



TO: The Honorable Members of the Board of Regents
FROM: Sarah S. Benson *Sarah S. Benson*
SUBJECT: Proposed Amendment to the Title of Part 61 and Section 61.13 of the Regulations of the Commissioner of Education Relating to the Practice of Registered Dental Assisting
DATE: February 2, 2023
AUTHORIZATION(S): *Dom [Signature] Betty [Signature]*

SUMMARY

Issue for Decision (Consent)

Should the Board of Regents amend the Title of Part 61 and section 61.13 of the Regulations of the Commissioner of Education relating to the practice of registered dental assisting?

Reason(s) for Consideration

Required by State statutes (Chapter 512 of the Laws of 2022 and Chapter 390 of the Laws of 2019).

Proposed Handling

The proposed amendment is submitted to the Full Board for adoption as a permanent rule at the February 2023 Regents meeting. A copy of the proposed rule is included (Attachment A).

Procedural History

The proposed amendment was presented to the Professional Practice Committee for discussion and recommendation to the Full Board for adoption as an emergency rule at the October 2022 meeting of the Board of Regents. A Notice of Emergency Adoption and Proposed Rulemaking was published in the State Register on October 19, 2022.

Because the October emergency action was set to expire on January 1, 2023, a second emergency action was necessary at the December 2022 Regents meeting to ensure the emergency rule remained continuously in effect until it could be permanently

adopted at the February 2023 Regents meeting. A Notice of Emergency Adoption was published in the State Register on January 18, 2023.

Following publication in the State Register, the Department received no comments on the proposed amendment. Therefore, an Assessment of Public Comment is not required and no changes to the proposed amendment are needed. A Notice of Adoption will be published in the State Register on March 1, 2023. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

Since at least 2007, it has been widely understood that registered dental assisting training programs should train registered dental assistants on how to place and remove temporary restorations. However, the registered dental assisting scope of practice statute was not updated to conform to this practice. Chapter 512 of the Laws of 2022 (Chapter 512), effective immediately, addressed this technical oversight by conforming Education Law §6608 to the existing education standards and training of registered dental assistants.

Therefore, the Department proposes to amend paragraph (17) of subdivision (b) of section 61.13 of the Commissioner's regulations by formally adding the placing and removing of temporary restorations to the list of supportive services that a registered dental assistant can perform. This supportive service may be conducted to assist a licensed dentist in the dentist's performance of dental services while under the direct personal supervision of the licensed dentist. The existing paragraphs (17) and (18) of subdivision (b) of section 61.13 of the Commissioner's regulations will be renumbered as paragraphs (18) and (19), respectively.

Additionally, on October 23, 2019, the Governor signed Chapter 390 (Chapter 390) of the Laws of 2019, which, effective immediately, *inter alia*, amended the Education Law by creating the new title of "registered dental assistant" and eliminating the prior protected title of "certified dental assistant." The prior title of certified dental assistant caused confusion between certification by the Department and the Dental Assisting National Board (DANB). This confusion affected dentists and the general public alike—it even led to unintentional criminal violations for individuals who used the certified dental assistant title in connection with New York State practice. Chapter 390 addressed these issues by changing the protected title of the profession to registered dental assistant and replacing all the references in Article 133 of the Education Law to the prior title of "certified dental assistant" with "registered dental assistant."

The Department also proposes to amend the Title of Part 61 to conform to Chapter 390. In 2020, the Board permanently adopted an amendment to section 29.2 of the Regents Rules and sections 52.26, 61.9, 61.11, 61.12, 61.13 and 61.14 of the Commissioner's regulations to implement Chapter 390 by changing the references, in those sections, from "certified dental assistant" and "certified dental assisting" to "registered dental assistant" and "registered dental assisting." However, due to an inadvertent oversight, the proposed amendment did not change the Title of Part 61 of the Commissioner's regulations from "Dentistry, Dental Hygiene, and Certified Dental

Assisting” to “Dentistry, Dental Hygiene, and Registered Dental Assisting.” Accordingly, the Department proposes to amend the Title of Part 61 of the Commissioner’s regulations to “Dentistry, Dental Hygiene, and Registered Dental Assisting.”

Related Regents Items

February 2020: [Proposed Amendment to Section 29.2 of the Rules of the Board of Regents and Sections 52.26, 61.9, 61.11, 61.12, 61.13 and 61.14 of the Regulations of the Commissioner of Education Relating to the Profession of Registered Dental Assisting](https://www.regents.nysed.gov/common/regents/files/220brca7.pdf)

(<https://www.regents.nysed.gov/common/regents/files/220brca7.pdf>)

October 2022: [Proposed Amendment to the Title of Part 61 and Section 61.13 of the Regulations of the Commissioner of Education Relating to the Practice of Registered Dental Assisting](https://www.regents.nysed.gov/common/regents/files/1022ppca1revised_0.pdf)

(https://www.regents.nysed.gov/common/regents/files/1022ppca1revised_0.pdf)

December 2022: [Proposed Amendment to the Title of Part 61 and Section 61.13 of the Regulations of the Commissioner of Education Relating to the Practice of Registered Dental Assisting](https://www.regents.nysed.gov/common/regents/files/1222brca7.pdf)

(<https://www.regents.nysed.gov/common/regents/files/1222brca7.pdf>)

Recommendation

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

VOTED: That the title of Part 61 and section 61.13 of the Regulations of the Commissioner of Education be amended, as submitted, effective March 1, 2023.

Timetable for Implementation

If adopted at the February 2023 meeting, the proposed amendment will become effective as a permanent rule on March 1, 2023.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6504, 6507, 6808 of the Education Law, Chapter 512 of the Laws of 2022 and Chapter 390 of the Laws of 2019.

1. The title of Part 61 of the Regulations of the Commissioner of Education is amended, as follows:

DENTISTRY, DENTAL HYGIENE, AND [CERTIFIED] REGISTERED DENTAL ASSISTING

2. Subdivision (b) of section 61.13 of the Regulations of the Commissioner of Education is amended, as follows:

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

(1) . . .

(2) . . .

(3) . . .

(4) . . .

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(17) placing and removing temporary restorations;

(18) taking x-rays in accordance with the requirements of section 3515(4)(c) of the Public Health Law; and

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