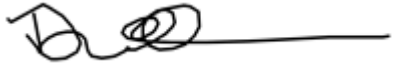






TO: The Honorable the Members of the Board of Regents

FROM: Douglas E. Lentivech 

SUBJECT: Proposed Amendment to Section 29.2 of the Rules of the Board of Regents and Sections 52.26, 61.9, 61.11, 61.12, 61.13 and 61.14 of the Regulations of the Commissioner of Education Relating to the Profession of Registered Dental Assisting

DATE: January 2, 2020

AUTHORIZATION(S):  

SUMMARY

Issue for Decision (Consent Agenda)

Should the Board of Regents adopt, as a second emergency action, the proposed amendment to section 29.2 of the Rules of the Board of Regents and sections 52.26, 61.9, 61.11, 61.12, 61.13 and 61.14 of the Regulations of the Commissioner of Education relating to the profession of registered dental assisting?

Reason for Consideration

Required by State statute (Chapter 390 of the Laws of 2019).

Proposed Handling

The proposed amendment will be presented to the Full Board for adoption as an emergency rule at the January 2020 meeting of the Board of Regents. A copy of the proposed rule and a statement of facts and circumstances justifying the emergency action are attached.

Procedural History

The proposed amendment was presented to the Professional Practice Committee for recommendation and to the Full Board for adoption as an emergency action at the November 2019 meeting of the Board of Regents, effective November 5, 2019. A Notice

of Emergency Adoption and Proposed Rule Making was published in the State Register on November 20, 2019. Because the November emergency action will expire on February 2, 2020, a second emergency action is necessary to ensure that the emergency rule remains continuously in effect until it can be permanently adopted at the February 10-11, 2020 Regents meeting and take effect as a permanent rule. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

On October 23, 2019, Governor Cuomo signed Chapter 390 (Chapter 390) of the Laws of 2019, which, effective immediately, inter alia, amended the Education Law by creating the new legally protected title of “registered dental assistant” and eliminating the prior protected title of “certified dental assistant.” The prior title of certified dental assistant was causing confusion between individuals certified by the Department and individuals certified by the National Dental Assisting Board (DANB). This confusion led to some unintentional criminal violations for those individuals who illegally used the certified dental assistant title in this State when they possessed only DANB certification. Additionally, both dentists and the public were confused by which certified dental assistants were licensed by New York State and which were only DANB-certified.

Chapter 390 eliminated these issues by changing the protected title of the profession to registered dental assistant and replacing all the references in Article 133 of the Education Law to the prior title of certified dental assistant with the title registered dental assistant.

The proposed amendment to section 29.2 of the Rules of the Board of Regents and sections 52.26, 61.9, 61.11, 61.12, 61.13 and 61.14 of the Regulations of the Commissioner of Education implements Chapter 390 by changing the references, in those sections, from “certified dental assistant” and “certified dental assisting” to “registered dental assistant” and “registered dental assisting.”

Related Regent’s Items

[November 2019: Proposed Amendment to Section 29.2 of the Rules of the Board of Regents and Sections 52.26, 61.9, 61.11, 61.12, 61.13 and 61.14 of the Regulations of the Commissioner of Education Relating to the Profession of Registered Dental Assisting](https://www.regents.nysed.gov/common/regents/files/1119ppca2.pdf) (<https://www.regents.nysed.gov/common/regents/files/1119ppca2.pdf>)

Recommendation

It is recommended that the Board of Regents take the following action:

VOTED: That section 29.2 of the Rules of the Board of the Board of Regents and sections 52.26, 61.9, 61.11, 61.12, 61.13 and 61.14 of the Regulations of the Commissioner of Education be added, as submitted, effective February 3, 2020, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the public health and general welfare to immediately conform the Rules of the Board of Regents and the Regulations of the Commissioner of Education to

the requirements of Chapter 390 of the Laws of 2019, which changed the title of profession of the profession from certified dental assisting to registered dental assisting and to ensure that the emergency adoption taken at the November meeting remains in effect until the proposed rule can be permanently adopted.

Timetable for Implementation

If adopted at the January 2020 Regents meeting, the emergency rule will become effective February 3, 2020. It is anticipated that the proposed rule will be presented to the Board of Regents for permanent adoption at the February 2020 Regents meeting, after expiration of the 60-day public comment period required under the State Administrative Procedure Act.

AMENDMENT TO THE RULES OF THE BOARD OF REGENTS AND THE
REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6504, 6507, 6509, 6608, 6608-a of the Education Law and Chapter 390 of the Laws of 2019

1. Subdivision (a) of section 29.2 of the Rules of the Board of Regents is amended, as follows:

(a) Unprofessional conduct shall also include, in the professions of: acupuncture, athletic training, audiology, certified behavior analyst assistant, [certified] registered dental assisting, chiropractic, creative arts therapy, dental hygiene, dentistry, dietetics/nutrition, licensed behavior analyst, licensed pathologists' assistants, licensed perfusionist, licensed practical nursing, marriage and family therapy, massage therapy, medicine, mental health counseling, midwifery, occupational therapy, occupational therapy assistant, ophthalmic dispensing, optometry, pharmacy, physical therapist assistant, physical therapy, physician assistant, podiatry, psychoanalysis, psychology, registered professional nursing, respiratory therapy, respiratory therapy technician, social work, specialist assistant, speech-language pathology (except for cases involving those professions licensed, certified or registered pursuant to the provisions of article 131 or 131-B of the Education Law in which a statement of charges of professional misconduct was not served on or before July 26, 1991, the effective date of chapter 606 of the Laws of 1991):

(1) . . .

(2) . . .

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(14) . . .

2. Section 52.26 of the Regulations of the Commissioner of Education is amended, as follows:

Section 52.26. [Certified] Registered dental assisting

(a) Definitions. As used in this section:

(1) . . .

(i) . . .

(ii) . . .

(iii) . . .

(2) Professional dental assisting content area shall mean course work relevant to the practice of [certified] registered dental assisting, accompanied where appropriate by laboratory and/or equivalent clinical experiences, which includes, but is not limited to, the following curricular areas:

(i) . . .

(ii) . . .

(iii) . . .

(iv) . . .

(v) . . .

(3) Clinical content area shall mean course work in clinical procedures which includes, but is not limited to, the following curricular areas:

(i) chairside dental assisting and dental laboratory procedures appropriate to the practice of [certified] registered dental assisting which shall include, but not be limited to, specific course work in the following clinical procedures subject to the restrictions set forth in section 61.13(c) of this Title:

(a) . . .

(b) . . .

(c) . . .

(ii) . . .

(iii) . . .

(iv) . . .

(v) . . .

(4) . . .

(b) Curriculum. In addition to meeting all applicable provisions of this Part, to be registered as a program recognized as leading to licensure in [certified] registered dental assisting which meets the requirements of section 61.11 of this Title, it shall be

(1) either:

(i) a one-year program in [certified] registered dental assisting, consisting of at least 24 semester hours or its equivalent, which is offered in an educational setting prescribed in section 6608-b(4)(B)(i) of the Education Law, such program to include:

(a) . . .

(b) at least 200 hours of clinical experience in the practice of [certified] registered dental assisting, as defined in section 6608 of the Education Law and section 61.13 of this Title, under the direct personal supervision of a licensed dentist; or

(ii) an alternate course of study in [certified] registered dental assisting, which requires the student to complete equivalent study as that required in a program prescribed in subparagraph (i) of this paragraph and in an educational setting prescribed in section 6608-b(4)(B)(ii) of the Education Law, such course of study to include:

(a) . . .

(b) at least 1,000 hours of relevant work experience constituting a clinical experience in the practice of [certified] registered dental assisting, as defined in section 6608 of the Education Law and section 61.13 of this Title, under the direct personal supervision of a licensed dentist.

(2) The programs prescribed in paragraph (1) of this subdivision shall have sufficient content, scope and depth to prepare a student for the practice of [certified] registered dental assisting, as defined in section 6608 of the Education Law and section 61.13 of this Title.

(3) Clinical facilities. A written contract or agreement shall be executed between the educational institution conducting the [certified] registered dental assisting program and the clinical facility or agency which is designated to cooperate in providing the clinical

experience, which shall set forth the responsibilities of each party, and shall be signed by the responsible officer of each party.

3. Subdivision (d) of section 61.9 of the Regulations of the Commissioner of Education is amended, as follows:

(d) The dental supportive services that a licensed dentist authorizes a [certified] registered dental assistant to perform under section 61.13(b)(18) of this Part, designated in such paragraph as other dental supportive services, may be performed by a licensed dental hygienist under the personal supervision of a licensed dentist who has delegated such function to the licensed dental hygienist, unless general supervision for such service is otherwise expressly prescribed in this section.

4. Section 61.11 of the Regulations of the Commissioner of Education is amended, as follows:

Section 61.11. Professional study of [certified] registered dental assisting

(a) . . .

(b) To meet the professional education requirement for licensure as a [certified] registered dental assistant in this State, the applicant shall present satisfactory evidence of:

(1) . . .

(2) completion of a program in [certified] registered dental assisting that is either registered by the department pursuant to Part 52 of this Title, or accredited by an acceptable accrediting agency, or determined by the department to be the equivalent of such a registered or accredited program.

5. Section 61.12 of the Regulations of the Commissioner of Education is amended, as follows:

Section 61.12. Licensing examination for [certified] registered dental assistant

(a) Each candidate for licensure as a [certified] registered dental assistant shall pass an examination that the department has determined measures the applicant's knowledge of curricular areas attained in a program prescribed in section 52.26 of this Title and other matters of law, ethics, or practice deemed appropriate by the department.

(b) . . .

6. Section 61.13 of the Regulations of the Commissioner of Education is amended, as follows:

Section 61.13. Practice of [certified] registered dental assisting

(a) The practice of [certified] registered dental assisting shall be that practice defined in section 6808 of the Education Law. In accordance with section 6608 of the Education Law, the practice of [certified] registered dental assisting must be supportive services to a licensed dentist in the dentist's performance of dental services and must be performed under the direct personal supervision of a licensed dentist. For purposes of this section, under the direct personal supervision of a licensed dentist shall mean supervision of dental procedures based on instructions given by a licensed dentist in the course of a procedure who remains in the dental office where the supportive services are being performed, personally diagnoses the condition to be treated, personally authorizes the procedures, and before dismissal of the patient, who remains the responsibility of the licensed dentist, evaluates the services performed by the registered dental assistant. Such practice shall include the dental supportive service prescribed in subdivision (b) of this section and shall exclude the dental supportive services prescribed in subdivision (c) of this section.

(b) The practice of [certified] registered dental assisting shall include the following supportive services to a licensed dentist while under the direct personal supervision of the licensed dentist:

(1) . . .

(2) . . .

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(17) . . .

(18) other dental supportive services authorized by the licensed dentist while the [certified] registered dental assistant is under the direct personal supervision of the licensed dentist, provided that such other dental supportive services are not excluded in subdivision (c) of this section.

(c) Excluded dental supportive services. The practice of [certified] registered dental assisting shall not include the following dental supportive services:

(1) . . .

(2) . . .

(3) . . .

(4) . . .

(5) . . .

(6) such dental supportive services that a [certified] registered dental assistant would not reasonably be qualified to perform based upon meeting the requirements for certification as a [certified] registered dental assistant in section 6608-b of the Education Law, and/or obtaining additional legally authorized experience in the practice of [certified] registered dental assisting.

(d) In accordance with section 29.1(b)(9) and (10) of this Title, a [certified] registered dental assistant is not permitted to provide dental supportive services that the [certified] registered dental assistant knows or has reason to know that he or she is not competent to perform, and a licensed dentist is not permitted to delegate to a [certified] registered dental assistant dental supportive services the licensed dentist knows or has reason to know that the [certified] registered dental assistant is not qualified by training, experience or by licensure to perform.

7. Section 61.14 of the Regulations of the Commissioner of Education is amended, as follows:

Section 61.14. Limited permits in [certified] registered dental assisting

(a) . . .

(b) In accordance with section 6608-d of the Education Law, permits limited as to eligibility, practice, and duration shall be issued by the department to eligible applicants as follows:

(1) A person who meets all requirements for admission to the licensure examination for [certified] registered dental assisting shall be eligible for a limited permit as a [certified] registered dental assistant.

(2) A [certified] registered dental assistant permittee shall be authorized to practice only under the direct personal supervision of a licensed dentist.

(3) An application for a limited permit in [certified] registered dental assisting shall be submitted on a form provided by the department and shall be accompanied by the statutory fee.

(4) Limited permits in [certified] registered dental assisting shall expire one year from the date granted, except that such permits may be renewed for one additional one-year period.

8 NYCRR §§29.2, 52.26, 61.9, 61.11, 61.12, 61.13 and 61.14

STATEMENT OF FACTS AND CIRCUMSTANCES

WHICH NECESSITATE EMERGENCY ACTION

The proposed amendment to section 29.2 of the Rules of the Board of Regents and sections 52.26, 61.9, 61.11, 61.12, 61.13 and 61.14 of the Regulations of the Commissioner of Education is necessary to implement Chapter 390 (Chapter 390) of the Laws of 2019, which amended the Education Law, effective October 23, 2019, by, inter alia, creating the new legally protected title of “registered dental assistant” and eliminating the prior protected title of “certified dental assistant.” The prior title of certified dental assistant was causing confusion between individuals certified by the Department and individuals certified by the National Dental Assisting Board (DANB). This confusion led to some unintentional criminal violations for those individuals who illegally used the certified dental assistant title in this State when they possessed only DANB certification. Additionally, both dentists and the public were confused by which certified dental assistants were licensed by New York State and which were only DANB-certified.

Chapter 390 eliminated these issues by changing the protected title of the profession to registered dental assistant and replacing all the references in Article 133 of the Education Law to the prior title of certified dental assistant with the title registered dental assistant.

The proposed amendment to section 29.2 of the Rules of the Board of Regents and sections 52.26, 61.9, 61.11, 61.12, 61.13 and 61.14 of the Regulations of the Commissioner of Education implements Chapter 390 by changing the references, in

those sections, from “certified dental assistant” and “certified dental assisting” to “registered dental assistant” and “registered dental assisting.”

The proposed amendment was presented to the Professional Practice Committee for recommendation and to the Full Board for adoption as an emergency action at the November 2019 meeting of the Board of Regents, effective November 5, 2019. Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for permanent adoption, after expiration of the required 60-day comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5), would be the February 10-11, 2020 Regents meeting. Furthermore, pursuant to SAPA 203(1), the earliest effective date of the proposed rule, if adopted at the February meeting would be February 26, 2020, the date the Notice of Adoption would be published in the State Register. However, the November emergency rule will expire on February 2, 2020. If the rule were to lapse, it would impede the ability of the Department to license applicants for licensure as registered dental assistants, which could adversely impact the public’s access to dental assisting services in this State.

Therefore, a second emergency action is necessary at the January 2020 meeting for the preservation of the public health and general welfare in order to immediately conform the Rules of the Board of Regents and the Regulations of the Commissioner of Education to the requirements of Chapter 390, which became effective October 23, 2019, by changing the references, in those sections, from “certified dental assistant” and “certified dental assisting” to “registered dental assistant” and “registered dental assisting” and to ensure that the emergency adoption taken at the November meeting remains in effect until the proposed rule can be permanently adopted.

It is anticipated that the proposed rule will be presented for adoption as a permanent rule at the February 2020 Regents meeting, which is the first scheduled meeting after the 60-day public comment period prescribed in SAPA for State agency rule makings.