

**Michigan Office of Administrative Hearings and Rules**

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**AGENCY REPORT TO THE  
JOINT COMMITTEE ON ADMINISTRATIVE RULES (JCAR)**

**1. Agency Information**

**Agency name:**

Licensing and Regulatory Affairs

**Division/Bureau/Office:**

Bureau of Professional Licensing

**Name of person completing this form:**

Andria Ditschman

**Phone number of person completing this form:**

517-290-3361

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DitschmanA@michigan.gov

**Name of Department Regulatory Affairs Officer reviewing this form:**

Elizabeth Arasim

**2. Rule Set Information**

**MOAHR assigned rule set number:**

2020-27 LR

**Title of proposed rule set:**

Dentistry - General Rules

**3. Purpose for the proposed rules and background:**

The purpose of the Dentistry – General Rules is to regulate the prelicensure education, licensure, licensure renewal, relicensure, and continuing education, for dentists, dental therapists, registered dental assistants, and registered dental hygienists; delegation and assignment of dental procedures; dental specialties; anesthesia; intravenous conscious sedation, and enteral sedation training requirements; and, requirements for disposal of dental amalgam. The proposed rules will add rules pursuant to Public Act 463 of 2018, which requires the Department in consultation with the Board to promulgate any rules the Department considers necessary to implement sections 16651 to 16658 of the Public Health Code, MCL 333.16651 to 333.16658.

**4. Summary of proposed rules:**

## Agency Report to JCAR-Page 2

The proposed rules will update definitions; require dental professionals to identify themselves to the patient at the inception of care and provide a written consent for treatment; delete violations; clarify licensing requirements; add licensing, practice requirements, and educational standards for dental therapists; allow an application to the Board for dental assistant examinations that meet certain requirements; modify the relicensure requirements and place them in tables; update educational standards; modify delegation, supervision, and assignment of dental assistants, registered dental assistants, and registered dental hygienists and place in a table; clarify specialty licenses; modify advertising of specialty licenses; update the anesthesia and sedation requirements; add 1 hour of continuing education in ethics and jurisprudence for all dental professions; add 1 hour of continuing education in infection control for dental assistants and hygienists; modify continuing education requirements and place them in tables; and update dental amalgam requirements.

### **5. List names of newspapers in which the notice of public hearing was published and publication dates:**

Marquette Mining Journal – September 4, 2020; Flint Journal – September 6, 2020; Grand Rapids Press – September 6, 2020

### **6. Date of publication of rules and notice of public hearing in Michigan Register:**

9/15/2020

### **7. Date, time, and location of public hearing:**

9/18/2020 01:00 PM at This meeting will be held virtually via Zoom pursuant to Executive Order 2020-132. , Web Link: <https://zoom.us/j/91037626554?pwd=U2hCenFIWnhJZEV1dmV4bmZlSVUzUT09; Password: 658403; Phone number: 877-336-1831; Conference Code for audio connection: 486917>

### **8. Provide the link the agency used to post the regulatory impact statement and cost-benefit analysis on its website:**

<https://ARS.apps.lara.state.mi.us/Transaction/RFRTransaction?TransactionID=155>

### **9. List of the name and title of agency representative(s) attending public hearing:**

Kerry Przybylo, Manager; Andria Ditschman, Senior Policy Analyst; Kimberly Catlin, Board Support; and LeAnn Payne, Board Support.

### **10. Persons submitting comments of support:**

Amy Zaagman, Executive Director, Maternal & Child Health submitted comments in support.

### **11. Persons submitting comments of opposition:**

Ona Erdt, Michigan Dental Assistants Association (MDAA), Chris Farrell, Michigan Department of Health and Human Services (MDHHS), Winie Furnari, American Academy of Dental Hygiene (AADH), Rob Kent, American Association of Orthodontists (AAO), Stephen Meraw, Michigan Dental Association (MDA), and Sandy Sutton, Greater Detroit Dental Hygienists submitted comments and suggested changes to the proposed rule set.

### **12. Identify any changes made to the proposed rules based on comments received during the public comment period:**

Agency Report to JCAR-Page 3

	<b>Name &amp; Organization</b>	<b>Comments made at public hearing</b>	<b>Written Comments</b>	<b>Agency Rationale for change</b>	<b>Rule number &amp; citation changed</b>
1	Sandy Sutton (Sutton)	Remove the word “the” and, and replace with “a”, to read: “Allied dental personnel” means the supporting team who receives appropriate delegation from a dentist or dental therapist to participate in dental treatment.” The provision as written shows unnecessary possessive ownership over the allied dental personnel and many practices have more than one dentist.		The provision as written shows unnecessary possessive ownership over the allied dental personnel and many practices have more than one dentist.	R 338.11101 (1)(a)
2	Farrell/MDHHS		Add at least 1 hour of infection control to the continuing education (CE) requirements for relicensure for dentists.	The Board agrees with the comment to add infection control to the CE requirements for relicensure for dentists similar to the infection control CE requirements for other dental professionals.	338.11263(e) (iii)

Agency Report to JCAR-Page 4

3	Erdt/MDAA	Change to “ethics and jurisprudence with inclusion of delegation of duties to dental auxiliaries.” MDAA has a concern over the amount of duties assigned by dentists to dental auxiliaries that are not within their scope of practice. All dentists should understand the scope of practice for dental assistants, RDAs, and RDHs, and dental therapists.		The Board agrees to require dental professionals to have CE in the “delegation of duties to allied dental personnel” in addition to ethics and jurisprudence.	338.11263(e)(ii)
4	Erdt/MDAA	Change to “ethics and jurisprudence with inclusion of delegation of duties to dental auxiliaries.” MDAA has a concern as dental hygienists and dental assistants perform duties illegally.		The Board to add “delegation of duties to allied dental personnel.”	338.11267(e)(ii)

Agency Report to JCAR-Page 5

5	Meraw/MDA		The MDA recommends replacing “RDA or RDH” with “allied dental personnel.”	The Board agrees with the comment to replace “RDA or RDH” with “allied dental personnel.” However, to differentiate which allied dental personnel are included in the second sentence of the definition the following language is recommended: “A patient of record includes a patient getting radiographic images by allied dental personnel with training pursuant to R 338.11411(a) after receiving approval from the assigning dentist or dental therapist.”	338.11401(e)
6	Erdt/MDAA	Remove. This is a duty for dental assistants, RDAs, RDSs and it would be compared to a second pair of hands as opposed to a duty. It is not in the Public Health Code, so it can be removed.		(b) Agrees with the comment to delete (b) as is a “second pair of hands duty” that is not a delegation of an activity.	338.11411(b)

Agency Report to JCAR-Page 6

7	Erdt/MDAA	<p>Remove D for DA. This should be under assignment to the DAs. This is not an appropriate duty to assign to a non-licensed dental assistant. No further duties should be assigned to a non-licensed assistants until they have been named in the Public Health Code and are required to have CPR inclusive education like all other dental providers. It is not in the best interest of the public to allow more duties. A dental assistant is defined as a non-licensed person who may perform basics before each procedure. Removing brackets and cement are pretty involved and non-basic and require formal education. Orthodontic brackets, bands, and adhesive materials often are located sub gingivally and the RDA and RDH have training in that anatomy and soft tissue intraoral attachments. Dental assistants that are not licensed do not have that training.</p>		<p>Agrees with the comment to delete the D for DA's in this category. This is not an appropriate duty to assign to a non-licensed dental assistant. Dental assistants that are not licensed do not have that training for these procedures.</p>	338.11411(i)

Agency Report to JCAR-Page 7

8	Meraw/MDA		RDHs should be required to complete the training similar to RDAs for this procedure.	Agrees with comment that RDHs should have training so an asterisk will be added to the RDHs for training and "RDH" will be added to the explanation of * at the bottom of the table.	338.11411(k)
9	Erdt/MDAA	Add DAs to (o) under assignment so can apply commonly accepted medical emergency procedures, including CPR. Medical emergencies are unpredictable, and they can happen at any time, and many offices at times merely have office personnel who are non-licensed on the premises. All team members should be knowledgeable and ready to provide medical care if needed. The ADA states that through academic and continuing education should be familiar with the prevention, diagnosis, and management of common emergency. They should provide appropriate training to their staff so each person knows what to do and can act promptly.		Agrees with the comment to allow dental assistants (DA) to apply commonly accepted medical emergency procedures for the best interest of the public.	338.11411(o)

Agency Report to JCAR-Page 8

10	Erdt/MDAA	Remove for registered dental hygienists. RDAs and RDHs can cement and glue temporaries and RDAs can place them. The RDA is formally trained to make temporaries, and it is in their clinical exam as well. The duty of replacing should not be provided to the RDH as their education does not provide the training nor does their exam have a temporary clinical component like the RDA.		Agrees with the comment to delete this activity for the RDHs as they are not trained in this activity. Also, the term “replacing” is not the correct term, it should be “fabricate” and the word “existing” should be deleted in order to make this provision reflect the actual activity in the profession.	338.11411(u)
11	Erdt/MDAA	Modify “registrations” to “restorations.”		Agrees as this is a clerical error.	338.11411(aa)
12	Meraw/MDA		Add “direct.”	Agrees to add “direct” as RDAs do have training in this activity.	338.11411(ll)
13	Meraw/MDA		Modify “planning” to “planing.”	Agrees to fix typo in “planning.”	338.11411 (oo)
14	Erdt/MDAA	(qq) seems to be a combination of (s) and (z) and is repetitive.		Agrees that (qq) is repetitive and should be deleted.	338.11411 (qq)
15	Erdt/MDAA	This category is repetitive. What is the different between (ss) and (q) and (y). What is the implication of “preliminary examining” that has been added to the beginning of (ss).		Agrees to delete (ss) as it is repetitive and add “preliminary examination including” to both (q) and (y).	338.11411(ss)

Agency Report to JCAR-Page 9

16	Erdt/MDAA	(uu) and (v) – sedative restoration and sedative dressing make this confusing.		Replace” intra-coronal” with “surgical” in (uu) to reduce the confusion between (uu) and (v) and no changes to (v).	338.11411 (uu)
17	Meraw/MDA		Allow RDAs by assignment.	Allow RDAs to do activity by assignment.	338.11411 (uu)
18	Meraw/MDA		Add DAs by direct and modify RDAs and RDHs to general. Also modify “impressions” to scans” and add “or intraoral appliances.”	Agrees to add DAs by direct and modify RDAs and RDHs to general. Also modify “impressions” to scans” and add “or intraoral appliances.”	338.11411(zz)
19	Meraw/MDA		Add (7): “If the patient requires treatment that exceeds the dental therapist’s capabilities or the scope of practice as a dental therapist, a referral to an appropriate provider within a reasonable distance must be given to the patient.” Patient safety is also a top priority for the MDA. Once dental therapists begin to treat Michigan patients, it will be imperative for dental therapists and the patients	The Board agrees with the comment to require a referral to be to a health professional within a reasonable distance subject to the Code provisions and the written practice agreement.	338.11417(7)

Agency Report to JCAR-Page 10

		<p>they treat to have reasonable access to a dentist. As currently written, the rules allow a dental therapist to treat a patient without the patient being first seen by a dentist. If the patient requires treatment that goes beyond the capabilities of the dental therapist or if there is a dental emergency, for the patient's safety, the patient should have assurance that an appropriate provider is available within a reasonable distance. This is why dental therapists practice agreements, outlined in Rule 338.11417, should include a referral to an appropriate provider within a reasonable distance, similar to requirements in the mobile dentistry law.</p>		

Agency Report to JCAR-Page 11

20	Meraw/MDA		<p>Add (8): “Dental therapists have the same level of supervision requirements over allied dental personnel as dentists have as stated in 338.11411.”</p> <p>Along the lines of patient safety, it is important to define the procedures dental therapists can delegate to dental assistants, registered dental assistants, and registered dental hygienists.</p> <p>Current law allows dental therapists to treat patients without a dentist present, but the rules do not limit supervision levels and what a dental therapist can delegate to allied dental personnel.</p> <p>Therefore, the MDA recommends that dental therapists have the same limitations as dentists in regard to delegating duties and supervising allied dental personnel.</p>	<p>The Board agrees with the comment that a dental therapist’s authority to delegate to allied dental personnel should not exceed a dentist’s authority to delegate to allied dental personnel subject to the Code and the dental therapist’s written practice agreement.</p>	338.11417(8)
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Agency Report to JCAR-Page 12

21	Meraw/MDA		As proposed, Rule 338.11601 (2)(a)(i), strikes “Joint Commission” and replaces it with “JCNDE,” which is incorrect. JCNDE does not accredit hospitals, the Joint Commission should remain the reference under this subpart.	The Board agrees with the comment to change JCNDE back to the “Joint Commission.”	338.11601(2)(a)(i)
22	Erdt/MDAA	Change to “ethics and jurisprudence with inclusion of delegation of duties to dental auxiliaries.” MDAA has a concern over the amount of duties assigned by dentists to dental auxiliaries that are not within their scope of practice. All dentists should understand the scope of practice for dental assistants, RDAs, and RDHs, and dental therapists.		The Board agrees to require dental professionals to have CE in the “delegation of duties to allied dental personnel” in addition to ethics and jurisprudence.	338.11701 (12)(b)
23	Farrell/MDHHS		Add at least 1 hour of infection control to the continuing education (CE) requirements for dentists.	The Board agrees with the comment to add infection control to the CE requirements for dentists similar to the infection control CE requirements for other dental professionals.	338.11701 (12)(d)

Agency Report to JCAR-Page 13

24	Sutton	<p>All of the forms of meeting the CE requirements, such as online, electronic media, video, internet, web-based seminar ... are not defined. According to the AGD the only official delivery method is lecture, self-instruction, and hands on class participation. The location can be online, a live webinar, or a live online lecture.</p>		<p>The Board agrees that clarification is needed to differentiate between the online and live acceptable CE requirements of “online” versus “live” wherever these terms are used in the rules. However, as the Board desires to be consistent in the rules, clarifying language is necessary to sections that limit and require online or live CE. Therefore, in section 12(e) and similar rules “synchronous, live” is recommended and in section 12(f) and similar rules, “asynchronously, noninteractive” is recommended.</p>	338.11701 (12)(e)
25	Erdt/MDAA	<p>Change to “ethics and jurisprudence with inclusion of delegation of duties to dental auxiliaries.” MDAA has a concern as dental hygienists and dental assistants perform duties that have not been legally delegated to them.</p>		<p>The Board agrees to add “delegation of duties to allied dental personnel.” As the CE requirements are repeated in the relicensure rules the change must also be added to R 338.11267(e)(ii) above.</p>	338.11704(7)(e)

Agency Report to JCAR-Page 14

26	Furnari/AADH		<p>Add the American Academy of Dental Hygiene (AAADH) as it is an organization that approves continuing education courses for dental hygienists. We are not a sponsor nor offer courses, we approve course content using standards of quality education.</p> <p>Modify the spelling of Hygienist to Hygienists' in American Dental Hygienists' Association.</p>	<p>The Board agrees to make both suggested changes to section 1(a).</p>	338.11704a (1)(a)
27	Meraw/MDA		<p>References to the ADA "CERP" should be replaced with the "Commission on Continuing Education Provider Recognition." The Commission on Continuing Education Provider Recognition is now responsible for approving CE providers.</p>	<p>All references to the CERP organization shall be "Commission on Continuing Education Provider Recognition American Dental Association Continuing Education Recognition Program (ADA CERP)."</p>	338.11704a (1)(a)

13.Date report completed:  
12/3/2020