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STATE OF MICHIGAN
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
BUREAU OF PROFESSIONAL LICENSING

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PUBLIC HEARING

Friday, September 18, 2020

9:00 a.m.

- - -

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

- - -

Re: Occupational Code - Disciplinary Rules
(MOAHR #2020-23 LR)

Occupational Therapy - General Rules
(MOAHR #2020-28 LR)

Real Estate Brokers and Salespersons - General Rules
(MOAHR #2019-80 LR)

HEARING FACILITATOR:

Dena Marks, Analyst
Bureau of Professional Licensing
611 West Ottawa Street
Lansing, Michigan 48909

Also Present:

Andria Ditschman
Weston MacIntosh
LeAnn Payne
Kerry Przybylo

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

1 Lansing, Michigan

2 Friday, September 18, 2020

3 9:00 a.m.

4 - - -

5 DENA MARKS: Good morning. My name is
6 Dena Marks, and I'm an analyst with the Bureau of
7 Professional Licensing in the Department of Licensing and
8 Regulatory Affairs. I will be conducting the hearing
9 today.

10 This is a public hearing on proposed
11 administrative rules entitled "Occupational Code -
12 Disciplinary Rules," "Occupational Therapy - General
13 Rules," and Real Estate Brokers and Salespersons -
14 General Rules." We are conducting the hearing as
15 required by the Administrative Procedures Act to allow
16 the public to comment on the proposed changes to these
17 rule sets. As with all other public hearings on draft
18 rule sets, the only items to be discussed during this
19 hearing will be the proposed changes to the rule sets.
20 This hearing will not be covering any questions or
21 discussions other than those issues.

22 We are calling this hearing to order at
23 9:00 a.m. on September 18, 2020, via Zoom under Executive
24 Order 2020-154 in response to the COVID-19 pandemic. The
25 notice of public hearing was published in three

1 newspapers of general circulation, the grand Rapids Press
2 and the Flint Journal on August 23, 2020, and the Mining
3 Journal on September 2, 2020, as well as the Michigan
4 Register, Issue 16-2020 published on 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 proposed rules, please include
10 the specific reasons why the changes would be in the
11 public interest.

12 We will take comments in the following
13 manner: For those using the video conference portion of
14 the Zoom, not calling in on a telephone, please use the
15 Raise Your Hand feature in Zoom. I will call on
16 individuals to speak and they will be unmuted at that
17 time. For participants that are available only by
18 telephone, we will ask if you wish to make a comment
19 after the video participants have finished. If you have
20 a comment but do not wish to speak, you may note --
21 please note that the Department will also accept written
22 statements e-mailed to BPL-boardsupport@Michigan.gov, or
23 postmarked and mailed to the Bureau until 5:00 p.m.
24 today.

25 Those making comments should clearly and

1 slowly say and spell your name and advise if you are
2 speaking on behalf of an organization. We will limit
3 comments to three minutes per person. Please remember
4 that only one person should speak at a time.

5 The other department staff from the
6 Bureau of Professional Licensing attending today are
7 Andria Ditschman, Weston MacIntosh, LeAnn Payne, and
8 Kerry Przybylo.

9 Is there anyone who wishes to make
10 comments on the Occupational Code - Disciplinary Rules?
11 Again, if you are on audio only, we will get to you
12 shortly. Otherwise, if you could indicate that by using
13 the Raise Your Hand feature. (No response.)

14 Is there anyone who would like to speak
15 who is on audio only? If so, hit *6 on your phone and
16 that will unmute you so you may speak. (No response.)

17 I'm not seeing anyone who wishes to
18 comment on that rule set. We'll move on to the next one.

19 The next rule set we will take is
20 comments on the Occupational Therapy - General Rules.
21 Again if you are using the Zoom function, please Raise
22 Your Hand. (No response.) If you are on audio only and
23 wish to speak, please hit *6. (No response.)

24 I'm not seeing any comments regarding
25 that rule set. We will move on then to Real Estate

1 Brokers and Salespersons - General Rules. If anyone
2 would like to speak and use the Raise Your Hand function,
3 please do so now. (No response.)

4 If anyone is on audio only and wishes to
5 speak about that rule set, please hit *6 and you may make
6 your comments. (No response.)

7 It doesn't appear that there are any
8 persons who wishes to speak on those rules at this time.
9 We will take a short recess to allow others to join this
10 hearing. We are currently in recess.

11 (Brief recess was taken.)

12 KERRY BRZYBYLO: I see that Bethany has
13 her hand raised. Oh, now she is lowering her hand.
14 Bethany, did you have a comment to make?

15 MS. BURGE: Hello. I just wondered if it
16 is possible to ask a question or if it's just the time to
17 make a comment?

18 KERRY BRZYBYLO: You may ask a question.
19 We can try and answer it, but this is the time to make
20 comments about rules or suggested changes. But go ahead
21 and ask, we'll be happy to try and entertain it.

22 MS. BURGE: O.K. I am an occupational
23 therapist. And in reviewing the updated rules, it
24 appears that the English language requirement has been
25 rescinded. So I was just concerned that if English isn't

1 a requirement for our therapists in our state, that could
2 present a challenge, especially for an older adult who
3 perhaps have difficulties or aren't familiar with other
4 primary proficiencies. So I just am concerned that if
5 the English language requirement is rescinded, that may
6 create a barrier to proxies for some of our clients.

7 KERRY BRZYBYLO: Agreed. And we did not
8 rescind the rule completely. We removed the rule to the
9 Public Health Code - General Rules which apply to all
10 health professions. So we took it out of the individual
11 professional administrative rules, occupational therapy,
12 dentistry, medicine, social work. We took it out of all
13 of those and put it into one rule that applies to all
14 professions so that it's uniformly enforced across the
15 board, so that everybody has the same minimal standard
16 which the Department is supposed to set.

17 Those rules are in the promulgation
18 process right now, and I expect that they will be made
19 into, made into law in the next few weeks, I believe. So
20 we can't move your rule forward until that rule
21 promulgates because we don't want to have a period of
22 time where nobody has that requirement. So yes, I
23 totally understand your concern but it's still going to
24 be a requirement for all health professionals.

25 MS. BURGE: O.K. Thank you. May I ask

1 one more question?

2 KERRY BRZYBYLO: Sure.

3 MS. BURGE: O.K. I'm sorry, this is my
4 first public hearing in reviewing the proposed changes.

5 KERRY BRZYBYLO: That's O.K.

6 MS. BURGE: So I wasn't quite sure how
7 this works. So my second question is related to
8 continuing education requirements. I notice that the
9 live synchronous requirement has been slightly modified.
10 So I just wanted to make sure just thinking about the age
11 of COVID, I know this policy, you know, supersedes any
12 pandemic. However, I was just concerned about half of
13 the credits being required for live synchronous, and if
14 Zoom-based on -- I mean it's not exactly live, it's live
15 but it's not in person -- if there is going to be some
16 future consideration to moving continuing education
17 requirements as we move forward into 2021 when someone
18 starts to think about live continuing education credits.

19 KERRY BRZYBYLO: So you're wondering if
20 there is going to be a policy or an executive order of
21 some sort that would waive the in-person requirement? Is
22 that what you're asking?

23 MS. BURGE: Yes. It looked as though --
24 in the proposed rules it still has the in-person
25 requirement. A part of that -- I'm trying to scroll back

1 through it. It still looked like it was partially
2 rescinded. So it said it must be completed live and in
3 person, or the live synchronous context was removed. I
4 just want to make sure that doesn't present a problem for
5 people renewing in 2021.

6 KERRY BRZYBYLO: Andria, you're muted.

7 MS. DITSCHMAN: I'm sorry. I got it. I
8 work with the OT Board. So we took out the using live
9 synchronous contact because there was confusion as to
10 what that meant. So it does say live and in person. So
11 that is correct, that for the occupational therapy CE it
12 is required to be in person.

13 Now, I know that we don't know when an
14 executive order will be changed or a new one will come
15 out that allows for a change to that. And so I mean if
16 this were to go on long-term, there might be something
17 that would come out saying that, you know, CE that is
18 supposed to be in person can be done live.

19 Kerry, is the current one for CE still in
20 effect, do you know?

21 KERRY BRZYBYLO: I don't know. I don't
22 know.

23 MS. DITSCHMAN: I don't know either.
24 There was one that allowed for continuing education to be
25 waived. I would have to look.

1 Bethany, I could check and get back to
2 you. I'll have to check on that and see if it's still in
3 effect. But right now, when these go into effect -- and
4 these won't go into effect until, you know, we have the
5 public hearing, then it goes back to a workgroup, and
6 then it goes back to the Board, so it's going to be
7 months before this is put into effect. But right now, so
8 it's a change in the language, but basically the
9 synchronous was taken out because it seemed to be
10 confusing. Seemed to be, people weren't sure what that
11 meant, live synchronous. So now it says live and in
12 person, it means yes, you have to have face-to-face.

13 MS. BURGE: O.K. I was just thinking
14 like for instance through Zoom you could be live and
15 synchronous. So that's why I was asking about the
16 clarification, if that counted as in person. But I
17 totally recognize that the pandemic is a unique
18 situation, and these rules are going to last longer
19 hopefully than the pandemic will. But I didn't know if
20 there was a way to add language or something pending,
21 executive orders, as a result of the pandemic should this
22 last longer than, for instance, the next 12 to 24 months.

23 MS. DITSCHMAN: By executive order the
24 Governor can override the rule and just allow that. If
25 you can send me an e-mail, I can respond with the

1 executive orders that were in effect. But can I give you
2 my e-mail address?

3 MS. BURGE: Sure. What is it, please?

4 MS. DITSCHMAN: So it's
5 Ditschmana@michigan.gov. And you send me an e-mail, and
6 then I'll send you the information that's been in effect
7 so far.

8 MS. BURGE: O.K. Thank you.

9 (Email address repeated.)

10 MS. DITSCHMAN: You're welcome.

11 KERRY BRZYBYLO: And Bethany, since you
12 have made comments, we need to get this hearing
13 transcribed. So could you please give me your last name
14 so that we can identify you for the record?

15 MS. BURGE: Sure. My name is Bethany
16 Burge. B as in Boy u-r-g-e.

17 KERRY BRZYBYLO: O.K. And are you
18 representing yourself or an association?

19 MS. BURGE: Just myself.

20 KERRY BRZYBYLO: O.K. All right. Thank
21 you very much, Bethany, for your comments.

22 MS. BURGE: Thank you. You all have a
23 good day.

24 KERRY BRZYBYLO: Thank you. You too.

25 MS. BURGE: Stay safe.

1 DENA MARKS: If there are no further
2 comments at this time, I hereby declare the hearing
3 closed. The record will remain open today until 5:00
4 p.m. for any other comments you may wish to share about
5 the proposed rules. Thank you for attending.

6 (Off the record at approximately 1:25 p.m.)

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CERTIFICATE OF TRANSCRIBER

I, Marie T. Schroeder, do hereby certify that I transcribed the foregoing electronic/visual recorded hearing held in the above matters via Zoom; In Re Occupational Code - Disciplinary Rules, Occupational Therapy - General Rules, and Real Estate Brokers and Salesperson - General Rules, held via Zoom on Friday, September 18, 2020; and do further certify that the foregoing transcript, consisting of 12 pages, is a true and correct transcript of said recording.

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