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| Regulatory Analysis Form (Completed by Promulgating Agency) | | INDEPENDENT REGULATORY REVIEW COMMISSION <div style="border: 1px solid black; padding: 5px; text-align: center;"> RECEIVED FEB 13 2020 Independent Regulatory Review Commission </div> | |
| (All Comments submitted on this regulation will appear on IRRC's website) | | | |
| (1) Agency: Department of State, Bureau of Professional and Occupational Affairs, State Board of Dentistry | | | |
| (2) Agency Number: 16A Identification Number: 4626 | | IRRC Number: 3198 | |
| (3) PA Code Cite: 49 Pa. Code §§ 33.1, 33.250—33.257 and 33.401 | | | |
| (4) Short Title: Child Abuse Reporting Requirements | | | |
| (5) Agency Contacts (List Telephone Number and Email Address): Primary Contact: Cynthia Montgomery, Deputy Chief Counsel, Department of State, P.O. Box 69523, Harrisburg, PA 17106-5923 (phone 717-783-7200) (fax 787-0251) cymontgome@pa.gov. Secondary Contact: Jackie Weist Lutz, Board Counsel, State Board of Dentistry, P.O. Box 69523, Harrisburg, PA 17106-9523 (phone 717-783-7200) (fax 787-0251) jlutz@pa.gov. | | | |
| (6) Type of Rulemaking (check applicable box): <input type="checkbox"/> Proposed Regulation <input checked="" type="checkbox"/> FINAL REGULATION <input type="checkbox"/> Final Omitted Regulation | | <input type="checkbox"/> Emergency Certification Regulation; <input type="checkbox"/> Certification by the Governor <input type="checkbox"/> Certification by the Attorney General | |
| (7) Briefly explain the regulation in clear and nontechnical language. (100 words or less) This final-form rulemaking implements amendments to the Child Protective Services Law (CPSL) (23 Pa.C.S. §§ 6301—6386), including the requirement imposed by the act of April 15, 2014 (P.L. 411, No. 31) (Act 31 of 2014) on all health-related Boards, including the State Board of Dentistry (Board), to require training in child abuse recognition and reporting. | | | |
| (8) State the statutory authority for the regulation. Include specific statutory citation. Section 3(o) of the Dental Law (63 P.S. § 122(o)) sets forth the Board's general rulemaking authority. Section 6383(b)(2) of the CPSL (23 Pa.C.S. § 6383(b)(2)) requires the Board to promulgate regulations to implement the mandatory reporting requirements for Board regulated practitioners. | | | |

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

Yes, section 6383(b)(2) of the CPSL requires the Board to promulgate regulations to implement the mandatory reporting requirements for Board regulated practitioners.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

Since 2014, the General Assembly has made numerous amendments to the CPSL, including the requirement imposed by Act 31 of 2014 on all health-related Boards to require licensees who are considered "mandated reporters" complete mandatory training in child abuse recognition and reporting. These amendments are required to update the Board's existing regulations on the subject of child abuse reporting to comport to the numerous amendments made to the CPSL, including the mandatory training requirements required by Act 31 of 2014, which the Board implemented as required at the beginning of 2015. All Board regulated practitioners will benefit by receiving mandatory training with regard to their responsibilities under the CPSL, and all Pennsylvania children will benefit from the increased protections provided by the amendments. Licensees will further benefit from regulations that are consistent with the CPSL, as amended, to avoid confusion as to their responsibilities in this area.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

No. There are no federal standards on the topic.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

This regulation will not adversely affect Pennsylvania's ability to compete with other states. All surrounding states also have regulations on reporting child abuse in the medical field.

In Connecticut, certain health professionals, including dentists and dental hygienists, are mandated to report suspected child abuse or neglect to the Department of Children and Families' Child Abuse and Neglect Careline or a law enforcement agency. Oral reports must be made within twelve hours of the moment the practitioner suspects the abuse or neglect occurred, followed by a written report within 48 hours after that. Failure to meet reporting responsibilities may subject the practitioner to criminal prosecution and possible action against the practitioner's license or certificate. While training is not mandatory, free training is available to all mandated reporters.

In Delaware, the law mandates certain persons, including any person licensed to render services in medicine, osteopathy or dentistry, to make an immediate oral report to the Department of Services for Children, Youth and their Families when they know of, or suspect, child abuse or

neglect and to follow up with any requested written reports. Mandatory reporter training is available through the Office of the Child Advocate.

In Maine, any child abuse or child neglect reports must be made immediately by telephone to the Department of Health and Human Services. Many adults, including dentists and dental hygienists, are mandated, or required by statute, to report knowledge or reasonable suspicion of incidents of child abuse, neglect or suspicious child deaths. In Maine, mandated reporters shall complete mandated reporter training at least once every 4 years.

In Maryland, any health practitioner is required to report both orally and in writing any suspected child abuse or neglect. Oral reports must be made immediately and written reports must be made within 48 hours of contact in which the disclosure of the suspected abuse or neglect was given. All reports of abuse must be made to the local departments of social services and the appropriate law enforcement agency. If a licensee knowingly fails to report suspected abuse of a child, they may be subject to professional sanctions by licensing boards. Anyone making a good faith report is immune from civil liability and criminal penalty. While not required, mandated reporter training is available.

In Massachusetts, all members of the medical field, including dentists, must report to the Department of Children and Families when they suspect that a child is being abused or neglected immediately by telephone to the DCF area office that services the city or town where the child lives or the Child-at-Risk-Hotline. As a mandated reporter, it is also required by law to mail or fax a written report to the Department within 48 hours after making the oral report. Mandated reporters are required to report any physical or emotional injury resulting from abuse; any indication of neglect, including malnutrition; any instance in which a child is determined to be physically dependent upon an addictive drug at birth; any suspicion of child sexual exploitation or human trafficking; or death as a result of abuse or neglect. DCF has an online training video available for mandatory reporters.

In New Hampshire, all members of the medical field, including dentists, or any other person having reason to suspect that a child has been abused or neglected are required to report such to the Central Intake Unit of the New Hampshire Division for Children, Youth and Families. An oral report shall be made immediately by telephone or otherwise, and followed within 48 hours by a report in writing, if requested. Training on the reporting requirements is not required.

In New Jersey, any person having reasonable cause to believe that a child has been subjected to abuse or acts of abuse must immediately report to the State Central Registry's hotline. For that reason, the New Jersey Department of Children and Families offers an online Mandated Reporter Training resource. Any person who knowingly fails to report suspected abuse or neglect according to the law or to comply with the provisions of the law is a "disorderly person." New Jersey law also provides immunity from criminal or civil liability for any person who makes a good faith report of suspected child abuse or neglect.

In New York, all persons in the medical profession, including dentists and dental hygienists, are required by law to report suspected child abuse or maltreatment to the New York Statewide Central Register of Child Abuse and Maltreatment. The law also assigns civil and criminal liability to those professionals who do not comply with their mandated reporter duties; including being criminally charged with a Class A misdemeanor, being subject to criminal penalties, and being sued in a civil court for monetary damages for any harm caused. Reasonable cause to

suspect child abuse or maltreatment means that, based on one's observations, professional training and experience, a licensee believes the parent or person legally responsible for a child has harmed that child or placed that child in imminent danger or harm. In addition, New York requires licensees, when applying initially for licensure to complete 2 hours of coursework or training in the identification and reporting of child abuse and maltreatment. This is a one-time requirement and once taken does not need to be completed again. The New York State Education Department Office of the Professions oversees the training requirements for mandated reporters.

In Ohio, all health care professionals are mandated to report if a child under the age of eighteen or a mentally retarded, developmentally disabled, or physically impaired person under the age of twenty-one has been abused or neglected. If a licensee has reason to believe that a child or mentally challenged person has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or other condition, the licensee may report to the entity or persons specified. A licensee making a report shall make it to the public children services agency or to a municipal or county peace officer in the county in which the child resides. The report must be made immediately by telephone or in person and must be followed by a written report if requested.

In Virginia, any persons licensed in the practice of dentistry must report if they have reason to suspect a child is an abused or neglected child immediately to the local department of the county or city where the child resides, where the abuse or neglect is believed to have occurred or to the Department's child abuse and neglect hotline. Any person required to file a report who fails to do so, shall be fined not more than \$500 for the first failure and for any subsequent failures not less than \$1,000 and may be charged with a Class 1 misdemeanor. Mandated reporter training on recognizing and reporting child abuse and neglect is available on the Virginia Department of Social Services website.

In West Virginia, any licensee in a health profession it required to report any suspected child abuse or neglect. When a licensee suspects that a child is being abused or neglected, or observes a child being subjected to conditions that are likely to result in abuse or neglect, or believes that a child has suffered serious physical abuse, sexual abuse, or sexual assault, a report must be made to the Child Protective Services unit in the county office of the Department of Health and Human Resources where the licensee is located or the State Police or other law enforcement agency that has jurisdiction to investigate the report. Reports must be made immediately by phone and followed up within 48 hours by a written report, if requested.

Based on these requirements from other states, the Board believes that this regulation will not place Pennsylvania at a competitive disadvantage.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No. The regulation does not affect any other regulations of the agency or other state agencies. However, there are 15 additional boards that will be promulgating similar regulations in the upcoming months (all health-related boards, and the State Board of Funeral Directors).

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

The Board began its discussions regarding the required updates at the end of 2014, and a draft of the proposed rulemaking was presented to the Board at its regularly scheduled public meeting on April 17, 2015. At that time the Board authorized Counsel to release an "exposure draft" of the proposal to the Board's list of interested parties and stakeholders requesting input. On June 1, 2015, the exposure draft was distributed to nearly 140 individuals and entities that have expressed an interest in the Board's regulatory agenda. The Board received input from the Pennsylvania Dental Association (PDA); Dr. Frank Falcone, a practicing oral and maxillofacial surgeon; and Virginia Saunders, Chairperson of the Allied Health, Science & Math Division, and Director of the Dental Hygiene Program at Manor College. These comments were considered by the Board at its regularly scheduled public meeting on July 10, 2015. The PDA asked questions about two of the definitions (specifically with regard to the definition of "child abuse" and the definition of "person responsible for a child's welfare"), but in that these definitions were derived from the amended CPSL, no changes were made in response to these comments. The PDA made suggestions to aid clarity in § 33.256 (relating to child abuse recognition and reporting—mandatory training requirement) which were incorporated into the regulation. Dr. Falcone agreed that reporting of child abuse is imperative, but that 2 hours of training every biennial renewal cycle is excessive. He suggested the Board limit the requirement to those applying for new licenses. Likewise, Dr. Saunders expressed her belief that requiring 2 hours of continuing education on child abuse every biennial renewal cycle was completely unnecessary. She suggested requiring a "refresher" every 10 years, or sooner if substantial changes occur to the CPSL or the reporting requirements. This, in her opinion, would be more appropriate and less burdensome. In reviewing these comments, the Board noted that the requirement to complete 2 hours of continuing education as a condition of biennial renewal each cycle was imposed by the General Assembly, and not the Board, so no changes were made to the proposed rulemaking based on this comment. As an executive agency, the Board is required to implement the legislation as enacted by the General Assembly. Thereafter, the Board prepared the proposed rulemaking package for publication as proposed.

The Board published the proposed rulemaking on February 24, 2018, requesting comments from the public within 30 days. No additional public comments were received. The Independent Regulatory Review Commission submitted comments on April 25, 2018, which were discussed by the Board at its regularly scheduled meeting on May 18, 2018. Thereafter, the Board prepared the final-form rulemaking addressing all comments and incorporating additional revisions necessitated by amendments made to the CPSL in 2018 and 2019. All discussions on the final-form rulemaking took place at regularly scheduled public Board meetings, which are attended by representatives of the regulated community.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

All Board regulated practitioners will be affected by the regulation. At the present time, there are 9,638 actively licensed dentists, 9,198 actively licensed dental hygienists; 2,712 certified expanded function dental assistants; and 20 restricted faculty license holders. In addition, all applicants for a license or certificate issued by the Board would be affected by the mandatory training requirements set forth in the proposed regulation as required by Act 31. The Board processes about 2,000 applications a year.

According to the Small Business Administration (SBA), as of 2018, there are approximately 1 million businesses in Pennsylvania; of which 99.6% are small businesses. Thus, the vast majority of businesses in Pennsylvania are considered small businesses. According to the Pennsylvania Department of Labor and Industry in 2016, the majority of dentists, dental hygienists and dental assistants work in offices of dentists and/or are self-employed (90%). A small number work in state or federal government, offices of physicians, and outpatient care centers. All restricted faculty licensees work at one of the three universities in the Commonwealth that has a dental school (the University of Pittsburgh, Temple University or the University of Pennsylvania).

Small businesses are defined in Section 3 of the Regulatory Review Act, (71 P.S. § 745.3) which provides that a small business is defined by the SBA's Small Business Size Regulations under 13 CFR Ch. 1 Part 121. These size standards have been established for types of businesses under the North American Industry Classification System (NAICS). In applying the NAICS standards to the types of businesses where dentists, dental hygienists and expanded function dental assistants work, a small business classified under NAICS code 621210 (offices of dentists) is one with \$ 8.0 million or less in average annual receipts. Colleges, universities and professional schools (NAICS code 611310) are considered small businesses if they have \$ 30.0 million or less in average annual receipts. Because these three universities each have annual operating budgets over a billion dollars, none of the 20 restricted faculty licensees work for small businesses. The Board does not collect data relating to business size, but believes that, with the exception of the restricted faculty licensees, the vast majority of dentists, dental hygienists and expanded function dental assistants work in "small businesses" as the term is defined by the SBA and the Regulatory Review Act.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

All Board-regulated practitioners will be affected by the regulation. At the present time, there are 9,638 actively licensed dentists, 9,198 actively licensed dental hygienists; 2,712 certified expanded function dental assistants; and 20 restricted faculty license holders. In addition, all applicants for a license or certificate issued by the Board would be affected by the mandatory training requirements set forth in the proposed regulation as required by Act 31. The Board processes about 2,000 applications a year.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

The Board does not anticipate any significant fiscal impact or paperwork requirements relating to the proposed rulemaking. Because licensees and certificate holders are already required to complete mandatory continuing education, and the 2 hours of continuing education in child abuse recognition and reporting are incorporated in the existing requirement, there would be no increased burden. Only applicants for licensure and certification would incur an additional requirement, and because there are many low-cost and free options available to complete the training, the Board anticipates this impact to also be minimal. Because all approved Act 31 training providers are required to report attendance/participation electronically, there are no additional paperwork requirements imposed on licensees/certificate holders. In addition, the implementation of an electronic reporting system for mandatory reporters of suspected child abuse under the CPSL by the Department of Human Services has decreased the paperwork requirements related to the mandatory reporting requirements. The regulation benefits all licensees and certificate holders, by providing clarity regarding the reporting obligations; and benefits all Pennsylvania children by the increased protections provided.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

Because any costs or adverse effects are minimal, the benefits to the regulated community of clarity regarding their reporting obligations and the increased protections to Pennsylvania children far outweigh the costs.

(19) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There should be no additional cost to the regulated community of board regulated practitioners to comply with the updated regulations or to complete the 2 hours of continuing education, as these are not new requirements. In fact, the new electronic reporting system will reduce any paperwork requirements. The only individuals who would incur additional costs are applicants for licensure/certification who will need to complete 3 hours of approved training in child abuse recognition and reporting as a condition of licensure. However, because there are numerous low-cost and free options available, this cost is minimal. Additionally, as more and more schools are submitting their courses for approval, more and more applicants will have completed the required training as part of their professional education and will incur no additional costs. At the present time, the cost for the required training ranges from free to \$100. So at an average of 2,000 applications per year, the cost to applicants could range from \$0 to \$200,000 per year. For purposes of this rulemaking, the Board is assuming that most applicants would choose a free or low cost option and estimates an average cost of no more than \$25 – or \$50,000 per year.

(20) Provide a specific estimate of the costs and/or savings to the local governments associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no costs or savings to local governments associated with compliance with the rulemaking.

(21) Provide a specific estimate of the costs and/or savings to the state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

The costs to state government associated with implementation of the regulation include the costs associated with the electronic reporting system by which approved providers submit attendance/participation records to the Bureau and the administrative costs of assuring applicants have complied with the training requirements. The costs associated with the electronic reporting system included an initial system upgrade of \$35,000 incurred in fiscal year 2014-2015. Ongoing annual operating costs of approximately \$90,000 include the costs associated with reviewing application records to determine compliance, sending discrepancy letters, responding to inquiries, working with the IT consultant, managing the child abuse education resource account, approving new courses, etc. These costs are allocated to the 16 Boards that are impacted by the training requirements based on licensee population.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

There are no additional legal, accounting or consulting procedures or additional reporting, recordkeeping or other paperwork requirements required of the regulated community. The Bureau/Board has additional recordkeeping responsibilities in receiving, retaining, and retrieving electronic records of completed child abuse training for applicants and licensees.

(22a) Are forms required for implementation of the regulation?

No forms are required for implementation of this regulation, as completion of the required child abuse training is being reported electronically to the Bureau by the course provider.

(22b) If forms are required for implementation of the regulation, attach copies of the forms here. If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.

N/A

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

| | Current FY Year 19-20 | FY +1 Year 20-21 | FY +2 Year 21-22 | FY +3 Year 22-23 | FY +4 Year 23-24 | FY +5 Year 24-25 |
|-----------------------------|--------------------------------------|---------------------------------|---------------------------------|---------------------------------|---------------------------------|---------------------------------|
| SAVINGS: | \$ | \$ | \$ | \$ | \$ | \$ |
| Regulated Community | | | | | | |
| Local Government | | | | | | |
| State Government | | | | | | |
| Total Savings | N/A | N/A | N/A | N/A | N/A | N/A |
| COSTS: | | | | | | |
| Regulated Community | \$50,000 | \$50,000 | \$50,000 | \$50,000 | \$50,000 | \$50,000 |
| Local Government | | | | | | |
| State Government | \$90,000 | \$90,000 | \$90,000 | \$90,000 | \$90,000 | \$90,000 |
| Total Costs | \$140,000 | \$140,000 | \$140,000 | \$140,000 | \$140,000 | \$140,000 |
| REVENUE LOSSES: | | | | | | |
| Regulated Community | | | | | | |
| Local Government | | | | | | |
| State Government | | | | | | |
| Total Revenue Losses | N/A | N/A | N/A | N/A | N/A | N/A |

(23a) Provide the past three year expenditure history for programs affected by the regulation.

| Program | FY -3 16-17 Actual | FY -2 17-18 Actual | FY -1 18-19 Actual | Current FY 19-20 Projected |
|---------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|---|
| State Board of Dentistry | \$2,209,336.72 | \$2,175,906.70 | \$2,336,027.57 | \$2,281,000.00 |

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

The regulation should have no adverse impact on small business. The new streamlined electronic system for making reports of suspected child abuse has decreased the paperwork requirements; and although licensees who are employees of small businesses now have to complete mandatory training in child abuse recognition and reporting, the law and regulations provide that this requirement is incorporated in the existing continuing education requirements, so there is no increased burden. And many approved courses are free or low cost.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

The Board has identified no special groups that needed special provisions. The CPSL applies equally to all mandated reporters.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

No alternative regulatory provisions have been considered. The Board believes that these regulations provide the least burdensome acceptable means of complying with the CPSL.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

Because there is no anticipated adverse impact on small business, a regulatory flexibility analysis was not conducted. No less stringent compliance or reporting requirements or less stringent schedules or deadlines for compliance for small businesses would be consistent with the goals of the CPSL. The new electronic reporting process established by the Department of Human Services simplifies the reporting process for all businesses. There are no design or operational standards in the regulation. Exempting small businesses or employees of small businesses from any of the requirements contained in the regulation would not be consistent with the intent of the CPSL.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

No data is the basis for this regulation.

(29) Include a schedule for review of the regulation including:

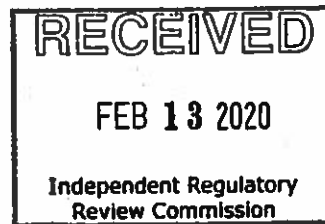
- A. The length of the public comment period: **30 days**
- B. The date or dates on which any public meetings or hearings will be held: **No public hearings are scheduled. The Board discusses its regulatory proposals at regularly scheduled public board meetings. See item (30) for dates.**
- C. The expected date of delivery of the final-form regulation: **Winter 2019-2020**
- D. The expected effective date of the final-form regulation: **Upon publication as final**
- E. The expected date by which compliance with the final-form regulation will be required: **Upon publication as final**
- F. The expected date by which required permits, licenses or other approvals must be obtained: **N/A**

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The Board continually reviews the efficacy of its regulations, as part of its annual review process under Executive Order 1996-1. The Board reviews its regulatory proposals at regularly scheduled public meetings. The Board will meet on the following remaining date in 2020: March 13, May 15, July 10, September 11, and November 13, 2020. More information can be found on the Department's website at (www.dos.pa.gov).

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STATE BOARD OF DENTISTRY
(AGENCY)

BY: Marissa H. Z. Lehr

DOCUMENT/FISCAL NOTE NO. 16A-4626

FEB 10 2020

DATE OF APPROVAL

DATE OF ADOPTION: _____

DATE OF APPROVAL

BY: John F. Erhard, III
JOHN F. ERHARD, III, D.D.S.

Deputy General Counsel,
Chief Counsel,
Independent Agency
(Strike Inapplicable title)

TITLE: Chairperson
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

- ☐ Check if applicable
Copy not approved.
Objections attached.
- ☐ Check if applicable.
No Attorney General approval
or objection within 30 day
after submission.

FINAL RULEMAKING

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF DENTISTRY
49 PA. CODE, CHAPTER 33
§§ 33.1, 33.250—33.257 and 33.401**

CHILD ABUSE REPORTING REQUIREMENTS

The State Board of Dentistry hereby amends §§ 33.1, 33.250—33.255 and 33.401 and adds §§ 33.256 and 33.257 (relating to child abuse recognition and reporting—mandatory training requirement; and child abuse recognition and reporting course approval process) to read as set forth in Annex A.

Effective Date

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

Statutory Authority

Section 3(o) of the Dental Law (63 P.S. § 122(o)) sets forth the Board's general rulemaking authority. Section 6383(b)(2) of the Child Protective Services Law (CPSL) (23 Pa.C.S. § 6383(b)(2)) requires the Board to promulgate regulations to implement the mandatory reporting requirements for board-regulated practitioners.

Purpose and Explanation

Since 2014 the General Assembly has made numerous amendments to the CPSL, including the requirement imposed by the act of April 15, 2014 (P.L. 411, No. 31) (Act 31 of 2014) on all health-related Boards to require training in child abuse recognition and reporting for licensees who are considered "mandated reporters" under the CPSL. Section 2 of Act 31 of 2014 provided that these training requirements would apply to all persons applying for a license, or applying for renewal of a license, on or after January 1, 2015. The Board implemented the training requirements as mandated by Act 31 of 2014 at the beginning of 2015 and subsequently proposed this rulemaking to update the Board's existing regulations on the subject of child abuse reporting to be consistent with the CPSL, as amended.

The proposed rulemaking was published on February 24, 2018, at 48 Pa.B. 1179, for 30 days of public comment, but no public comments were received. The Independent Regulatory Review Commission (IRRC) submitted comments on April 25, 2018. The House Professional Licensure Committee (HPLC) and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) did not submit comments. The following represents a summary of IRRC's comments and the Board's response, along with a description of the amendments made to the final-form rulemaking, some of which were necessitated by additional amendments made to the CPSL since publication of the proposed rulemaking.

Summary of IRRC's Comments and the Board's Response

Section 33.1 (relating to definitions)

IRRC first commented relating to definitions that the Board is adopting or amending from the CPSL that are not defined exactly as stated in the CPSL. First, IRRC noted that the Board indicated its intent to remove the definition of the term "perpetrator" because it is no longer used

in the regulations. However, IRRC correctly pointed out that the term continues to appear in the definition of “serious physical neglect” as taken directly from the CPSL. IRRC suggests that the Board should either keep the defined term “perpetrator” or revise the definition of “serious physical neglect” not to include the use of that term.

The Board had intentionally deleted the definition of the term “perpetrator” from the regulation because the Board believed it could cause confusion when a Board regulated practitioner was unsure of who may have abused a child leading to an underreporting of suspected child abuse. The Board has added the statutory definition of “perpetrator” to the final-form regulation in response to IRRC’s comment. However, this addition is being made to assure that the regulation is consistent with the CPSL, and is not intended to imply that a Board regulated practitioner has a duty to conduct an investigation to determine who abused or caused abuse to the child and then determine if they meet the statutory definition of “perpetrator” prior to making a report of suspected child abuse. If a Board regulated practitioner believes a child has been the subject of abuse, the Board regulated practitioner should make a report as set forth in the regulations so that the appropriate authorities may investigate.

IRRC also noted that the Board’s intent is to amend the definition of “child abuse” to comport with amendments made to the CPSL. However, IRRC noted that the proposed definition varies from the CPSL. Specifically, section 6303(b.1)(8)(ii) of the CPSL states, “unreasonably restraining or confining a child, based on consideration of the method, location or duration of the restraint or confinement,” whereas the equivalent definition in the Board’s regulations only states “unreasonably restraining or confining a child.”

Initially, the qualifying phrase “based on consideration of the method, location or duration of the restraint or confinement” was intentionally omitted from the proposed rulemaking because the Board did not want Board regulated practitioners to be making subjective determinations about whether the method, location or duration of the restraint or confinement was or was not “unreasonable” resulting in an underreporting of suspected child abuse. However, upon consideration of IRRC’s comment, it appears to the Board that the phrase may be helpful to Board regulated practitioners by clarifying what aspects of restraint or confinement make it unreasonable. For that reason, and to assure that the definition is consistent with the CPSL, the qualifying phrase has been added to the final-form regulation.

IRRC also noted that the phrase “provided that the violation is being investigated by law enforcement” was not carried over from section 6303(b.1)(8)(iv) of the CPSL to the Board’s definition of “child abuse.” This provision of the CPSL defines “child abuse” to include the act of “causing a child to be present at a location while a violation of 18 Pa.C.S. § 7508.2 (related to operation of a methamphetamine laboratory) is occurring, provided that the violation is being investigated by law enforcement.” In response to IRRC’s comment, the Board has inserted the missing clause. Originally, the Board did not want to include the proviso at the end because it might imply that the Board regulated practitioner would have a duty to determine if the methamphetamine laboratory was being investigated by law enforcement, which was not the Board’s intent. Again, the insertion of the proviso in the final-form regulation is being made to assure that the definition in the Board’s regulation is consistent with the CPSL. It is not intended to imply that a Board regulated practitioner has such a duty. If a Board regulated practitioner

believes that a child has been present at a methamphetamine laboratory, it should be reported as set forth in the regulation.

Additionally, IRRC noted that section 6303(b.1)(8)(vii)(D) of the CPSL was not included at all in the proposed regulation. This provision is related to leaving a child unsupervised with an individual, other than the child's parent, who has been determined to be a sexually violent predator under 42 Pa.C.S. § 9799.58 (relating to assessments) or has to register for life under 42 Pa.C.S. § 9799.55(b) (relating to registration). In response, the Board notes that section 6303(b.1)(8)(vii)(D) was added by the act of February 21, 2018 (P.L. 27, No. 10) (Act 10 of 2018), while the Board delivered the proposed rulemaking to IRRC and the standing committees of the House and Senate on February 9, 2018. Therefore, the Board could not have included it in the proposed rulemaking because it did exist as a requirement of the CPSL at the time of delivery. However, it has been added to the final-form regulation.

IRRC also noted that since it is the Board's intent to amend the regulations to be consistent with the CPSL to benefit licensees and so as to avoid confusion as to their responsibilities in this area, the Board should ensure that the final regulation is consistent with the CPSL. The final-form regulation has been reviewed and revised so that it comports with the CPSL, including more recent amendments that occurred after the proposed rulemaking was published. In addition, the Board will endeavor to keep up with future changes to the CPSL and to amend the regulations as needed.

Section 33.401 (relating to credit-hour requirements)

IRRC raised a concern that the proposed regulation does not provide direct notice that if the continuing education requirement for child abuse recognition and reporting is not met, a license or certificate cannot be renewed. IRRC suggests that direct and clear notice in the wording of the regulation will benefit both the Board and the regulated community in obtaining compliance. In response, the Board has added a clear notice to § 33.401(h) indicating that the Board will not renew a license or certificate unless the Bureau has received an electronic report from an approved provider documenting the attendance/participation of the licensee or certificate holder. Instead, the licensee or certificate holder will receive a "discrepancy notice" through the Pennsylvania Licensing System informing them that the Bureau/Board has not received an electronic report evidencing completion of the mandatory child abuse training and that their license or certificate cannot be renewed until such a report is received.

Description of Amendments to the Final-form Rulemaking

The definition of "child abuse" has been amended in response to IRRC's comments to be consistent with the definition in the CPSL as discussed above. Additionally, the definition of "perpetrator" has been included in the final-form regulation.

In the proposed rulemaking, the Board had planned to add a new section, § 33.252a (relating to mandatory reporting of children under 1 year of age) as a result of amendments to section 6386 of the CPSL, which had required mandatory reporting when a health care provider is involved in the care of a child under 1 year of age who is born and identified as being affected by illegal substance abuse by the child's mother, withdrawal symptoms resulting from prenatal drug

exposure, or a Fetal Alcohol Spectrum Disorder. However, section 6386 of the CPSL was amended in June of 2018, to change this requirement to a “notification” and to clarify that this “notification” does not constitute a child abuse report. Therefore, the Board determined that this section was no longer needed in the final-form regulation and it has been deleted. This, of course, does not relieve health care providers from the duty to make such notifications under the CPSL, but simply reflects the fact that the Board is not required to enforce this requirement by regulation. In addition, all cross references to proposed § 33.252a have been removed from the final-form regulation.

Section 33.255 (relating to noncompliance) has been amended in the final-form regulation to reflect recent amendments made to the CPSL by the act of November 26, 2019 (P.L. 648, No. 88), which were effective as of January 25, 2020, with regard to the criminal penalties related to the willful failure to report suspected child abuse.

Finally, the Board has amended § 33.401(h) to provide clear notice that the Board will not renew a license or certificate unless the Bureau has received an electronic report from an approved child abuse course provider documenting the attendance/participation by the licensee or certificateholder of the required 2 hours of continuing education in child abuse recognition and reporting requirements.

Fiscal Impact and Paperwork Requirements

The Board does not anticipate any significant fiscal impact or paperwork requirements relating to these amendments. Because licensees and certificateholders are already required to complete mandatory continuing education, and the 2 hours in child abuse recognition and reporting are incorporated in the existing requirement, there would be no increased burden. Only applicants for licensure or certification incur an additional requirement, and as there are many low-cost and free options available to complete the training, the Board anticipates this impact to also be minimal. Because all approved Act 31 training providers are required to report attendance/participation electronically, there are no additional paperwork requirements imposed on licensees. In addition, the implementation of an electronic reporting system for mandatory reporters of child abuse under the CPSL by the Department of Human Services has decreased the paperwork requirements related to the mandatory reporting requirements.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on February 9, 2018, the Board submitted a copy of the notice of proposed rulemaking, published at 48 Pa.B. 1179, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) and the House Professional Licensure Committee (HPLC) for review and comment.

In preparing the final-form rulemaking, the Board has considered all comments from IRRC. No public comments were received. The Board also received no comments from the HPLC or the SCP/PLC.

On February 13, 2020, the Board delivered this final-form rulemaking to IRRC, the HPLC and the SCP/PLC. Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on _____, 2020, 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 _____, 2020, and approved the final-form rulemaking.

Additional Information

Individuals who need information about the final-form regulation may contact Lisa Burns, Board Administrator, State Board of Dentistry, at P.O. Box 2649, Harrisburg, PA 17105-2649, RA-DENTISTRY@pa.gov.

Findings

The Board finds that:

- (1) Public notice of proposed rulemaking 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) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law, but no comments were received.
- (3) The amendments to this final-form rulemaking do not enlarge the original purpose of the proposed regulation published at 48 Pa.B. 1179 (February 24, 2018).
- (4) This final-form rulemaking is necessary and appropriate for the administration of the amendments to the Child Protective Services Law (23 Pa.C.S. §§ 6301—6385).

Order

The Board, therefore, orders that:

- (a) The regulations of the Board at 49 Pa.Code Chapter 33 are amended to read as set forth in Annex A.
- (b) The Board shall submit this Order and Annex A to the Office of Attorney General and the Office of General Counsel for approval as required by law.
- (c) The Board shall submit this order and Annex A to IRRC, the HPLC and the SCP/PLC as required by law.
- (d) The Board shall certify this Order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

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

John F. Erhard, III, D.D.S.
Chairperson
State Board of Dentistry

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

§ 33.1 Definitions.

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

* * * * *

Board regulated practitioner—A dentist, restricted faculty license holder, dental hygienist, public health dental hygiene practitioner or expanded function dental assistant.

Bodily injury—Impairment of physical condition or substantial pain.

Bureau—The Bureau of Professional and Occupational Affairs of the Commonwealth.

[*Child abuse*—A term meaning any of the following:

- (i) A recent act or failure to act by a perpetrator which causes nonaccidental serious physical injury to a child under 18 years of age.
- (ii) An act or failure to act by a perpetrator which causes nonaccidental serious mental injury to or sexual abuse or sexual exploitation of a child under 18 years of age.
- (iii) A recent act, failure to act or series of acts or failures to act by a perpetrator which creates an imminent risk of serious physical injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iv) Serious physical neglect by a perpetrator constituting prolonged or repeated lack of supervision or the failure to provide the essentials of life, including adequate medical care, which endangers a child's life or development or impairs the child's functioning.]

Child—An individual under 18 years of age.

Child abuse—Intentionally, knowingly or recklessly doing any of the following:

- (i) Causing bodily injury to a child through any recent act or failure to act.
- (ii) Fabricating, feigning or intentionally exaggerating or inducing a medical symptom or disease which results in a potentially harmful medical evaluation or treatment to the child through any recent act.
- (iii) Causing or substantially contributing to serious mental injury to a child through any act or failure to act or a series of such acts or failures to act.
- (iv) Causing sexual abuse or exploitation of a child through any act or failure to act.
- (v) Creating a reasonable likelihood of bodily injury to a child through any recent act or failure to act.
- (vi) Creating a likelihood of sexual abuse or exploitation of a child through any recent act or failure to act.
- (vii) Causing serious physical neglect of a child.
- (viii) Engaging in any of the following recent acts:
 - (A) Kicking, biting, throwing, burning, stabbing or cutting a child in a manner that endangers the child.
 - (B) Unreasonably restraining or confining a child, BASED ON CONSIDERATION OF THE METHOD, LOCATION OR DURATION OF THE RESTRAINT OR CONFINEMENT.

(C) Forcefully shaking a child under 1 year of age.

(D) Forcefully slapping or otherwise striking a child under 1 year of age.

(E) Interfering with the breathing of a child.

(F) Causing a child to be present at a location while a violation of 18 Pa.C.S. § 7508.2 (relating to operation of methamphetamine laboratory) is occurring, PROVIDED THAT THE VIOLATION IS BEING INVESTIGATED BY LAW ENFORCEMENT.

(G) Leaving a child unsupervised with an individual, other than the child's parent, who the actor knows or reasonably should have known:

(I) Is required to register as a Tier II or Tier III sexual offender under 42 Pa.C.S. Chapter 97, Subchapter H (relating to registration of sexual offenders), where the victim of the sexual offense was under 18 years of age when the crime was committed.

(II) Has been determined to be a sexually violent predator under 42 Pa.C.S. § 9799.24 (relating to assessments) or any of its predecessors.

(III) Has been determined to be a sexually violent delinquent child as defined in 42 Pa.C.S. § 9799.12 (relating to definitions).

(IV) HAS BEEN DETERMINED TO BE A SEXUALLY VIOLENT PREDATOR UNDER 42 Pa.C.S. § 9799.58 (RELATING TO ASSESSMENTS) OR HAS TO REGISTER FOR LIFE UNDER 42 Pa.C.S. § 9799.55(b) (RELATING TO REGISTRATION).

(H) Causing the death of the child through any act or failure to act.

(I) Engaging a child in a severe form of trafficking in persons or sex trafficking, as those terms are defined under section 103 of the Trafficking Victims Protection Act of 2000 (114 Stat. 1466, 22 U.S.C. § 7102).

ChildLine—An organizational unit of the Department of [Public Welfare] Human Services, which operates a 24-hour a day Statewide toll free telephone system for receiving reports of suspected child abuse, referring reports for investigation and maintaining the reports in the appropriate file.

* * * * *

General supervision—In a dental facility, supervision by a dentist who examines the patient, develops a treatment plan, authorizes the performance of dental hygiene services to be performed within 1 year of the examination, and takes full professional responsibility for the performance of the dental hygienist. In facilities identified in § 33.205(c)(2) and (3) (relating to practice as a dental hygienist), general supervision is defined in § 33.205(d)(2).

[Individual residing in the same home as the child—An individual who is 14 years of age or older and who resides in the same home as the child.]

Individual study—A course of continuing education offered by an approved program sponsor, which permits the participant to learn without interacting with an instructor or interactive learning methodologies and which requires a passing grade on a written examination or workbook.

Local anesthesia—The elimination of sensations, especially pain, in one part of the body by regional injection of an anesthetic agent.

[Perpetrator—A person who has committed child abuse and is a parent of the child, a person responsible for the welfare of a child, an individual residing in the same home as a child or a paramour of a child's parent.]

Mandated reporter—A person who is required under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse) to make a report of suspected child abuse. For purposes of this chapter, the term includes all Board regulated practitioners.

Parent—A biological parent, adoptive parent or legal guardian.

PERPETRATOR—A PERSON WHO HAS COMMITTED CHILD ABUSE AS DEFINED IN THIS SECTION.

(i) THIS TERM INCLUDES ONLY THE FOLLOWING:

(A) A PARENT OF THE CHILD.

(B) A SPOUSE OR FORMER SPOUSE OF THE CHILD'S PARENT.

(C) A PARAMOUR OR FORMER PARAMOUR OF THE CHILD'S PARENT.

(D) A PERSON 14 YEARS OF AGE OR OLDER AND RESPONSIBLE FOR THE CHILD'S WELFARE OR HAVING DIRECT CONTACT WITH CHILDREN AS AN EMPLOYEE OF CHILD-CARE SERVICES, A SCHOOL OR THROUGH A PROGRAM, ACTIVITY OR SERVICE.

(E) AN INDIVIDUAL 14 YEARS OF AGE OR OLDER WHO RESIDES IN THE SAME HOME AS THE CHILD.

(F) AN INDIVIDUAL 18 YEARS OF AGE OR OLDER WHO DOES NOT RESIDE IN THE SAME HOME OF THE CHILD BUT IS RELATED WITHIN

THE THIRD DEGREE OF CONSANGUINITY OR AFFINITY BY BIRTH OR ADOPTION OF THE CHILD.

(G) AN INDIVIDUAL 18 YEARS OF AGE OR OLDER WHO ENGAGES A CHILD IN SEVERE FORMS OF TRAFFICKING IN PERSONS OR SEX TRAFFICKING, AS THOSE TERMS ARE DEFINED UNDER SECTION 103 OF THE TRAFFICKING VICTIMS PROTECTION ACT OF 2000 (114 STAT. 1466, 22 U.S.C. § 7102).

(ii) ONLY THE FOLLOWING MAY BE CONSIDERED A PERPETRATOR FOR FAILING TO ACT, AS PROVIDED IN THIS SECTION:

(A) A PARENT OF THE CHILD.

(B) A SPOUSE OR FORMER SPOUSE OF THE CHILD'S PARENT.

(C) A PARAMOUR OR FORMER PARAMOUR OF THE CHILD'S PARENT.

(D) A PERSON 18 YEARS OF AGE OR OLDER AND RESPONSIBLE FOR THE CHILD'S WELFARE.

(E) A PERSON 18 YEARS OF AGE OR OLDER WHO RESIDES IN THE SAME HOME AS THE CHILD.

Person responsible for the child's welfare—A person who provides permanent or temporary care, supervision, mental health diagnosis or treatment, training or control of a child in lieu of parental care, supervision and control. [The term does not include a person who is employed by or provides services or programs in a public or private school, intermediate unit or area vocational-technical school.]

Program, activity or service—Any of the following in which children participate and which is sponsored by a school or a public or private organization:

- (i) A youth camp or program.
- (ii) A recreational camp or program.
- (iii) A sports or athletic program.
- (iv) A community or social outreach program.
- (v) An enrichment or educational program.
- (vi) A troop, club or similar organization.

Program sponsor—The party approved by the Board who is responsible for the development and presentation of the continuing dental education program.

Public health dental hygiene practitioner—A licensed dental hygienist who is certified by the Board as having met the requirements of section 11.9 of the act (63 P.S. § 130j), and who is authorized to perform dental hygiene services in accordance with § 33.205b (relating to practice as a public health dental hygiene practitioner) without the authorization, assignment or examination of a dentist.

Recent [acts or omissions] act or failure to act—[Acts or omissions] An act or failure to act committed within 2 years of the date of the report to the Department of [Public Welfare] Human Services or county agency.

Serious mental injury—A psychological condition, as diagnosed by a physician or licensed psychologist, including the refusal of appropriate treatment, that does one or more of the following:

- (i) Renders a child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic or in reasonable fear that the child's life or safety is threatened.

- (ii) Seriously interferes with a child's ability to accomplish age-appropriate developmental and social tasks.

[*Serious physical injury*—An injury that causes a child severe pain or significantly impairs a child's physical functioning, either temporarily or permanently.]

Serious physical neglect—Any of the following when committed by a perpetrator that endangers a child's life or health, threatens a child's well-being, causes bodily injury or impairs a child's health, development or functioning:

- (i) A repeated, prolonged or egregious failure to supervise a child in a manner that is appropriate considering the child's developmental age and abilities.
- (ii) The failure to provide a child with adequate essentials of life, including food, shelter or medical care.

Sexual abuse or exploitation—[The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another person to engage in sexually explicit conduct or a simulation of sexually explicit conduct for the purpose of producing a visual depiction, including photographing, videotaping, computer depicting or filming, of sexually explicit conduct or the rape, sexual assault, involuntary deviate sexual intercourse, aggravated indecent assault, molestation, incest, indecent exposure, prostitution, statutory sexual assault or other form of sexual exploitation of children.] Any of the following:

- (i) The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another individual to engage in sexually explicit conduct, which includes the following:

(A) Looking at the sexual or other intimate parts of a child or another individual for the purpose of arousing or gratifying sexual desire in any individual.

(B) Participating in sexually explicit conversation either in person, by telephone, by computer or by a computer-aided device for the purpose of sexual stimulation or gratification of any individual.

(C) Actual or simulated sexual activity or nudity for the purpose of sexual stimulation or gratification of any individual.

(D) Actual or simulated sexual activity for the purpose of producing visual depiction, including photographing, videotaping, computer depicting or filming.

(ii) Any of the following offenses committed against a child:

(A) Rape as defined in 18 Pa.C.S. § 3121 (relating to rape).

(B) Statutory sexual assault as defined in 18 Pa.C.S. § 3122.1 (relating to statutory sexual assault).

(C) Involuntary deviate sexual intercourse as defined in 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse).

(D) Sexual assault as defined in 18 Pa.C.S. § 3124.1 (relating to sexual assault).

(E) Institutional sexual assault as defined in 18 Pa.C.S. 3124.2 (relating to institutional sexual assault).

(F) Aggravated indecent assault as defined in 18 Pa.C.S. § 3125 (relating to aggravated indecent assault).

(G) Indecent assault as defined in 18 Pa.C.S. § 3126 (relating to indecent assault).

(H) Indecent exposure as defined in 18 Pa.C.S. § 3127 (relating to indecent exposure).

(I) Incest as defined in 18 Pa.C.S. § 4302 (relating to incest).

(J) Prostitution as defined in 18 Pa.C.S. § 5902 (relating to prostitution and related offenses).

(K) Sexual abuse as defined in 18 Pa.C.S. § 6312 (relating to sexual abuse of children).

(L) Unlawful contact with a minor as defined in 18 Pa.C.S. § 6318 (relating to unlawful contact with minor).

(M) Sexual exploitation as defined in 18 Pa.C.S. § 6320 (relating to sexual exploitation of children).

(iii) For the purposes of subparagraph (i), the term does not include consensual activities between a child who is 14 years of age or older and another person who is 14 years of age or older and whose age is within 4 years of the child's age.

Sexual misconduct—Any conduct with a current patient, including words, gestures or expressions, actions or any combination thereof, which is sexual in nature, or which may be construed by a reasonable person as sexual in nature.

Subgingival agents—Therapeutic agents, including antimicrobials, antibiotics, antiseptics or anesthetics, placed below the free margin of the gingiva by a local delivery system or device, including injectable systems for ointments, gels or pastes, and degradable or nondegradable devices, such as fibers, films, strips, slaps, spheres, discs or chips.

Subchapter C. MINIMUM STANDARDS OF CONDUCT AND PRACTICE**§ 33.250. Suspected child abuse—mandated reporting requirements.**

(a) *General rule.* Under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse), all Board regulated practitioners [who, in the course of their employment, occupation or practice of their profession, come into contact with children shall report or cause a report to be made to the Department of Public Welfare and to the appropriate county agency when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is a victim of child abuse] are considered mandated reporters. A mandated reporter shall make a report of suspected child abuse in accordance with this section if the mandated reporter has reasonable cause to suspect that a child is a victim of child abuse under any of the following circumstances:

(1) The mandated reporter comes into contact with the child in the course of employment, occupation and practice of the profession or through a regularly scheduled program, activity or service.

(2) The mandated reporter is directly responsible for the care, supervision, guidance or training of the child, or is affiliated with an agency, institution, organization, school, regularly established church or religious organization or other entity that is directly responsible for the care, supervision, guidance or training of the child.

(3) A person makes a specific disclosure to the mandated reporter that an identifiable child is the victim of child abuse.

(4) An individual 14 years of age or older makes a specific disclosure to the mandated reporter that the individual has committed child abuse.

(b) *Staff members of public or private agencies, institutions and facilities.* [Board regulated practitioners who are staff members of a dental or other public or private institution, school, facility or agency, and who, in the course of their employment, occupation or practice of their profession, come into contact with children shall immediately notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is a victim of child abuse. Upon notification by the Board regulated practitioner, the person in charge or the designated agent shall assume the responsibility and have the legal obligation to report or cause a report to be made in accordance with subsections (a), (c) and (d)] Whenever a Board regulated practitioner is required to make a report under subsection (a) in the capacity as a member of the staff of a medical, dental or other public or private institution, school, facility or agency, that Board regulated practitioner shall report immediately in accordance with subsection (c) and shall immediately thereafter notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge.

(c) *Reporting procedure.* [Reports of suspected child abuse shall be made by telephone and by written report.

(1) *Oral reports.* Oral reports of suspected child abuse shall be made immediately by telephone to ChildLine, (800) 932-0313.

(2) *Written reports.* Written reports shall be made to the appropriate county agency within 48 hours after the oral report is made by telephone and must contain, at a minimum, the information required by the Department of Public Welfare in 55 Pa. Code § 3490.18 (relating to filing of a written report by a required reporter).]

A mandated reporter shall immediately make a report of suspected child abuse to the Department of Human Services by either:

- (1) Making an oral report of suspected child abuse by telephone to ChildLine at (800) 932-0313, followed by a written report within 48 hours to the Department of Human Services or the county agency assigned to the case in a manner and format prescribed by the Department of Human Services. The written report submitted under this subparagraph may be submitted electronically.
 - (2) Making an electronic report of suspected child abuse in accordance with 23 Pa.C.S. § 6305 (related to electronic reporting) through the Department of Human Service's Child Welfare Information Solution self-service portal at www.compass.state.pa.us/cwis. A confirmation by the Department of Human Services of the receipt of a report of suspected child abuse submitted electronically relieves the mandated reporter of the duty to make an additional oral or written report.
- (d) Written or electronic reports. [Written reports shall be made in the manner and on forms prescribed by the Department of Public Welfare. The following information shall be included in the written reports, if available:] A written or electronic report of suspected child abuse, shall include the following information, if known:
- (1) The names and addresses of the child, [and the child's parents or], the child's parents and any other person responsible for the [care of the child, if known] child's welfare.
 - (2) Where the suspected child abuse occurred.
 - (3) The age and sex of the subject or subjects of the report.

- (4) The nature and extent of the suspected child abuse, including any evidence of prior abuse to the child or sibling of the child.
- (5) The name and relationship of the person or persons responsible for causing the suspected abuse[,if known,] and any evidence of prior abuse by those persons.
- (6) Family composition.
- (7) The source of the report.
- [(8) The person making the report and where that person can be reached.
- (9) The actions taken by the reporting source, including the taking of photographs and X-rays, removal or keeping of the child or notifying the medical examiner or coroner.
- (10) Other information which the Department of Public Welfare may require by regulation.]
- (8) The name, telephone number and e-mail address of the person making the report.
- (9) The actions taken by the person making the report, including actions taken under 23 Pa.C.S. §§ 6314—6317.
- (10) Other information required by Federal law or regulation.
- (11) Other information that the Department of Human Services may require by regulation.

§ 33.251. Photographs, medical tests and X-rays of child subject to report.

A Board regulated practitioner may take or cause to be taken photographs of the child who is subject to a report and, if clinically indicated, cause to be performed a radiological examination and other medical tests on the child. Medical summaries or reports of the photographs, X-rays and relevant medical tests taken shall be sent to the county children and youth social service agency at the time the written report is sent, or within 48 hours after an electronic report is made

under § 33.250(c)(2) (relating to suspected child abuse—mandated reporting requirements), or as soon thereafter as possible. The county children and youth social service agency shall have access to actual photographs or duplicates and X-rays and may obtain them or duplicates of them upon request.

§ 33.252. Suspected death as a result of child abuse—mandated reporting requirement.

A Board regulated practitioner who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the coroner or medical examiner of the county where death occurred or, in the case where the child is transported to another county for medical treatment, to the coroner or medical examiner of the county where the injuries were sustained.

§ 33.252a. Mandatory reporting of children under 1 year of age.

A Board regulated practitioner shall immediately make a report to the appropriate county agency if the Board regulated practitioner is involved in the care of a child under 1 year of age who is born and identified as being affected by any of the following:

- (1) — Illegal substance abuse by the child's mother.
- (2) — Withdrawal symptoms resulting from prenatal drug exposure unless the child's mother, during the pregnancy, was:
 - (i) — Under the care of a prescribing medical professional.
 - (ii) — In compliance with the directions for the administration of a prescription drug as directed by the prescribing medical professional.
- (3) — A Fetal Alcohol Spectrum Disorder.

§ 33.253. Immunity from liability.

Under 23 Pa.C.S. § 6318 (relating to immunity from liability) a Board regulated practitioner who participates in good faith in the making of a report [, cooperating with an investigation,

testifying in a proceeding arising out of an instance of suspected child abuse or the taking of photographs] of suspected child abuse, making a referral for general protective services, cooperating or consulting with an investigation including providing information to a child fatality or near fatality review team, testifying in a proceeding arising out of an instance of suspected child abuse or general protective services or engaging in any action authorized under 23 Pa.C.S. §§ 6314—6317, shall have immunity from civil and criminal liability that might otherwise result by reason of the Board regulated practitioner's actions. For the purpose of any civil or criminal proceeding, the good faith of the Board regulated practitioner shall be presumed. The Board will uphold the same good faith presumption in any disciplinary proceeding that might result by reason of a Board regulated practitioner's actions [in participating in good faith in the making of a report, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse or the taking of photographs] under §§ 33.250—33.252a 33.252 (RELATING TO SUSPECTED CHILD ABUSE—MANDATORY REPORTING REQUIREMENTS; PHOTOGRAPHS, MEDICAL TESTS AND X-RAYS OF CHILD SUBJECT TO REPORT; AND SUSPECTED DEATH AS A RESULT OF CHILD ABUSE—MANDATED REPORTING REQUIREMENT).

§ 33.254. Confidentiality—waived.

To protect children from abuse, the reporting requirements of {§§ 33.250—33.252 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement)} ~~§§ 33.250—33.252a~~ take precedence over the provisions of any client confidentiality, ethical principle or professional standard that might otherwise apply. In accordance with 23 Pa.C.S. § 6311.1 (relating to privileged communications), privileged

communications between a mandated reporter and a patient does not apply to a situation involving child abuse and does not relieve the mandated reporter of the duty to make a report of suspected child abuse.

§ 33.255. Noncompliance.

(a) *Disciplinary action.* A Board regulated practitioner who willfully fails to comply with the reporting requirements in §§ 33.250—33.252 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement)] ~~§§ 33.250—~~

~~33.252a~~ will be subject to disciplinary action under section 4.1 of the act (63 P. S. § 123.1).

(b) *Criminal penalties.* [Under 23 Pa.C.S. § 6319 (relating to penalties [for failure to report]), a Board regulated practitioner who is required to report a case of suspected child abuse who willfully fails to do so commits a summary offense for the first violation and a misdemeanor of the third degree for a second or subsequent violation.] Under 23 Pa.C.S. § 6319 (relating to penalties), a Board regulated practitioner who is required to report a case of suspected child abuse or to make a referral to the appropriate authorities and who willfully fails to do so commits a criminal offense, as follows:

(1) An offense not otherwise specified in paragraphs (2), (3) or (4) is a misdemeanor of the second degree.

(2) An offense is a felony of the third degree if all of the following apply:

(i) The mandated reporter willfully fails to report.

(ii) The child abuse constitutes a felony of the first degree or higher.

(iii) The mandated reporter has direct knowledge of the nature of the abuse.

(3) If the willful failure to report continues while the mandated reporter knows or has reasonable cause to believe the SUSPECT A child is actively being subjected to child abuse BY THE SAME INDIVIDUAL, OR WHILE THE MANDATED REPORTER KNOWS OR HAS REASONABLE CAUSE TO SUSPECT THAT THE SAME INDIVIDUAL CONTINUES TO HAVE DIRECT CONTACT WITH CHILDREN THROUGH THE INDIVIDUAL'S EMPLOYMENT, PROGRAM, ACTIVITY OR SERVICE, the mandated reporter commits a misdemeanor of the first degree FELONY OF THE THIRD DEGREE, except that if the child abuse constitutes a felony of the first degree or higher, the mandated reporter commits a felony of the third SECOND degree.

(4) A mandated reporter who commits a second or subsequent offense, AT THE TIME OF SENTENCING FOR AN OFFENSE UNDER 23 PA.C.S. § 6319, HAS BEEN CONVICTED OF A PRIOR OFFENSE UNDER § 6319, commits a felony of the third degree, except that if the child abuse constitutes a felony of the first degree or higher, the penalty for the second or subsequent offense is a felony of the second degree.

§ 33.256. Child abuse recognition and reporting—mandatory training requirement.

(a) Except as provided in subsection (c), individuals applying to the Board for an initial license or certificate shall submit proof of completion of 3 hours of training in child abuse recognition and reporting requirements which has been approved by the Department of Human Services.

(b) Except as provided in subsection (c), licensees and certificate holders seeking renewal of a license or certificate issued by the Board shall complete, as a condition of biennial renewal of the license or certificate, 2 hours of approved continuing education in child abuse recognition and reporting requirements, as a portion of the total continuing education required for biennial

renewal. For credit to be granted, the continuing education course or program must be approved by the Bureau, in consultation with the Department of Human Services, as set forth in § 33.257 (relating to child abuse recognition and reporting course approval process).

(c) An applicant, licensee or certificate holder may apply in writing for an exemption from the training/continuing education requirements set forth in subsections (a) and (b) provided the applicant, licensee or certificate holder meets one of the following:

(1) The applicant, licensee or certificate holder submits documentation demonstrating that:

(i) The applicant, licensee or certificate holder has already completed child abuse recognition training as required by section 1205.6 of the Public School Code of 1949 (24 P.S. § 12-1205.6).

(ii) The training was approved by the Department of Education in consultation with the Department of Human Services.

(iii) The amount of training received equals or exceeds the amount of training or continuing education required under subsection (a) or (b), as applicable.

(2) The applicant, licensee or certificate holder submits documentation demonstrating all of the following:

(i) The applicant, licensee or certificate holder has already completed child abuse recognition training required under 23 Pa.C.S. § 6383(c) (relating to education and training).

(ii) The training was approved by the Department of Human Services.

(iii) The amount of training received equals or exceeds the amount of training or continuing education required under subsection (a) or (b), as applicable.

(3) The applicant, licensee or certificate holder submits documentation demonstrating that the applicant, licensee or certificate holder should not be subject to the training or continuing education requirement. Each request for an exemption under this paragraph will be considered on a case-by-case basis.

§ 33.257. Child abuse recognition and reporting course approval process.

(a) An individual, entity or organization may apply for approval to provide mandated reporter training as required under 23 Pa.C.S. § 6383(b) (relating to education and training) by submitting the course materials set forth in subsection (b) simultaneously to the Department of Human Services (DHS), Office of Children, Youth and Families, and to the Bureau at the following addresses:

(1) Department of Human Services, Office of Children, Youth and Families, Health and Welfare Building, 625 Forster Street, Harrisburg, PA 17120 or electronically at RA-PWOCYFCPSL@pa.gov.

(2) Bureau of Professional and Occupational Affairs, 2601 North Third Street, P.O. Box 2649, Harrisburg, PA 17105-2649 or electronically at RA-stcpsl_course_app@pa.gov.

(b) Submissions must include all of the following:

(1) Contact information (mailing address, email address and telephone number) for the agency/course administrator.

(2) General description of the training and course delivery method.

(3) Title of the course.

(4) Timed agenda and estimated hours of training.

(5) Learning objectives.

- (6) Intended audience.
- (7) All course related materials, including as applicable:
 - (i) Handouts.
 - (ii) Narrated script or talking points.
 - (iii) Interactive activities or exercises.
 - (iv) Videos and audio/visual content.
 - (v) Knowledge checks, quizzes or other means of assessing participant's understanding of the material.
 - (vi) For online courses, a transcript or recording of audio training.
- (8) Citation of sources, including written permission to use copyrighted material, if applicable.
- (9) Anticipated credentials or experience of the presenter, or biography of presenter, if known.
- (10) Printed materials used to market the training.
- (11) Evaluation used to assess participants' satisfaction with the training.
- (12) Sample certificate of attendance/participation, which shall include:
 - (i) Name of participant.
 - (ii) Title of training.
 - (iii) Date of training.
 - (iv) Length of training (2 or 3 hours).
 - (v) Name and signature of the authorized representative of the provider. The signature may be an electronic signature.
 - (vi) Statement affirming the participant attended the entire course.

(13) Verification of ability to report participation/attendance electronically to the Bureau in a format prescribed by the Bureau.

(c) The Bureau will notify the applicant in writing upon approval of the course and will post a list of approved courses on the Bureau's website and the Board's website.

Subchapter F. CONTINUING DENTAL EDUCATION

§ 33.401. Credit-hour requirements.

* * * * *

(b) [The] Except as provided in subsection (h), the required hours shall be taken in subject areas listed in § 33.402 (relating to continuing education subject areas) from a program sponsor listed in § 33.403 (relating to program sponsors).

* * * * *

(g) Exceptions are as follows:

(1) An applicant is exempt from the continuing education requirement in subsection (a) for only the biennial period during which the applicant passed the licensure or certification examination.

(2) An Applicant who cannot meet the continuing education requirement due to illness, emergency or hardship may apply to the Board in writing for a waiver. The request [shall] must explain why compliance is impossible. Waiver requests will be evaluated on a case-by-case basis.

(h) All licensees and certificate holders shall complete 2 of the required hours of continuing education in approved courses on child abuse recognition and reporting as set forth in § 33.256 (relating to child abuse recognition and reporting—mandatory training requirement). THE

BOARD WILL NOT RENEW A LICENSE OR CERTIFICATE UNLESS THE BUREAU HAS

RECEIVED AN ELECTRONIC REPORT FROM AN APPROVED COURSE PROVIDER
DOCUMENTING THE ATTENDANCE/PARTICIPATION BY THE LICENSEE OR
CERTIFICATEHOLDER.

* * * * *

16A-4626 – State Board of Dentistry
Child Abuse Reporting Requirements

There were no public comments submitted on this regulation.



**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF DENTISTRY**

**Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
(717) 787-1762**

February 13, 2020

The Honorable George D. Bedwick, Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harrisburg 2, 333 Market Street
Harrisburg, Pennsylvania 17101


Re: Final Regulation
State Board of Dentistry
16A-4626-CHILD ABUSE REPORTING REQUIREMENTS

Dear Chairman Bedwick:

Enclosed is a copy of a final rulemaking package of the State Board of Dentistry pertaining to 16A-4626-CHILD ABUSE REPORTING REQUIREMENTS.

The Board will be pleased to provide whatever information the Commission may require during the course of its review of the rulemaking.

Sincerely,


John P. Erhard III, Chairperson
State Board of Dentistry

JFE:rs

Enclosure

cc: K. Kalonji Johnson, Acting Commissioner of Professional and Occupational Affairs
Sari Stevens, Executive Deputy Secretary, Department of State
Marc Farrell, Deputy Director of Policy, Department of State
Cynthia Montgomery, Deputy Chief Counsel, Department of State
Jackie Wiest Lutz, Counsel, State Board of Dentistry
Jacqueline Wolfgang, Regulatory Unit Counsel, Department of State
State Board of Dentistry

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 16A-4626

SUBJECT: Child Abuse Reporting Requirements

AGENCY: DEPARTMENT OF STATE
Bureau of Professional and Occupational Affairs

TYPE OF REGULATION

Proposed Regulation

X Final Regulation

Final Regulation with Notice of Proposed Rulemaking Omitted

120-day Emergency Certification of the Attorney General

120-day Emergency Certification of the Governor

Re-Delivery of Disapproved Regulation

a. With Revisions

b.

Without Revisions

RECEIVED

FEB 13 2020

Independent Regulatory
Review Commission

FILING OF REGULATION

DATE

SIGNATURE

DESIGNATION

HOUSE COMMITTEE ON PROFESSIONAL LICENSURE

2-13-20 Emily L. Epler

MAJORITY CHAIR Rep. David Hickernell

2-13-20 Markene Wilson

MINORITY CHAIR Rep. Harry A. Readshaw

*SENATE COMMITTEE ON CONSUMER PROTECTION &
PROFESSIONAL LICENSURE*

2/13/20 Tammy M. Blanch

MAJORITY CHAIR Sen. Robert M. Tomlinson

2/13/20 Jennifer Reim

MINORITY CHAIR Lisa M. Boscola

2/13/20 K. Cooper

INDEPENDENT REGULATORY REVIEW COMMISSION

ATTORNEY GENERAL (for Final Omitted only)

LEGISLATIVE REFERENCE BUREAU (for Proposed only)