

GEORGIA BOARD OF DENTISTRY
Rules Committee Meeting
2 Peachtree St., N.W., 5th Floor
Atlanta, GA 30303
June 28, 2019
9:00 a.m.

The following Committee members were present:

Dr. Tom Godfrey, Chair

Staff present:

Tanja Battle, Executive Director
Max Changus, Assistant Attorney General
Kimberly Emm, Attorney

The following Board members were present:

Dr. Bert Yeargan

Visitors:

Lauren Pollow, PDS
Mark Middleton, SmileDirectClub
Joe McLean, Great Expressions
Brandon Jackson
Scott Lofranco, GDA
Pam Wilkes, Help A Child Smile
Emily Yona, GDA

Dr. Godfrey established that a quorum was present and called the meeting to order at 9:00 a.m.

Introduction of Visitors

Dr. Godfrey welcomed the visitors.

Approval of Minutes

Dr. Yeargan made a motion to approve the Public Session minutes for the March 1, 2019 meeting. Dr. Godfrey seconded and the Committee voted unanimously in favor of the motion.

Dr. Yeargan made a motion to approve the Executive Session minutes for the March 1, 2019 meeting. Dr. Godfrey seconded and the Committee voted unanimously in favor of the motion.

Dr. Bert Yeargan made a motion and Dr. Tom Godfrey seconded and the Committee voted to enter into **Executive Session** for the purpose of receiving legal advice as authorized under O.C.G.A. §§ 50-14-1(e)(2)(c), 50-14-2(1). Voting in favor of the motion were those present who included Dr. Tom Godfrey, and Dr. Bert Yeargan.

Executive Session

The Committee requested and received legal advice regarding Rule 150-14-.02 Fabrication of Dental Appliances, Caps, Coverings, Prostheses and Cosmetic Coverings is Practice of Dentistry.

The Committee requested and received legal advice regarding Teledentistry and Chapter 150-26 Mobile Dentistry.

The Committee requested and received legal advice regarding Rule 150-9-.01 General Duties of Dental Assistants.

No votes were taken in Executive Session. Dr. Godfrey declared the meeting back in Open Session.

Open Session

Discussion Topics

Rule 150-5-.03 Supervision of Dental Hygienists: Dr. Godfrey stated that there was a rule that had been proposed for the number of hours of experience and that proposal failed. He stated the Committee can look at some alternative versions. The previous version defined “Experience” as 1,000 hours for each twelve (12) month period. Dr. Godfrey discussed changing 1,000 hours to 500. He stated that one of the thoughts is that the practice of dental hygiene is a perishable skill. Dr. Godfrey stated he has read through the comments received and the argument was that it is too hard to meet the 1000 hours as a part-time practitioner. He stated that he hopes in this potential version it will help people be able to meet the requirement. He added there were other written comments proposed that say 1,000 hours was too much that now 500 is too much. He stated the Committee is happy to hear from anyone. There were no additional comments. Dr. Yeargan made a motion to refer the proposed amendment to the full Board. Dr. Godfrey seconded and the Committee voted unanimously in favor of the motion.

Rule 150-8-.02 Fee Splitting: Dr. Godfrey stated amendments to this rule have been bounced back and forth for years. He stated the Committee needs to decide if this is something it wants to pursue. He added that the ADSO has commented in past. Mr. McLean commented that they have submitted written comments regarding this matter. He stated the overall context was the revision takes out the link from fee splitting to referrals and it is confusing when professional fees are shared, for example, rent, legal fees, taxes, etc. He stated that they did not like the way the sharing of fees between a dentist and an unlicensed party is unclear. Mr. Lofranco stated that was his recollection as well.

Mr. Changus stated that, in looking at the rules and going through an analysis, there is a fee splitting rule on the books and it is short. He asked why does the Board feels it needs to amend the rule? Dr. Godfrey responded by stating that the Board received so many questions from dentists about what they can give as a thank-you. He stated one concern is whether or not a dentist would be incentivized to make a different decision because of the receipt of a gift or fee/payment of some sort. He added that, in certain circumstances, it is concerning especially if a treatment decision is involved. Mr. Changus responded that this is really clarification and delineation about conduct. Dr. Godfrey stated this will prohibit situations that may be unsafe to Georgia citizens. He stated that he feels it would help remove an asymmetry in potential treatment provided. He added that the Committee has reviewed several versions.

Mr. McLean stated the current rule links the prohibition to a referral source. He stated when (d) was added it seemed to bring in any payment made to unlicensed parties. Dr. Godfrey referred back to when Mr. McLean mentioned payment of rent. He asked Mr. McLean to further explain how they do this and how it will impact people. Mr. McLean responded that he can try, but he does not really think it is what constitutes a professional fee. He stated that you receive revenue and then you have to pay your bills. He commented that any of those payments to a third party can be considered a fee share. He added that some landlord contracts rent based on percentages, so do some billing companies. Mr. McLean stated the concern is if someone is referring a patient and you do not want his/her judgment swayed by said gift. Dr. Godfrey responded by stating that helps, and asked if it is like a management fee. Mr. McLean responded that one could do it using a single model DSO or they can parse it out to several people. Mr. Changus stated it is so if as a result of a referral was added. Mr. McLean responded that would address the issue. Dr. Godfrey asked about settings where a non-dental owned dental organization is making, incentivizing or pressuring a production or treatment decision influence in a way. He asked if there is protection against that. Mr. McLean responded that if it is in regard to a referral, this would address it. He stated that no matter how the provider is practicing, they have to provide treatment irrespective of incentive. Dr.

Godfrey stated the concern comes when a practitioner feels they cannot freely make treatment decisions or does not have access to records. If we go to a dentist-run practice, we can get records no problem; however, if we go to some other practices, it is nearly impossible. Dr. Godfrey suggested presenting two versions to the Board. One version with language stating, “The sharing of fees for professional services between a licensed dentist and any unlicensed party”. The second version with language stating, “The sharing of fees for professional services between a licensed dentist and any unlicensed party as the result of a referral”.

Mr. Changus stated if the Committee includes the language it seems it would be narrowly tailoring to the specific point of referrals. He stated that limiting referrals has an economic impact but the Public interest is that referrals are harmful for the previously mentioned reasons. He stated there are exceptions. He stated that the Committee has already stated that fee splitting is unprofessional conduct and now it is clarifying it. Mr. Lofranco commented that the rationale he gave would apply to other models. He stated this rule is drafted broadly enough so that payment of those fees would be captured. Mr. Changus commented that is *if* the limiting language is added. Dr. Godfrey made a motion to refer the proposed amendments to the full Board. Dr. Godfrey seconded and the Committee voted unanimously in favor of the motion. Dr. Godfrey made a motion to present to the full Board the two versions discussed. Dr. Yeargan seconded and the Committee voted unanimously in favor of the motion.

Mr. Lofranco asked the Committee what the enforcement mechanism is if the Board receives complaints. Dr. Godfrey responded that the Board can discuss things with licensees; however, the trouble is when they are not there and there is a line drawn regarding what we can do. He asked if Mr. Lofranco was suggesting the Committee add any additional language. Mr. Lofranco responded that he was just trying to understand the parameters and the Board’s jurisdiction. Mr. Changus responded that if a complaint came in that falls within the rule, the Board would investigate and decide what path is appropriate. He added that the Board can close a case, issue a letter of concern, or impose discipline. He stated a violation of the rule is grounds for discipline. Mr. Lofranco asked if the Board would be able to file a complaint with the Consumer Affairs division of the Attorney General’s office. He stated the Board is limited by the Practice Act, but there may be some actors that do not fall under the purview of the Board. Mr. Changus responded that regarding Consumer Protection, if the Board determines there is an issue, they can file a complaint, but it can also be filed by the person who identified the conduct in the first place.

The Committee recommended tabling Rule 150-14-.02 Fabrication of Dental Appliances, Caps, Coverings, Prostheses and Cosmetic Coverings is Practice of Dentistry, Teledentistry, Chapter 150-26 Mobile Dentistry, Rule 150-9-.01 General Duties of Dental Assistants, and Rule 150-9-.02 Expanded Duties of Dental Assistants.

Dr. Bert Yeargan made a motion and Dr. Tom Godfrey seconded and the Committee voted to enter into **Executive Session** for the purpose of receiving legal advice as authorized under O.C.G.A. §§ 50-14-1(e)(2)(c), 50-14-2(1). Voting in favor of the motion were those present who included Dr. Tom Godfrey, and Dr. Bert Yeargan.

Executive Session

The Committee requested and received legal advice regarding Rule 150-10-.01 Fraudulent, Misleading or Deceptive Advertising.

No votes were taken in Executive Session. Dr. Godfrey declared the meeting back in Open Session.

Rule 150-10-.01 Fraudulent, Misleading or Deceptive Advertising: Dr. Godfrey stated that the Committee has heard from the public over time now concerning proposed amendments to this rule. Mr. McLean responded that the use of word “assert, allude, imply” are vague. He suggested leaving out “ownership” and change to “representation”. He commented that “implication” is sufficient.

The Committee discussed suggested changes to present to the full Board.

Rule 150-7-.04 Dental Provisional Licensure by Credentials: In regards to an individual practicing for ten (10) years, is a specialist, but his/her clinical exam did not contain a human component, Dr. Godfrey stated the Board was considering waiving that requirement. He stated there has been a desire to create a carve out for specialists who apply by credentials and, for example, are a Periodontist, who practiced for 10 years in another state, but his/her exam did not contain periodontics, human subject clinical abilities testing. The proposed amendments read:

(c) The Board, in its discretion, may waive a specific human subject clinical abilities testing requirement if:

1. An applicant represents himself or herself as a specialist and qualifies for such title under Rule 150-11-.01.
2. The applicant’s clinical examination did not include human subject clinical abilities testing in the area of his or her specialty, and
3. The applicant has practiced in that specialty for at least 10 years.

Dr. Godfrey made a motion to present the proposed amendment to the full Board. Dr. Yeargan seconded and the Committee voted unanimously in favor of the motion.

Rule 150-3-.01 Examination for Dental Licensure: Dr. Godfrey read the proposed changes to this rule:

(1) Each candidate submitting an application for a dental license must have passed all sections of the National Board Theory Examinations - Part I and Part II with a score of 75 or higher or have a passing score on the Integrated National Board Dental Exam. The President of the Georgia Board of Dentistry may appoint one or more members of the Board to proctor the National Dental Board Examinations held in Georgia.

Dr. Yeargan made a motion to present the proposed amendment to the full Board. Dr. Godfrey seconded. Discussion was held by Ms. Emm who suggested adding the following language:

(e) Regional examinations must include procedures performed on human subjects as part of the assessment of clinical competencies and shall have included evaluations in the following areas:

1. periodontics, human subject clinical abilities testing;
2. endodontics, clinical abilities testing;
3. posterior class II amalgam or posterior class II composite preparation and restoration, human subject clinical abilities testing;
4. anterior class III composite preparation and restoration, human subject clinical abilities testing;
5. crown preparation, clinical abilities testing;
6. prosthetics, written or clinical abilities testing;
7. oral diagnosis, written or clinical abilities testing; and
8. oral surgery, written or clinical abilities testing.

The previous motion was withdrawn by Dr. Yeargan. Dr. Godfrey made a motion to include both changes discussed and present to the full Board. Dr. Yeargan seconded and the Committee voted unanimously in favor of the motion.

Rule 150-3-.09 Continuing Education for Dentists: Ms. Emm stated this proposed rule had a language correction. Dr. Godfrey read suggested changes he would like to provide. After further discussion, Dr. Yeargan made a motion to present the proposed amendment to the full Board. Dr. Godfrey seconded and the Committee voted unanimously in favor of the motion.

(d) ~~Effective for the 2019 renewal year, o~~One (1) hour of the minimum requirement shall include the impact of opioid abuse, ~~and/or the proper prescription writing, and/or the~~ use of opioids in dental practice;

Rule 150-8-.01 Unprofessional Conduct: Dr. Godfrey commented that the Board had previously discussed making it be unprofessional conduct for writing prescriptions for controlled substances for non-professional use and prescribing controlled substances for a known or suspected habitual drug abuser in the absence of substantial reasoning. Dr. Godfrey expressed his concerns with using the language in the Medical Board rule. Ms. Emm noted that this topic was on the agenda to evaluate whether or not to propose something akin to Georgia Composite Medical Board's rule 360-3-.02(2) regarding prescribing to family members. Mr. Changus stated that if the Committee was interested in Medical Composite Board rule 360-3-.02(1) to focus on what a dentist would know. Mr. Changus suggested the following language "prescribing controlled substances when the dentist knows or should know that the patient is a habitual drug or other substance abuser in the absence of a recognized dental purpose." He stated opioids are for relief of immediate pain and then moved into chronic situations. Dr. Yeargan responded by stating there is no way the dentist is going to know unless it is in the PDMP or the patient tells him/her. Mr. Changus stated if there is no reason to know, then there would be no action. After further discussion, Dr. Godfrey requested to let the minutes reflect that the Committee discussed this matter and recommended letting the current rule stand as is.

Rule 150-13-.03 Renewal of Conscious Sedation and Deep Sedation/General Anesthesia Permits: Dr. Godfrey discussed ACLS and its relation to CPR. He stated the Board's history is there was a time where if you had taken ACLS, it superseded BLS CPR and you did not have to take both. He added that then the thought was this is separate and the Board should require both ACLS and CPR. Dr. Godfrey stated that in recent times, the American Heart Association CPR requires one to pass ACLS. He asked if the Board should allow ACLS to be accepted in lieu of CPR. Mr. Lofranco responded that GDA will take the proposal back and research. After further discussion, the Committee suggesting identifying the rules that would be effected prior to the next Rule's meeting.

Rule 150-5-.05 Requirements for Continuing Education for Dental Hygienists: Ms. Emm stated she believed this rule was on the agenda for the same reason as Rule 150-13-.03. Dr. Godfrey agreed.

Rule 150-5-.03 Supervision of Dental Hygienists: Dr. Godfrey asked if the Committee would be able to find what other states have defined as authorization versus supervision, such as a dentist authorizing a prophylaxis and then retiring or going on maternity leave. Dr. Godfrey asked if the treatment has been authorized and something more has been required, what then? Mr. Lofranco responded that if the patient is a patient of record for the owner dentist, not the substituting dentist. Dr. Godfrey stated that the Committee needs to discuss what supervision is and asked if there is there an umbrella of care from whoever the substituting dentist is. Mr. Lofranco responded that is why the patient is notified in writing in advance of the appointment that the dentist will not be there. He added that if the patient is harmed it goes back to the owner since it is his/her practice. Mr. Lofranco stated the owner needs to be clear what the substituting dentist is there for. He stated that is how the law is written. If there is an issue the, patient's recourse is to file suit. He asked what the patient's harm would be if the procedure was incorrect

because the dentist was not there? He answered that it would be malpractice or if the hygienist missed an obvious sign of cancer.

Dr. Godfrey commented that there needs to be a definition of authorization and supervision. Dr. Yeargan responded by stating the covering dentist takes responsibility. Mr. Lofranco commented that the covering dentist could opt to not take the job. He stated that he/she can also say that if they are covering they have to be there. He stated it is the call of whoever is running the practice.

Dr. Godfrey asked what happens when he has authorized 300 patients to be seen this year and he goes leaves to go home, but is hit by a truck. Mr. Lofranco responded by stating that authorization ends with your life. Mr. McLean commented that authorization is a component. He stated if you are not exercising general supervision, you are no long authorized. He added that authorization is contingent upon being able to practice under general supervision. Mr. Lofranco asked if there will be authorization for every patient. He stated your diagnosis is case by case, not every patient is the same. Dr. Godfrey requested Mr. Changus's perspective on this matter. Mr. Changus stated that in regards to being deceased, we could all agree that supervision stops at that time, as your authorization does not last beyond you. In regards to who is supervising the dental hygienist, he stated that in most circumstances it flows from the person who is there. He stated with direct supervision the person looking at the dental hygienist is supervising. Mr. Changus stated with general supervision, that person is not being supervised but they are authorized to do specific things when the dentist is not in the office. He stated that the question is who is responsible. Mr. Changus stated the person on maternity leave has given the dental hygienist authorization to do the tasks authorized. He stated whoever is stepping into the office to cover would be assuming the responsibility for all the dentistry going on.

After further discussion, Dr. Godfrey made a motion for the Committee to present to the full Board for consideration a definition of authorization at minimum to include the name and contact info of the dentist providing coverage. Dr. Yeargan seconded and the Committee voted unanimously in favor of the motion.

Dr. Bert Yeargan made a motion and Dr. Tom Godfrey seconded and the Committee voted to enter into **Executive Session** for the purpose of receiving legal advice as authorized under O.C.G.A. §§ 50-14-1(e)(2)(c), 50-14-2(1). Voting in favor of the motion were those present who included Dr. Tom Godfrey, and Dr. Bert Yeargan.

Executive Session

The Committee requested and received legal advice regarding Chapter 150-10 Advertising.

No votes were taken in Executive Session. Dr. Godfrey declared the meeting back in Open Session.

Open Session

There being no further business to come before the Committee, the meeting was adjourned at 12:40 p.m.

The next scheduled meeting of the Rules Committee of the Georgia Board of Dentistry will be held on Friday, July 12, 2019, at 8:00 a.m. at the Department of Community Health's office located at 2 Peachtree Street, N.W., 5th Floor, Atlanta, GA 30303.

Minutes recorded by Kimberly Emm, Attorney
Minutes edited by Tanja D. Battle Executive Director