

South Dakota State Board of Dentistry  
Minutes of Public Hearing  
October 18, 2019

Dr. Schaack called the public hearing to order at 10:13 a.m. on Friday, October 18, 2019, in conference room 3, Kneip Building, 700 Governors Drive, Pierre, South Dakota and noted that this was time and place for the Public Hearing on the proposed rules of the South Dakota State Board of Dentistry numbered § 20:43:03:01; 20:43:03:02; 20:43:03:09; 20:43:04:06; 20:43:08:01; 20:43:08:02; 20:43:08:02.01; 20:43:08:03; 20:43:08:04; 20:43:08:05; 20:43:08:06; 20:43:08:07; 20:43:08:08; 20:43:08:09; 20:43:08:09.01; 20:43:08:10; and 20:43:08:11 adopted under the authority of SDCL 36-6A-14, 36-6A-33, 36-6A-41, 36-6A-42, 36-6A-44, 36-6A-44.2, 36-6A-50, and 36-6A-55.

Dr. Schaack noted that statements made during the hearing were being recorded in the minutes and due notice of this public hearing was published in three South Dakota newspapers and was made to interested parties in advance of the hearing. Dr. Schaack noted that the proposed rules had been edited for compliance with the requirements for form, style and legality as recommended by the South Dakota Legislative Research Council pursuant to SDCL 1-26.

**Hearing Officer:** Dr. Tara Schaack, Board President.

**Members of the Board in attendance:** Dr. Harold Doerr, Dr. Scott Van Dam, Dr. Nick Renemans, Dr. Amber Determan, Zona Hornstra and Molly Fulton.

**Board staff in attendance:** Brittany Novotny and Lisa Harsma.

**Legal Counsel in attendance:** Shelly Munson and Matthew Templar.

**Others in attendance:** Andrew Wiltsch, American Association of Orthodontists (AAO); Suzanne Luken, South Dakota Dental Hygienists Association (SDDHA); Paul Knecht, South Dakota Dental Association (SDDA); Dr. Rick Fuchs (SDDA); and Dr. Michelle Hofer (SDDA).

**Written Testimony:** Dr. Schaack entered into the record the following letters that were received prior to the hearing:

- A. South Dakota Dental Association – Letter of Support
- B. Western Dakota Tech – Letter of Support
- C. Lake Area Technical Institute – Letter of Support
- D. Central Regional Dental Testing Service, Inc. (CRDTS) – Letter of Support
- E. The Commission on Dental Competency Assessments (CDCA) – Letter of Support
- F. Council of Interstate Testing Agencies (CITA) – Letter of Support
- G. Southern Regional Testing Agency, Inc. (SRTA) – Letter of Support
- H. Western Regional Examining Board (WREB) – Letter of Support

**Oral Testimony:** Dr. Schaack took Oral Testimony. Oral Testimony was presented by the following:

- 20:43:08:02: Andrew Wiltsch (AAO) noted potential confusion with the language “prior knowledge of” and “authorized the performance” on lines 20 – 22 of page 6.
  - o The Board closely reviewed the language cited by Mr. Wiltsch. The Board explained that this language would allow a supervising dentist to authorize the performance of a duty specifically outlined in subsection (1) through (11), if the supervising dentist is not on site. The Board noted that this section of ARSD 20:43:08:02 was incorporated based on feedback received from orthodontists and had been reviewed extensively with stakeholders. The Board explained that the language “prior knowledge of” and “authorized the performance” was included based upon a recommendation from stakeholders and was modeled after regulation in Minnesota.
- 20:43:08:02: Andrew Wiltsch (AAO) noted concern with lines 20-22 of page 6 relative to the statutory authority.
  - o The Board closely reviewed the statutory authority cited in ARSD 20:43:08:02. The Board explained the review process completed by the Legislative Research Council (LRC), noting that LRC reviews the statutory authority for each rule proposed to ensure rule making authority (General Authority) and that the statute identifies the policy intended to be implemented (Law Implemented). The Board noted that the LRC had completed a review of the proposed rules and all LRC recommendations had been incorporated into the rules being considered.
  - o The Board also asked general counsel to review the statutory authority. Shelly Munson, general counsel for the Board, reviewed the statutory authority and confirmed that in her professional opinion the Board had statutory authority to promulgate ARSD 20:43:08:02, including lines 20-22 of page 6, and that the rule does not conflict with existing statute.
  - o Mr. Wiltsch noted he was not licensed to practice law in South Dakota and thanked the Board for that information.

Dr. Schaack closed testimony and opened the public hearing to Board discussion and/or action.

The Board reviewed the proposed rules. The Board reviewed all written and oral testimony received.

- The Board closely reviewed the testimony from Mr. Wiltsch again, along with ARSD 20:43:08:02 and the statutory authority.
- The Board identified that lines 20-23 on page 6 and lines 1-11 on page 7 were based on feedback received during stakeholder discussions held over the course of the last year, which included orthodontists as well as the South Dakota Society of Orthodontists – a constituent of the AAO.
- The Board reviewed the eight letters of support received in advance of the hearing, noting the widespread support for the proposed rules.
- The Board noted the rules had now been reviewed at three public board meetings and feedback from many stakeholders had been incorporated pursuant to discussions held over the course of the last year.

Determan moved that the South Dakota State Board of Dentistry approve the adoption of amended rules § 20:43:03:01; 20:43:03:02; 20:43:03:09; 20:43:04:06; 20:43:08:01; 20:43:08:02; 20:43:08:02.01; 20:43:08:03; 20:43:08:04; 20:43:08:05; 20:43:08:06; 20:43:08:07; 20:43:08:08; 20:43:08:09; 20:43:08:09.01; 20:43:08:10; and 20:43:08:11 including the LRC edits for compliance with the requirements for form, style and legality. Second by Doerr. Motion carried.

There being no further business, the public hearing was adjourned at 10:30 a.m.

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Zona Hornstra  
Secretary