

EXHIBIT G

STATE BOARD OF DENTAL EXAMINERS

SUBJECT: Article XI; Dental Hygienists Functions

DESCRIPTION: This eliminates the function of application of fissure sealants as being exclusively performed by dental hygienists. These may be delegated by the treating dentist to other dental personnel, not just dental hygienists, if this amendment is adopted.

Section A.2.b provides a new regulation to govern dental hygienists utilizing lasers and that they must complete an education course involving lasers prior to performing any treatment on a patient.

PUBLIC COMMENT: A public hearing was held on January 20, 2012, and the public comment period expired on that date.

The following people commented that they had some problems with the proposed regulation because dental assistants could not place pit and fissure sealants. It was explained to each of the following individuals that, in the immediate future, there would probably be an amendment to the dental assistant regulation setting up a training program, for them to be able to place pit and fissure sealants. The following individuals expressed the same concern: (a) Rhonda Sledge of the Dental Hygienists Association; (b) Susan Long, UAMS Dental Hygienist School; (c) Bill Tarpley, Arkansas Dental Association; and (d) a representative from the Dental Assistant Association.

There were a number of individuals that wanted to express opinions about the use of lasers, but no one was against the proposed rule as it involved lasers and the training of dental hygienists to use lasers.

An attorney with the Bureau of Legislative Research asked the following question: The stated purpose of the rule is to eliminate the function of application of fissure sealants as being exclusively performed by dental hygienists as it may also be delegated by the treating dentist to other dental personnel. What other dental personnel would be applying the sealants? Dental assistants and dentists? I'm assuming that all dental personnel would be trained and licensed, right? **RESPONSE:** Yes, this rule change would also allow dental assistants to perform these functions. They would be trained and licensed.

The proposed effective date is February 1, 2013.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The State Board of Dental Examiners shall by rule or regulation "prescribe those acts, services, procedures, and practices which may be performed by dental hygienists and dental assistants at the direction and under the direct supervision of a licensed dentist and shall impose requirements and restrictions on the performance thereof by dental hygienists and dental assistants as it shall deem proper and

necessary to protect and promote the public health and welfare of the citizens of this state.” Ark. Code Ann. § 17-82-208(c).

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

DEPARTMENT/AGENCY Arkansas State Board of Dental Examiners
DIVISION: _____
DIVISION DIRECTOR: Donna Cobb
CONTACT PERSON: William H. Trice, III - Attorney for the Board
ADDRESS: 211 Spring Street, Little Rock, Arkansas 72201
PHONE NO.: 501-372-4144 FAX NO.: 501-372-7480 EMAIL: btrice@htolaw.com
NAME OF PRESENTER AT COMMITTEE MEETING William H. Trice, III
PRESENTER E-MAIL: btrice@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 documents. Mail or deliver to:

Donna K. Davis
Subcommittee on Administrative Rules and Regulations
Arkansas Legislative Council
Bureau of Legislative Research
Room 315 State Capitol
Little Rock, AR 72201

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1. What is the short title of this rule?

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Article XI Dental Hygienists Functions

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2. What is the subject of the proposed rule?

Sets forth the dental hygienists functions that are permitted and not permitted by Rule and Regulations.

3. Is this rule required to comply with federal statute or regulation? Yes ___ No XX
If yes, please provide the federal rule, regulation and/or statute citation

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes ___ No XX

If yes, what is the effective date of the emergency rule? _____

When does the emergency rule expire? N/A

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes ___ No XX

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

Does this repeal an existing rule? Yes ____ No **XX** 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 **XX** 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." Summary and Mark Up is attached.

6. Cite the state law that grants the authority for this proposed rule? If codified, please give 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?

It limits the function of fissure sealants being delegated only to dental hygienists, and it sets forth a requirement that dental hygienists must submit to the Board proof that the hygienist has completed a laser educational course prior to utilizing a laser in dental treatment.

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).

Offices of the Arkansas State Board of Dental Examiners, www.asbde.org

9. Will a public hearing be held on this proposed rule? Yes **XX** No ____

If yes, please complete the following:

Date: 20 January 2012

Time: 8:30a.m.

Place: Offices of the Arkansas State Board of Dental Examiners

6th and Main Street

Little Rock, AR 72201

10. When does the public comment period expire for permanent promulgation? (Must provide a date) 20 January 2012

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

1 March 2012

12. Do you expect this rule to be controversial? Yes ____ No **X** If yes, please explain.

13. 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; Arkansas State Dental Hygienists Association

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas State Board of Dental Examiners

DIVISION _____

PERSON COMPLETING THIS STATEMENT William H. Trice, Attorney

TELEPHONE NO. (501) 372-4144 FAX NO. (501) 372-7480 EMAIL: btrice@htolaw.com

To comply with Act 1104 of 1995, please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE

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Article XI Dental Hygienists Functions

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1. Does this proposed, amended, or repealed rule or regulation have a financial impact?
Yes _____ No XX

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2. Does this proposed, amended, or repealed rule affect small businesses?
Yes _____ No XX

If yes, please attach a copy of the economic impact statement required to be filed with the Arkansas Economic Development Commission under Arkansas Code §25-15-301 et seq.

3. If you believe that the development of a financial impact statement is so speculative as to be cost prohibited, please explain.
Speculative in that it requires some level of education prior to using laser, but that is already being done in most dental offices..

4. If the purpose of this rule or regulation is to implement a federal rule or regulation, please give the incremental cost for implementing the regulation. Please indicate if the cost is provided is the cost of the program.

N/A

Current Fiscal Year N/A

Next Fiscal Year N/A

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____
Total _____

General Revenue _____
General Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____
Total _____

5. What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or

repealed rule or regulation? Identify the party subject to the proposed regulation, and explain how they are affected. **Not applicable.**

Current Fiscal Year N/A
\$ _____

Next Fiscal Year N/A
\$ _____

6. What is the total estimated cost by fiscal year to the agency to implement this regulation? N/A

Current Fiscal Year N/A
\$ _____

Next Fiscal Year N/A
\$ _____

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Proposed Amended Regulation

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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.

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.

Revised 11-17-11
MARK UP

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, 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 hygienists.

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.~~ Application of pit and fissure sealants.
 - ~~e-b.~~ Oral prophylaxis, scaling, root planning 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 lasers prior to its usage for any patient treatment.
 - ~~d-c.~~ Using air driven, electric, sonic, ultrasonic, or otherwise powered scalers or polishers (except dental assistants possessing an expanded duties permit for polishing).
 - ~~e-d.~~ Placing medicaments as prescribed by the supervising dentist into the sulcus or periodontal pockets, for periodontal diseases.

B. PROHIBITED ACTIVITY. The following functions and procedures may NOT be delegated to dental hygienists. ~~Because effective and safe performance is dependent upon making judgments that require synthesis and application of knowledge acquired in professional dental education.~~ The functions include:

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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 (2) 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. Hygienists may perform any procedure allowed under Indirect Supervision with the exception of root planing, subgingival curettage, local anesthesia, and 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.

Amended 1/12/01; 4/9/04.

- I. The receiving of anything of value as a referral fee, a fee splitting, a commission, or rebate, when professional services have not been rendered by the licensee.
- J. The making or use of any advertising statements of a character tending to deceive or mislead the public.
- K. The advertising of professional superiority or the advertising of the performance of professional services in a superior manner.
- L. The advertising to guarantee any dental service, or to perform any dental operation painlessly.
- M. The willful violation of any of the provisions of law regulating the dispensing and administration of dangerous drugs or narcotics.
- N. Any licentiate may have his license revoked or suspended or be reprimanded or be placed on probation by the Board for unprofessional conduct, gross negligence, or inefficiency in his profession; for conviction of a felony or misdemeanor involving moral turpitude. (Inefficient: Wanting in ability; incompetent; wasteful of time, energy, or materials; not producing the intended result.)

Amended 10/20/99, §C, D, I, & K.

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Present Rule

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Article XI

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DENTAL HYGIENISTS FUNCTIONS

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- 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. Application of pit and fissure sealants.
- c. Oral prophylaxis, scaling, root planing and curettage.
- d. Using air driven, electric, sonic, ultrasonic, or otherwise powered scalers or polishers (except dental assistants possessing an expanded duties permit for polishing).
- e. Placing medicaments as prescribed by the supervising dentist into the sulcus or periodontal pockets, for periodontal diseases.

B. PROHIBITED ACTIVITY. The following functions and procedures may NOT be delegated to dental hygienists under any level of supervision because effective and safe performance is dependent upon making judgments that require synthesis and application of knowledge acquired in professional dental education. 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

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- 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.
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 - 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 (2) consecutive days.
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 - 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. Hygienists may perform any procedure allowed under Indirect Supervision with the exception of root planing, subgingival curettage, local anesthesia, and 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.

Amended 1/12/01; 4/9/04.

Article XII
**RADIATION SAFETY EXAMINATION MINIMUM TRAINING
 STANDARDS FOR DENTAL AUXILIARIES ENGAGING IN DENTAL
 RADIOGRAPHY**

This article was repealed at the January 10, 2003 meeting of the Arkansas State Board of Dental Examiners.

Article XIII
**ANALGESIA, CONSCIOUS SEDATION, DEEP SEDATION, AND
 GENERAL ANESTHESIA RULES FOR A DENTIST IN AN
 AMBULATORY FACILITY**

A. DEFINITIONS

1. Analgesia - The diminution of pain or production of increased tolerance to pain in the conscious patient.
2. Anesthesia - Partial or complete loss of sensation with or without the loss of consciousness.
3. Anesthesia Period - The period of time beginning with the placement of a needle, mask, or solution into or onto the body until the patient has met the criteria which are appropriate for dismissal.

To be published three times in December 9, 13 and 16, 2011 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:

William H. Trice
Attorney for the Arkansas State Board of Dental Examiners
211 Spring Street
Little Rock, AR 72201
(501) 372-4144

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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 20th January, 2012 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 governing the functions of a dental hygienist.

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 amendment to Article XI governing the functions of a dental hygienist, as referred to herein, may contact Donna Cobb, the Executive Director at the above number.

