparable occupations indicates that a written examination can adequately test for clinical competency.

### D. *Description of Proposed Rulemaking*

The proposed rulemaking deletes the clinical examination requirement for expanded function dental assistants in § 33.103(c) (relating to examination).

### E. *Compliance with Executive Order 1996-1, "Regulatory Review and Promulgation"*

The Board reviewed this proposed rulemaking and considered its purpose and likely impact upon the public and the regulated population under the directives of Executive Order 1996-1. The proposed rulemaking addresses a compelling public interest as described in this Preamble and otherwise complies with Executive Order 1996-1.

In accordance with Executive Order 1996-1, the Board sent a draft of this proposed rulemaking on April 6, 2001, to 138 dental associations, schools and interested persons for pre-draft comment and held a public hearing on July 20, 2001. The list of these entities is available upon request from the contact person listed. Thirty-three EFDAs commented in the pre-draft stage supporting the elimination of the clinical examination. At the public hearing, six persons testified in support of the elimination of the clinical examination, two persons supported eliminating the clinical examination for temporary permit holders only and two persons supported retention of both the clinical and written examinations.

### F. *Fiscal Impact and Paperwork Requirements*

This proposed rulemaking will have a beneficial fiscal impact upon EFDA certification applicants as the cost of the certification examination should be considerably reduced. At this stage, it is not possible to estimate the fiscal impact with precision. Cost data will be available when a contract is finalized for the administration of the written examination.

### 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 October 10, 2002, the Board submitted a copy of this proposed rulemaking 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 proposed rulemaking, 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.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed rulemaking, it will notify the Board within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria that have not been met by the portion of the proposed rulemaking to which an objection is made. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, 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 rulemaking to Deborah B. Eskin, Counsel, State Board of Dentistry, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference No. 16A-4612 (Deletion of Expanded Function Dental Assistants) when submitting comments.

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

**Fiscal Note:** 16A-4612. 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 CERTIFICATION OF EXPANDED FUNCTION DENTAL ASSISTANTS

§ 33.103. Examinations.

\* \* \* \* \*

(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.

\* \* \* \* \*

[Pa.B. Doc. No. 02-1883. Filed for public inspection October 25, 2002, 9:00 a.m.]

[49 PA. CODE CH. 33]  
Sexual Misconduct

The State Board of Dentistry (Board) proposes to add § 33.211a (relating to sexual misconduct) to read as set forth in Annex A. This proposed rulemaking identifies when sexual exploitation by Board regulated practitioners with patients will be deemed unprofessional conduct.

*Effective Date*

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

*Statutory Authority*

Under section 3(c), (d), (d.1) and (o) of the Dental Law (63 P.S. §§ 122(c), (d), (d.1) and (o)), the Board has authority to establish standards of professional conduct for Board regulated practitioners under its jurisdiction. These individuals include dentists, dental hygienists and expanded function dental assistants.

*Background and Purpose*

It should be axiomatic that it is unprofessional conduct for a Board regulated practitioner to sexually exploit patients. Past decisions of the Board, the draft code of ethics committee of the American Dental Association and responsible professional publications addressing the issue denounce sexual exploitation of a patient by a practitioner. However, complaints are filed each year by consumers who have been harmed by Board regulated practitioners who engage in this conduct.

*Description of Proposed Amendments*

The proposed rulemaking would add § 33.211a to make sexual misconduct an unprofessional conduct.

The purpose of the proposed rulemaking is to better protect patients by providing guidance to the profession and the public as to prohibited sexual conduct between practitioners and patients. The proposed rulemaking would prohibit sexual exploitation by a Board regulated practitioner of a current patient. "Sexual exploitation" is defined by § 33.211a as sexual behavior with a current patient that uses trust, knowledge, emotions or influence derived from the professional relationship.

The proposed rulemaking provides that Board regulated practitioners who engage in prohibited sexual conduct with patients will not be eligible for placement in the Board's impaired professional program in lieu of disciplinary or corrective actions. The impaired professional program is unable to effectively monitor Board regulated practitioners who have engaged in sexual misconduct.

The proposed rulemaking would also provide that patient consent will not be considered a defense to disciplinary action in these cases. The imbalance of power inherent in the health care practitioner-patient relationship not only serves as the basis for the prohibition but also undermines the patient's ability to consent to sexual behavior as an equal when trust, knowledge, emotions or influence derived from the professional relationship are used.

*Fiscal Impact and Paperwork Requirements*

The proposed rulemaking should have no fiscal impact on the Commonwealth or its political subdivisions. Likewise, the proposed rulemaking should not necessitate any legal, accounting, reporting or other paperwork requirements.

*Sunset Date*

The Board continuously monitors the cost effectiveness of its regulations. Therefore, no sunset date has been assigned.

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

In compliance with Executive Order 1996-1, the Board extended an invitation to comment on early drafts of this



proposed rulemaking to numerous parties who have indicated an interest in the Board's regulatory activities. The list of these persons is available upon request from the contact person listed in this Preamble. Two comments were received and considered by the Board at the March 15, 2002, Board meeting.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 10, 2002, the Board submitted a copy of this proposed rulemaking 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 proposed rulemaking, 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. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed rulemaking, it will notify the Board within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria that have not been met by the portion of the proposed rulemaking to which an objection is made. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of objections raised.

*Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to Deborah B. Eskin, Counsel, State Board of Dentistry, 116 Pine Street, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days of publication of this proposed rulemaking.

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

**Fiscal Note:** 16A-4613. 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 C. MINIMUM STANDARDS OF CONDUCT AND PRACTICE**

**§ 33.211a. Sexual misconduct.**

Unprofessional conduct, as defined in section 4.1(a)(8) of the act (63 P. S. § 123.1(a)(8)), includes sexual misconduct by a dentist, dental hygienist and EFDA as follows:

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

*Sexual behavior*—Any sexual conduct that has no diagnostic or therapeutic purpose, including words, actions or any combination thereof which are or are intended to be, sexual in nature, or which may be construed by a reasonable person as sexual in nature.

*Sexual exploitation*—Any sexual behavior, with a current patient, that uses trust, knowledge, emotions or influence derived from the professional relationship.

(2) *Disciplinary action.* Sexual exploitation by a Board regulated practitioner of a current patient constitutes unprofessional conduct, is prohibited, and subjects the practitioner to disciplinary action.

(3) *Impaired professional program.* A practitioner who engages in conduct prohibited by this section will not be eligible for placement into an impaired professional program in lieu of disciplinary action or correction.

(4) *Consent.* Consent is not a defense to conduct prohibited by this section.

(5) *Exclusion.* This section does not apply to a spouse or equivalent domestic partner.

[Pa.B. Doc. No. 02-1884. Filed for public inspection October 25, 2002, 9:00 a.m.]