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STATE OF MICHIGAN  
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
DEPARTMENT OF LICENSING and REGULATORY AFFAIRS  
BUREAU OF PROFESSIONAL LICENSING

- - -

PUBLIC HEARING

Friday, September 18, 2020

1:00 p.m.

- - -

Held on-line via Zoom  
under Executive Order 2020-154

- - -

Re: Dentistry - General Rules (MOAHR #2020-27-LR)

HEARING FACILITATOR:

Andria Ditschman, Analyst  
Bureau of Professional Licensing  
611 West Ottawa Street  
Lansing, Michigan 48909

Also Present:

Kerry Ryan Przybylo  
LeAnn Payne  
Kimmy Catlin

Reported by: Marie T. Schroeder, CSR-2183  
Metro Court Reporters, Inc.

1                   Lansing, Michigan

2                   Friday, September 18, 2020

3                   1:00 p.m.

4                   -   -   -

5                   (Proceedings held via Zoom on-line)

6                   MS. DITSCHMAN: My name is Andria  
7                   Ditschman and I am an analyst for the Bureau of  
8                   Professional Licensing in the Department of Licensing and  
9                   Regulatory Affairs. I'll be conducting the hearing  
10                  today.

11                  This is a public hearing on proposed  
12                  administrative rules entitled "Dentistry - General  
13                  Rules." We're conducting the hearing as required by the  
14                  Administrative Procedures Act to allow the public to  
15                  comment on the proposed changes to this rule set. As  
16                  with all other public hearings on draft rule sets, the  
17                  only items discussed during this hearing will be the  
18                  proposed changes to the rule set. This hearing will not  
19                  be covering any questions or discussions on any other  
20                  issues.

21                  We are calling this hearing to order at  
22                  1:00 p.m. on September 18, 2020, via Zoom under Executive  
23                  Order 2020-154 in response to the COVID-19 pandemic. The  
24                  notice of public hearing was published in three  
25                  newspapers of general circulation, the Grand Rapids Press  
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1 and the Flint Journal on September 6, 2020, and the  
2 Mining Journal on September 4, 2020, as well as the  
3 Michigan Register, Issue 16-2020, published on  
4 September 15, 2020.

5 All comments should relate directly to  
6 the proposed rules. If you have questions about the  
7 rules, you may place your comments on the record and the  
8 Department will review and consider them. If you have  
9 suggested changes to the rules, please include the  
10 specific reasons why the changes should be in the public  
11 interest.

12 We will take comments in the following  
13 manner: For those using the Video Conference portion,  
14 those not calling on the telephone, we will use the Raise  
15 Your Hand feature in Zoom. And I will call on  
16 individuals to speak and then they will be unmuted at  
17 that time. So you unmute yourself, speak, and then mute  
18 yourself again.

19 For participants that are available only  
20 by telephone, after we're done doing those by video  
21 conference we'll take those by telephone, and we will ask  
22 you to make comments.

23 If you have a comment but do not wish to  
24 speak, you can please note that the Department will allow  
25 written comments, statements, emailed or postmarked to  
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1 BPL-BoardSupport@michigan.gov until 5:00 p.m. today.

2 Also, if you are on the phone, to unmute  
3 yourself you will press \*6.

4 Those making comments should clearly and  
5 slowly say and spell your name and advise if you are  
6 speaking on behalf of yourself or an organization. We  
7 will limit comments to three minutes per person.  
8 Remember that only one person can speak at a time.

9 Other department staff from the Bureau of  
10 Professional Licensing attending today are Kerry  
11 Przybylo, LeAnn Payne, and Kimmy Catlin.

12 So we will start now with those on Zoom.  
13 And you need to use the Raise Your Hand if you would like  
14 to speak.

15 KERRY PRZYBYLO: This is Kerry Przybylo  
16 speaking. The reaction button at the bottom of your  
17 screen is where you can find the opportunity to Raise  
18 Your Hand.

19 (Pause.)

20 MS. CATLIN: It looks like Ona has her  
21 hand up, Erdt.

22 MS. ERDT: Yes, hello. My name is Ona  
23 Erdt, O-n-a, E-r-d-t. And I am speaking on behalf of the  
24 Michigan Dental Assistants Association. I am the  
25 Judicial Committee Chairman. And we have several  
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1 comments and suggestions for the proposed rule changes.  
2 May I just go ahead and just get started?

3 KERRY PRZYBYLO: Yes.

4 MS. ERDT: O.K. So Rule 338.11411.

5 Under (b), Holding matrix for anterior resin restoration,  
6 we are recommending that that be removed from the rule.  
7 Rationale being that the MDAA feels that this is a duty  
8 for dental assistants, RDAs, RDHs, and it would just be  
9 compared to a second pair of hands as opposed to a duty.  
10 From our research it does not appear to be in the Public  
11 Health Code, so it could just be a rule removal.

12 And I just keeping going, right, through  
13 my list? O.K.

14 The next one is under rule (i). We are  
15 recommending that it be removed, that this be under  
16 assignment to the dental assistants. And it is Removing  
17 orthodontic bands, brackets, and adhesives with  
18 non-tissue cutting issue. The MDAA feels this is not an  
19 appropriate duty to assign to a non-licensed dental  
20 assistant. It's our professional stance that no further  
21 duties should be assigned to a non-licensed assistant  
22 until they have been named in the Public Health Code and  
23 are required to have CPR inclusive education like all  
24 other dental providers. A standard has been set for our  
25 industry and therefore it's not in the best interests of  
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1 the public to allow more duties. In addition, the dental  
2 assistant is defined as a non-licensed person who may  
3 perform basics before each procedure. Removing brackets  
4 and cement are pretty involved and non-basic and require  
5 formal education. Orthodontic brackets, bands, and  
6 adhesive materials often are located subgingivally, and  
7 the RDA and RDH have training in that anatomy and soft  
8 tissue intraoral attachments and more. But if -- but  
9 dental assistants that aren't licensed don't have that  
10 training.

11 Under (o), we would like to recommend  
12 adding assignments of option to the dental assistants of  
13 applying commonly accepted medical emergency procedures,  
14 including CPR. Medical emergencies are unpredictable and  
15 they can happen at any time, and many offices at times  
16 merely have office personnel who are non-licensed on the  
17 premise. All team members should be knowledgeable and  
18 ready to provide medical care if needed. The American  
19 Dental Association states that (inaudible) through  
20 academic and continuing education should be familiar with  
21 the prevention, diagnosis, and management of current --  
22 I'm sorry, of common emergency. In addition, they should  
23 provide appropriate training to their staff so each  
24 person knows what to do and can act promptly. The dental  
25 profession has set a standard of care for its members,

1 and therefore all dental team members should be trained,  
2 including the dental assistants.

3 Under (u), we recommend removing this  
4 duty for the registered dental hygienist. Currently RDAs  
5 and RDHs can cement and glue temporaries, and the RDAs  
6 can also place them. The proposed language adds  
7 replacing for the RDH. The RDA is formally trained to  
8 make temporaries, and it's in their clinical exam as  
9 well. And it's the MDAA's stance that the duty of  
10 replacing not be provided to the RDH as their education  
11 does not provide the training, nor does their exam have a  
12 temporary clinical component like it does with the RDA.

13 Rule (aa), we are recommending a change.  
14 Taking impressions for intraoral appliances including  
15 bite restorations is what it currently says.

16 KERRY PRZYBYLO: Ona?

17 MS. ERDT: Yes.

18 KERRY PRZYBYLO: Can I ask that you  
19 please slow down? When you read, you speak a lot faster  
20 and the Court Reporter is having trouble keeping up with  
21 you. So if you could just slow your pace a little bit,  
22 please.

23 MS. ERDT: You got it. So for Rule (aa),  
24 it says Taking impressions for intraoral appliances,  
25 including bite restorations. And we think that's

1 probably a type-o, and it should probably be taking  
2 impressions for intraoral appliances including bite  
3 registrations, as opposed to restorations. So we are  
4 recommending that change.

5 For (qq), we were hoping to get  
6 clarification why it is in there for Applying  
7 anticariogenic agents including, but not limited to,  
8 sealants, fluoride varnish, and fluoride applications.  
9 And that's what (s) says. And then (z) says Applying  
10 desensitizing agents. But then (qq) like combines all of  
11 these in one line. But they already have been assigned  
12 that in lines (s) and (z). So it seems kind of  
13 repetitive and kind of confusing why that is being added.

14 (ss), we are hoping to get clarification.  
15 Again this is adding something for the RDH, and we are  
16 wondering what the difference is between line (ss) when  
17 line (q) says Classifying occlusion is already a duty  
18 they have. (y) says Performing pulp vitality testing.  
19 So what is the difference between those and this (ss)  
20 that says Preliminary examining that includes both  
21 classifying occlusion and testing pulp vitality using an  
22 electric pulp tester.

23 So we would like to understand what the  
24 implications are of this preliminary examining that's  
25 been added to the beginning of that sentence, and

1 combining these two it seems like, just for the RDH.

2 For (uu), we were wondering, is there a  
3 difference in the line -- again it seems like it's  
4 combining two for the RDH only, so it's Placing and  
5 removing intra-coronal temporary sedative dressings. The  
6 line (v) says Placing and removing a nonmetallic  
7 temporary or sedative restoration with non-tissue cutting  
8 instruments. So we are wondering, shouldn't the language  
9 be different between what's a sedative restoration and  
10 sedative dressing? Or are we talking about two different  
11 things?

12 For line -- Now Rule 338.11701(12) (b), we  
13 are recommending a change. It says currently: Complete  
14 at least one hour of the required continuing education  
15 hours in dental ethics and jurisprudence.

16 Hours earned through volunteer patient or  
17 supportive dental services provided for R338.11704a(1) (m)  
18 do not count toward the required hours for clinical  
19 issues.

20 We recommend changing that to: Complete  
21 at least one hour of your required continuing education  
22 hour in dental ethics and jurisprudence with inclusion of  
23 delegation of duties to dental auxiliaries, and again  
24 leaving the hours earned through volunteer patient  
25 supportive dental services.

1                   And the rationale is, we at the MDAA have  
2 a huge concern over the amount of duties assigned by  
3 dentists to dental auxiliaries that are not within their  
4 scope of practice. It goes unreported, but it's common  
5 knowledge, and we feel maybe this is in part due to lack  
6 of knowledge of the rules and in part because they can  
7 not find qualified staff, so they choose to delegate the  
8 duties illegally. All dentists should understand the  
9 scope of practice for the dental assistant, the RDA, the  
10 RDH, and now the dental therapist.

11                   Recommend after (c), add: Complete a  
12 minimum of three hours of the required dental continuing  
13 education hours and infection control in the dental  
14 setting. So MDAA feels infection control training is  
15 imperative for the dentist as well as the rest of the  
16 team who have that already. The dentist is ultimately in  
17 charge of making sure the office is in compliance, and  
18 they should be the one overseeing procedures and the  
19 training in the office for continuous -- for continuity.  
20 Infection control, as we know, is one of the most  
21 important procedures and especially like right now, you  
22 know, even more of a hot topic than it ever has been, and  
23 many offices are experiencing trouble in securing  
24 formally trained assistants. So with less than 2,000  
25 already in the State that has this formal training, it's  
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1 now the responsibility of the dentist to ensure that the  
2 unlicensed assistants have the proper training in  
3 infection control.

4 And then the last one is Rule 338.11704,  
5 after (c). We recommend adding: Complete at least one  
6 hour of the required continuing education hours in dental  
7 ethics and jurisprudence with inclusion of delegation of  
8 duties to dental auxilliary. Dental assistants and --  
9 With the rationale being dental assistants and dental  
10 hygienists also perform duties illegally in the State,  
11 and again part of that could be just plain not having the  
12 knowledge. So as these things are constantly changing,  
13 they should have to do these so they can keep up and they  
14 know what the delegation of duties is.

15 That's all I have.

16 MS. DITSCHMAN: Thank you. Is there  
17 anybody else that would like to make a comment? If so,  
18 please use the reaction button to raise your hand.

19 (Pause.)

20 MS. DITSCHMAN: I am not seeing anybody  
21 that wishes to make a comment, so let's go to those who  
22 are on the phone. If you are on the telephone and you  
23 wish to make a comment, you must hit \*6 to unmute  
24 yourself. You can do so at this time.

25 (Pause.)

1 MS. PAYNE: Kerry, there is a comment in  
2 the Chat.

3 KERRY PRZYBYLO: The comment is: If you  
4 supplied written comments, do we need to read them? No.  
5 No, you do not. We have them. And so you do not need to  
6 repeat those on the record here. Those comments will be  
7 accumulated with the comments that we receive on, at the  
8 hearing here, and compiled to be shown to the Board.

9 All right. I don't see anybody else that  
10 has a comment. If that's the case, I think we'll stay on  
11 the record for another ten minutes or so, and then if we  
12 don't, we'll go off the record until someone chimes in to  
13 make a comment. And if no comments are received, then we  
14 will formally close the hearing about 1:30. So we'll go  
15 off the record until, unless someone chimes in with a  
16 comment.

17 (Off the record at 1:21 p.m.)

18 - - -

19 (Back on the record at 1:24 p.m.)

20 KERRY PRZYBYLO: It looks like Sandy  
21 Sutton. Do you have a comment to make, Sandy?

22 MS. SUTTON: Yes, I do. I was waiting  
23 for some noise here to settle down. Thank you.

24 My name is Sandy Sutton. I am  
25 representing from the Greater Detroit Dental Hygienists  
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1 Association. I do have just a couple of things to add,  
2 and I will try to read slowly.

3 For Rule 1101.1(a), "Allied dental  
4 personnel" means the dentist's supporting team who  
5 receives appropriate delegation from the dentists or  
6 dental therapist to participate in dental treatment. We  
7 are requesting that we remove "dentists" and the word  
8 "the" prior to dentists in the second line, replacing it  
9 with "a", to read: "Allied dental personnel" means the  
10 supporting team who receives appropriate delegation from  
11 a dentist or dental therapist to participate in dental  
12 treatment. With the justification, it's showing  
13 unnecessary possessive ownership over the allied dental  
14 personnel. And many practices have more than one  
15 dentist.

16 Continuing on, in part (7), continuing  
17 education, R338.1170, in regards to license renewal.  
18 Under rule 1701,12(e), Complete no more than 30 hours of  
19 the required continuing education hours online or through  
20 electronic media, including videos, internet, web-based  
21 seminars, video conferences, online continuing education  
22 programs, and online journal articles. All of those  
23 terms are not defined very well, and with current CEs  
24 being offered by virtual means only leads to much  
25 confusion. According to the AGD, the only official  
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1 delivery method that are recognized are lecture, self  
2 instruction, and hands on class participation. They  
3 state that the location can be listed as online or live  
4 webinar or live online lecture to differentiate.  
5 However, delivery methods are still only listed as  
6 lectures.

7 Also, if only the allied dental personnel  
8 require one hour of infection control CE for license  
9 renewal, why is it the dentist does not have this  
10 provision. We are wondering if this an oversight as  
11 they're not required, especially with this new age of  
12 COVID-19.

13 That is all for our comments. Thank  
14 you.

15 KERRY PRZYBYLO: Thank you, Sandy. Does  
16 anybody else have a comment to make?

17 (Pause.)

18 Again, if you're calling on the phone,  
19 please hit \*6 to unmute yourself so that we can hear you.

20 (Pause.)

21 All right. I don't see any further  
22 comments. Andria, would you like to explain the next  
23 step? Heather Beavers, the dental policy specialist for  
24 Medicaid was asking in the Chat what the next steps were.

25 MS. DITSCHMAN: Sure. So the next steps  
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1 are to take all of the comments that have been either  
2 sent in writing or made here today, and put them into a  
3 report. That report will go to a work session, a work  
4 group session that is scheduled for September 29, from  
5 1:00 to 3:00 o'clock. The rules committee will review  
6 those comments with the public there at the work session.  
7 Anyone is able to attend. And the only comments that  
8 will be able to be made at that work session have to do  
9 with the comments that have been made here, not any  
10 additional comments.

11 So the rules committee will make  
12 recommendations to the Board regarding all of the  
13 comments that have been made, and the Board will look  
14 over those comments on October 8th at 10:00 at their full  
15 Board meeting. Following the board meeting of the Board,  
16 a decision regarding the comments that have been made  
17 will be sent to the joint committee on administrative  
18 rules.

19 KERRY PRZYBYLO: With that, are there any  
20 further comments? If there are, please use the reaction  
21 button at the bottom to Raise Your Hand so that we may  
22 call on you.

23 (Pause.)

24 I don't see any further comments, so I  
25 think we will call this hearing to close at 1:29. Again

1 the record for the hearing will remain open until 5:00  
2 p.m. today. So if there are additional comments that you  
3 would like to send in writing, you can send them to  
4 BPL-Boardsupport, all one word, @Michigan.gov.

5 Thank you for add tending. We will  
6 close this session.

7 (Hearing closed at 1:30 p.m.)

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C E R T I F I C A T E

I, Marie T. Schroeder, CSR-2183, do hereby certify that I reported in stenotype via Zoom, the public hearing had in the within-entitled matter before the Bureau of Professional Licensing, for the Michigan Office of Administrative Rules, LARA, on Friday, September 18, 2020; and do further certify that the foregoing transcript, consisting of 17 pages, is a true and correct transcript of my stenotype notes.

---

Marie T. Schroeder, CSR-2183  
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Dated: September 21, 2020