

South Dakota State Board of Dentistry
Minutes of Public Hearing
October 22, 2021

Dr. Doerr called the public hearing to order at 10:04 a.m. on Friday, October 22, 2021 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 § 20:43:03:07; 20:43:09:01; 20:43:09:02; 20:43:09:03; 20:43:09:04; 20:43:09:04.01; 20:43:09:04.02; 20:43:09:04.03; 20:43:09:04.04; 20:43:09:04.05; 20:43:09:04.06; 20:43:09:05; 20:43:09:06; 20:43:09:06.02; 20:43:09:08; 20:43:09:09; 20:43:09:11; 20:43:09:12; 20:43:09:13; 20:43:09:13.01; 20:43:09:14; 20:43:09:17.

Dr. Doerr 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. Doerr 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. Harold Doerr, Board President.

Members of the Board in attendance: Dr. Scott Van Dam, Dr. Nick Renemans, Dr. Brian Prouty, Zona Hornstra and Molly Fulton.

Board staff in attendance: Brittany Novotny and Lisa Harsma.

Legal Counsel in attendance: Shelly Munson and Megan Borchert.

Others in attendance: Paul Knecht, South Dakota Dental Association (SDDA); Don Roesler, South Dakota Association of Nurse Anesthetists (SDANA); Tim Kappenman (Self); Bruce Wintle (Self); Jeff Feiock (SDDA); Jay Crossland, Self/Oral and Maxillofacial Surgeon and South Dakota Society of Oral & Maxillofacial Surgeons (SDSOMS); and Ann Schwartz, Delta Dental.

Dr. Doerr instructed Brittany Novotny to provide a summary of the project history and process to date, along with an overview of the proposed changes:

Summary of Project History and Process:

- The Anesthesia Credentials Committee (ACC) presented areas in ARSD 20:43:09 identified for update at the public Board of Dentistry meeting held on June 26, 2020. Notice was sent to interested parties in advance of the meeting and information was posted on the Board's website.
- A draft of proposed updates to ARSD 20:43:09 was presented, section by section, at a public Board of Dentistry meeting held on October 23, 2020. Following that meeting, the process to solicit informal stakeholder feedback, and incorporate changes pursuant to that feedback, began. Notice was sent to interested parties in advance of the meeting and information was posted on the Board's website.

- The goal of the informal feedback phase is to obtain feedback, identify areas of concern or consensus, and address areas of concern where possible. As part of the stakeholder informal feedback process:
 - An online form for interested parties to sign up to receive future notification was posted to the Board's website.
 - An online form to submit feedback was posted to the Board's website.
 - An outline of the process and all updated information was posted on the Board's website to keep stakeholders informed.
- A meeting to listen to stakeholder comments was held on December 17, 2020. A stakeholder meeting to outline the process moving forward was held on December 28, 2020. Notice was sent to interested parties in advance of each meeting and information was posted on the Board's website.
- At its public Board of Dentistry meeting on January 8, 2021, the Board appointed a committee comprised of three Board members to further review the draft rules and work with stakeholders. The committee was comprised of a dentist that does not hold a sedation or anesthesia permit, a dentist that holds a general anesthesia and deep sedation permit, and a dentist that holds a moderate sedation permit and utilizes the services of a licensed anesthesia provider (LAP). Notice was sent to interested parties in advance of the meeting and information was posted on the Board's website.
- The Board kept the public comment period open until January 29, 2021. Notice was sent to interested parties requesting feedback during this phase and information was posted on the Board's website.
- At the conclusion of the comment period, the Board appointed committee reviewed feedback that was received, and the draft rules were modified pursuant to that feedback.
- A second draft was released on May 7th. The draft rules were sent to interested parties and posted on the Board's website.
- The Board solicited stakeholder feedback on the second draft and kept the public comment period open until June 1st. Notice was sent to interested parties requesting feedback during this phase and information was posted on the Board's website.
- At the conclusion of the comment period, the Board appointed committee reviewed feedback that was received, and the draft rules were modified pursuant to that feedback.
- A third draft was released prior to the June 18th public board meeting. The draft rules were sent to interested parties and information was posted on the Board's website.
- The draft rules were reviewed during the June 18th public board meeting. Additional changes were incorporated at the meeting to address stakeholder feedback and the Board voted to initiate the formal rule promulgation process. Notice was sent to interested parties in advance of the meeting and information was posted on the Board's website.
- The Board initiated the formal rule promulgation process on August 13th after receiving authorization from the Department of Health to proceed. Notice of the Public Hearing was published in three South Dakota newspapers and was made to interested parties well in advance of the hearing and information was posted on the Board's website.

Summary of Proposed Changes:

20:43:03:07 Continuing education requirements -- Dentists

- Includes host permit in anesthesia continuing education requirements.

20:43:09:01 Definitions.

- Updates definitions - ADA definitions. Places definitions in alphabetical order.
- 20:43:09:02 Prohibitions.
- Incorporates authority for host dentist to advertise sedation and anesthesia.
- 20:43:09:03 General anesthesia and deep sedation permit requirements.
- Updates permit requirements. Requires ACLS for all and PALS if sedating patient under 12 years old. Creates a path to obtain a permit both for those with recent anesthesia experience and those with gaps in practice.
 - Specifies minimum anesthesia team when general anesthesia or deep sedation is being administered (1 provider, 2 monitors = 3). Expands anesthesia team to those with independent authority to monitor patients under anesthesia.
- 20:43:09:04 Moderate sedation permit requirements.
- Updates permit requirements. Requires ACLS. Creates a path to obtain a permit both for those with recent sedation experience and those with gaps in practice.
 - Requires residency training, along with PALS, for those sedating pediatric patients under 12 years old.
 - Requires PALS if utilizing a LAP to sedate pediatric patients under 12 years old.
 - Specifies minimum anesthesia team when moderate sedation is being administered (1 provider, 1 monitor = 2). Expands anesthesia team to those with an independent scope of practice to monitor patients under anesthesia.
- 20:43:09:04.01 Employing or contracting with licensed anesthesia provider that provides general anesthesia, deep sedation, or moderate sedation in dental office.
- Helps ensure patient safety. Sets forth requirements for dentists that utilize a LAP. Incorporates areas based on patient safety issues identified in other states. Specifies minimum anesthesia team when general anesthesia or deep sedation is being administered (1 LAP, 1 host, 1 monitor = 3). Minimum anesthesia team required for administration of moderate sedation is 1 LAP, 1 host = 2.
- 20:43:09:04.02 Utilizing licensed anesthesia provider for general anesthesia and deep sedation or moderate sedation in ambulatory surgery center or hospital.
- Continues exemption for utilization of LAP in licensed ambulatory surgery centers or hospitals from permit requirements.
- 20:43:09:04.03 Moderate sedation course requirements.
- Specifies requirements for moderate sedation educational courses and provides for an annual review.
 - The ADA does not accredit moderate sedation courses, so this rule incorporates criteria set forth in the current ADA Guidelines for Teaching Pain Control to Dentists and Dental Students.
- 20:43:09:04.04 Host permit requirements.
- Reduces barriers and increases access to care. ARSD currently in effect requires dentists to hold a moderate sedation permit to administer moderate sedation or to utilize a LAP.
 - This draft rule creates and sets forth requirements for a new host permit that would be available for dentists that would like to utilize a LAP, but not administer moderate sedation themselves. The host permit also incorporates authority to monitor patients as part of the anesthesia team.
 - Although a host dentist will not be administering sedation, he or she is part of the overall anesthesia team. The host dentist will most often be selecting a LAP to come into his or her office, will be involved with patient selection, and will be operating in the open

(unsecured) airway of the sedated patient. The training required for a host dentist is outlined in the next rule.

20:43:09:04.05 Host course requirements.

- Outlines requirements for host permit educational courses and provides for an annual review. Any course that meets these requirements would be eligible for review and approval on an annual basis. Two initial courses have been identified that would provide this training, each require approximately 6-8 hours of training, involve a relatively small financial investment, and are available online.

20:43:09:04.06 Anesthesia or sedation education – Other.

- Increases portability. Allows the Board to approve sedation or anesthesia training accepted in any state or jurisdiction that resulted in an equivalent permit being issued or maintained in that state or jurisdiction.

20:43:09:05 Nitrous oxide sedation and analgesia permit requirements -- Dentists.

- Helps ensure patient safety and regulatory consistency. Updates permit requirements, incorporates scavenger system requirement, and incorporates timeline for education or training to maintain consistency in regulation. Allows the administration of nitrous oxide + MRD of one enteral drug to patients 12 years and older. If a patient is under 12 years old, nitrous oxide can be administered.

20:43:09:06 Nitrous oxide sedation and analgesia permit requirements -- Dental hygienists and registered dental assistants.

- Helps ensure patient safety and regulatory consistency. Updates permit requirements, incorporates equipment requirements to maintain consistency in regulation.

20:43:09:06.02 Minimal sedation.

- Helps ensure pediatric patient safety. Specifies that a dentist may administer, without a sedation or anesthesia permit, up to the MRD of one enteral drug to patients 12 years or older to achieve a state of minimal sedation.

20:43:09:08 Application for permits -- Renewal.

- Incorporates host permit into renewal process.
- Helps ensure patient safety. Requires a dentist that holds a general anesthesia or deep sedation permit complete at least 50 cases of general anesthesia or deep sedation annually. Requires a dentist that holds a moderate sedation permit complete at least 12 cases of moderate sedation annually. Allows completion of continuing education in lieu of cases if a dentist is unable to complete the requisite number of cases annually. Does not have a case requirement for host permit. Requires a dentist that holds a host, moderate, or general anesthesia and deep sedation permit document completion of team training on emergency response protocols in the setting where the anesthesia or sedation is being provided.
- Data has been shared freely with stakeholders throughout the process highlighting that a minority of states have an annual case requirement. However, other models and constructs were review and considered - including the medical model, maintenance of certification for anesthesia providers, credentialing requirements within licensed healthcare facilities, and maintenance of non-core privileges. Case requirements is a consistent component of these models and has been incorporated in this draft to help ensure active practice and recent experience for not just the anesthesia provider, but the entire functioning anesthesia team.

- Note, the advisory opinion currently in effect includes 25 moderate sedation cases per year. The proposed rule has reduced that number to 12.
- 20:43:09:09 Reports of adverse conditions.
 - Requires reporting of adverse conditions and incorporates host permit.
- 20:43:09:11 Inspection.
 - Incorporates criteria for anesthesia inspectors that would allow a variety of professions to act as inspectors, if they have the requisite education and experience in a dental office. Clarifies the timing of inspections currently required.
- 20:43:09:12 Requirements of inspection.
 - Lists the components of a facility, host, moderate and general anesthesia and deep sedation inspection. Allows the flexibility to evaluate alternative inspection models and formats, as it removes the live patient procedure and monitoring requirement.
- 20:43:09:13 Equipment -- Moderate sedation.
 - Updates equipment requirements for moderate sedation.
- 20:43:09:13.01 Equipment -- General anesthesia and deep sedation.
 - Updates equipment requirements for general anesthesia and deep sedation.
- 20:43:09:14 Clinical guidelines.
 - Broadens guidelines and references general standard of care.
- 20:43:09:17 Emergency response protocol.
 - Incorporates requirement that a written emergency response protocol be in place for all patients undergoing moderate sedation, deep

Written Testimony:

Dr. Doerr entered into the record the following letters that were received prior to the hearing:

- A. Paul Knecht (SD) – South Dakota Dental Association
- B. Teri Schlunsen (SD) – South Dakota Association of Nurse Anesthetists
- C. Mark East (SD) – South Dakota State Medical Association
- D. Dr. Seri Carney (SD) – South Dakota Society of Anesthesiologists
- E. Dr. Mark Bain (SD) - Academy of General Dentistry
- F. Dr. B.D. Tiner (IL) - American Association of Oral and Maxillofacial Surgeons
- G. South Dakota Pediatric Dentists (All SD) - Dr. Brent Bradley, Dr. Kelli Jobman, Dr. Stephany Liu, Dr. Karli Williams, Dr. Conner Christensen, Dr. Joe Olsen, Dr. Corey Peterson, Dr. JB Skibinski, Dr. John Taggart, Dr. Damon Thielen, Dr. Scott Weyers, and Dr. Thane Crump
- H. South Dakota Neighborhood Dental Clinics (SD)
- I. Dr. Denis Miller, Dr. Jason Leet and Dr. Lou George (All SD) – Siouxland Oral & Maxillofacial Surgery
- J. Dr. Paul Schwartz (PA)
- K. Dr. Mike Doerr (SD)
- L. Dr. Mattie Bertels (SD)
- M. Dr. Mark Terry (SD)
- N. Dr. Kevin Croft (UT, holds license in SD)
- O. Dr. Josh Nehring (SD)
- P. Dr. John Bridges (SD)
- Q. Dr. Jesse Fast (SD)
- R. Dr. Jennifer Friedman (SD)

- S. Dr. Jeff Loftus (SD)
- T. Dr. Ike Morgan (SD)
- U. Dr. Dan Graves (SD)
- V. Dr. Chuck Scanlon (SD)
- W. Dr. Cody Gronsten (SD)
- X. Dr. Chris Freed (SD)
- Y. Dr. Chad Lewison (SD)
- Z. Dr. Bruce Wintle (SD)
- AA. Dr. Brian Richman (SD)

Oral Testimony:

Dr. Doerr took Oral Testimony. Oral Testimony was presented by the following:

- Dr. Jay Crossland (representing self as practicing oral and maxillofacial surgeon and South Dakota Society of Oral & Maxillofacial Surgeons) testified in support of the proposed rules, noting that the proposed rules improve access to care for patients requiring anesthesia services in dental offices and allow collaboration with other professions. He hoped that the proposed rules will allow the safety record in our state to continue and recommended that the impact of the rules be measured, so if safety is ever an issue the rules can be amended.
- Dr. Jeffrey Feiock (representing South Dakota Dental Association) testified in support of the proposed rules. Dr. Feiock noted the ways in which the SDDA and its practice act taskforce engaged throughout the process, by reviewing and distributing the drafts of the proposed rules to their members statewide and providing feedback to the Board on the multiple drafts. He testified that the SDDA supports the rules as proposed. He noted the rules will increase access to sedation services in dental offices while ensuring the safety of patients receiving those services. He noted that while the proposed number of minimum annual moderate sedation cases was on the high end of the range found in states, the SDDA supports the rule as proposed. He testified that the SDDA supports the creation of the host permit, along with the requirements for such. He noted the SDDA would be happy to work with the Board as the Board reviews the inspection process. He noted the SDDA intends to share the new rules with members and provide education and training to dentists and staff in order for them to be in full compliance. He noted the SDDA appreciates the transparent and thorough process of review undertaken by the Board.
- Dr. Bruce Wintle (representing self as a practicing general dentist) testified in support of the proposed rules. He voiced support for the rules and process and welcomed the addition of the host permit.
- Dr. Tim Kappenman (representing self as a general dentist that is not currently practicing) expressed concern about the number of required annual moderate sedation cases. He testified that he believes 12 annual moderate sedation cases is too high. Dr. Kappenman voiced support for all other proposed rule changes, noting that he believed they were well written.

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

The Board reviewed the proposed rules, along with all written and oral testimony, highlighting the areas that have generated the most feedback.

Rules Overall: Overall, the Board noted there was much support for the proposed rules in the public comments that were received. The SDDA, AAOMS, SDANA, AGD, a large group of pediatric dentists, along with many practitioners and group practices, have expressed overall support for the rules as proposed. The Board noted that throughout the last year, the participation of stakeholders across the state and the willingness of everyone come to the table to provide feedback, even when not everyone saw see eye to eye, was instrumental in developing the current proposal. The Board thanked stakeholders for taking the time to review each proposal in detail and providing constructive feedback that allowed the Board to make changes to address concerns and questions, which ultimately allowed many stakeholders to support the current proposal.

Host Dentist/Education: The Board noted that one area that has generated feedback throughout the project is the education required of a dentist that would like to utilize or “host” a licensed anesthesia provider. The Board reviewed this area.

The Board reviewed stakeholder feedback advocating that a dentist that will be utilizing a licensed anesthesia provider should hold a sedation permit at the level of the sedation being provided by the licensed anesthesia provider or, at a minimum, hold a moderate sedation permit. The Board also noted that the administrative rules currently in effect require a moderate permit. Alternatively, the Board reviewed stakeholder feedback advocating that no permit requirements or education should be required of a dentist utilizing a licensed anesthesia provider.

The Board explained that the rules, as proposed, have been modified to strike a balance between these competing viewpoints. The proposed rules create a new concept; the host permit. This host permit will allow a dentist to utilize a licensed anesthesia provider but not administer medications resulting in moderate sedation, deep sedation or general anesthesia.

Recognizing that the dentist with a host permit cannot administer moderate sedation or above, the proposed rules do not require that level of moderate sedation education. Although the host dentist cannot administer sedation or anesthesia, the Board recognized that the host dentist will be hiring or contracting with a licensed anesthesia provider, working with the licensed anesthesia provider on patient selection, operating in an often open, or unsecured, airway of a sedated patient, and will be part of the team that responds if and when an emergency arises. Thus, the proposed rules require education tailored to the role of the host dentist that is utilizing a licensed anesthesia provider. Two courses have been identified that meet this criterion, are offered online, and provide a base level of training for the host dentist. The host dentist must also maintain ACLS and, where appropriate, PALS, as well as complete the inspection process and maintain continuing education.

Dr. Doerr noted specifically that the proposed rules set up base requirements that allow licensees a framework from which they can build a team model of care and create a culture of safety within the dental office by incorporating comprehensive systems and processes that ensure patient safety. In doing so, he noted that the rules can not only increase access to sedation services in our dental offices but do so in a safe manner.

Annual Case Requirement to Maintain a Sedation or Anesthesia Permit: The requirement that moderate permit holders complete a certain number of cases on an annual basis to maintain a permit has generated discussion throughout this project. The Board reviewed this area. The Board reviewed stakeholder feedback advocating for more annual cases and also reviewed stakeholder feedback advocating for fewer annual cases or no cases.

The Board explained that the proposed rules have decreased the moderate sedation annual cases from 25, which is currently included in a Board advisory opinion, to 12. The proposed rules have also incorporated an additional path that allows a dentist to complete continuing education to maintain the moderate permit if the dentist is unable to complete the required annual cases.

The Board explained that data has been shared freely with stakeholders throughout the past year noting that a minority of states have an annual case requirement to maintain a sedation or anesthesia permit. However, the Board highlighted that other models were reviewed and considered - including the medical model, maintenance of certification for anesthesia providers, credentialing requirements within licensed healthcare facilities, and maintenance of non-core privileges. The Board noted that case requirements is a consistent component of these models and has been incorporated into the rules to help ensure active practice and recent experience for not only the anesthesia provider, but the entire functioning anesthesia team.

The Board noted that deep sedation and general anesthesia permit holders must complete 50 cases annually and would also be eligible for the alternate continuing education path if unable to complete the cases. The Board noted the annual cases for the deep sedation and general anesthesia permit holders has not generated feedback.

Dr. Doerr noted specifically that the minimum number of annual cases and alternate continuing education path provide flexibility, but also highlighted that licensees have the ultimate responsibility to ensure that they are maintaining competency and meeting the standard of care for all services provided.

Process and Opportunity for Stakeholder Feedback: The Board reviewed feedback from many organizations and licensees supporting the Board's transparent process and recognizing the ability to participate in that process, provide feedback, and see changes made pursuant to that feedback. The Board reviewed feedback from a few licensees that expressed opposition to the entire process.

The Board highlighted that work on the initial draft began in June of 2020, and that the Board chose to invest significant time and resources over the course of more than a year to provide multiple opportunities to provide feedback on multiple drafts of the rules. The Board felt this lengthy process was necessary because this is a complex topic and understanding the feedback and perspectives of licensees and stakeholders in relation to the various drafts was important. The Board noted that the current proposal is very different from that initial draft and emphasized that significant changes have been incorporated into the current draft because of the constructive feedback received from stakeholders.

Dr. Doerr noted specifically that the feedback received was very diverse, which provided perspectives and constructive feedback that were helpful throughout this project. He highlighted

that stakeholder feedback led to many changes that have been incorporated into the current draft and, in turn, has allowed for broad stakeholder support of the current draft.

Other: The Board reviewed all additional feedback including, continuing education approval, location of emergency equipment, definitions, and other topics raised by one or two stakeholders.

The Board discussed the proposed rules overall, along with additional stakeholder feedback.

At the conclusion of the review and Board discussion, Dr. Doerr opened the public hearing to Board action.

Renemans moved to add the sentence “Reflex withdrawal from a painful stimulus is not considered a purposeful response.” on page 6, line 15 after “tactile stimulation.” Second by Van Dam. Hornstra, Fulton, Prouty, Renemans, Van Dam, and Doerr voted aye. Motion carried.

Van Dam moved that the South Dakota State Board of Dentistry approve the adoption of the amended rules ARSD § 20:43:03:07; 20:43:09:01; 20:43:09:02; 20:43:09:03; 20:43:09:04; 20:43:09:04.01; 20:43:09:04.02; 20:43:09:04.03; 20:43:09:04.04; 20:43:09:04.05; 20:43:09:04.06; 20:43:09:05; 20:43:09:06; 20:43:09:06.02; 20:43:09:08; 20:43:09:09; 20:43:09:11; 20:43:09:12; 20:43:09:13; 20:43:09:13.01; 20:43:09:14; 20:43:09:17 including the LRC edits for compliance with the requirements for form, style and legality. Second by Prouty. Hornstra, Fulton, Prouty, Renemans, Van Dam, and Doerr voted aye. Motion carried.

There being no further business, the public hearing was adjourned at 10:38 a.m.



Zora Hornstra, Secretary