

BEFORE THE DENTAL BOARD OF THE STATE OF IOWA

Re:)	
PETITION BY IOWA DENTAL)	
ASSOCIATION FOR AMENDMENT)	ORDER DENYING PETITION
OF 650 IAC 10.5(1) RELATING TO)	FOR RULEMAKING
DEFINITION OF “PUBLIC HEALTH)	
SETTINGS”)	
)	

1. On December 3, 2014, the Iowa Dental Association (“Petitioner”) filed a Petition for Rulemaking (“Petition”) with the Board. The Petition asks the Board to amend Iowa Administrative Code 650—rule 10.5(1) as follows:

10.5(1) *Public health settings defined.* For the purposes of this rule, public health settings are limited to schools; Head Start programs; programs affiliated with the early childhood Iowa (ECI) initiative authorized by Iowa Code chapter 256I; child care centers (excluding home-based child care centers); federally qualified health centers; public health dental vans; free clinics; nonprofit community health centers; and nursing facilities; ~~and federal, state, or local public health programs.~~

2. Rule 10.5(1) sets forth the settings at which a dental hygienist may be supervised by a dentist under “public health supervision.” Public health supervision is one of the types of supervision for a dental hygienist and is limited to specified public health settings.

3. The Petition was filed following an interpretation by the Board regarding the language “federal, state, or local public health programs.” At the Board’s October 17, 2014 quarterly meeting, the Board was asked whether state correctional facilities could be included in the list of public health settings so as to allow public health supervision in those facilities. The request came from a dental hygienist with the Iowa Department of Corrections. The Board considered the question at its October 17, 2014 meeting and concluded that state correctional facilities could be considered “state public health programs” within the language of rule 10.5(1). The Board took no further action at that time. The Board held a teleconference on October 31, 2014 at which time it was asked to reconsider this interpretation of rule 10.5(1). At that time, the Board chose not to take any further action.

4. In support of the Petition, the Petitioner references the action taken by the Board at the October 17, 2014 quarterly meeting to interpret the language “federal, state, or local public health programs” to include state correctional facilities, expresses concern about the vagueness of this language, and expresses concern about patient safety if additional public health settings are included in rule 10.5(1) without the Board initiating the formal rule-making process.

5. The Petition was posted on the Board's website and sent to the Board's mailing list. Approximately 90 comments were received regarding the Petition. The comments were posted on the Board's website. Additional oral comments were provided at the Board's in-person meeting on January 22, 2015. Comments were received from dentists, dental hygienists, associations, faculty, county and state public health boards, and local public health agencies.

6. The vast majority of comments received expressed concern that granting the Petition and removing the language "and federal, state, or local public health programs" from the list of public health settings would eliminate existing programs serving primarily low-income Iowans. The affected programs include the federal Women, Infants and Children program, Title V federal public health programs, and services provided through local public health fairs. None of the comments indicated concern with patient safety for such programs.

7. In response to the comments, Petitioner submitted a letter stating that its Petition did not intend to affect existing public health programs but expressed concerns with the provision at issue, specifically that the specific settings encompassed within the term "federal, state, or local public health programs" should be explicitly set forth. Petitioner further suggested that once such an exact list exists, any changes or additions to those settings should only occur through rule-making pursuant to Iowa Code chapter 17A.

8. The Board has significant concerns with the effect rescinding the requested portion of the rule would have on existing programs that serve Iowans who lack access to dental care. The Board is also cognizant of the fact that since the rule was promulgated in 2003, there have been no previous requests to the Board to interpret the provision at issue or concern expressed that the provision necessitates further delineation. It appears that the rule has worked well over time. The Board is concerned that attempting to include an exhaustive list of settings in the rule will preclude the evolution of such programs and might limit participation in future public health programs. In addition, the Board does not want to have to initiate rulemaking every time a program changes its name or a new program is created. This poses an unnecessary and unreasonable burden on the Board.

9. The Board reaffirms its authority to interpret its rules and does not agree with the assessment of the Petitioner that its interpretation of "federal, state, or local public health programs" created a new rule in violation of chapter 17A or that the Board otherwise acted improperly in its interpretation of rule 10.5(1) to include state correctional facilities. Since the October 17 and 31st meetings, the Board has obtained further information about the provision of dental services in state correctional facilities and reviewed the original request. It appears that dental hygienists providing hygiene services in the state correctional facilities are providing such services following an examination by a dentist. Once a dentist has examined the patient, the dentist can prescribe hygiene services to be provided on an on-going basis, under either general or direct supervision. These standards are set forth in the Board's rules. Therefore, there does not appear to be any need to further consider whether state correctional facilities should be included among the other public health settings so as to allow a hygienist to operate under public health supervision, and whether rule-making pursuant to chapter 17A is appropriate.

THEREFORE, IT IS HEREBY ORDERED that the Petition for Rulemaking filed by the Iowa Dental Association is hereby **DENIED**.

Handwritten signature of Steven P. Bradley, D.D.S. in cursive script, with the initials "D.D.S." written to the right of the signature.

STEVEN P. BRADLEY, D.D.S.
Chairperson
Iowa Dental Board
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