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WILLIAM H. TRICE III (1946-2014)

October 9, 2018

Via email and U.S. Mail
donna@arkleg.state.ar.us

Ms. Donna K. Davis, Committee Staff
State of Arkansas, Bureau of Legislative Research
State Capitol Building, Room 315
Little Rock, AR 72201

**RE: My Client: Arkansas State Board of Dental Examiners
Amendment to Article XI –Dental Hygienists Functions**

Dear Ms. Davis:

Enclosed please find the following:

1. Two copies of the Questionnaire and Financial Impact Statement.
2. Two copies of a mark-up reflecting the Amendment to Article XI.
3. Two copies of the Proposed Amendment to Article XI.
4. Two copies of the Notice of Hearing, setting forth the public hearing date as November 16, 2018 at 8:30 a.m. at the offices of the Board.
5. Two copies of the Summary.

After the public hearing I will contact your office and let you know whether it was approved by the Board and request that you schedule this for review at your convenience by Legislative Council Rules and Regulations Committee. Please let me know when to appear.

Respectfully,



Kevin M. O'Dwyer
Attorney for the Arkansas State Board of Dental Examiners

KMO/mel
Enclosures

cc w/encl.: Arkansas Secretary of State, register@sos.arkansas.gov
Arkansas State Library, statedocs@library.arkansas.gov
Donna Cobb, Executive Director, asbde@arkansas.gov

**QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL**

DEPARTMENT/AGENCY Arkansas State Board of Dental Examiners
DIVISION _____
DIVISION DIRECTOR Donna Cobb, Executive Director
CONTACT PERSON Kevin M. O'Dwyer, Attorney
ADDRESS 211 S. Spring Street, Little Rock, AR 72201
PHONE NO. (501) 372-4144 FAX NO. (501) 372-7480 E-MAIL kodwyer@htolaw.com
NAME OF PRESENTER AT COMMITTEE MEETING Kevin M. O'Dwyer
PRESENTER E-MAIL kodwyer@htolaw.com

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question **completely** using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Donna K. Davis
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

- 1. What is the short title of this rule? Amendment to Article XI - Dental Hygienists Functions
To clarify how long a dental hygienist can see patients
- 2. What is the subject of the proposed rule? without a dentist in the office and to state that placing silver diamine flouride may only be delegated to a licensed dental hygienist.
- 3. Is this rule required to comply with a federal statute, rule, or regulation? Yes No
If yes, please provide the federal rule, regulation, and/or statute citation. N/A
- 4. Was this rule filed under the emergency provisions of the Administrative Procedure Act?
Yes No
If yes, what is the effective date of the emergency rule? N/A

When does the emergency rule expire? N/A

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? N/A
Yes No

5. Is this a new rule? Yes No
If yes, please provide a brief summary explaining the regulation. _____

Does this repeal an existing rule? Yes No
If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does. _____

Is this an amendment to an existing rule? Yes No
If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. _____ ACA 17-82-103(b) and ACA 17-82-208(c)

7. What is the purpose of this proposed rule? Why is it necessary? To clarify dental hygienists' functions.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b). www.dentalboard.arkansas.gov

9. Will a public hearing be held on this proposed rule? Yes No
If yes, please complete the following:

Date: November 16, 2018

Time: 8:30 a.m.

Place: Offices of Arkansas State Board of Dental Examiners
101 E. Capitol Avenue, Suite 111, Little Rock, Arkansas 72201

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)
November 16, 2018

11. What is the proposed effective date of this proposed rule? (Must provide a date.)
December 28, 2018

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. Attached. Proof of Publication will be provided after it is received.

13. Please provide proof of filing the rule with the Secretary of State and the Arkansas State Library as required pursuant to Ark. Code Ann. § 25-15-204(e). This is done after Governor's approval.

14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known. Arkansas State Dental Association

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas State Board of Dental Examiners

DIVISION _____

PERSON COMPLETING THIS STATEMENT Kevin M. O'Dwyer, Attorney

TELEPHONE (501) 372-4144 **FAX** (501) 372-7480 **EMAIL:** kodwyer@htolaw.com

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE An Amendment to Article XI to clarify how long a dental hygienist can see patients without the dentist in the office and to state that placing silver diamine flouride may only be delegated to a licensed dental hygienist.

1. Does this proposed, amended, or repealed rule have a financial impact? Yes No
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule? Yes No
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes No

If an agency is proposing a more costly rule, please state the following:

(a) How the additional benefits of the more costly rule justify its additional cost;
N/A

(b) The reason for adoption of the more costly rule;
N/A

(c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;
N/A

(d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.
N/A

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

(a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

Next Fiscal Year

General Revenue N/A

General Revenue N/A

Federal Funds _____

Federal Funds _____

Cash Funds _____

Cash Funds _____

Special Revenue _____

Special Revenue _____

Other (Identify) _____

Other (Identify) _____

Total _____

Total _____

(b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue N/A
Federal Funds
Cash Funds
Special Revenue
Other (Identify)

Total

Next Fiscal Year

General Revenue N/A
Federal Funds
Cash Funds
Special Revenue
Other (Identify)

Total

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

\$ N/A

Next Fiscal Year

\$ N/A

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ N/A

Next Fiscal Year

\$ N/A

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

ARTICLE XI

DENTAL HYGIENISTS FUNCTIONS

Definitions pertaining to Dental Hygiene Functions:

INDIRECT SUPERVISION: The dentist authorizes the procedures and remains in the treatment facility while the procedures are being performed.

OPERATIVE SUPERVISION: The dentist authorizes the procedures and remains in the operatory while the procedures are being performed, and evaluates the results prior to leaving the operatory.

GENERAL SUPERVISION: The dentist authorizes the procedures but is not required to be present in the treatment facility while the procedures are being performed by the dental hygienist.

A. EXCLUSIVE FUNCTIONS TO BE PERFORMED BY A DENTAL HYGIENIST WHEN DELEGATED BY A DENTIST

1. Effective and safe delivery of certain services to the public is dependent upon making judgments and utilizing skills that require synthesis and application of knowledge acquired in accredited dental hygiene education programs and cannot be delegated to any dental staff member other than a licensed, registered dental hygienist.
2. The following functions may only be delegated to a licensed dental hygienist:
 - a. Oral examination. Elements of these examinations include charting of carious lesions and other abnormalities, periodontal charting and assessment of periodontal conditions, treatment planning for dental hygiene services and oral cancer screening. The dental hygienists may dictate the examination findings to a dental assistant who may then record the data on the patient's dental record.
 - b. Oral prophylaxis, scaling, root planing, and curettage. If a laser instrument is used, the dental hygienist and their supervising dentist must submit to the Board proof of successful completion of an approved educational course on the use of that type of laser prior to its usage for any patient treatment.
 - c. Using air driven, electric, sonic, ultrasonic, or otherwise powered scalers or polishers (except for dental assistants possessing an expanded duties permit for polishing).
 - d. Placing medicaments as prescribed by the supervising dentist into the sulcus or periodontal pockets, for periodontal diseases.
 - e. Place Silver Diamine Fluoride (SDF) under general supervision. If SDF is used, the dental hygienist and their supervising dentist must submit to the Board proof of successful completion of an approved educational course on SDF prior to its usage for any patient treatment.

B. PROHIBITED ACTIVITY: The following functions and procedures may NOT be delegated to dental hygienists. The functions include:

1. Diagnosis and treatment planning
2. Surgical or cutting procedures on hard or soft tissue
3. Prescription, injection, inhalation, and parenteral administration of drugs (except where permitted by the Board)
4. Placement, seating or removal of any final or permanent restorations.
5. Final placement of orthodontic brackets
6. Any procedure that contributes to or results in irreversible alteration of the oral anatomy.
7. Performance of any of the following expanded duties without a permit:
 - a. Administration of local anesthesia
 - b. Administration of nitrous oxide/oxygen analgesia

C. SUPERVISION LEVELS FOR AUTHORIZED FUNCTIONS OF A DENTAL HYGIENIST

1. Under INDIRECT SUPERVISION a hygienist may perform any dental task or procedure assigned by the supervising dentist to the hygienist that does not require the professional skills of a licensed dentist except for those functions prohibited in Section B of this Article or those tasks that require operative supervision.
2. Under OPERATIVE SUPERVISION, a hygienist may perform the following procedures:
 - a. Any procedure allowed under Indirect Supervision.
 - b. Administer certain local anesthesia injections as provided in Article XVI of these Rules and Regulations.
3. Under GENERAL SUPERVISION, the following restrictions apply:
 - a. A hygienist may render services only with the expressed consent of the supervising dentist and only for brief intervals when the supervising dentist cannot be in the treatment facility not to exceed two consecutive days.
 - b. The supervising dentist maintains full control as to whether general supervision will be utilized in his/her office or practice setting.
 - c. General supervision is allowed only in dental clinics, community health centers or government sponsored dental facilities.
 - d. Hygienists must comply with written protocols for emergencies as established by the supervising dentist.
 - e. Hygienists must practice under the supervision of a licensed dentist and may not practice independently or establish an office devoted primarily to dental hygiene services.
 - f. Hygienists must have one (1) full year of full-time service before being able to function under general supervision of a dentist.
 - g. Patients must be notified in advance that the doctor may not be in the treatment facility.
 - h. The supervising dentist must have examined the patient(s) not more than twelve (12) months prior.

- i. Hygienist may perform any procedure allowed under Indirect Supervision with the exception of root planing, subgingival curettage, local anesthesia, administration of nitrous oxide.
- j. The hygienist may place sealants if it has not been more than thirty days since the teeth to be sealed were examined by the dentist.
- k. A registered dental hygienist may not delegate functions to a registered dental assistant when the treating dentist is not in the facility.

ARTICLE XI

DENTAL HYGIENISTS FUNCTIONS

Definitions pertaining to Dental Hygiene Functions:

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OPERATIVE SUPERVISION: The dentist authorizes the procedures and remains in the operatory while the procedures are being performed, and evaluates the results prior to leaving the operatory.

GENERAL SUPERVISION: The dentist authorizes the procedures but is not required to be present in the treatment facility while the procedures are being performed by the dental hygienist.

A. **EXCLUSIVE FUNCTIONS TO BE PERFORMED BY A DENTAL HYGIENIST WHEN DELEGATED BY A DENTIST**

1. Effective and safe delivery of certain services to the public is dependent upon making judgments and utilizing skills that require synthesis and application of knowledge acquired in accredited dental hygiene education programs and cannot be delegated to any dental staff member other than a licensed, registered dental hygienist.
2. The following functions may only be delegated to a licensed dental hygienist:
 - a. Oral examination. Elements of these examinations include charting of carious lesions and other abnormalities, periodontal charting and assessment of periodontal conditions, treatment planning for dental hygiene services and oral cancer screening. The dental hygienists may dictate the examination findings to a dental assistant who may then record the data on the patient's dental record.
 - b. Oral prophylaxis, scaling, root planing, and curettage. If a laser instrument is used, the dental hygienist and their supervising dentist must submit to the Board proof of successful completion of an approved educational course on the use of that type of laser prior to its usage for any patient treatment.
 - c. Using air driven, electric, sonic, ultrasonic, or otherwise powered scalers or polishers (except for dental assistants possessing an expanded duties permit for polishing).
 - d. Placing medicaments as prescribed by the supervising dentist into the sulcus or periodontal pockets, for periodontal diseases.
 - e. Place Silver Diamine Fluoride (SDF) under general supervision. If SDF is used, the dental hygienist and their supervising dentist must submit to the Board proof of successful completion of an approved educational course on SDF prior to its usage for any patient treatment.

- B. **PROHIBITED ACTIVITY:** The following functions and procedures may NOT be delegated to dental hygienists. The functions include:
1. Diagnosis and treatment planning
 2. Surgical or cutting procedures on hard or soft tissue
 3. Prescription, injection, inhalation, and parenteral administration of drugs (except where permitted by the Board)
 4. Placement, seating or removal of any final or permanent restorations.
 5. Final placement of orthodontic brackets
 6. Any procedure that contributes to or results in irreversible alteration of the oral anatomy.
 7. Performance of any of the following expanded duties without a permit:
 - a. Administration of local anesthesia
 - b. Administration of nitrous oxide/oxygen analgesia

C. **SUPERVISION LEVELS FOR AUTHORIZED FUNCTIONS OF A DENTAL HYGIENIST**

1. Under **INDIRECT SUPERVISION** a hygienist may perform any dental task or procedure assigned by the supervising dentist to the hygienist that does not require the professional skills of a licensed dentist except for those functions prohibited in Section B of this Article or those tasks that require operative supervision.
2. Under **OPERATIVE SUPERVISION**, a hygienist may perform the following procedures:
 - a. Any procedure allowed under Indirect Supervision.
 - b. Administer certain local anesthesia injections as provided in Article XVI of these Rules and Regulations.
3. Under **GENERAL SUPERVISION**, the following restrictions apply:
 - a. A hygienist may render services only with the expressed consent of the supervising dentist and only for brief intervals when the supervising dentist cannot be in the treatment facility not to exceed two consecutive days.
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 - c. General supervision is allowed only in dental clinics, community health centers or government sponsored dental facilities.
 - d. Hygienists must comply with written protocols for emergencies as established by the supervising dentist.
 - e. Hygienists must practice under the supervision of a licensed dentist and may not practice independently or establish an office devoted primarily to dental hygiene services.
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- k. A registered dental hygienist may not delegate functions to a registered dental assistant when the treating dentist is not in the facility.

To be published three times: October 2, October 9, and October 16, 2018, in the Daily Record:

Bill to: Donna Cobb, Executive Director
Arkansas State Board of Dental Examiners
101 E. Capitol, Ste. 111
Little Rock AR 72201
(501) 682-2085

Send proof of publication to:

Kevin M. O'Dwyer
Attorney for the Arkansas State Board of Dental Examiners
211 Spring Street
Little Rock, AR 72201
Ph. (501) 372-4144
kodwyer@htolaw.com

NOTICE OF PUBLIC HEARING

In compliance with ACA 25-15-204, the Arkansas State Board of Dental Examiners gives notice that it will conduct a public hearing at 8:30 a.m. on the 16th day of November, 2018, at the offices of the Arkansas State Board of Dental Examiners, Main Street Mall, 6th and Main, Little Rock, Arkansas 72201. The public hearing will involve an Amendment to Article XI, Dental Hygienists Functions.

All individuals desiring to attend said hearing may do so. All individuals desiring to address the Board should contact Ms. Donna Cobb, the Executive Director of the Arkansas State Board of Dental Examiners, (501) 682-2085. Individuals desiring a copy of the proposed Article XI, as referred to herein, may contact Donna Cobb, the Executive Director at the above number.

SUMMARY

Amendment to Article XI, Dental Hygienists Functions, will clarify how long a hygienist can see patients without the dentist in the office, and to state that placing silver diamine fluoride may only be delegated to a licensed dental hygienist.