

Joint Commission on Administrative Rules
September 7, 2005
Senate Room B
Richmond, Virginia

Commission members present:

Senator Wagner-Chairman
Senator Marsh
Senator Martin
Senator Whipple
Senator Williams
Delegate Gear
Delegate Griffith
Delegate Howell
Delegate McQuigg
Delegate Saxman
Delegate Suit

Members not present:

Senator Martin
Delegate Floyd

Senator Wagner, Chairman, called the meeting to order at 1:10 p.m. He explained that the meeting topics for discussion included i) Proposed expansion of duties of dental assistants (18 VAC 60-20); ii) Compliance with regulatory flexibility analysis provisions of § 2.2-4007.1 of the Code of Virginia); iii) Testing and Inspection of weights and measures relating to gasoline pumps; and iv) Mortgage and bank duties (10 VAC 5-160).

I. Notice of Regulatory Action (NOIRA); expansion of duties of dental assistants; Regulation 18 VAC 60-20

Robert Nebiker of the Department of Health Professions provided a presentation on the proposed regulatory action of the Board of Dentistry. He began with a brief overview of the status of the proposed action and an explanation of types of services that dental assistants are currently allowed to perform. Mr. Nebiker noted that while a chair side dental assistant must be certified to perform X-rays, typically the position is not regulated. Rather, dental assistants are looked upon as an employee of the licensed dentist. This serves to limit the activities of the dental assistant. He noted that many dentists have expressed the desire to expand the activities that a dental assistant may perform in order to provide care to a greater number of patients.

Mr. Nebiker further stated that under the proposed regulation, a dental assistant would be authorized, under the direct supervision of a dentist, to perform supragingival scaling, coronal polishing, and carving and packing amalgams.

According to Mr. Nebiker, the Department has 795 pages of comment regarding the possible increased duties including scaling and oral prophylactics. While the actual rule

has not been drafted, he stated that the Board will meet next week to respond to the comments. After the Board's review, the Department will refer the matter to the Regulatory and Legislative Committee of the Board of Dentistry for consideration but they are bound by the NOIRA on what it can propose, the regulation is then drafted, sent to Planning and Budget, the Secretary of Natural Resources and then to the Governor's office.

Senator Wagner noted that dental hygienists, who are regulated, are able to perform some procedures. These individuals normally possess an associate's or a bachelor's degree. He also noted that while a dental assistant is not regulated by the Board, there are some tasks that an individual dental assistant performs for which that individual may have private certification or some other level of competency such as in cleaning prophylaxis or scaling teeth above the gum line.

Senator Whipple inquired about the origin of the proposal and whether it was based on a shortage of hygienists. **Mr. Nebiker** answered that the basis for the request is that dentists wanted to be able to service more patients and be more productive.

Senator Whipple commented that some of the correspondence that she has received warns of dangerous or inadequate care if your teeth are cleaned only supragingivally. **Mr. Nebiker** answered that the care is ultimately the responsibility of the dentist.

Senator Wagner questioned that if hygienists are required to have at least two years of training, what distinguishes them from a dental assistant when it comes to cleaning of teeth?

Delegate Griffith asked what the certifying body in Virginia is for dental assistants and why there isn't a certifying program in Virginia? **Mr. Nebiker** responded that dental assistants have a national board that mandates classes that are needed for certification.

Cal Whitehead, lobbyist for the hygienists, said that the concern among hygienists and patients is that they are opposed to certain parts of the supragingival scraping done by assistants.

Senator Williams mentioned that the Board of Dentistry meets the second week in September and said that whatever the Board does, JCAR should consider a significant public policy change. He asked whether health agencies be able to change the work force or should they defer to the legislature and have it done statutorily?

Delegate Saxman commented that the Code currently provides the Board with the discretion to require training and stated that perhaps the provision should be changed to mandate training. **Mr. Whitehead** indicated that the dental hygienists that he represented were opposed to expanding the duties of dental assistants.

Maureen Glick, President, Virginia Dental Hygienist Association, and a dental hygienist from Rockingham County, stated that dental assistants have a lower stand of

care and it would be to disregard quality treatment of care to use assistants over hygienists. She asserted that expanded use of dental assistants would require them to obtain more education and that the proposed regulation would be a major regulation change resulting in a lowering of the standard of care. **Ms. Glick** stated that completion of the dental hygienist program provided the proper standard of care.

Senator Williams asked if the Board issued the change, will it be spelled out in the regulation? **Mr. Nebiker** said the difficult part is to let public know the direction the Board is leaning toward. He noted that there is a concern regarding the issue of private certification, citing the need for the legislature to grant such authority.

Senator Wagner inquired if **Mr. Nebiker** was aware of any other professions that are not in the Code of Virginia to which **Mr. Nebiker** responded that he would research the questions and provide a response at a later date.

Delegate Griffith mentioned that the Code of Virginia says duties given by the dentist to the assistant "shall be permissible," it doesn't regulate to what extent that dentists should delegate duties and what should be done.

Senator Whipple expounded that some areas have surplus hygienists and their salaries range from \$35,000 to \$75,000 per year. She mentioned a need for more funding for Northern Virginia Community College and said we need to enlarge the systems that are successful in producing hygienists. Also she would like to hear from the Board of Dentistry one way or another.

Senator Williams said he was not comfortable with the role of giving the Board of Dentistry instructions.

Delegate McQuigg said the term "dental assistant" seemed very open ended and needed clarification, perhaps through legislation.

Senator Whipple said there is a need to determine the legislative intent. She noted that a few states have added duties to what dental assistants may do and that it may be better to review the states that have allowed expanded duties to see how well it was doing.

Senator Wagner agreed that the omission in the Code needs to be looked at.

II. Regulatory Flexibility for small businesses in Virginia.

Elizabeth Palen explained the provisions requiring agencies to include a statement regarding the regulatory impact on small businesses and offered a sample form to be used for that purpose. **Senator Wagner** expressed a wish that the compliance be noted on a simple form instead of lengthy written statements. Planning and Budget staff present at the meeting noted that they would work with the Division of Legislative Services on this issue.

III. Testing and Inspection of Weights and Measures relating to Gasoline Pumps

This issue concerns the inspectors from the Department of Agriculture and Consumer Affairs testing gasoline pumps for the proper amount of gasoline dispensed by the pumps. An area of concern is reinspection after a particular pump, that originally failed the inspection, has been corrected.

Delegate McQuigg stated that her concern centered on the protection of the public. The technician is supposed to remove failed inspection stickers from the pumps. When this does not occur, it results in the pumps being out of service for an extended period of time after they have been approved for use.

Don Blankenship, Deputy Commissioner of the Department of Agriculture and Consumer Affairs, provided a response to the concerns raised by **Delegate McQuigg**. Citing House Document 35 (2000), **Mr. Blankenship** stated that the legislature mandated 14 programs changed.

Senator Williams inquired if the failure to remove the sticker **Delegate McQuigg** mentioned was tied to the availability of personnel?

Senator Wagner inquired what the percentage of calibration is and the answer was one cubic inch per gallon which is roughly 1/2 ounce. There is an error rate of 18% off without inspection, if inspected 20% off, it depends on the type of device used.

Senator Williams commented that an inconsistent revenue stream is then created for the gas stations.

Delegate McQuigg asked if the time between reinspections was based on lack of funding for personnel. **Mr. Blankenship** responded that inspections are on a periodic basis based on resources; usually they are inspected with a 16- to- 18 month frequency.

Delegate McQuigg further asked if a pump is fixed and correctly recalibrated is it still 16 to 18 months before a new sticker is placed on the pump? **Andres Alvarez, Director of Consumer Protection**, responded that his office has focused on gas pump inspections the last few months. **Mr. J. Carleton, Commissioner of Department of Agriculture and Consumer Affairs** said that when there are new stations that have 12 to 18 pumps each, the rounds are made every 14 months.

Delegate McQuigg asked what percentage of the inspections pass and what percentage fail at that time? **Mr. J. Carleton** responded that 19% are rejected; an additional 5% are reinspected.

Michael O'Connor, who indicated that he was a lobbyist for the petroleum industry said the number of service stations in 1998 was 6,000, and there are 46,000 today. In his opinion, there is no problem reinspecting those pumps that have been rejected.

Delegate McQuigg indicated that she remained concerned that the consumer is left out.

No motion was made for immediate action.

Other Business

10 VAC 5-160

Delegate Suit expressed concern about regulations that address mortgage lenders. Her concern was about the disparity between mortgage lenders, banks, and savings and loans. Her concern was that that industry be on level playing field.

It was determined that the issue would be taken up when it became more ripe as it was yet to be decided by the State Corporation Commission.

There being no further business, the **meeting adjourned at 3:00 p.m.**