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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

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

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.)

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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
Metro Court Reporters Inc. metrostate@sbcglobal.net

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.

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Dated: September 21, 2020