

THE OHIO STATE DENTAL BOARD AND THE RULE MAKING PROCESS: A GUIDE TO PUBLIC PARTICIPATION

INTRODUCTION

This guide is published to assist licensed dentists, dental hygienists, dental assistants and the general public in understanding how rules are adopted by the Ohio State Dental Board (Board). It provides highlights only and is not intended to be an in-depth review of the rule making process. Rules, if adopted in accordance with Ohio's Administrative Procedures Act (Chapter 119. of the Revised Code), have the force and effect of law. Therefore, rules of the Board are important to every dental practice. While the process of rule adoption may seem complex at times, it is designed to offer adequate opportunity for the public to provide input to the Board regarding the content of any rule being considered. How to take full advantage of the opportunities for public participation is the focus of this publication. If you have questions after reading this material, contact the Board at 614/466-2580.

MISSION

The ability to practice any profession is a privilege, not a right. As such, those who attempt to engage in a licensed profession without the appropriate training, ethical standards and/or competency levels, pose a threat to the health, welfare and safety of the citizens of Ohio. The mission of the Ohio State Dental Board is to actively promote and protect the health of the citizens of Ohio through the safe and effective practice of dentistry as defined by law.

The Board is an agency created by statute and charged with the responsibility of administering and enforcing Chapter 4715 of the Ohio Revised Code which is the law regulating the practice of dentistry in the state of Ohio. The primary purpose of the law is to serve as a safeguard for the health, welfare and safety of the public and to protect the public against unqualified practitioners of dentistry. The members of the Board, consisting of five licensed dentists, one licensed dental hygienist, and one consumer member, are appointed by the governor with the consent of the senate to serve for a term of five years.

The Board employs an executive director and a support staff which includes several enforcement officers to assist in implementing the various functions of the Board that are mandated by law.

The Ohio State Dental Board has been charged with regulating the practice of dentistry by regulating and enforcing the standards of practice. This is accomplished under three primary functions: Licensing, Regulation and Enforcement.

RULE MAKING AUTHORITY

By law, the Board is authorized to promulgate (adopt, amend, and rescind) all rules necessary to carry out the provisions of the Dental Practice Act (RC Chapter 4715, which is the law regulating the practice of dentistry in Ohio). Specifically, through rules, the Board may provide for its government and control of its actions and business affairs; establish minimum criteria and procedures for granting and renewing of licenses issued by the Board; establish standards for approval of continuing education programs and courses for licensees; establish conditions for reinstating a suspended license; establish criteria for evaluating an individual seeking licensure by endorsement; establish universal blood and body fluid precautions to be used by licensees; establish rules regarding the practice of dental auxiliaries; establish rules for dental hygiene practice when the supervising dentist is not physically present; establish rules for dentists wishing to employ general anesthesia, deep sedation and/or conscious sedation, and establish rules for the safe practice of dentistry and dental hygiene in the state of Ohio.

All rules of the Board can be found in Chapters 4715-1 through 4715-21 of the Ohio Administrative Code.

RULE REVIEW PROCESS

In accordance with Ohio law, the Board is required to review each of its rules at least once every five years each of its rules. To effectively conduct this process, the Board has formed the Law and Rules Review Committee, which meets regularly for this purpose. The committee is comprised of Board members and other individuals in the dental field who provide opinions and expertise in various areas. Only Board members on the committee, however, have voting ability. The committee and ultimately the Board must review the rules to determine whether a particular rule should be unchanged, revised, or rescinded in light of the purpose, scope, and intent of the statute under which the rule was adopted. Factors the Board considers when reviewing the rules include whether the rule should be amended or rescinded to allow more flexibility at the local level; to eliminate unnecessary paperwork; or to avoid duplication, overlap, or conflict with other rules.

In making the review the Board considers the continued need for the rule, the nature of any complaints or comments received concerning the rule, and any relevant factors that have changed in the subject matter affected by the rule.

In addition to the regular five year review required by law, the Board may consider its other rules to determine what, if any, modifications may be needed as a result of the enactment of new laws by the General Assembly or because of changes to dental practice regulation.

The Board has established a schedule for conducting this rule review which typically begins during the January Board meeting. Input from licensees is encouraged and the meetings of the committee are open to the public. Agendas to the meetings are available shortly before the meeting date.

Once the Board has gathered all necessary information through these sources about the subject matter of the rules under consideration, members decide what course of action they wish to take. A rule may be filed as unchanged or may be submitted for revision or rescission. New rules may also be proposed to address concerns expressed by licensees and consumers. Once rules are filed as required by law, the public has another opportunity to provide input during the Board's public hearing scheduled 31 to 40 days after the rules are filed.

ADOPTING, REVISING, RESCINDING A RULE: THE PROCESS

The law requires the Board to file its proposed rules with the Joint Committee on Agency Rule Review (JCARR), the Legislative Service Commission (LSC) and the Secretary of State. Additionally, the Board must make a reasonable effort to inform those affected by the rules of the filing (which generally takes the form of a published and mailed public notice sent to all subscribers, relevant trade organizations, and many health care providers and will soon include electronic notification through the Ohio Register). Finally, the Board conducts a public hearing within the time frame required by law.

This public hearing, generally held in Columbus, offers an opportunity for members of the Board to hear from dentists and others affected by proposed new rules or rule changes. The law requires that all public input be heard by the Board.

The hearing is a formal process presided over by the president of the Board. A quorum, consisting of four Board members must be present. A court reporter is on hand to record the proceedings. The Board's attorney, an Assistant Attorney General, conducts the hearing, first eliciting testimony from the Board's executive director to determine Board compliance with all of the filing and public notice requirements contained in the law. Once the executive director's testimony is completed, witnesses are called to testify.

Anyone who wishes to present comments or concerns orally to the Board may do so. Ten copies of the oral testimony should be provided if possible to facilitate the Board members' deliberations after the hearing.

Board members may ask questions of a witness, may ask a witness to provide additional information, or may place a time limit on a witness's oral remarks to assure that all who wish to testify are heard. Those who intend to testify are asked to complete a witness slip, and witnesses are called to testify in the order in which the slips are received by the Board. Because the hearing is intended to provide an opportunity for the Board to hear from the public, only the Board members may question a witness.

For those who do not want to provide oral testimony, written remarks may be submitted to the Board by mail or fax any time prior to the day of the hearing and up until the hearing record is officially closed, which is usually at the end of the oral testimony or later during the day of the hearing. Once all witnesses have been heard, the hearing is adjourned.

The Board then thoroughly considers the testimony it has received, both written and oral, and decides, generally at its next regularly scheduled meeting after the hearing, whether to make changes to the rules as proposed. If changes are warranted, the rules must be refiled with JCARR, LSC, and the Secretary of State. The Board is not required to conduct another public hearing when rules are refiled.

Once the Board's public hearing is completed and rules refiled if applicable, JCARR holds its meeting to review the rules under consideration. JCARR is made up of five senators and five members of the House of Representatives. The committee's primary function is to review the rules to make certain they (1) do not exceed the scope of the Board's rule making authority, (2) do not conflict with any other law or rules, (3) do not conflict with the intent of the legislature in enacting any relevant statute(s) and (4) that the Board has completed the appropriate documents (rule summary and fiscal analysis) for filing. The JCARR meeting is the final opportunity for the public to provide comments about the rules; however, the comments before JCARR must address only those four issues that are within JCARR's jurisdiction. If JCARR believes the rules violate one of these areas, the committee may entertain a motion proposing to invalidate the rules under consideration. If the motion is approved by the General Assembly, the Board would not be able to make any more rules on the subject matter at issue until the next session of the General Assembly.

Assuming the proposed rules are not invalidated, once JCARR jurisdiction expires, the Board may take final action on the rules. Rules become effective no sooner than 10 days after the JCARR's jurisdiction expires.

CONCLUSION

The Board relies on public input to guide its rule making activities. The expertise of dentists and dental hygienists working in a variety of health care settings is an essential ingredient if the Board's rules are to be reasonably enforceable, clear, and consistent. Licensees and the general public are strongly encouraged to provide feedback and comments to the Board throughout the year.