

## THE LOUISIANA STATE BOARD OF DENTISTRY ACTIONS

The following is a summary of action taken by the Louisiana State Board of Dentistry with respect to adoption, amendment, or repeal of proposed rules and of actions taken by the agency with respect to proposed fee adoptions, increases, or decreases. Included are actions take from January 1, 2019 to December 31, 2019.

Proposed dates are those on which the notice of intended action was published in the Louisiana Register pursuant to R.S. 49:953. Public hearing dates are those on which the agency held public hearings pursuant to R.S. 49:953. Oversight hearing dates are those on which oversight hearings were conducted pursuant to R.S. 49:968. Final rule promulgation dates are those on which the actions were published in the Louisiana Register pursuant to R.S. 49:954.

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### **LAC 46:XXXIII.1503 “Personal Permits for Sedation/Anesthesia”**

Proposed Date: September 20, 2019  
Final Rule Promulgation Date: December 20, 2019

### **LAC 46:XXXIII.1607 “Exemptions”**

Proposed Date: September 20, 2019  
Final Rule Promulgation Date: December 20, 2019

### **LAC 46:XXXIII.1615 “Approved Courses”**

Proposed Date: September 20, 2019  
Final Rule Promulgation Date: December 20, 2019

**THE LOUISIANA STATE BOARD OF DENTISTRY STATEMENTS AND RESPONSES  
TO SUBMISSIONS PURSUANT TO R. S. 49:953**

Pursuant to R.S. 49:953(C)(2)(a) the Louisiana State Board of Dentistry held its public hearing for the purpose of allowing the public to comment on its rules. The public hearing was held on August 16, 2019. The Board received one comment, which was addressed by the Board at its public hearing. The comment, which it from a corporation named SmileDirectClub, is attached, as is the Board's response to the comment.



July 29, 2019

Arthur Hickham, Jr. D.D.S.  
Executive Director  
Louisiana State Board of Dentistry  
P.O. Box 5256  
Baton Rouge, LA 70802

Dear Dr. Hickham:

The Louisiana State Board of Dentistry (the "Board") recently posted a notice in the Louisiana Register, Volume 45, Number 7, dated July 20, 2019, soliciting public comment on any rule of the Board which any person believes is contrary to law, outdated, unnecessary, overly complex, or burdensome. This letter is submitted in response to that notice. Specifically, SmileDirectClub ("SDC") refers the board to Louisiana Administrative Code Title 46, Part XXXIII, Chapter 5, §501.B.2. "A dental assistant may only perform the following under direct on-premises supervision of the dentist who employs her or him as directly ordered by the dentist: ...take and develop dental radiographs and intra-oral photographs." This rule is woefully outdated and fails to reflect modern technological innovation.

As your Board may already be aware, SDC is a dental service organization ("DSO") that provides non-clinical administrative support services to contractually affiliated dental practices across the country, including in Louisiana, that wish to offer doctor-directed remote clear aligner treatment for cases of mild to moderate malocclusion. All of our affiliated dentists are licensed to practice dentistry in the states where their patients are located and have a minimum of 4 years of clear aligner therapy experience in a traditional bricks and mortar setting. Indeed, most of the dentists and orthodontists affiliated with these professional corporations have ongoing traditional bricks and mortar practices. While SDC does not engage in the practice of dentistry it does have a keen interest in arbitrary changes, unsupported by peer-reviewed clinical data, to state statutory and regulatory environments, as well as outdated rules and statutes, that would affect our contractually affiliated dentists' ability to provide affordable, quality dental care to their patients; hence our interest in the Louisiana rule.

As I mentioned, SDC believes that the current language in Louisiana Administrative Code Title 46, Part XXXIII, Chapter 5, §501.B.2. is outdated. While SDC has no objection to the Board empowering its licensees to take photographs it does have strong objections to requiring licensure of any kind in order to take photographs. Keeping this language in the regulation would imply that the taking of photographs is considered the practice of dentistry and professional licensure would

be required in the state. This is a regulatory burden unsupported by any public health and safety imperatives. Certainly we can agree that no one “develops” photographs anymore. Further, SDC has reviewed the Louisiana Dental Practices Act and could find no statutory justification that photography be a regulated dental service function.

Photography should not be confused with or placed in the same category as radiographs that emit ionizing radiation or digital imaging. Digital imaging is a general category encompassing medical technological modalities of ultrasound, magnetic resonance (MRI), computed tomography (CT) and cone beam computed technology (CBCT) as distinguished from x-rays or radiographs. All of these require special training for machine operators and carry risks to the patient in the form of ionizing radiation or, in the case of ultrasound, biological risks associated with misuse of the technology or through heated body tissue.

In Louisiana, as in the rest of the country, the past decade has seen rapid advances in imaging, especially with digital photography and associated 3-dimensional computer representations and printing, none of which present any harmful physical effects on patients when utilized in conjunction with dental care. Taking photographs requires no training other than how to operate a camera and associated computers. There are no published, peer-reviewed studies in medical journals that make a case for professional licensure for photography used for dental care because of adverse effects on patient health and safety. Requiring licensure for photography would be an arbitrary discrimination against a particular technological modality based solely on its end use and not on patient health and safety concerns. The end result is unjustified higher costs to consumers.

Accordingly, SDC urges the Board to amend Title 46, Part XXXIII, Chapter 5, §501.B.2 as follows: “...take ~~and develop~~ dental radiographs ~~and intra-oral photographs;~~”

SDC appreciates this opportunity to share with the Board its comments on this outdated section of the Dental Health Profession regulations. SDC remains available to answer any questions the Board may have on this important public policy matter.

Respectfully submitted,



**Susan Greenspon Rammelt**  
General Counsel and Corporate Secretary  
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## Louisiana State Board of Dentistry

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September 3, 2019

Susan Greenspon Rammelt  
General Counsel and Corporate Secretary  
SmileDirectClub  
414 Union St., 8<sup>th</sup> Floor  
Nashville, TN 37219

Dear Ms. Greenspon Rammelt:

Please allow this to serve as a response to your letter submitted pursuant to the notice posted by the Louisiana State Board of Dentistry (the "Board") in the Louisiana Register, Volume 45, Number 7, soliciting public comment on Board rules. The Board has considered the request made in your letter at its public hearing on August 16, 2019. The public hearing was held pursuant to Act 454 of the 2018 Regular Session of the Louisiana Legislature and was noticed in the Louisiana Register as cited above.

Your letter requests a change to Louisiana Administrative Code Title 46, Part XXXIII, Chapter 5, §501.B.2. Rule 501 currently reads:

### §501. Authorized Duties

- A. A dental assistant is one who is employed by and works in the office of a licensed, practicing dentist and performs the duties authorized by the Louisiana State Board of Dentistry under the direct on-premises supervision, direction and responsibility of the dentist.
- B. A dental assistant may only perform the following under the direct on-premises supervision of the dentist who employs her or him as directly ordered by the dentist:
1. serve as the dentist's chair side assistant;
  2. take and develop dental radiographs and intra-oral photographs;
  3. take and record pulse, blood pressure and temperature;
  4. apply:
    - a. non-aerosol topical anesthetics;
    - b. topical fluorides following prophylaxis by a dentist or dental hygienist;
    - c. desensitizing agents;

- d. non-endodontic oxygenating agents;
5. chart existing restorations and missing teeth, floss teeth and make preliminary inspections of the mouth and teeth with a mouth mirror and floss only;
6. give intra-oral instructions and demonstrations on oral hygiene procedures;
7. receive removable prostheses for cleaning or repair work;
8. remove cement from dental restorations and appliances, with hand instruments, limited to the clinical crown;
9. make dental plaque smears;
10. place or remove preformed crowns or bands for determining size only when recommended by the dentist and only under his or her supervision;
11. place or remove ligatures, cut and tuck ligatures, remove tension devices and any loose or broken bands or arch wires;
12. place a removable retaining device in the mouth of a patient;
13. remove final impressions;
14. apply and remove rubber dams;
15. make preliminary study model impressions and opposing model impressions;
16. fabricate and remove interim crowns or bridges (interim meaning temporary while permanent restoration is being fabricated);
17. condition teeth prior to placement of orthodontics bands or brackets;
18. place or remove temporary orthodontic separating devices;
19. remove sutures, post-extraction dressing and surgical ligature ties.

C. exception: a dental assistant who has been employed by a licensed, practicing dentist and has worked as a dental assistant prior to July 30, 1992, may continue performing the following duties without registering as an expanded duty dental assistant. These duties must also be performed under the direct, on-premises supervision of the dentist:

1. apply cavity liners, excluding capping of exposed pulpal tissue;
2. place, wedge or remove matrices for restoration by the dentist;
3. place and remove periodontal dressings;
4. place and remove retraction cords.

Your letter requests that the Board amend Rule 501(B)(2) as follows: “...take ~~and develop~~ dental radiographs ~~and intra-oral photographs;~~” After considering your request at its public hearing on August 16, 2019, the Board concluded that the requested amendment is not warranted at this time. Rule 501(A) defines a dental assistant as one who is employed by and works in the office of a licensed, practicing dentist. See also La. R.S. 37:751(A)(4). Section 501(B), in turn, identifies the duties a dental assistant may perform under the direct on-premises supervision of the dentist. Removing intra-oral photographs from Rule 501(B)(2) would bar dental assistants from being able to take intra-oral photographs. The Board believes that dental assistants should be allowed to take intra-oral photographs under the direct supervision of a dentist licensed in the State of Louisiana, and that continuing to allow this practice allows for efficiency in dental offices and increases access to care. The same holds true for the reference to developing dental radiographs. Although fewer dentists use radiographic film now than in the past, a minority of

dentists continue with its use. The Board does not wish to inhibit access to care by taking away the ability of dental assistants to develop radiographic film.

Sincerely,

A handwritten signature in blue ink that reads "Arthur Hickham, Jr." in a cursive script.

Arthur Hickham, Jr. D.D.S.  
Executive Director  
Louisiana State Board of Dentistry