

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: May 31, 2022
Proposal publication date: January 21, 2022
For further information, please call: (512) 475-1497

TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 108. PROFESSIONAL CONDUCT SUBCHAPTER A. PROFESSIONAL RESPONSIBILITY

22 TAC §108.7

The State Board of Dental Examiners (Board) adopts this amendment to 22 TAC §108.7(3) - (4), concerning the minimum standard of care. The rule is adopted in accordance with House Bill 2056 of the 87th Texas Legislature, Regular Session (2021), and Chapter 111, Texas Occupations Code. The bill amended Chapter 111, Texas Occupations Code, which allows dental health professionals to provide teledentistry dental services to patients. The bill's intent is to eliminate barriers pertaining to access to care, and allow dental health professionals to treat patients without having an in-person visit if the standard of care is met. This adopted amendment changes §108.7(3) - (4) to allow for the provision of teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. A dentist must ask the patient to come into the office for a physical examination if the diagnosis or treatment utilizing teledentistry is not adequate or consistent with the standard of care.

Paragraph (3) is adopted without changes to the proposed text as published in the March 11, 2022, issue of the *Texas Register* (47 TexReg 1174). Paragraph (4) is adopted with non-substantive changes to the proposed text as published in the March 11, 2022, issue of the *Texas Register* (47 TexReg 1174). The text of the rule will be republished.

The Board received public written comments regarding this rule from the following commenters: Align Technology (Align); American Teledentistry Association (ATDA); Dial Care; Dr. Clark Colville, DDS; Dr. Larry Tadlock, DDS; Dr. Peter, Vig, DDS; Senator Lois Kolkhorst; Smile Direct Club (Smile Direct); Texas Dental Association (TDA); and Tech Net.

The following is a summary of the comments and the Board's responses:

Align Technology provided a written comment in opposition of adoption of the rule as proposed. Align states a patient must receive at least an initial physical examination before undergoing orthodontic treatment, and requests that the Board change paragraph (4) to the following: "maintain and review a limited physical examination when a reasonable and prudent dentist would do so under the same or similar circumstances. At a minimum a limited physical examination should be renewed and updated annually. A physical examination shall be performed prior to orthodontic treatment."

Response: The Board's proposed amendment allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. No changes to this proposed rule were made as a result of the comment.

American Teledentistry Association (ATDA) provided a written comment in support of adoption of the rule as proposed. ATDA states the legislature was clear that no prior in-person examination should be required and that the standard of care should dictate how services are delivered. ATDA states that all dentists regardless of delivery method used is held to the same standard of care, which is now defined in this rule as what a reasonable and prudent dentist would do under the same or similar circumstances.

Response: The Board's proposed amendment allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. No changes to this proposed rule were made as a result of the comment.

Dial Care provided a written comment in support of adoption of the rule as proposed. Dial Care states that a reasonable and prudent dentist can decide whether and when an in-person examination is required. Dial Care states the proposed rule suggests an annual examination as a best practice, which leaves it to each dentist to determine using professional judgment whether an in-person examination should be performed.

Response: The Board's proposed amendment allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. No changes to this proposed rule were made as a result of the comment.

Dr. Clark Colville, DDS provided a written comment in opposition of adoption of the rule as proposed. He states initiating orthodontic treatment without a thorough physical evaluation combined with necessary high-quality diagnostic records can result in irreversible damage. He states the proposed amendment is vague in that it requires a dentist to perform a physical examination when a reasonable and prudent dentist would do so under the same or similar circumstances. He states a reasonable and prudent dentist would not initiate a clinical procedure that could cause irreversible damage without adequately assessing the hard and soft tissues in person.

Response: The Board's proposed amendment allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. No changes to this proposed rule were made as a result of the comment.

Dr. Larry Tadlock, DDS provided a written comment in opposition of adoption of the rule as proposed. He believes the proposed amendment removes the standard for an in-person examination, and as a consequence, the need to review appropriate patient diagnostic records prior to initiating orthodontic treatment. He states an in-person examination prior to initiating active tooth movement is critical to protect the health and safety of patients, and periodic visits beyond once a year are also required to protect patients.

Response: The Board's proposed amendment allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as

the dentist adheres to the standard of care. No changes to this proposed rule were made as a result of the comment.

Dr. Peter, Vig, DDS provided a written comment in support of adoption of the rule as proposed. He states the proposed rule holds each licensee responsible for using professional discretion to select the technology appropriate to diagnose and sufficient to treat the patient for the condition as presented to meet the standard of care.

Response: The Board's proposed amendment allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. No changes to this proposed rule were made as a result of the comment.

Senator Lois Kolkhorst provided a written comment in opposition of adoption of the rule as proposed. She states evidence supports that the minimum standard of care for dental treatment requires an in-person physical examination before beginning orthodontic treatment, and effective orthodontic treatment cannot be provided by relying solely on photographs. She requests that the Board revise the rule to require an in-person examination before a patient begins orthodontic treatment, or prior to treatment for an irreversible dental procedure.

Response: The Board's proposed amendment allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. The Board declines to include rule language pertaining to an irreversible procedure because even some of the least complicated dental procedures could be considered irreversible. No changes to this proposed rule were made as a result of the comment.

Smile Direct Club (Smile Direct) provided a written comment in support of adoption of the rule as proposed. Smile Direct states the Board has made clear that the minimum standard of care for all practice of dentistry, including teledentistry, is the same and is consistent with that of a reasonable and prudent dentist under the same or similar circumstances. Smile Direct states removing language pertaining to the taking of blood pressure and pulse/heart rate measurements and replacing it with the limited physical examination when a reasonable and prudent dentist would do so is appropriate.

Response: The Board's proposed amendment allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. No changes to this proposed rule were made as a result of the comment.

Texas Dental Association (TDA) provided a written comment in opposition of adoption of the rule as proposed. TDA states that the limited physical examination is essential for a dentist to determine the relationship between a patient's overall health and oral health. TDA agrees that although it is infeasible to perform a limited physical examination of a patient at an initial teledentistry dental appointment, the accepted benchmark of care for dental patients is that dentists perform a limited physical examination of the patient at least annually. TDA requests that the Board change paragraph (4) to the following: "*perform* and review a limited physical examination when a reasonable and prudent dentist would do so under the same or similar circumstances. At a minimum, a limited physical examination *shall be performed* and reviewed annually."

Response: The Board's proposed amendment allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. As a result of the comment, the Board made the following changes to paragraph (4): "*perform* and review a limited physical examination when a reasonable and prudent dentist would do so under the same or similar circumstances. At a minimum, a limited physical examination should be *performed* and reviewed annually."

Tech Net provided a written comment in support of adoption of the rule as proposed. Tech Net states that the rule before the proposed amendment would have required an in-person examination prior to providing teledentistry dental services. TechNet states that the proposed amendment ensures access to oral healthcare.

Response: The Board's proposed amendment allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. No changes to this proposed rule were made as a result of the comment.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

Legal counsel for the Board has reviewed the adopted rule and has found it to be within the Board's authority to adopt.

§108.7. *Minimum Standard of Care, General.*

Each dentist shall:

(1) conduct his/her practice in a manner consistent with that of a reasonable and prudent dentist under the same or similar circumstances;

(2) maintain patient records that meet the requirements set forth in §108.8 of this title (relating to Records of the Dentist);

(3) obtain, maintain, and review an initial medical history. The medical history shall include, but shall not necessarily be limited to, known allergies to drugs, serious illness, current medications, previous hospitalizations and significant surgery, and a review of the physiologic systems obtained by patient history. A "check list," for consistency, may be utilized in obtaining information. The dentist shall review the medical history with the patient at any time a reasonable and prudent dentist would do so under the same or similar circumstances. At a minimum, a medical history should be reviewed and updated annually;

(4) perform and review a limited physical examination when a reasonable and prudent dentist would do so under the same or similar circumstances. At a minimum, a limited physical examination should be performed and reviewed annually;

(5) for office emergencies:

(A) maintain a positive pressure breathing apparatus including oxygen which shall be in working order;

(B) maintain other emergency equipment and/or currently dated drugs as a reasonable and prudent dentist with the same or similar training and experience under the same or similar circumstances would maintain;

(C) provide training to dental office personnel in emergency procedures which shall include, but not necessarily be limited to, basic cardiac life support, inspection and utilization of emergency

equipment in the dental office, and office procedures to be followed in the event of an emergency as determined by a reasonable and prudent dentist under the same or similar circumstances; and

(D) shall adhere to generally accepted protocols and/or standards of care for management of complications and emergencies;

(6) successfully complete a current course in basic cardiopulmonary resuscitation given or approved by either the American Heart Association or the American Red Cross;

(7) maintain a written informed consent signed by the patient, or a parent or legal guardian of the patient, if the patient is a minor, or the patient has been adjudicated incompetent to manage the patient's personal affairs. A signed, written informed consent is required for all treatment plans and procedures where a reasonable possibility of complications from the treatment planned or a procedure exists, or the treatment plans and procedures involve risks or hazards that could influence a reasonable person in making a decision to give or withhold consent. Such consents must disclose any and all complications, risks and hazards;

(8) safeguard patients against avoidable infections as required by this chapter;

(9) not be negligent in the provision of dental services;

(10) use proper diligence in the dentist's practice;

(11) maintain a centralized inventory of drugs;

(12) report patient death or hospitalization as required by this chapter;

(13) abide by sanitation requirements as required by this chapter;

(14) abide by patient abandonment requirements as required by this chapter;

(15) abide by requirements concerning notification of discontinuance of practice as required by this chapter; and

(16) hold a Level 1 permit (Minimal Sedation permit) issued by the Board before prescribing and/or administering Halcion (triazolam), and should administer Halcion (triazolam) in an in-office setting.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 13, 2022.

TRD-202201874

Lauren Studdard

General Counsel

State Board of Dental Examiners

Effective date: June 2, 2022

Proposal publication date: March 11, 2022

For further information, please call: (512) 305-8910



22 TAC §180.16

The State Board of Dental Examiners (Board) adopts new rule 22 TAC §108.16, concerning teledentistry. The adopted rule pertains to standards for the provision of teledentistry dental services as set out in House Bill 2056 of the 87th Texas Legislature, Regular Session (2021), and Chapter 111, Texas Occupations Code. This new rule is adopted with no changes to the proposed

text as published in the March 11, 2022 issue of the *Texas Register* (47 TexReg 1176), and will not be republished.

This rule was initially published in the November 12, 2021 issue of the *Texas Register*. During the public comment period, the Board received several stakeholder comments pertaining to the reference of §108.7 in §108.16(e)(2)(A). As a result of stakeholder feedback, the Board voted to amend §108.7, and also voted to re-propose this rule with no changes. Both rules were published in the March 11, 2022 issue of the *Texas Register*.

The Board received public written comments regarding this rule from the following commenters: Align Technology (Align); American Association of Orthodontists (AAO); American Teledentistry Association (ATDA); American Telemedicine Association (ATA); Byte; Coalition of Texans with Disabilities (CTD); Dial Care; Dr. Clark Colville, DDS; Dr. Larry Tadlock, DDS; Dr. Peter, Vig, DDS; Dr. Rhonda Stokley, DDS; Representative Stephanie Klick; Senator Charles Perry; Senator Lois Kolkhorst; Smile Direct Club (Smile Direct); Smile Doctors; Tech Net; Texas Academy of Pediatric Dentistry (TAPD); Texas Association of Business (TAB); Texas Association of Orthodontists (TAO); Texas Conservative Coalition Research Institute (TCCRI); Texas Dental Association (TDA); Texas e-Health Alliance; Texas Public Policy Foundation (TPPF); and United Spinal Association.

The following is a summary of the comments and the Board's responses:

Align Technology (Align) provided a written comment in opposition of adoption of the rule as proposed. Subsection (e)(2)(A) of this rule refers to §108.7, but Align disagrees with the proposed amendment to §108.7(4) regarding a limited physical examination. The proposed amendment to §108.7(4) will require a dentist to perform a limited physical examination when a reasonable and prudent dentist would do so under the same or similar circumstances. Align states a patient must receive at least an initial physical examination before undergoing orthodontic treatment, and requests that the Board revise this rule to reflect that a physical examination is required prior to orthodontic treatment.

Response: The Board's proposed amendment to §108.7 allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. No changes to this proposed rule were made as a result of the comment.

American Association of Orthodontists (AAO) provided a written comment in opposition of adoption of the rule as initially proposed in the November 12, 2021 issue of the *Texas Register*. Subsection (e)(2)(A) of this rule refers to §108.7, but AAO disagrees with the proposed amendment to §108.7(4) regarding a limited physical examination. The proposed amendment to §108.7(4) will require a dentist to perform a limited physical examination when a reasonable and prudent dentist would do so under the same or similar circumstances. AAO requests that the Board revise the rule to require dentists to perform a physical examination on a patient prior to performing an irreversible dental procedure. AAO is also concerned that subsection (c) does not clearly indicate what is expected from licensees and requests further details regarding the rule's prevention of fraud and abuse.

Response: The Board's proposed amendment to §108.7 allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. The Board declines to include rule language pertaining to an irreversible procedure

because even some of the least complicated dental procedures could be considered irreversible. Subsection (c) of this rule requires dentists to adopt protocols to prevent fraud and abuse through the use of teledentistry dental services. In accordance with §108.9(6), dentists are required to comply with all laws relating to the regulation of dentists, which includes applicable laws pertaining to fraud and abuse. No changes to this proposed rule were made as a result of the comment.

American Teledentistry Association (ATDA) provided a written comment in support of adoption of the rule as proposed. ATDA agrees with subsection (e)(2)(A) of this rule because of the proposed amendment to §108.7(4), which will require a dentist to perform a limited physical examination when a reasonable and prudent dentist would do so under the same or similar circumstances.

Response: The Board's proposed amendment to §108.7 allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. No changes to this proposed rule were made as a result of the comment.

American Telemedicine Association (ATA) provided a written comment in opposition of adoption of the rule as initially proposed in the November 12, 2021 issue of the *Texas Register*. ATA states the reference to §108.7 in subsection (e)(2)(A) of this rule requires an in-person examination of the patient before the dentist can perform teledentistry dental services. ATA requests that the Board revise the rule to clarify that dentists are not required to perform an in-person examination prior to providing teledentistry dental services.

Response: The Board's proposed amendment to §108.7 allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. No changes to this proposed rule were made as a result of the comment.

Byte provided a written comment in opposition of adoption of the rule as initially proposed in the November 12, 2021 issue of the *Texas Register*. Byte states that the reference to §108.7 in subsection (e)(2)(A) of this rule requires an in-person visit by requiring dentists to perform a physical examination for all dental patients. Byte requests that the Board revise the rule to clarify that dentists are not required to perform an in-person examination prior to providing teledentistry dental services.

Response: The Board's proposed amendment to §108.7 allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. No changes to this proposed rule were made as a result of the comment.

Coalition of Texans with Disabilities (CTD) provided a written comment in opposition of adoption of the rule as initially proposed in the November 12, 2021 issue of the *Texas Register*.

CTD states that teledentistry may be used to establish a doctor-patient relationship, and has the added benefit of allowing practitioners to plan and prepare an accommodation for a person's disability prior to being seen in the office. CDT states that the rule will restrict the ability of providers to use technologies to deliver high-quality dental care, and requests that the Board reconsider the reference in this rule that requires an in-person office visit prior to teledentistry services.

Response: The Board's proposed amendment to §108.7 allows a dentist to provide teledentistry dental services without requiring

an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. No changes to this proposed rule were made as a result of the comment.

Dial Care provided a written comment in support of adoption of the rule as proposed. Dial Care agrees with subsection (e)(2)(A) of this rule because of the proposed amendment to §108.7(4), which will allow dentists to use their professional judgment to determine whether and when a limited physical examination is required.

Response: The Board's proposed amendment to §108.7 allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. No changes to this proposed rule were made as a result of the comment.

Dr. Clark Colville, DDS provided a written comment in opposition of adoption of the rule as proposed. He states initiating orthodontic treatment without a thorough physical evaluation combined with necessary high-quality diagnostic records can result in irreversible damage. He states the proposed amendment to §108.7 is vague in that it requires a dentist to perform a physical examination when a reasonable and prudent dentist would do so under the same or similar circumstances. He states the Board's recordkeeping requirements in §108.8 cannot be met if a dentist performs teledentistry dental services in accordance with subsection (e)(2)(C) of this rule because dentists are required to document a written review a patient's medical history and limited physical examination, and document the findings of a tactile and visual examination of the soft and hard tissues of the oral cavity.

Response: The Board's proposed amendment to §108.7 allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. The Board disagrees that §108.8 cannot be met. If a dentist does not record a review of a patient's medical history and limited physical examination, or does not record findings of a tactile and visual examination, then §108.8(c)(12) requires a dentist to record why those items are missing. In other words, §108.8 can be met when certain required items are missing as long as a dentist provides an adequate explanation why the required items are missing. No changes to this proposed rule were made as a result of the comment.

Dr. Larry Tadlock, DDS provided a written comment in opposition of adoption of the rule as proposed. Subsection (e)(2)(A) of this rule refers to §108.7, but Dr. Tadlock disagrees with the proposed amendment to §108.7(4) regarding a limited physical examination. The proposed amendment to §108.7(4) will require a dentist to perform a limited physical examination when a reasonable and prudent dentist would do so under the same or similar circumstances. Dr. Tadlock states that an in-person examination prior to initiating active tooth movement is critical to protect the health and safety of patients.

Response: The Board's proposed amendment to §108.7 allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. No changes to this proposed rule were made as a result of the comment.

Dr. Peter, Vig, DDS provided a written comment in support of adoption of the rule as proposed. He agrees with the re-publication of this rule in the March 11, 2022 issue of the *Texas Register* in that it amends provisions of the cross referenced §108.7 to be

based on what a reasonable and prudent dentist would do so under the same or similar circumstances.

Response: The Board's proposed amendment to §108.7 allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. No changes to this proposed rule were made as a result of the comment.

Dr. Rhonda Stokley, DDS provided a written comment in opposition of adoption of the rule as initially proposed in the November 12, 2021 issue of the *Texas Register*. Dr. Stokley requests that the Board revise the rule to explicitly state that teledentistry is allowed for dental public health programs. Dr. Stokley also requests clarification on the application of subsection (e)(2)(B) in public health programs as there may not be an existing patient relationship based on the nature of these programs.

Response: A dentist, dental hygienist, or dental assistant who works for a dental public health program can provide teledentistry services to a patient located in Texas if they hold an active Texas license or registration issued by the Board, and they follow all applicable law. A dentist may use teledentistry technologies to establish a practitioner-patient relationship. No changes to this proposed rule were made as a result of the comment.

Representative Stephanie Klick and Senator Charles Perry provided a written comment in opposition of adoption of the rule as initially proposed in the November 12, 2022 issue of the *Texas Register*. They state that a physician can treat a patient without having an in-person visit as long as the standard of care is met, however the physician must ask the patient to come into the office if the diagnosis or treatment utilizing telemedicine is not adequate or consistent with the standard of care. They request that the Board reconsider the in-person requirement referenced in the proposed rule so that patients can utilize teledentistry dental services without imposing barriers that do not exist in telemedicine.

Response: The Board's proposed amendment to §108.7 allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. No changes to this proposed rule were made as a result of the comment.

Senator Lois Kolkhorst provided a written comment in opposition of adoption of the rule as proposed. She states evidence supports that the minimum standard of care for dental treatment requires an in-person physical examination before beginning orthodontic treatment, and effective orthodontic treatment cannot be provided by relying solely on photographs. She requests that the Board revise the rule to require an in-person examination before a patient begins orthodontic treatment, or prior to treatment for an irreversible dental procedure.

Response: The Board's proposed amendment to §108.7 allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. The Board declines to include rule language pertaining to an irreversible procedure because even some of the least complicated dental procedures could be considered irreversible. No changes to this proposed rule were made as a result of the comment.

Smile Direct Club (Smile Direct) provided a written comment in opposition of adoption of the rule as proposed. Smile Direct states that the Board has made clear that the minimum standard of care for the practice of dentistry, including teledentistry,

is consistent with that of a reasonable and prudent dentist under the same or similar circumstances. Smile Direct states that the recordkeeping requirement in §108.8(c) could appear to require through the phrase "records must include documentation of the following when services are rendered" mandatory radiographs and tactile examinations regardless of the clinical appropriateness of such diagnostics. Smile Direct requests that the Board consider issuing a policy statement on the application of recordkeeping. Smile Direct requests that the Board replace the language in subsection (c) of this rule to the following: "Teledentistry dental services may only be provided following the patient's initiation of a dentist-patient relationship or pursuant to a referral made by a patient's licensed dentist with whom the patient has an established dentist-patient relationship."

Response: The Board disagrees with Smile Direct's interpretation of §108.8. If a dentist does not have documentation of radiographs or a tactile examination, then §108.8(c)(12) requires a dentist to record why those items are missing. In other words, §108.8 can be met when certain required items are missing as long as a dentist provides an adequate explanation why the required items are missing. Subsection (c) of this rule requires dentists to adopt protocols to prevent fraud and abuse through the use of teledentistry dental services. In accordance with §108.9(6), dentists are required to comply with all laws relating to the regulation of dentists, which includes applicable laws pertaining to fraud and abuse. No changes to this proposed rule were made as a result of the comment.

Smile Doctors provided a written comment in support of adoption of the rule as initially proposed in the November 12, 2021 issue of the *Texas Register*. Smile Doctors is concerned that patients are not receiving appropriate initial care. Smile Doctors states that doctor directed care following an initial physical evaluation will protect patients and improve treatment outcomes.

Response: The Board's proposed amendment to §108.7 allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. No changes to this proposed rule were made as a result of the comment.

Tech Net provided a written comment in support of adoption of the rule as proposed. Tech Net was originally concerned with the reference to §108.7 in subsection (e)(2)(A) of this rule because Tech Net states it would have required an in-person examination prior to providing teledentistry dental services. TechNet states that the proposed amendment to §108.7 ensures access to oral healthcare.

Response: The Board's proposed amendment to §108.7 allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. No changes to this proposed rule were made as a result of the comment.

Texas Academy of Pediatric Dentistry (TAPD) provided a written comment in opposition of adoption of the rule as initially proposed in the November 12, 2021 issue of the *Texas Register*. Subsection (e)(2)(A) of this rule refers to §108.7, but TAPD disagrees with the proposed amendment to §108.7(4) regarding a limited physical examination. The proposed amendment to §108.7(4) will require a dentist to perform a limited physical examination when a reasonable and prudent dentist would do so under the same or similar circumstances. TAPD requests that the Board revise the rule to require a physical examination at

least annually because physical dental examinations are important for preventative care and maintaining a child's oral health.

Response: The Board's proposed amendment to §108.7 allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. No changes to this proposed rule were made as a result of the comment.

Texas Association of Business (TAB) provided a written comment in opposition of adoption of the rule as initially proposed in the November 12, 2021 issue of the *Texas Register*. TAB states the reference to §108.7 in subsection (e)(2)(A) of this rule requires an in-person examination of the patient before the dentist can perform teledentistry dental services. TAB requests that the Board revise the rule to clarify that dentists are not required to perform an in-person examination prior to providing teledentistry dental services.

Response: The Board's proposed amendment to §108.7 allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. No changes to this proposed rule were made as a result of the comment.

Texas Association of Orthodontists (TAO) provided a written comment in opposition of adoption of the rule as proposed. Subsection (e)(2)(A) of this rule refers to §108.7, but TAO disagrees with the proposed amendment to §108.7(4) regarding a limited physical examination. The proposed amendment to §108.7(4) will require a dentist to perform a limited physical examination when a reasonable and prudent dentist would do so under the same or similar circumstances. TAO requests that the Board revise the rule to require dentists to perform a physical examination on a patient prior to performing an irreversible dental procedure. TAO is also concerned that subsection (c) does not clearly indicate what is expected from licensees and requests further details regarding the rule's prevention of fraud and abuse.

Response: The Board's proposed amendment to §108.7 allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. The Board declines to include rule language pertaining to an irreversible procedure because even some of the least complicated dental procedures could be considered irreversible. Subsection (c) of this rule requires dentists to adopt protocols to prevent fraud and abuse through the use of teledentistry dental services. In accordance with §108.9(6), dentists are required to comply with all laws relating to the regulation of dentists, which includes applicable laws pertaining to fraud and abuse. No changes to this proposed rule were made as a result of the comment.

Texas Conservative Coalition Research Institute (TCCRI) provided a written comment in opposition of adoption of the rule as initially proposed in the November 12, 2021 issue of the *Texas Register*. TCCRI is concerned with subsection (e)(2)(A) of this rule in that it references §108.7, which appears to require a physical in-person examination to establish the practitioner-patient relationship prior to the provision of teledentistry services. TCCRI requests that the Board require dentists to establish a practitioner-patient relationship, but not require that to be done solely by an in-office visit.

Response: The Board's proposed amendment to §108.7 allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long

as the dentist adheres to the standard of care. No changes to this proposed rule were made as a result of the comment.

Texas Dental Association (TDA) provided a written comment in opposition of adoption of the rule as proposed. TDA believes the proposed rule is consistent with House Bill 2056, however it requests that the Board change subsection (e)(5) of this rule to the following: "Any individual may provide any photography or digital imaging to a Texas licensed dentist or Texas licensed dental hygienist for the sole and limited purpose of screening, assessment, or examination *that is within the scope of that dentist's or hygienist's respective license.*" TDA states that this change will ensure there is no confusion about the scope of practice under teledentistry.

Response: The scope of practice for dentists and hygienists is specified in the Dental Practice Act and Board rules, and this proposed rule does not change or expand the law in this regard. No changes to this proposed rule were made as a result of the comment.

Texas e-Health Alliance submitted a comment in opposition of adoption of the rule as initially proposed in the November 12, 2021 issue of the *Texas Register*. The organization is concerned the rule's reference to §108.7 prevents technology from being used to replicate an in-person physical examination under any circumstances.

Response: The Board's proposed amendment to §108.7 allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. No changes to this proposed rule were made as a result of the comment.

Texas Public Policy Foundation (TPPF) submitted a comment in opposition of adoption of

the rule as proposed in the November 12, 2021 issue of the *Texas Register*. TPPF states that the requirement of an in-person examination inhibits practitioners of teledentistry from expanding their practices by increasing the difficulty of reaching new markets that teledentistry technologies make easy and efficient.

Response: The Board's proposed amendment to §108.7 allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. No changes to this proposed rule were made as a result of the comment.

United Spinal Association (United Spinal) submitted a written comment in opposition of

adoption of the rule as initially proposed in the November 12, 2021 issue of the *Texas Register*. United Spinal provides that teledentistry is a valuable tool, especially for people with mobility challenges, and the in-person examination requirement would make access to teledentistry impossible. United Spinal states that this requirement is unnecessary so long as the treatment is performed to the standard of care. United Spinal requests that the Board remove the reference to §108.7 in subsection (e)(2)(A) of this rule.

Response: The Board's proposed amendment to §108.7 allows a dentist to provide teledentistry dental services without requiring an in-person examination prior to providing the service as long as the dentist adheres to the standard of care. No changes to this proposed rule were made as a result of the comment.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

Legal counsel for the Board has reviewed the adopted rule and has found it to be within the Board's authority to adopt.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 13, 2022.

TRD-202201873

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State Board of Dental Examiners

Effective date: June 2, 2022

Proposal publication date: March 11, 2022

For further information, please call: (512) 305-8910

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