

RULES AND REGULATIONS

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF DENTISTRY

[49 PA. CODE CH. 33]

Fees

[52 Pa.B. 6849]

[Saturday, November 5, 2022]

The State Board of Dentistry (Board) amends § 33.3 (relating to fees) and deletes § 33.339 to read as set forth in Annex A.

Effective Date

This final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*. The initial increase for application fees will be implemented immediately upon publication of this final-form rulemaking in the *Pennsylvania Bulletin*. Thereafter, the subsequent graduated increases for application fees will be implemented on a 2-Fiscal-Year (FY) basis. The initial renewal fee increases will be implemented for the April 1, 2023—March 31, 2025, biennial renewal. The second and third renewal fee increases will be implemented for the April 1, 2025—March 31, 2027, and April 1, 2027—March 31, 2029, biennial renewals and thereafter.

Statutory Authority

Section 3(o) of The Dental Law (act) (63 P.S. § 122(o)), authorizes the Board to adopt, promulgate and enforce such rules and regulations as may be deemed necessary by the Board and proper to carry into effect the powers conferred by the act. Section 4(b) of the act (63 P.S. § 123(b)) requires the Board to increase fees by regulation to meet or exceed projected expenditures if the revenues raised by fees, fines and civil penalties imposed under the act are not sufficient to meet expenditures over a 2-year period. Section 4(a) of the act provides that the fee for an applicant for examination and licensure to practice dentistry or as a dental hygienist or certification for an expanded function dental assistant (EFDA) in this Commonwealth shall be fixed by the Board by regulation. In terms of application fees for licensure and certification by criteria approval, section 3(f) of the act, authorizes fees for applicants who have licenses from other states, territories or Canada. Section 11.2(a)(2), (4) and (6) of the act (63 P.S. § 130c(a)(2), (4) and (6)) requires the Board to establish anesthesia permit fees. Section 11.11(a)(7) of the act (63 P.S. § 130l(a)(7)) gives the Board authority to impose an application fee for a restricted faculty applicant in the same amount as is prescribed by the Board for licensure to practice dentistry.

Under section 3(g.1) of the act, one of the Board's duties is "[t]o receive and record all filings of the names and fictitious names of providers of dental services. . ." Another duty of the Board under section 3(b) of the act, is to ". . .determine the acceptability and to approve and disapprove institutions and colleges of this State and of other states and countries for the education of students desiring. . .to be certified as expanded function dental assistants." Under the authority of sections 3(o) and 4(b) of the act, the Board is increasing the fees for fictitious names for dental facilities and EFDA educational programs.

Regarding biennial renewal fees, section 3(j) of the act empowers the Board "[t]o provide for, regulate, and require biennial renewals of all persons licensed or certified in accordance with provisions of this act. . .[and] to require, as a condition precedent to such biennial renewal, the payment of such biennial renewal fee as shall be fixed by regulation of the board." Additionally, under section 11.11(d) of the act, to renew a restricted faculty

license, a licensee must pay a biennial renewal fee in the same amount as the fee prescribed by the Board for renewal of licensure to practice dentistry.

Background and Need for Amendment

This final-form rulemaking increases application fees to reflect updated costs of processing applications and increases all the Board's biennial renewal fees to ensure its revenue meets or exceeds the Board's current and projected expenses. This final-form rulemaking increases the following application fees under § 33.3 on a graduated basis: dentist, dental facility fictitious name, dental hygienist, expanded function dental assistant, anesthesia (unrestricted), anesthesia (restricted I), anesthesia (restricted II), dental hygienist local anesthesia, public health dental hygienist practitioner, expanded function dental assistant education program, restricted faculty license, criteria approval (dentists), criteria approval (dental hygienists) and criteria approval (expanded function dental assistants). Approximately 1,984 applicants will be impacted annually by the increased application fees.

The Board is also implementing graduated biennial renewal fee increases for the following licenses, certificates, registrations and permits under § 33.3: dentist, dental hygienist, EFDA, anesthesia (unrestricted), anesthesia (restricted I), anesthesia (restricted II), dental hygienist local anesthesia, public health dental hygienist practitioner, expanded function dental assistant education program and restricted faculty license. There are approximately 30,917 individuals who possess current licenses, certificates and registrations issued by the Board who will be required to pay more to renew their licenses, certifications, registrations or permits.

Under section 4(b) of the act, the Board is required by law to support its operations from the revenue it generates from fees, fines and civil penalties. In addition, the act provides that the Board shall increase fees if the revenue raised by fees, fines and civil penalties is not sufficient to meet expenditures over a 2-year period. The Board raises the majority of its revenue through biennial renewal fees. A small percentage of its revenue comes from application fees, fines and civil penalties. The Board receives an annual report from the Department of State's Bureau of Finance and Operations (BFO) regarding the Board's income and expenses.

The BFO data demonstrates that the Board's revenue is insufficient to meet expenditures over a 2-year period resulting in a projected deficit of approximately \$2.6 million by the end of FY 2022-2023—FY 2023-2024, and a projected deficit of approximately \$5.7 million following FY 2024-2025—FY 2025-2026. It is therefore necessary for the Board to raise fees to meet or exceed projected expenditures, in compliance with section 4(b) of the act.

For the Board to meet or exceed projected expenditures with the delayed implementation date, the BFO recommended increased application fees that are reflective of actual costs to process applications in each biennium, and an 18% renewal fee increase for each renewal cycle beginning with the April 1, 2023—March 31, 2025, biennial renewal and continuing through the April 1, 2025—March 31, 2027, biennial renewal period and concluding following the April 1, 2027—March 31, 2029, biennial renewal period. The last time the Board approved a renewal fee increase was in July of 2012, which was effective for the April 2015 renewal period.

In consideration of the comments received in response to the proposed rulemaking regarding the timing of the biennial renewal fee increases, the Board voted to delay the implementation of the biennial fee increase until the April 1, 2023—March 31, 2025, biennial renewal. In March 2022, representatives from the BFO met with the Board and provided summaries of the Board's revenue and expenses through FY 2027-2028. Based upon the financial information that the BFO presented to the Board on March 11, 2022, the Board adopted the new schedule of fees set forth in accompanying Annex A. The increased fees are projected to produce sufficient revenue to meet expenditures, while reducing budget deficits, over 3 biennial renewal periods. In FY 2022-2023 through FY 2023-2024, with the fee increase, the Board's revenue of approximately \$5.1 million will be sufficient to meet its expenditures of approximately \$4.9 million and reduce the deficit. In FY 2024-2025 through FY 2025-2026, the Board's revenue of approximately \$5.93 million will be sufficient to meet its expenditures of approximately \$5.07 million and reduce the deficit. In FY 2026-2027 through FY 2027-2028, the Board's revenue of approximately \$6.9 million will be sufficient to meet its expenditures of approximately \$5.23 million and also eliminate the deficit. By the end of FY 2027-2028, the Board will have a positive balance of \$682,193. Thus, this final-form fee structure will allow the Board to meet expenditures over a 2-year period as required by section 4(b) of the act and will put the Board back on firm financial ground without creating a significant surplus of funds.

Notice of the proposed rulemaking was published at 50 Pa.B. 6356 (November 14, 2020). Publication was followed by a 30-day public comment period during which the Board received four public comments. Two of the public comments were from dentists. The Board also received a comment from the Pennsylvania Dental Association (PDA) and the Pennsylvania Academy of General Dentistry (PAGD). In addition, the Independent Regulatory Review Commission (IRRC) submitted comments. The Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) and the House Professional Licensure Committee (HPLC) did not submit comments.

Timing of fee increase

The Board originally planned for this final-form rulemaking to be effective in time for the 2021 biennial renewal period. Two dentists questioned the timing of the fee increase. They commented that the dental community was negatively impacted financially by the novel coronavirus (COVID-19) pandemic, specifically with the costs associated with keeping their practices safe for patients and team members. One dentist pointed out that the dental community was barely starting to bounce back from the ongoing COVID-19 pandemic, indicating that a fee increase for the 2021 renewal period was poorly timed and gave minimal financial notice to the dental community.

PDA commented that while it appreciates the need for the Board to forecast expenditures and budget prudently, PDA urged the Board to reconsider increasing fees at a time when many dentists and their teams were dealing with significant financial hardship due to the COVID-19 pandemic. PDA asked the Board to consider the acute situation that many dentists and their staff were facing by considering the latest data from the American Dental Association's Health Policy Institute (HPI), including, the fact that it took until mid-June of 2020 for patient volume in the majority of dental practices to bounce back to 75% of pre-COVID levels. According to PDA, patient volume in dental practices was estimated at 76% as patients were hesitant to seek medical and dental care until the vaccine was readily available to the public. Additionally, dentists were not able to schedule as many patients as usual due to the current Centers for Disease Control and Prevention guidelines. HPI also found that staffing in dental offices was at 90% of pre-pandemic levels, which left a significant amount of dental team members who were unemployed and would have difficulty in paying higher fees. Finally, HPI data suggested that dental practices were absorbing exorbitant costs for personal protection equipment, a cost PDA anticipated would likely rise as dental suppliers struggle to meet demand. Ultimately, PDA requested that the Board consider the needs of the dental community at this critical juncture and delay implementing fee increases until the dental community recovers from the devastating impact of COVID-19 and resumes practicing at pre-COVID-19 pandemic levels.

PAGD questioned whether implementing fee increases in time for the 2021 biennial renewal period would give licensees sufficient advance notice. PAGD recommended that the Board implement the fee increases for the 2023 biennial renewal period due to the COVID-19 pandemic. PAGD also expressed concern about the impact of fee increases on dental practices that are small businesses. In particular, PAGD was concerned that dental practices that require staff to pay their own licensing fees may find it more difficult to recruit and hire staff if licensing fees are increased. These businesses, however, have the option to pay the licensing fee of staff and to increase the service fees charged to consumers.

IRRC agreed with the commentators' concerns and commented that a fee increase during the height of the COVID-19 pandemic was not reasonable. IRRC commented that the second wave of the COVID-19 pandemic created unprecedented financial and operational challenges for the dental community. IRRC recommended that the Board withdraw the proposed rulemaking and submit it at a later date to allow additional time for the regulated community to review and comment on the proposal. In the alternative, IRRC asked the Board to explain how the Board would implement this final-form rulemaking if it was not finalized prior to the April 1, 2021, renewal cycle.

In response to the comments relating to the impact of the COVID-19 pandemic on the dental community, the Board reconsidered the implementation date of the fee increase and agreed with IRRC and the commentators that the timing of the fee increase, given the COVID-19 pandemic, could have an unintended negative impact upon the dental community during a time of great uncertainty. Thus, at its January 15, 2021, meeting, the Board voted to delay the implementation of the graduated application fee increases until the date of publication of this final-form rulemaking in the *Pennsylvania Bulletin*, which the Board anticipated would occur in the summer of

2022. The Board also voted to delay the implementation of the biennial renewal increases until the April 1, 2023—March 31, 2025, biennial renewal period, as recommended by PAGD.

In response to IRRC's question as to how the Board would implement the renewal fee if the regulation was not finalized prior to the April 1, 2021, renewal cycle, the Board amended the implementation dates, as noted previously, so that the renewal fee increases will be effective in 2023 instead of 2021. Delaying the implementation dates provided additional time for the dental community to navigate and recover from the impact of the COVID-19 pandemic and provided additional time to implement the biennial renewal fees.

General opposition to the fee increase

The Board received two comments from individual dentists expressing general opposition to the fee increases, asserting that the amount of the increases are excessive and arbitrary. They also questioned the basis of the fee increases, requesting a complete financial report and questioned the 18% increase in biennial renewal fees. PAGD respects the financial pressures that are shouldered by the Board and the deficits that must be addressed but asserted that the increases are excessive and arbitrary and requested greater transparency regarding the basis for the increases. PAGD specifically asked for an explanation for the increased expenses between FYs 2012-2013 and 2018-2019. IRRC reiterated these comments and also asked the Board to address the adverse economic impacts that commentators asserted.

In response to the comments of general opposition to the proposed fee increases, the Board begins by noting that section 4(b) of the act requires the Board to increase fees by regulation to meet or exceed projected expenditures if the revenues raised by fees, fines and civil penalties imposed under the act are not sufficient to meet expenditures over a 2-year period. The BFO data demonstrates that the Board's revenue is insufficient to meet expected expenditures over a 2-year period resulting in a projected deficit of approximately \$2.67 million by the end of FY 2022-2023—FY 2023-2024, a projected deficit of approximately \$5.7 million following FY 2024-2025—FY 2025-2026 and a projected deficit of approximately \$6.7 million dollars at the conclusion of FY 2026-2027—FY 2027-2028. Based on this data, the law mandates the Board to increase fees by regulation to meet or exceed projected expenditures. While the Board delayed the implementation of fee increases due to the extreme circumstances surrounding the pandemic, in addition to a concern that there was insufficient time to implement a fee increase for the April 1, 2021—March 31, 2023, renewal cycle, the Board is not able to make an exception to the law which mandates an increase in fees by regulation when revenue fails to meet expenditures over a 2-year period. The appropriate mechanism for an exception to the law is through the legislature.

Regarding the basis for the fee increases, the majority of the Board's costs are personnel-related, and much of those costs are not within the Board's control. Staff are generally employees of the Commonwealth, most of whom are civil service personnel, and many are union positions. For these employees, the Board is bound by the negotiated contract. Personnel costs associated with investigation and enforcement depend largely on the number of complaints received that need to be investigated and the number of those matters that result in disciplinary action. The Board has no control over the number of complaints that are filed against licensees and unlicensed individuals, nor may they control which matters are or are not prosecuted.

The proposed application fee increases occur on a graduated basis so that the application fees collected during each biennium reflect the anticipated costs of processing applications for that biennium. These fees are designed to cover the cost to process applications and are borne by individual applicants. Actual cost calculations for application fees are based upon the following formula:

$$\begin{aligned} & \text{number of minutes to perform the function} \\ & \quad \times \\ & \text{pay rate for the classification of the personnel performing the function} \\ & \quad + \\ & \text{a proportionate share of administrative overhead} \end{aligned}$$

The application fees are based on time study reports created within the Bureau of Professional and Occupational Affairs (Bureau) giving each step in the process and the amount of time it takes to process one application. That amount is multiplied by the anticipated application requests for 1 year (times two since the increases are biennial). Increases which will be effective immediately and then again on July 1, 2025, and July 1, 2027, are calculated at an approximately 9.5% increase as pay increases for staff that process applications are 2.5% in

July and 2.25% in January or 4.75% annually (9.5% biennially) and the fee is almost entirely dependent upon personnel-related costs.

Regarding the basis of the biennial renewal fees for dentists, dental hygienists, EFDAs, anesthesia-unrestricted permits, anesthesia-restricted I permits, anesthesia-restricted II permits, dental hygienist local anesthesia permits, public health dental hygiene practitioners, EFDA education program approval and restricted faculty licenses, the fees will increase on a graduated basis by 18% for each renewal cycle beginning with the April 1, 2023—March 31, 2025, biennial renewal period and continuing through the April 1, 2027—March 31, 2029, biennial renewal period. The Board adopted the 18% graduated increase because, as the calculations show in the answer to Question 10 of the Regulatory Analysis Form, the graduated fees will generate adequate revenue to meet its expenses during each biennium; FY 2022-2023 through FY 2023-2024, FY 2024-2025 through FY 2025-2026, and FY 2026-2027 through FY 2027-2028. By the end of FY 2027-2028, the budget deficit will be eliminated, and the Board will have a positive balance of \$682,193.

On an annual basis, during a public meeting where stakeholders are present, the Board reviews its fiscal status and receives an annual report from the BFO regarding the Board's income and expenses. A copy of the BFO report is posted to the Board's web site. In response to the request for additional information regarding the Board's financial needs, including the dramatic rise in expenses of major cost centers in the preceding 6 years, specifically in FY 2012-2013, and FY 2018-2019, the Board provided an explanation of page 3 of the BFO report (included as Attachment A) which contains the Board's Expense and Revenue History Comparison for FY 2012-2013 through FY 2020-2021. There was a dramatic increase in expenses between FY 2014-2015 to FY 2015-2016, for legal prosecution. The reason for the dramatic increase in FY 2015-2016, is that the prosecution division began implementing a practice wherein all practice-related complaints would receive expert review. The prosecution division determined that public protection necessitated expert review to secure successful prosecution of licensees who pose a risk to the community. Based on the success of this plan of action, the prosecution division continues to utilize expert review for most practice-related complaints. In addition, prior to FY 2015-2016, expenses for Board Counsel and the Professional Compliance Office (PCO) were included under the Cost Center for Legal Administration. These expenses also include other legal administrative costs, such as renting of office space, phones, legal administrative staff, printing copiers, furniture and the like. In FY 2015-2016, Board Counsel became its own Cost Center and expenses related to PCO went under Legal Prosecution Cost Center. This explains the dramatic decrease in expenses for Legal Administration in FY 2015-2016, and gives further explanation to the dramatic increase in expenses for Legal Prosecution in FY 2015-2016. Additionally, it explains why the Cost Center for Board Counsel shows expenses totaling \$0.00 until FY 2015-2016.

Over the last few fiscal years, the Board has had some sizable increases to expenses for a variety of reasons. One of the largest financial impacts for the Board was the incorporation of The Pennsylvania Justice Network (JNET), due in part to the enactment of the act of February 15, 2018 (P.L. 14, No. 6) (Act 6 of 2018), which requires mandatory self-reporting of criminal convictions. The Board uses JNET to identify criminal convictions of licensees and to verify compliance with Act 6 of 2018's mandatory reporting requirement. Initially, the Board was one of three boards under the Bureau that incorporated JNET criminal notifications into their business processes. Across the three boards, there was a sizable 27.5% average increase in the number of complaints being processed and opened for prosecution. With the additional complaints, increased expenses due to higher prosecutions, investigations, expert witness usage, and hearings resulted. Since incorporation of JNET, expenses have been relatively steady in all of these cost categories. More than likely, this new level of legal workload is one that will be part of the financial picture for the Board going forward.

In addition to the legal increases, all 29 boards and commissions under the Bureau have undergone an information technology transformation upgrade with the incorporation of the Pennsylvania Licensing System (PALS). Expenses associated with PALS, including the initial build as well as ongoing maintenance, are proportionately spread across all entities based on licensee population to effectively share costs per licensee. While the initial build is in the past, it has contributed to higher administrative expenses for all boards and commissions during the last few fiscal years. Due to PALS' high functioning database with enhanced features over the Department's previous License 2000 platform, maintenance for this system requires a larger financial commitment from all boards and commissions than the previous system.

When considering the proposed fee increase, the Board conducted a comparison of application fees and renewal fees charged by surrounding states. The Board found that even by comparing the highest fee increases,

the Commonwealth's application fees and renewal fees are still among the lowest or are in line with fees charged in surrounding states.

The Board is empathetic to all the concerns put forth by commentators, including adverse economic impact during the COVID-19 pandemic. The Board has delayed the implementation of these fee increases to avoid additional adverse fiscal impact to the dental community during the height of the COVID-19 pandemic. The Board, however, is dutybound to ensure that the Board remains fiscally sound so that it may carry out the mandates of the General Assembly set forth in the act in furtherance of public health and safety. Increasing fees is critical to sustain the operations of the Board. The Board is statutorily obligated to increase fees by regulation when revenues raised by fees, fines and civil penalties under the act are insufficient to meet expenditures over a 2-year period. The Board meets this criterion, and thus, is required to increase its fees.

IRRC Additional Comments

IRRC reiterated the concerns of the commentators, including the timing of the proposed rulemaking and the basis for the Board's financial needs. IRRC asked the Board to consider withdrawing the proposed rulemaking and resubmitting it at a later date. As discussed previously, the Board amended the proposed rulemaking and delayed the implementation of the fee increases until 2023. The Board believes that delaying the fee increases has allowed the dental community to recover economically; dental offices are open and patient volume has increased significantly since the proposed rulemaking was published in November of 2020. In March of 2022, HPI released the results of a National study (Economic Outlook and Emerging Issues in Dentistry: *Insights from Data from March 2022*) which showed that dental patient appointment schedules have risen to approximately 88% of full capacity; this represents the highest patient volume levels since the beginning of the COVID-19 pandemic. The most common reason for dental patient schedules not being 100% full was patient cancellations.

IRRC also asked the Board to revise the preamble and the Regulatory Analysis Form to include statutory authority citations for all fees contained in § 33.3. The Board adds the citations in this final-form rulemaking preamble and RAF.

Description of Amendments to this Final-Form Rulemaking

This final-form rulemaking changes the implementation dates of the graduated application fee increases in § 33.3(a) and the graduated renewal fee increases in subsection (b). The application fee increases in subsection (a) are implemented immediately upon publication of this final-form rulemaking in the *Pennsylvania Bulletin*, with subsequent graduated fee increases on July 1, 2025, and July 1, 2027. The biennial renewal fees will increase by 18% on a graduated basis over 3 renewal cycles. The initial fee increases will impact the renewal fees for the April 1, 2023—March 31, 2025, biennial renewal, with the second fee increase occurring for the April 1, 2025—March 31, 2027, biennial renewal and the third fee increase occurring for the April 1, 2027—March 31, 2029, biennial renewal period. The Board also amends the third graduated biennial renewal increase in subsection (b) by adding "and thereafter." The term "thereafter" is added to clarify that the final fee increase for the 2027—2029 renewal period would remain the fee for all biennial renewal years thereafter, unless or until there is a new fee increase or decrease.

Fiscal Impact

The amendments will increase the application fees and biennial renewal fees for all license, certification and permit types issued by the Board. The Board receives approximately 1,984 applications annually from its various licensee types. There are currently 30,917 licensees and permit holders who will be impacted by the fee increase. Existing licensees will be required to pay 18% higher renewal fees every 2 years beginning in the April 1, 2023—March 31, 2025, biennial renewal period and continuing through the April 1, 2027—March 31, 2029, biennial renewal period.

As set forth as follows, the graduated increase will impact applicants and licensees as follows:

Dentists

The Board receives approximately 465 dentist applications per year. The graduated application fee increases impact applying dentists as follows: FYs 2022-2023, and 2023-2024, the application fee for dentist applicants

increases by \$35, followed by an increase of \$25 in FYs 2024-2025, and 2025-2026, and an increase of \$22 in FYs 2026-2027, and 2027-2028.

There are approximately 10,224 dentists who must renew biennially. In FY 2022-2023, dentists will pay an additional \$47 to renew their license, followed by an increase of \$56 to renew their license in FY 2024-2025, and an additional \$66 to renew their license in FY 2026-2027.

Dental facility (fictitious name)

The Board receives approximately 75 dental facility (fictitious name) applications per year. The graduated application fee increases will impact applying dental facilities as follows: FYs 2022-2023, and 2023-2024, the application fee for a dental facility (fictitious name) increases by \$30, followed by an increase of \$6 in FYs 2024-2025, and 2025-2026, and an increase of \$7 in FYs 2026-2027, and 2027-2028.

Dental facilities are not required to renew the fictitious name registration with the Board; therefore, the initial application fee is the only fiscal impact to dental facilities.

Dental hygienist

The Board receives approximately 400 dental hygienist applications per year. The graduated application fee increases will impact applying dental hygienists as follows: FYs 2022-2023, and 2023-2024, the application fee for dental hygienist applicants increases by \$65, followed by an increase of \$14 in FYs 2024-2025, and 2025-2026, and an increase of \$14 in FYs 2026-2027, and 2027-2028.

There are approximately 9,578 dental hygienists who must renew biennially. In FY 2022-2023, dental hygienists will pay an additional \$8 to renew their license, followed by an increase of \$9 to renew their license in FY 2024-2025, and an additional \$11 to renew their license in FY 2026-2027.

EFDA

The Board receives approximately 275 EFDA applications per year. The graduated application fee increases will impact applying EFDAs as follows: FYs 2022-2023, and 2023-2024, the application fee for EFDA applicants increases by \$35, followed by an increase of \$10 in FYs 2024-2025, and 2025-2026, and an increase of \$12 in FYs 2026-2027, and 2027-2028.

There are approximately 2,931 EFDAs who must renew biennially. In FY 2022-2023, EFDAs will pay an additional \$5 to renew their license, followed by an increase of \$6 to renew their license in FY 2024-2025, and an additional \$7 to renew their license in FY 2026-2027.

Anesthesia—unrestricted permit

The Board receives approximately 30 anesthesia unrestricted permit applications per year. The graduated application fee increases will impact applicants applying for an anesthesia—unrestricted permit as follows: FYs 2022-2023, and 2023-2024, the application fee for an anesthesia—unrestricted permit increases by \$50, followed by an increase of \$15 in FYs 2024-2025, and 2025-2026, and an increase of \$15 in FYs 2026-2027, and 2027-2028.

There are approximately 405 anesthesia—unrestricted permit holders who must renew biennially. In FY 2022-2023, anesthesia—unrestricted permit holders will pay an additional \$38 to renew their permit, followed by an increase of \$45 to renew their permit in FY 2024-2025, and an additional \$53 to renew their permit in FY 2026-2027.

Anesthesia—restricted I permit

The Board receives approximately 25 anesthesia—restricted I permit applications per year. The graduated application fee increases will impact applicants applying for an anesthesia—restricted I permit as follows: FYs 2022-2023, and 2023-2024, the application fee for an anesthesia—restricted I permit increases by \$50, followed by an increase of \$15 in FYs 2024-2025, and 2025-2026, and an increase of \$15 in FYs 2026-2027, and 2027-2028.

There are approximately 204 anesthesia—restricted I permit holders who must renew biennially. In FY 2022-2023, anesthesia—restricted I permit holders will pay an additional \$38 to renew their permit, followed by an increase of \$45 to renew their permit in FY 2024-2025, and an additional \$53 to renew their permit in FY 2026-2027.

Anesthesia—restricted II permit

The Board receives approximately 175 anesthesia—restricted II permit applications per year. The graduated application fee increases will impact applicants applying for an anesthesia—restricted II permit as follows: FYs 2022-2023, and 2023-2024, the application fee for an anesthesia—restricted II permit increases by \$50, followed by an increase of \$6 in FYs 2024-2025, and 2025-2026, and an increase of \$7 in FYs 2026-2027, and 2027-2028.

There are approximately 2,467 anesthesia—restricted II permit holders who must renew biennially. In FY 2022-2023, anesthesia—restricted II permit holders will pay an additional \$10 to renew their permit, followed by an increase of \$11 to renew their permit in FY 2024-2025, and an additional \$13 to renew their permit in FY 2026-2027.

Dental hygienist local anesthesia permit

The Board receives approximately 425 dental hygienist local anesthesia permit applications per year. The graduated application fee increases will impact applicants applying for a dental hygienist local anesthesia permit as follows: FYs 2022-2023, and 2023-2024, the application fee for a dental hygienist local anesthesia permit increases by \$30, followed by an increase of \$5 in FYs 2024-2025, and 2025-2026, and an increase of \$5 in FYs 2026-2027, and 2027-2028.

There are approximately 4,150 dental hygienist local anesthesia permit holders who must renew biennially. In FY 2022-2023, dental hygienist local anesthesia permit holders will pay an additional \$8 to renew their permit, followed by an increase of \$9 to renew their permit in FY 2024-2025, and an additional \$11 to renew their permit in FY 2026-2027.

Public health dental hygiene practitioners

The Board receives approximately 95 public health dental hygiene practitioner applications per year. The graduated application fee increases will impact applying public health dental hygiene practitioners as follows: FYs 2022-2023, and 2023-2024, the application fee for a public health dental hygiene practitioner increases by \$60, followed by an increase of \$8 in FYs 2024-2025, and 2025-2026, and an increase of \$7 in FYs 2026-2027, and 2027-2028.

There are approximately 926 public health dental hygiene practitioners who must renew biennially. In FY 2022-2023, public health dental hygiene practitioners will pay an additional \$8 to renew their license, followed by an increase of \$9 to renew their license in FY 2024-2025, and an additional \$11 to renew their license in FY 2026-2027.

EFDA education program

The Board receives approximately two EFDA education program applications per year. The graduated application fee increases will impact applicants for EFDA education programs as follows: FYs 2022-2023, and 2023-2024, the application fee for an EFDA education program increases by \$115, followed by an increase of \$30 in FYs 2024-2025, and 2025-2026, and an increase of \$33 in FYs 2026-2027, and 2027-2028.

There are approximately seven EFDA education programs that must renew biennially. In FY 2022-2023, EFDA education programs will pay an additional \$18 to renew their license, followed by an increase of \$21 to renew their license in FY 2024-2025, and an additional \$25 to renew their license in FY 2026-2027.

Restricted faculty license holders

The Board receives approximately five restricted faculty license applications per year. The graduated application fee increases will impact applicants for a restricted faculty license as follows: FYs 2022-2023, and

2023-2024, the application fee for a restricted faculty license increases by \$35, followed by an increase of \$25 in FYs 2024-2025, and 2025-2026, and an increase of \$22 in FYs 2026-2027, and 2027-2028.

There are approximately 25 restricted faculty license holders who must renew biennially. In FY 2022-2023, restricted faculty license holders will pay an additional \$47 to renew their license, followed by an increase of \$56 to renew their license in FY 2024-2025, and an additional \$66 to renew their license in FY 2026-2027.

Dental license by criteria approval

The Board receives approximately six dental license by criteria approval applications per year. The graduated application fee increases will impact applicants for dental license by criteria approval as follows: In FYs 2022-2023, and 2023-2024, the application fee for a dental license by criteria approval increases by \$35, followed by an increase of \$25 in FYs 2024-2025, and 2025-2026, and an increase of \$22 in FYs 2026-2027, and 2027-2028.

Dental hygienist applications by criteria approval

The Board receives approximately three dental hygienist license by criteria approval applications per year. The graduated application fee increases will impact applicants for dental hygienist license by criteria approval as follows: FYs 2022-2023, and 2023-2024, the application fee for a dental hygienist license by criteria approval increases by \$65, followed by an increase of \$14 in FYs 2024-2025, and 2025-2026, and an increase of \$14 in FYs 2026-2027, and 2027-2028.

EFDA applications by criteria approval

The Board receives approximately three EFDA license by criteria approval applications per year. The graduated application fee increases will impact applicants for EFDA license by criteria approval as follows: FYs 2022-2023, and 2023-2024, the application fee for an EFDA by criteria approval increases by \$65, followed by an increase of \$14 in FYs 2024-2025, and 2025-2026, and an increase of \$14 in FYs 2026-2027, and 2027-2028.

Total economic impact to applicants and licensee/permit holders

Based upon the graduated application fee increases, the total economic impact to all applicants per fiscal year is as follows:

FY 2022-2023:	\$85,105
FY 2023-2024:	\$85,105
FY 2024-2025:	\$25,604
FY 2025-2026:	\$25,604
FY 2026-2027:	\$24,887
<u>FY 2027-2028:</u>	<u>\$24,887</u>
Total:	\$271,192

Based upon the biennial renewal fee increases, the economic impact to all license/permit holders is as follows:

FY 2022-2023:	\$661,528
FY 2024-2025:	\$778,105
<u>FY 2026-2027:</u>	<u>\$922,668</u>
Total:	\$2,362,301

This final-form rulemaking should have no other fiscal impact on the private sector, the general public or political subdivisions of the Commonwealth.

Paperwork Requirements

This final-form rulemaking will require the Board to alter its online application and renewal forms to reflect the new fees; however, the amendments will not create additional paperwork for the regulated community or for the private sector.

Sunset Date

The Board continuously monitors the effectiveness of its regulations. Therefore, no sunset date has been assigned. Additionally, the BFO provides the Board with an annual report detailing the Board's financial condition. In this way, the Board continuously monitors the adequacy of its fee schedule.

Regulatory Review

Under section 5(a) of the Regulatory Review Act, 71 P.S. § 745.5(a), on October 29, 2020, the Board submitted a notice of proposed rulemaking, published at 50 Pa.B. 6356, to IRRC and the Chairpersons of the HPLC and SCP/PLC for review and comment. Publication was followed by a 30-day public comment period during which the Board received four public comments.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments from the IRRC and the public. The HPLC and the SCP/PLC did not submit comments.

Under section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)), on July 7, 2022, the Board delivered this final-form rulemaking to IRRC, the HPLC and the SCP/PLC. Under section 5.1(g)(3) and (j.2) of the Regulatory Review Act (71 P.S. § 745.5a(g)(3) and (j.2)), on September 14, 2022, the final-form rulemaking was deemed approved by the HPLC and the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on September 15, 2022 and approved the final-form rulemaking.

Additional Information

Additional information may be obtained by writing to Christina Townley, Board Administrator, State Board of Dentistry, P.O. Box 2649, Harrisburg, PA 17105-2649, ST-DENTISTRY@pa.gov.

Findings

The State Board of Dentistry finds that:

(1) Public notice 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), referred to as the Commonwealth Documents Law and the regulations promulgated thereunder 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) A public comment period was provided as required by law and all comments were considered in drafting this final-form rulemaking.

(3) The amendments to this final-form rulemaking do not enlarge the original purpose for the proposed regulation published at 50 Pa.B. 6356.

(4) These amendments to the regulations of the State Board of Dentistry are necessary and appropriate for the regulation of the practice of dentistry in the Commonwealth.

Order

The Board, acting under its authorizing statute, orders that:

(A) The regulations of the State Board of Dentistry at 49 Pa. Code Chapter 33, are amended by amending § 33.3 and deleting § 33.339 to read as set forth in Annex A.

(B) The Board shall submit this final-form rulemaking to the Office of the Attorney General and the Office of General Counsel for approval as required by law.

(C) The Board shall submit this final-form rulemaking to IRRC, the HPLC and the SCP/PLC as required by law.

(D) The Board shall certify this final-form rulemaking and shall deposit it with the Legislative Reference Bureau as required by law.

(E) This final-form rulemaking shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

SHAWN M. CASEY, DMD,
Chairperson

(*Editor's Note:* See 52 Pa.B. 6282 (October 1, 2022) for IRRC's approval order.)

Fiscal Note: Fiscal Note 16A-4634 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 A. GENERAL PROVISIONS

§ 33.3. Fees.

Following is the schedule of fees charged by the Board:

(a) *Application fees*

	Effective November 5, 2022	Effective July 1, 2025	Effective July 1, 2027
Dentist	\$235	\$260	\$282
Dental facility fictitious name	\$65	\$71	\$78
Dental hygienist	\$140	\$154	\$168
Expanded function dental assistant	\$110	\$120	\$132
Anesthesia—unrestricted	\$150	\$165	\$180
Anesthesia—restricted I	\$150	\$165	\$180
Anesthesia—restricted II	\$65	\$71	\$78
Dental hygienist local anesthesia	\$50	\$55	\$60
Public health dental hygienist practitioner	\$80	\$88	\$95
Expanded function dental assistant education program	\$315	\$345	\$378
Restricted faculty license	\$235	\$260	\$282
Criteria approval—dentists	\$235	\$260	\$282
Criteria approval—dental hygienists	\$140	\$154	\$168
Criteria approval—expanded function dental assistants	\$140	\$154	\$168

(b) *Biennial renewal fees*

Following is the schedule of biennial renewal fees charged by the Board:

	April 1, 2023— March 31, 2025 biennial renewal	April 1, 2025— March 31, 2027 biennial renewal	April 1, 2027— March 31, 2029 biennial renewal and thereafter
Dentist	\$310	\$366	\$432
Dental Hygienist	\$50	\$59	\$70
Expanded Function Dental Assistant	\$31	\$37	\$44
Anesthesia—unrestricted	\$248	\$293	\$346
Anesthesia—restricted I	\$248	\$293	\$346
Anesthesia—restricted II	\$63	\$74	\$87
Dental hygienist local anesthesia	\$50	\$59	\$70
Public health dental hygienist practitioner	\$50	\$59	\$70
Expanded Function Dental Assistant Education Program	\$118	\$139	\$164
Restricted faculty license	\$310	\$366	\$432

(c) *Miscellaneous fees*

Verification of license, permit or registration fee—dentists, dental hygienists and expanded function dental assistants\$15

**Subchapter E. ADMINISTRATION OF GENERAL ANESTHESIA, DEEP SEDATION,
CONSCIOUS SEDATION AND NITROUS OXIDE/OXYGEN ANALGESIA**

§ 33.339. [Reserved].

[Pa.B. Doc. No. 22-1689. Filed for public inspection November 4, 2022, 9:00 a.m.]

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