

Michigan Office of Administrative Hearings and Rules
MOAHR-Rules@michigan.gov

**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

E-mail of person completing this form:

DitschmanA@michigan.gov

Name of Department Regulatory Affairs Officer reviewing this form:

Elizabeth Arasim

2. Rule Set Information

MOAHR assigned rule set number:

2021-40 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 modify the requirements for licensure as a dental therapist consistent with Public Act 298 of 2020, and will modify any other provisions necessary for consistency with the Public Health Code.

4. Summary of proposed rules:

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The proposed rules require licensees to meet the requirements in the Public Health Code-General Rules, R 338.7001 through R 338.7005, including complying with a minimum English language requirement and an implicit bias training requirement; applicants for endorsement and relicensure will disclose all licenses with other entities, report current discipline or sanctions on a license, and meet the human trafficking training requirement, English language requirement, and implicit bias training; dental professionals will be trained in basic cardiac life support or advanced cardiac life support for healthcare providers with a hands-on component prior to being licensed; limited licensees will be trained in infection control before being licensed; unlicensed assistants will be referred to as an unregistered dental auxiliary (UDA); applicants licensed in Canada, other countries, and other states, who meet certain educational and examination requirements will have a pathway for licensure; dentists from other states may supervise dental therapy program clinical hours; dentists will meet with a patient in-person at least once in 24 months if duties will be delegated or assigned; a UDA will obtain additional training; the licensure requirements for dental specialists in dental anesthesiology, dental public health, oral and maxillofacial radiology, oral medicine, and orofacial pain will be added to the rules; dentists who administer or collaboratively provide general anesthesia, deep, moderate, or minimal sedation with a physician, anesthesiologist, dentist, or nurse anesthetist will obtain additional training; and dental professionals who use telehealth will meet consent and prescribing requirements.

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

Marquette Mining Journal – August 4, 2022; Flint Journal – July 28, 2022; Grand Rapids Press – July 28, 2022.

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

8/15/2022

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

8/22/2022 09:00 AM at Location: G. Mennen Williams Building Auditorium 525 W. Ottawa Street, Lansing, Michigan, 525 W. Ottawa Street, Lansing, Michigan

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=1298>

9. List of the name and title of agency representative(s) who attended the public hearing:

Andria Ditschman, Senior Policy Analyst; and Stephanie Wysack, Board Support Technician.

10. Persons submitting comments of support:

Nathan Mick and Nathan Thomas, American Association of Orthodontists (AAO) and Michigan Association of Orthodontists (MAO) submitted comments in support.

11. Persons submitting comments of opposition:

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Marc Bernard Ackerman, American TeleDentistry Association (ATDA); Vincent Benivegna, Michigan Dental Association (MDA); Richael Cobler, Central Regional Dental Testing Service, Inc. (CRDTS); Tyler Diers; TechNet; Heather Gietzen; Peter Horkan, Governmental Affairs, SmileDirectClub; Representative Bronna Kahle, 57th District; Shirley Kim, Byte; Kathryn Swan; Senator Curtis VanderWall, 35th District; and Representative; Angela Witwer, 71st District submitted comments in opposition.

12. Persons submitting other comments:

Brent Accurso, Heather Beavers, Michigan Oral Health Program, Department of Health and Human Services (DHHS); Misty Davis, Michigan Primary Care Association (MPCA); Kim Hoppes, Michigan Dental Assistants Association, (MDAA); Ellen Sugrue Hyman, Michigan Oral Health Coalition (MOHC); J. David Johnson, American Association of Oral and Maxillofacial Surgeons (AAOMS); Mark Johnston, DDS; Nathan Mick and Nathan Thomas, American Association of Orthodontists (AAO) and Michigan Association of Orthodontists (MAO); Richard Small and Frank Farbod, Michigan Society of Oral and Maxillofacial Surgeons (MSOMS); Craig Spangler; Kathryn Swan; Irene Tseng, DDS; Katie Whitman-Herzer, Council of Michigan Dental Specialties, Inc.; and Amy Zaagman, Michigan Council for Maternal and Child Health (MCMCH) submitted other comments.

The following 50 individuals sent the same letter regarding R 338.11411 (delegation of duties): Katherine Beard, Marsha Beattie, Jashleen Bedi, Michael Behnan, Sara Bergsma, Mark Bieszki, Steven Bowman, George Bork, Rick Bruno, Jason Charnley, Te Chen, David Copus, Spencer Crouch, Andrew DeHaan, Richard Friedman, Kevin Hallgren, Renee Geran, Cameron George, Heather Gietzen, Sindy Goodman, Christian Groth, Eric Hannapel, Travis Harshman, Gregory Hummon, Amy Isenberg, Ludia Kim, Maureen Kuhta, Michel Lanzetta, Kathryn Marks, Laurie McClatchey, Lathe Miller, John Monticello, Mark Powell, Nicholas Rafail, Tracie Resler, Jamie Sage, Dina Salman, Scott Schulz, Thomas Shannon, Lainie Shapiro, Brandon Shoukri, Nicole Siara-Olds, Ritu Singh, Kathryn Swan, Lauren Sytek, Nathan Thomas, Nicole Teifer, James Williams, and Gabrielle Zuzo.

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

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	Name & Organization	Comments made at public hearing	Written Comments	Agency Rationale for Rule Change and Description of Change(s) Made	Rule number & citation changed
1	Beavers/ DHHS		Change all pronouns to they or their to be gender neutral.	Modify the pronouns in the document as allowed by the rule making requirements.	R 338.11101 (1)(ll) R 338.11103 (a) R 338.11201 (a) R 338.11202 (b),(c)(i), (c)(ii),(c)(iii) R 338.11218 (2) R 338.11233 (1),(2) R 338.11240 (1),(2)
2	Beavers/ DHHS		Change all pronouns to they or their to be gender neutral.	Modify the pronouns in the document as allowed by the rule making requirements.	R 338.11247 (1)(d),(g),(h), (i),(2)(g),(3), (3)(g),(h),(i) R 338.11255 (2),(2)(a)(i), (2)(a)(ii)(A), (2)(a)(ii)(B) R 338.11256 R 338.11257 (2) R 338.11259 (2) R 338.11261 (2),(3)

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3	Beavers/ DHHS		Change all pronouns to they or their to be gender neutral.	Modify the pronouns in the document as allowed by the rule making requirements.	R 338.11263 (1),(1)(b), (i),(k),(1)(k) (ii),(l), (1)(l)(ii) R 338.11265 (1),(1)(b),(j), (1)(j)(ii),(1) (k) R 338.11267 (1),(1)(b),(i), (j)
4	Beavers/ DHHS		Change all pronouns to they or their to be gender neutral.	Modify the pronouns in the document as allowed by the rule making requirements.	R 338.11269 (1), (1)(b),(i), (1)(i)(ii),(1)(j) R 338.11501 (4) R 338.11611 (c) R 338.11613 (1)(a)(b), (4)(a),(4)(c) R 338.11615, (b),(d) R 338.11701 (3) R 338.11811 (1)

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5	Beavers/ DHHS		Regarding the new infection control requirement, we suggest adding “the current version” before the Centers for Disease Control and Prevention’s infection control guidelines	The most up to date version of the Centers for Disease Control and Prevention’s infection control guidelines should be referenced in the rules. The definitions in R 338.11101 will be modified as follows: “CDC infection control guidelines” means the Centers for Disease Control and Prevention infection control guidelines established by the CDC in effect on the effective date of the rules and any amendments adopted by the CDC.”	R 338.11101 (q)

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6	Davis/MPCA Zaagman/ MCMCH		Accept an examination that is substantially similar to the ADEX examination.	Modify for the following reasons: as the profession is new; the need to address access to oral care in Michigan; limited or no dental therapist educational training in Michigan; desire to encourage dental therapists from outside of Michigan who have taken another examination that is substantially equivalent to the ADEX to obtain licensure and practice in Michigan.	R 338.11209 (b)
7	Cobler/ CRDTS		Modify the rule to accept substantially equivalent examinations for licensure by endorsement. Portability for candidates seeking licensure is an important matter. Restricting acceptance of licensure examinations to one agency creates an undue burden for candidates.	Accept substantially equivalent examinations for licensure by endorsement, which requires modifications to (2)(c), (h), and (i). This will allow more applicants by endorsement to seek licensure in Michigan.	R 338.11255 (2)(c), (h) and (i)

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8	Cobler/ CRDTS		Modify the rule to accept substantially equivalent examinations for licensure by endorsement. Portability for candidates seeking licensure is an important matter. Restricting acceptance of licensure examinations to one agency creates an undue burden for candidates.	Accept substantially equivalent examinations for licensure by endorsement, which requires modifications to (4). This will allow more applicants by endorsement to seek licensure in Michigan.	R 338.11257 (4)
9	Cobler/ CRDTS		Modify the rule to accept substantially equivalent examinations for licensure by endorsement. Portability for candidates seeking licensure is an important matter. Restricting acceptance of licensure examinations to one agency creates an undue burden for candidates.	Accept substantially equivalent examinations for licensure by endorsement, which requires modifications to (2)(c), (3), and (4). This will allow more applicants by endorsement to seek licensure in Michigan.	R 338.11259 (2), (c), (3), and (4)

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10	Hoppes/ MDAA		Require unlicensed individuals in the dental office to be required to review the delegation of duties chart and levels of supervision. Specifically require that the dentist must provide and explain the duties chart. Add (c) "The employer dentist must provide the unregistered dental auxiliary with a current copy of the delegation of duties chart and the dentist must explain the levels of supervision."	It is in the best interest of the public if all dental personnel know the requirements of delegation, assignment, and supervision. Before functions are delegated to an unlicensed individual, the dentist shall provide the individual with a copy of the delegation and assignment duties in Table 1 and shall explain the levels of supervision.	R 338.11411 (2)

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11	Mick/Thomas-AAO/MAO		<p>Michigan dentists are feeling the effects of a shortage of workforce, and specifically, are having a difficult time finding and hiring dental assistants, and more specifically, orthodontic assistants. RDAs would need to complete additional specialty training to understand how to work for an orthodontist, and there are not enough RDAs available to serve as orthodontic assistants in Michigan. Request that unregistered dental auxiliaries perform the tasks listed in (h), (i), (j), (k) and (y) under direct supervision, and the task in (n) under assignment.</p>	<p>Modify the table as follows: - Allow unregistered dental auxiliary to handle the functions in (h), (i), (j), (k), (n), and (y) with direct supervision. - Functions (i), (j), (k), (n) and (y) will require training prior to handling any of these functions. The in-person or virtual training must include performance evaluations. - This training will be added to the bottom of the Table and noted with **. The existing designations of ** and *** will be modified to *** and ****. - The * designation will be modified to include the UDA.</p>	R 338.11411 (3)(h),(i), (j), (k),(n) and (y)

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12	Swan		Request that unregistered dental auxiliaries perform the tasks listed in (p), (r), and (v) under supervision.	Modify the table as follows: * Allow unregistered dental auxiliary to handle the functions in (p), (r) and (v) with direct supervision. * Function (r) shall further state that UDA's may not place sealants. * Functions (p), (r) and (v) will require training prior to handling any of these functions. The in-person or virtual training must include performance evaluations.	R 338.11411 (3)(p),(r) and (v)
13	Mick/Thomas-AAO/MAO		Modify item (v) as it is redundant to item (e).	Delete "sizing", as it is redundant to (e).	R 338.11411 (3)(v)
14	Benivegna/MDA		Requiring dentists to be qualified to administer anesthesia or sedation to provide dental treatment to an anesthetized or sedated patient will significantly limit access to care. Dentists frequently work with qualified professionals, such as oral surgeons and anesthesiologists,	The rules will clarify when a dentist must have additional training regarding general anesthesia and deep sedation. The rules will be modified as follows: • Separate the rules regarding a general dentist providing general anesthesia or deep sedation versus a general dentist who collaboratively	R 338.11601 (1) and (2)

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			<p>to safely administer anesthesia while the dentist delivers the necessary dental care. The current proposal by the Board of Dentistry will cause confusion among dentists as to when and how they are able to treat their patients who require sedation or anesthesia, which will hurt the delivery of dental care to patients. The MDA strongly believes clarifying this language will achieve the desired result of protecting patients, while providing clear guidelines for dentists to follow.</p>	<p>provides general anesthesia or deep sedation.</p> <ul style="list-style-type: none"> • If a physician anesthesiologist, oral surgeon, or nurse anesthetist is providing general anesthesia or deep sedation in the dental office, the general dentist providing the dental treatment, a dental therapist, and allied dental personnel only needs BLS training. • The term “dentist” should be modified to “general dentist who does not hold a specialty license in dental anesthesiology or oral and maxillofacial surgery.” • Delete the term “treatment.” 	

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15	Small/Farbod MSOMS		Add AAOMS to Rule 1601 and 1602 as a recognized provider of courses on managing medical emergencies associated with office-based anesthesia, plus monitoring guidelines.	Add training provided by AAOMS. The definition of AAOMS will also be added to R 338.11101, Definitions.	R 338.11601 (1)(a)(i), (1)(a)(ii)(A), (1)(b)(i) and R 338.11101(1)
16	Benivegna/ MDA		Requiring dentists to be qualified to administer sedation to provide dental treatment to a sedated patient will significantly limit access to care. Dentists frequently work with qualified professionals, such as oral surgeons and anesthesiologists, to safely administer sedation while the dentist delivers the necessary dental care. The current proposal by the Board of Dentistry will cause confusion among dentists as to when and how they are able to treat their patients	The rules will clarify when a dentist must have additional training regarding sedation. The rules will be modified as follows: <ul style="list-style-type: none"> • Separate the rules regarding a general dentist providing sedation versus a general dentist who collaboratively provides sedation. • If a physician anesthesiologist, oral surgeon, or nurse anesthetist is providing sedation in the dental office, the general dentist providing the dental treatment, a dental therapist, and allied dental personnel only needs BLS training. • The term 	R 338.11602 (1) and (2)

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			<p>who require sedation, which will hurt the delivery of dental care to patients. The MDA strongly believes clarifying this language will achieve the desired result of protecting patients, while providing clear guidelines for dentists to follow.</p>	<p>“dentist” should be modified to “general dentist who does not hold a specialty license in dental anesthesiology or oral and maxillofacial surgery.”</p> <ul style="list-style-type: none"> • Delete the term “treatment.” 	
17	Small/Farbod MSOMS		<p>Add AAOMS to Rule 1601 and 1602 as a recognized provider of courses on managing medical emergencies associated with office-based anesthesia, plus monitoring guidelines.</p>	<p>Add training provided by AAOMS. The definition of AAOMS will also be added to R 338.11101, Definitions.</p>	<p>R 338.11602 (1)(a)(iii)(A) and (1)(b)(i) and R 338.11101(1)</p>

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18	Hyman/ MOHC		<p>We want to ensure that an individual does not need to be a patient of record of the provider to have a teledentistry appointment. Often, individuals in an emergency dental situation (injury to or infection of a tooth) do not have a dental home and may need to be seen by a dental professional who has not yet seen them in person.</p>	<p>The following language will be added to the definition of telehealth services to clarify when the “in-person requirement in the patient of record definition applies in telehealth: The requirement in R 338.11401 to have an “in-person” contact with the dentist or dental therapist once every 24 months does not apply to telehealth services unless the dentist or dental therapist delegates or assigns duties, other than radiographic images, to allied dental personnel.</p>	R 338.11611 (b)

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19	Hoppes/ MDAA		<p>The word “approved” is misleading when it is widely known that there are courses provided by organizations that do not meet the states standard for acceptable continuing education. The word “approved” makes it sound as if anything would be accepted by the department if a dental professional was audited for CE compliance. The statement used in R 338.11704 (3) (c) would also be appropriate in section (1)(a) in the chart:</p> <p>“(c) A course or program must substantially meet the standards and criteria for an acceptable category of continuing education under this rule and must be relevant to health care and advancement of the licensee’s dental education.”</p>	Automatically approved CE in (a) should be relevant to healthcare and advancement of the licensee’s dental education.	R 338.11704a (1)(a)
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20	Beavers/ DHHS		Anyone who is part of the dental team, has a license with LARA, and works at an underserved clinic (ex. FQHC) should receive a determined number of CEs for working with the underserved population.	It would benefit the public to encourage licensees to work with underserved populations and that offering continuing education for this work would be an incentive for licensees. The rule will be modified to allow 1 hour continuing education for every 120 hours of patient care or supportive dental services with underserved populations, for a maximum of 1/3 of the total hours required.	R 338.11704a (1)(n)
21	Whitman-Herzer/ Council of Michigan Dental Specialties, Inc.		Update from "Oral pathologists" to "Oral & maxillofacial pathologists" for consistency throughout the rules.	For consistency, oral pathologists will be modified to oral and maxillofacial pathologists.	R 338.11811 (2)(c)

14.Date report completed:

3/29/2023