

Testimony presented to the Administrative Rules Committee
Rita Sommers, Executive Director, NDSBDE
Monday, December 8, 2014
Roughrider Room, State Capitol Bismarck, North Dakota

Chairman Devlin and Members of the Administrative Rules Committee:

Good Morning. I am Rita Sommers, Executive Director of the North Dakota State Board of Dental Examiners (NDSBDE) speaking on the Board's behalf regarding amendments to Title 20 of the North Dakota Administrative Rules.

These rules amendments were not a result of statutory changes made by the Legislative Assembly.

The rules are not related to any federal statute or regulation.

Small entity regulatory analysis and economic statement: The ND Board of Dental Examiners is exempt from the provisions of NDCC § 28-32-08.1(2), as it is a statutory exempted professional licensing authority. Because the ND Board of Dental Examiners is statutorily exempt from NDCC § 28-32-08.1, it is also not required to make a small entity economic impact statement pursuant to NDCC § 28-32-08.1(3).

A fiscal note pursuant to §28-32-08.2 is not required in the amendment process of Title 20, North Dakota Administrative Rules, considered at public hearings on March 12, 2014, and July 23, 2014 in that the proposed rules do not effect state revenues and expenditures, nor do they have any adverse effect on funds controlled by the agency.

A takings assessment pursuant to §28-32-09 is not required in the amendment process of Title 20, North Dakota Administrative Rules, considered at public hearings on March 12, 2014 and July 23, 2014, in that the proposed rules do not limit in any way the use of real property.

Rulemaking procedures followed during adoption were in compliance with Chapter 28-32, the Administrative Agencies Practice Act. Abbreviated notice of the proposed adoption, amendments and repeal of Title 20 was published February 5, 2014 thru February 11, 2014 by the North Dakota Newspaper Association. The approximate cost of giving public notice and holding hearings on the rules was approximately two thousand dollars. Reasonable opportunity was provided for any and all stakeholders to submit views orally during the hearing process or in written form concerning the proposed rules. An oral hearing was held; comments were received by the NDSBDE and accepted as part of the record at the conclusion of the public hearing for a period of ten days and were considered by the NDSBDE. During the final adoption, the Board amended the proposed New Section 20-03-01-

01.1 to include language that would authorize dental assistants under the direct supervision of a dentist to provide the expanded function of supragingival scaling. “A registered dental assistant authorized by permit and under the direct supervision of a dentist may perform supragingival scaling duties”. Assistant Attorney General Nate Martindale, the Board’s legal counsel, advised the Board that such an amendment was significant enough to consider another public notice. Rather than delete the amendment, the NDSBDE moved to proceed with a second public notice and comment period.

An abbreviated notice of the proposed adoption, amendments and repeal of Title 20 was published June 26, 2014 thru July 2, 2014 by the North Dakota Newspaper Association. The approximate cost of giving public notice and holding hearings on the rules was twenty three hundred dollars (conference call line 65 attendees). Reasonable opportunity was provided for any and all stakeholders to submit views orally during the hearing process or in written form concerning the proposed rules. An oral hearing was held; comments were received by the NDSBDE and accepted as part of the record at the conclusion of the public hearing for a period of fourteen days and were considered by the NDSBDE.

A summary of the amendment and a summary of the comments received by the NDSBDE is noted below each amendment. Central to the debate over the new amendments is the Board’s proposal to authorize a registered dental assistant, under the direct supervision of a dentist to remove calculus (hardened deposits on the surface of a tooth) from the dentition of a patient that is twelve years of age or less. The Board was prompted to amend the language by dental hygienists who commented that the supragingival scaling should be limited to younger patients. The Board responded during the final adoption, amended the expanded duty relating to the supragingival scaling by adding additional language (highlighted) as follows: “A registered dental assistant authorized by permit and under the direct supervision of a dentist may perform supragingival scaling duties to a patient that is twelve years of age or less.”

EXPLANATION OF SUBJECT MATTER OF THE PROPOSED RULE: The content and structure of Title 20 has been amended significantly. The Board has methodically reorganized rules, especially rules pertaining to dental auxiliary. The Board has addressed adjunct services such as nitrous oxide inhalation, added definitions to support new duties, and added clarification to licensure requirements. The Board amended language that would expedite the credentialing process of dentists who currently hold valid licensure in another state and desire to come to ND for the sole purpose of providing care to indigent populations or temporary care for those patients of a dentist whose ability to practice has temporarily been interrupted by health concerns or some other unforeseeable event.

Amendments specifically brought forward to address barriers to care or access to care were given the utmost consideration. The Board's objective being to allow procedures where competency could be demonstrated and the delivery of duties could be provided in the safest manner possible using the current workforce. The Board's initiated measures strategically authorize a competent workforce to work in numerous settings providing care within their scope of practice and providing an avenue for an existing workforce to broaden their scopes of practice if they so choose. Toward this end the NDSBDE has adopted the following rules some of which I will briefly summarize:

CHAPTER 20-01-02

Page 36, 37, 38, 39

20-01-02-01. Definitions.

Summary:

13. A definition of "contiguous supervision" is added which is used where a dental assistant is providing anesthesia duties. Reference to the supervising maxillofacial surgeon also differentiates the term.

18. "Direct visual supervision" is also required for the anesthesia assistant to carry out their duties during the operatory procedures.

25. "Oral assessment" the term is referred to in 20-04-01-01, dental hygiene duties. The definition may be instrumental in duties that can be delegated to the dental auxiliary.

26. "Oral hygiene treatment plan" is a dental hygiene duty referred to in 40-02-01(7). The new definition emphasizes the dental hygienist provider. The amendment was aimed at hygienists working in public health and/or under general supervision.

30. "Supragingival scaling", the definition is required if the duty is to be implemented in Ch. 20-03. In hindsight, another descriptive definition would be "removal of calcified plaques adherent to tooth surfaces coronal to the free gingival margin". Farlex Partner Medical Dictionary © Farlex 2012

Comments: Supragingival scaling is addressed in more than one section; comments related to the subject may be found attached to **20-03-01-01.1. Expanded duties of registered dental assistants.**

CHAPTER 20-02-01

PAGE 40

GENERAL REQUIREMENTS

20-02-01-01. Advertising.

Summary: The only amendment to the advertising section is the inclusion of the language "bona fide specialty". *The term is defined in Ch. 20-01-02. Definitions.* The Board has a valid and substantial interest in regulating the dental profession, ensuring that consumers are not misled by ads and protecting citizens from unqualified and incompetent dentists. The requirement is no more extensive than necessary to establish standards and uniform criteria by accredited educational standards.

No Comments

Page 41-42

20-02-01-03. Nitrous oxide.

Summary: The amendment is a patient safety measure authorizing trained auxiliary to reduce or end nitrous oxide flow. Alternatively the hygienist or assistant would have to leave the patient unattended.
Comments: The North Dakota Dental Hygienists' Association and the North Dakota Dental Assistants' Association were in favor of the safety measure.

Page 42-43

20-02-01-03.1. Additional requirements for licensure by examination.

Summary: Although all regional exams are accepted by the NDSBDE, rather than count on the examining entities to include ND requirements in their exams, the Board moved to list required components to assist candidates in their selection process.
No Comments

Page 43

20-02-01-03.3. Additional requirements for applications.

Summary: The interview may or may not be required. The Board may opt to postpone the interview to prevent an unnecessary financial burden for the candidate such as travel expenses or to waive the interview altogether depending on content of the application.
No Comments

Page 44-45

20-02-01-04. Temporary license to practice dentistry.

Page 45

20-02-01-04.2. Volunteer license to practice dentistry.

Summary: The amendment is a measure to streamline the volunteer and temporary license process. The Board has experienced situations where expediting the temporary or volunteer license was an issue. The Board would not expedite a temporary license if the background check is incomplete or questionable. The jurisprudence exam may be waived for example in the instance where a dentist is entering the state to practice dentistry for one or two days with an organization such as the Mission of Mercy (MOM) project.
Comments: The concern over streamlining the volunteer licensure process came about during the application process of twenty specialty and non specialty dentists practicing out of state, wishing to volunteer for a MOM project.

Page 46

20-02-01-05. Permit for anesthesia use.

Summary: Interest in mobile clinics has grown. Interest in sedation dentistry has also risen considerably. The measure protects the public by adding language that includes an evaluation of any mobile clinic when the mobile clinic provides anesthesia services. There are businesses offering mobile anesthesia. The need for such services stems from smaller facilities or any practice needing such services not wishing to bear the costs associated with being an anesthesia or sedation provider.

No Comments.

Page 48

20-02-01-06. Continuing dental education for dentists.

Summary: The section was moved from statute to rule.

No Comments

Page 48-49

20-02-01-08. Discontinuance of practice - Retirement - Discontinuance of treatment.

Summary: The amendment addresses three issues. Two locations provide clarification about transfer of medical records. Section 4. provides a means for a dentist who is not working in a public health setting to provide volunteer services from the dental office. Under the volunteer license a dentist is not obligated to provide care to the patient outside of the volunteer setting. The amendment extends the same consideration to dentists currently practicing in private office settings without removing an option for the patient to become a patient of record.

Comments: The concept to provide care without remuneration to underserved patients was originally suggested for the Board's consideration by a practitioner wishing to deliver benevolent dental care within a private dental office and outside of existing free clinic settings permitting similar commitments with regard to the establishment of any obligatory doctor/patient relationships. This change enhances opportunities for voluntary benevolent care by providing similar protections provided to those dentists serving in safety net clinics. This change offers potential to expand opportunities for care to the underserved.

Page 49-51

20-02-05-11. Permit for the use of dermal fillers and botulinum toxin for dental use.

Summary: The Board acknowledged that dentists who are already highly skilled in the use of injectables could attain the competencies required to safely administer dermal fillers. A dentist's knowledge of the facial structures exceeds most other healthcare providers including physicians, nurses, physicians assistants and medical aestheticians, all who are permitted to place Botox and dermal fillers. Botox has important clinical uses as an adjunct in TMJ and bruxism cases, and for patients with chronic TMJ and facial pain. Botox is used to complement esthetic dentistry cases as a minimally invasive alternative to surgically treating high lip line problems and lip augmentation.

Comments: Several verbal comments in favor of the measure.

CHAPTER 20-03-01

DUTIES

Pages 52-59

20-03-01-01. Duties.

Summary: ARTICLE 20-03 DENTAL ASSISTANTS 20-03-01-01. **Duties.** This section was amended to organize dental assisting duties based on the level of training and education and the supervision level required for the specific duty. *Expanded functions assistant* and *registered dental assistant in a public health setting (below)* are new sections and are also singled out due to the level of training and supervision. Dental assistants play a vital role in the efficient delivery of dental services in any setting. The registered dental assistant has a comprehensive understanding of the principles and procedures used in dentistry. Effective delivery of care requires a multidisciplinary team. Dental assistants are qualified to provide case management services, oral health assessment and fluoride varnish in schools or other community or public health settings.

Comments: Dental assistants commented fully in support of the measure.

Page 57-58

20-03-01-01.1 Expanded duties of registered dental assistants.

Comments from the North Dakota Dental Hygienists' Association: The NDDHA requested that the Board conduct a survey to assess the impact of the use of EFDA's (expanded function dental assistant) as the information would be useful to other states. Another comment was in regard to training for such functions and whether or not dental assistants would obtain the training in a timely manner after the proposed amendments have passed. Kathryn Dockter from the ND State School of Science commented "If there are changes with these rules amendments, NDSCS will work with the board to get CE [continuing education] courses for the changes." NDDAA liaison, Carla Schneider requested continuing education pertaining to expanded functions be required. The Board agreed and added the amendment. A national dental testing organization commented "To assist the Board in its evaluation of the currently proposed rule amendments, DANB is providing the Board with background information related to DANB's Restorative Functions (RF) Exam."

FURTHER COMMENTS MADE BY THE BOARD HAVE BEEN RECORDED IN THE APRIL 2, 2014 and AUGUST 6, 2014 MINUTES ATTACHED AT THE END OF THE RULES.

SUMMARY: At the request of oral surgeons the board evaluated and subsequently included dental assistant duties for the dental assistant who works directly with an oral surgeon. Two new definitions related to contiguous supervision and direct visual supervision are used exclusively in sub-section three.

COMMENT: The board viewed the duty of supragingival scaling as a duty that a dental assistant is capable of with board approved training. Objections from the NDDHA discussed were related to the patient being unaware which professional provided the service, a dental hygienist or a dental assistant. Another NDDHA concern considered by board was whether or not supragingival scaling would be thorough. The board determined that since the duty is under the direct supervision of the dentist, the dentist is responsible to make the determination regarding the patient treatment plan. Direct supervision requires the dentist to examine the patient before dismissal of the patient and evaluate the performance of the dental assistant.

Page 58-59

20-03-01-01.2. Registered dental assistant in a public health setting.

Summary: *Expanded functions assistants and registered dental assistants in a public health setting* are new sections and are also singled out due to additional levels of training and supervision. Dental assistants play a vital role in the efficient delivery of dental services in any setting.

Comments: All dental assistants replied in favor of the new sections. Tyler Winter proposed adding language which would enable dental assistants to work in community settings providing outreach to vulnerable populations by conducting basic screenings, oral hygiene instruction, case management, fluoride varnish, and linkage to a dental home. The Board responded favorably, pointing out that under current statute a dental assistant is not prohibited from providing oral hygiene instruction or case management. These administrative functions and basic duties are in line with the ADA's definition of the *Community Dental Health Coordinator*. The duty of application of fluoride varnish under general supervision is provided for in NDCC 43-28-02(6). The Board commented that proposed rules introduce language that will provide not only a broader scope of practice, but a broader range of supervision requirements for the dental assistant. Brent Holman, DDS, Past President of the North Dakota Dental Association spoke in support of the proposed amendments that would allow registered dental assistants and hygienists to work in schools and other community settings. Dr. Holman stated that the amendments are a key part of the infrastructure required to authorize auxiliary to health care settings to reach Medicaid and other vulnerable populations while conducting basic oral assessments, hygiene instruction, case management, fluoride varnish, sealants and linkage to a dental home. The "outreach" concept is a variation on the CDHC (ADA's Community Dental Health Coordinator). Dr. Holman noted that case management has been shown to be effective and stressed the need to utilize the current workforce.

The Board concurred that such a project, especially in the ND rural areas has potential to demonstrate cost efficiency while protecting the public in contrast to options initiated in a neighboring state. Dr. Holman also noted that in addition to the importance of the use of the existing infrastructure, direct reimbursement would be a key factor in constructing a financially feasible proposed model.

Page 59

20-03-01-02. Prohibited services.

Summary: This section now includes language pertaining to high speed dental hand pieces.

Comments: The North Dakota Dental Hygienists' Association commented that further clarification on the use of high-speed hand pieces by the expanded duty dental assistant is needed.

Pages 60 -62

20-03-01-05.1. Expanded duties of registered dental assistants.

Summary: The section provides requirements of a permit for expanded duties. The Board adopted language regarding competency examinations and may allow examinations other than the dental anesthesia assistant national certification examination (DAANCE).

Comments: Comments to this section by all dental hygienists who commented were in opposition for reasons as reported in the August 6, 2014 NDSBDE minutes attached to this testimony. Kathryn Dockter, BSDH, MS, Chair, Allied Dental Education, North Dakota State College of Science also commented that CODA (Commission on Dental Accreditation which accredits dental schools as well as advanced dental

education programs and allied dental education programs in the United States) accredited programs are required to provide the education within the curriculum or by way of continuing education related to some expanded function procedures. Ms. Dockter suggested that candidates should have practical experience in an office for two years prior to the education. Marsh Krumm, Past President of the North Dakota Dental Assistants' Association supported the suggestion for practical experience prior to admittance into an advanced education/training program.

Page 62

20-03-01-06. Continuing dental education for qualified and registered dental assistants. 20-03-01-06.

Summary: Language was added to require specific CE for expanded functions auxiliary; with the addition of subsection 6, dentists, hygienists and dental assistants are all subject to audit of continuing education.

No Comment

Page 64

CHAPTER 20-04-01

20-04-01-01. Duties.

Summary: #2 the Board is opposed to auxiliary using a high speed dental hand piece inside the mouth.

#7 The intent will authorize the dental hygienist practicing within a public health setting

#33, 34 During an emergency situation 4 hands (or more) may be required.

#35, 36, 37 provide opportunity for the RDH to broaden his/her scope of practice.

No Comments

Page 67

20-04-01-02. Prohibited services.

Summary: This section now includes language pertaining to high speed dental hand pieces.

Comments: The North Dakota Dental Hygienists' Association commented further clarification on the use of high-speed hand pieces by the expanded duty dental assistant is needed.

Pages 67-69

20-04-01-03.1. Duties of the dental hygienist requiring a permit.

Summary: Although it is less likely that a dental hygienist would provide the duty of anesthesia assisting, the Board authorizes duties based on capability, training and education rather than the current availability of any given workforce which may fluctuate.

No Comment

Page 69

20-04-01-04.1. Clinical competency examination retakes.

Summary: Three consecutive failures of a clinical licensure examination happens seldom and there are several reasons candidates fail the clinical exam. The measure provides guidance to the Board and the applicant in making a determination regarding remedial education.

No Comments

Page 69-70

20-04-01-06. Additional requirements for applications.

Summary: The interview may or may not be required. Currently, new graduates are not required to appear before the Board unless further information is needed regarding a background check or other situation. The Board may opt to postpone the interview for a license by credential for a dental hygiene applicant to prevent an unnecessary financial burden for the candidate such as travel expenses or waive the interview altogether depending on application content.

No Comments

Page 70-71

20-04-01-08. Continuing dental education for dental hygienists.

Summary: Continuing education was added as a requirement for hygienists with expanded duties related to anesthesia assisting or restorative procedures.

No Comments

Page 72

CHAPTER 20-05-01

20-05-01-01. Fees.

Summary: A fee of two hundred dollars will be assessed to dermal fillers/botulinum toxin permit applicants. Renewal fees are not required to hold the permit.

No Comments



North Dakota State Board of Dental Examiners

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MINUTES SPECIAL MEETING VIA TELECONFERENCE AUG 6, 2014, 5:40 PM AS AMENDED SEPTEMBER 18, 2014

The meeting was called to order Aug 6, 2014, 5:40 PM CDT by Rob Lauf, DDS, President NDSBDE. The North Dakota Board of Dental Examiners convened via teleconference for the purpose of discussion and consideration of comments submitted by communities of interest and the general public. The North Dakota Board of Dental Examiners has recently made numerous amendments to the Administrative Rules, Chapter 20-01; 20-02; 20-03; 20-04 and 20-05. Collectively, the Board had approved the rules amendments. Momentum behind the amendments was primarily related to provide options that may further improve access to dental care by ND citizens. The board has previously and collectively determined that the proposed amendments are 1) safe for the public, 2) may utilize a current workforce that is shown to be competent in delivery of care, and 3) may offer continuity of care to the patients. The focus of the re-notice of the rules, second public hearing and comment period is found in Section 20-03-01-01.1(2), which states, "a registered dental assistant authorized by permit and under the direct supervision of dentist may perform supragingival scaling duties." Prior to the conference call, all comments received before 5PM CDT, Aug 6, 2014 were made available to all members of the Board.

PRESENT VIA TELEPHONE

ROB LAUF, DDS, PRESIDENT	DALE BREWSTER, DDS, MEMBER
CATHY CORNELL, RDH, PRESIDENT-ELECT	GREG EVANOFF, DDS, MEMBER
TONY MALAKTARIS, DDS, MEMBER	TIM MEHLHOFF, CPA, PUBLIC MEMBER
RITA SOMMERS, EXECUTIVE DIRECTOR	
NATE MARTINDALE, ASSISTANT ATTORNEY GENERAL	

Known callers (20): Pamela Traiser, Kati Zainhofsky, Kathy Mangskau, Katherine Landsberg, DANB, Janet Graalum, Jody Van Beek, Jayne Greuel, Sarah Senf, Heather Haroldson, Carla Schneider, Linda Alton, Bev Marsh, Rachelle Gustafson, Linda Neppl, Melanie Uecker, Denise Maus, Marsha Krumm, Christina O'Neill, Cindell Haugen, and Amy Schaefer. Undisclosed callers; Due to the volume of calls Board President Lauf requested callers identify themselves by reporting their name and phone number used to dial in to the call to ritasommers@gmail.com. Of all callers, those listed above identified themselves as requested; 30 callers did not.

The Board reviewed all amendments excluding Section 20-03-01-01.1(2). Moved and seconded to adopt the amendments as proposed. Hearing no further discussion, a roll call vote was taken. All voted in favor of adopting the amendments except for Section 20-03-01-01.1(2).

Moved and seconded to adopt Section 20-03-01-01.1(2), which states, "a registered dental assistant authorized by permit and under the direct supervision of a dentist may perform supragingival scaling duties." Discussion; The Board reviewed public comments, most of which were identical form letters or letters with verbatim talking points; therefore the

comments were addressed according to the comment and not the individual letter. The comments were addressed as follows:

Comments OPPOSED to Proposed Administrative Rule 20-03-01-01.1(2)	
Comment:	Board response:
<p><i>"Even educated patients will be confused about the credentials and/or scope of the dental employee or will be confused about the proficiency of the service provided."</i> (Letter #?)</p> <p><i>"I can tell you first hand our patients are going to be confused more than ever. They already have a hard time identifying the difference between what a hygienist and assistant does."</i> (Letter #12)</p> <p><i>"Even educated patients sometimes struggle with understanding the disease process of periodontal disease."</i> (Letter #13)</p>	<p>Lack of communication with the patient would be a cause for confusion regarding employees, or types of procedures, or who is the dentist, etc. While the patient may not be aware of the credentials of the employee, the patient/doctor relationship is built on trust. The Board believes that an overwhelming majority of dental team members follow high ethical standards which focus on benefiting the patient as their primary goal. Training will be in place for all expanded duties. There may be dentists who abuse the new rules; however those are the same dentists who would abuse auxiliary in other instances. Many dentists will not use the function, but it should be made available for practitioners who can and would incorporate it. Patients would benefit from having the care as opposed to no care at all.</p>
<p><i>"I found no scientific research that supports the practice of supragingival cleaning only to be beneficial treat for a patient's oral health."</i> (Letter #7)</p> <p><i>"Supra-gingival scaling has no evidence-based research that demonstrates a therapeutic benefit to the patient"</i> (Letter #2)</p> <p><i>"The one instance in which a dental assistant may be used is to perform prophys on children under age 12."</i> (Letter #1)</p>	<p>Scientific articles exist and speak favorably on the subject of supra gingival calculus removal.</p>
<p><i>"I am unable to think of any instance where strictly scaling supra gingivally would be beneficial to a patient's treatment."</i> (Letter #8)</p>	<p>Patients age 12 and under rarely have periodontal disease or require anything more than light scaling above the gumline. The Board collectively agrees that supragingival scaling could be delegated at no risk to patients. Other duties that dental assistants are currently authorized to do, such as removing excess cement from a crown, require similar technical skills. Cement is much more difficult to remove than light calculus above</p>

	<p>the gumline. The excess cement, if not properly removed could cause severe gum inflammation or a periodontal pocket. No complaints have been received by the Board regarding this procedure.</p>
<p>.... "I am concerned that allowing this function for those 12 and older will not be in the best interest of the public." (Letter #8)</p> <p>"Although I would prefer to see the function removed completely from the rules, I could see the dental assistant performing supra gingival scaling on children under the age of 12." (Letter #8, 11)</p> <p>"The only setting I can see where this could be advantageous (mostly to the dentist) is in a pediatric dental office and/or an orthodontic office. It would allow a dental assistant to remove the small deposits of calculus we sometimes see on children. Again, I do not feel this would have any impact on the access to care problem we have." (Letter #3)</p>	<p>The language of "12 years and under" was suggested in numerous comments from hygienists. Although the board disagrees that a specific age limit is a determining factor where a diagnosis and oral hygiene treatment plan are concerned, the consensus was it would be better to have the age level rather than restrict the duty in some other way. The Board collectively adopting language restricting the age limit to 12 and under.</p> <p>Limiting the expanded duty to a specialty such as pedodontics or orthodontics would be an unfortunate disadvantage to rural practice settings or underserved practice settings as specialists are found in locations of higher populations.</p>
<p>"The supra gingival dental assisting function contradicts the Board Mission statement to protect the public. Oral health literacy in our nation is low. How can we expect patient and their parents/guardians to understand the difference between supra Subgingival scaling and make appropriate decisions regarding care when we perpetuate less than thorough care?" (Letter #5)</p> <p>[September 18, 2014 meeting; Board moved to amend as underlined]</p>	<p>Board member, Cathy Cornell, RDH, stated that she has been providing hygiene care for 40 years and felt strongly against the measure. Ms. Cornell stated that "<u>It is not cost effective for a dentist to provide a prophylaxis; this is what happens in rural areas. Even children can get subgingival calculus. The Board is not preventing disease they are perpetuating promoting the disease. In the last forty years dentistry has enabled better oral health through prevention; I do not feel that this is preventive dentistry.</u>"</p> <p>As is the case with many duties that hygienists and assistants are authorized to carry out, educating patients is not exclusive to the dental hygienist. Other Board</p>

	<p>members commented that: <i>“the expanded duty will require training and proof of competency. Assistants provide other services which include use of slow speed handpieces. Therefore this discussion is an example of the hygienists protecting their turf. Dental assistants can be trained adequately.”</i></p> <p>and</p> <p><i>“Ultimately the responsibility of the dentist is to determine a treatment plan. Often times hygiene treatment planning is left to the hygienist; the hygienist begins the procedures without the dentists preview. This is acceptable because of the confidence in the hygiene practitioner’s education and training. Perhaps the measure would be more palatable if the duty had an age restriction attached”.</i></p> <p>The Board assumes that dentists presently direct competent dental auxiliary to provide statute-authorized care for their patients and that the practitioner has at a minimum explained such procedures to the patient. To suggest that an assistant providing supra gingival calculus removal to a patient means the providing substandard care is erroneous.</p>
<p><i>“There is potential for the expanded function to be abused.” (Letter #6)</i></p> <p><i>“Even if this supra gingival scaling is performed with the intention of having a hygienist then perform subgingival scaling, and I am not sure that is the intent, this is a blatant abuse of dental hygienists” (Letter #7)</i></p>	<p>Potential for abuse, unethical behavior or violations occur in every occupation and at any level of expertise. Even so, over-all compliance with statutorily allowed delegation of duties has been high in our state. The Board finds no reason to anticipate licensees will increasingly fail to comply with new law or rule modifications related to duties of dental auxiliary at levels in excess of what may have previously occurred.</p>
<p><i>“Dental assistants are already in short supply in many areas of the state, why would we expand their functions to duties</i></p>	<p>Some areas of the state have job vacancies for hygienists and dental</p>

that we already have other professionals trained to do? Allowing dental hygienists to practice to the full extent of their education and training can create practice efficiencies.” (Letter #5)

“The United States is graduating the highest number of dental hygienists ever through an increase in the number of dental hygiene programs and class sizes these past many years. It would be hard to believe that the reason North Dakota is considered having scaling assistant is over a shortage of dental assistants.” (Letter #4)

“According to the job posting site, <http://www.jobshq.com/search/keyword/dental%20hygienist/>, on July 31st, there are currently nine open positions for dental assistants, and no job openings for dental hygienists. This also would lead me to believe that dentists are presently looking for the current skill set the assistants can provide and are not in need of additional scaling and preventative measures that a licensed dental hygienist can provide.” (Letter #14)

assistants because of less desirable geographic locations. The driving economic factor is often location. Expanding the functions of all auxiliary offers the opportunity to enhance the efficiency of all dental offices and may therefore provide cost saving measures which could be passed along to the consumer. Cost savings has potential to make dental care more accessible for under insured and underserved patient populations. Many dental hygiene and dental assisting duties overlap; the precise scope of practice being established by the level of training.

The Board has been made aware of many rural dentists who struggle to find trained auxiliary. Therefore the Board is collectively in favor of the expanded functions to educate and train existing dental staff to their fullest capacity. The measure seems less likely to benefit the larger cities where hygienists are more abundant. The measure is far more likely to make a difference in rural settings or underserved areas.

The subject of the employment of dental hygienists and abundance of dental hygienists ~~assistants~~ came up in several comments received by the Board; this being brought to the Board's attention as a reason to limit the dental assistants' scope of practice.

The Board recognizes that there are no assurances that an individual will find, keep or secure employment once registered or licensed. Jobs for dentists, dental hygiene and dental assisting ebb and flow. Other reasons for dental hygiene unemployment may be that hygienists are unaware of career options in nontraditional doctor-patient settings and dental hygienists are not being utilized to their full potential by public health, nursing homes, assisted living,

		<p>public school settings. Infrastructure and funding may likely be the core of the issue. Statistically, the numbers of registered dental assistants, hygienists and dentists has never been higher. The Board's Mission is to protect the public, there is no mention of protecting the job security of one profession over another profession.</p> <p>"The measure would also be helpful to pediatric dentists who care for a significant number of Medicaid patients. These rules changes do not mean that a dental assistant could provide the service the next day. Appropriate training would be required. The same is true for any other expanded duties."</p> <p>The access issue will not be resolved by instituting a single measure. The Board has taken several measures.</p>
<p><i>"It was not unusual to be confronted with the scaling and prophylaxis dilemma of a patient who had not had a thorough scaling of the mouth. Patients would present claiming they had been having their teeth cleaned every six months, yet they had significant amounts of subgingival calculus, inflammation and pockets present. Patients were often upset that their teeth had not been thoroughly cleaned and that they had thought otherwise."</i> (Letter #5)</p>		<p>The commentator assumes or would like the NDSBDE to believe that in these instances of sub standard care that a dental assistant was providing the care. It is far more likely that it was a hygienist providing the care who was not properly supervised or was unable to please the patient and clean below the gumline at the same time. Many patients will opt for the "hygienist with the gentle touch".</p>
<p><i>"The NDDHA is concerned that this proposed rule conflicts with Chapter 43-20-03 of the North Dakota Century Code."</i> (Letter #9)</p>		<p>The Attorney General's Office has reviewed the document and finds no conflict.</p>
<p><i>"First, there was a bill on the ND legislature concerning mid-level providers which all of you and the North Dakota Dental Association opposed. In my opinion, the board has voted to do just that with a dental assistant; establish a new mid-level provider. I know the argument is that it is under direct supervision. Explain that to a legislature who is inclined to vote to allow a mid-level provider. We have weakened our position and argument, when the board has done this on a smaller scale with the dental assistant."</i> (Letter #10)</p>		<p>The NDSBDE has provided testimony before Committees suggesting the registered dental hygienist is a mid-level provider. A hygienist may deliver direct patient care under levels of supervision that do not apply to a dental assistant. Potential practice settings and authorized duties reflect</p>

education and training, also beyond the scope of a dental assistant. The patient care does not include surgical procedures. The board has no reason to believe that adding expanded functions authorized under direct supervision will have a negative impact on either profession, rather the opposite as has been the case each time the scope of practice has been revised.

Comments IN FAVOR of Proposed Administrative Rule 20-03-01-01.1(2)

Comments were also submitted in favor of the amendment. Among these were comments from dental assistants and public supporters as well as detailed justification for support from a pediatric dentist, an educator, and a person who provides residential support to individuals with disabilities. Comments in support were also submitted from two national entities, the American Association of Dental Assistants (ADAA) and the Dental Assisting National Board (DANB). The ADAA commented that dental assisting professionals can help to serve the increasing demand for quality dental care while still providing top level professional dentistry as states begin to recognize and encourage expanded function dental assistants. Dr. Lauf thanked all those who commented. Board members did not refute any comments made in favor of the supragingival scaling amendment.

Moved and seconded to amend the motion by adding the words "on a patient that is 12 years of age or less". A roll call vote was taken to amend the motion. Vote: Malaktaris, yes; Cornell, no; Mehlhoff, yes; Brewster, yes; Evanoff, yes; Lauf, yes; Motion carried 5/1.

A roll call vote was taken to adopt the amended motion "a registered dental assistant authorized by permit and under the direct supervision of a dentist may perform supragingival scaling duties to a patient 12 years of age or less." Discussion; the impact of delegation on practice productivity and efficiency are substantial in regard to other duties that have been delegated. Similarly, delegating specific procedures/duties to either dental assistants or dental hygienists will have an important effect on the general population of the dental consumers which would include low income, vulnerable, and Medicaid patients. The measure meets the criteria as put forth by the Board's mission. Both general practitioners in rural or more populated areas would benefit. Dr. Lauf called the question: Roll call vote: Malaktaris, yes; Cornell, no; Mehlhoff, yes; Evanoff, yes; Brewster, yes; Lauf, yes. Motion carried 5/1.

Adjournment: Hearing no further business the meeting was adjourned at 7:35 PM, August 6, 2014.



Respectfully submitted, Rita Sommers, Executive Director, NDSBDE

Tim Mehlhoff, Secretary – Treasurer, NDSBDE



North Dakota State Board of Dental Examiners

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Minutes

Special Meeting via Teleconference

April 2, 2014

The North Dakota Board of Dental Examiners convened via teleconference to consider comments and views regarding the final adoption of changes, amendments and repeal to Title 20 of the North Dakota Administrative rules. The meeting was called to order at 5:38 PM, April 2, 2014 by Rob Lauf, DDS, President of the Board of Dental Examiners.

NDSBDE Members and Staff Present via Telephone

Rob Lauf, DDS, President; Dale Brewster, DDS, President-Elect; Greg Evanoff, DDS;
Cathy Cornell, RDH; Tony Malaktaris, DDS; Nate Martindale, Assistant Attorney General;
and Rita Sommers, Executive Director

Others in Attendance

Kathy Landsberg, (DANB); Kathy Mangskau, RDH, MPH; Carla Schneider, CDA, RDA; Marsha Krumm, CDA, RDA; Tyler Winer, CDA, RDA, LDA (NDDAA); Rachelle Gustafson, RDH (NDDHA); Brent Holman, DDS (NDDA)

1. Comments were received from Tyler Winter, President of the ND Dental Assistants' Association, who spoke in favor of expanded functions for Registered Dental Assistants and requested that the Board consider adding language expanding further the duty of restorative expanded functions to include the placement, contour and adjust/polish of a Class II restoration. The Board had considered the CI II function at a previous meeting and reiterated concern for the difficulty of the procedure.

Mr. Winter also spoke in favor of the EFDA (expanded function dental assistant) model and services that could be billed for the EFDA services. The Board commented that under proposed rule, an EFDA would be required to work under direct supervision because of the nature of the expanded functions, i.e. restorative or anesthesia duties; regarding billable services, the Board does not have jurisdiction over payment for dental services.

Mr. Winter proposed adding language which would enable dental assistants to work in community settings providing outreach to vulnerable populations by conducting basic screenings, oral hygiene instruction, case management, fluoride varnish, and linkage to a dental home. The Board responded favorably, pointing out that under current statute a dental assistant is not prohibited from providing oral hygiene instruction, case management; the administrative functions and basic duties fall in line with the ADA's definition of the *Community Dental Health Coordinator*. The duty of application of fluoride varnish under general supervision is provided for in NDCC 43-28-02(6). The Board commented that proposed rules introduce language which would provide not only a broader scope of practice, but a broader range of supervision requirements for the dental assistant.

Mr. Winter also requested for the sake of greater access to dental care that the Board consider adding language allowing a registered dental assistant to provide supragingival scaling. Board member Cathy Cornell, RDH, spoke against the proposal as a measure of protecting the public. Dr. Malaktaris suggested consideration of an age limit for the procedure. Kansas is currently the only state allowing supragingival scaling. No action was taken.

2. Comments were received from Dana Schmit, RDH, President of the North Dakota Dental Hygienists' Association. Ms. Schmit requested the Board conduct a study on the EFDA to help clarify what is working and what could be improved and stated the study would be useful to other states. Dr. Lauf having financial concerns over the process of conducting a study spoke against the proposal. Dr.

Malaktaris added that studies have been conducted regarding the proposed expanded functions auxiliary including therapists. Based on results of the information, the Board determined that in the interest of public safety, efficacy and which can impact the delivery of care in the most timely fashion, creating avenues that would maximize the capabilities of existing practitioners dental licensees within the state is in the best interest of the public.

Ms. Schmit was also concerned about the proximity of expanded function training programs and the need for licensees to travel to their locations. No evidence supporting that a hardship would be incurred by students attending continuing education in locations outside ND was presented for dental assistants or other dental practitioners. The ND State College of Science which has addressed needs related to education of dental auxiliary for adjunctive dental procedures in the past is aware of the Board's proposed amendments. Dr. Lauf added NDSCS could move forward subsequent to the adoption of the proposed rules.

Ms. Schmit spoke favorably regarding the nitrous oxide issue.

Ms. Schmit requested the Board reconsider allowing the RDH to administer local anesthesia to a patient under the age of 18. Previous minutes of the NDSBDE reflect the support of such a measure; however the amendment would require change of statute rather than of administrative rule. Change of statute is not being considered at this time.

Ms. Schmit requested further clarification regarding use of the high-speed hand piece and also spoke against a dental assistant providing the duty of supragingival scaling. No action taken.

3. Comments were received from Kathryn Dockter, BSDH, MS, Chair, Allied Dental Education, North Dakota State College of Science. Ms. Dockter stated that the NDSCS will work with the Board to acquire courses that would accommodate regulations. CODA (Commission on Dental Accreditation which accredits dental schools as well as advanced dental education programs and allied dental education programs in the United States) accredited programs are required to provide the education within the curriculum or by way of continuing education related to some expanded function procedures. Ms. Dockter suggested that candidates should have practical experience in an office for two years prior to the education. Marsh Krumm, Past President of the North Dakota Dental Assistants' Association supported the suggestion for practical experience prior to admittance into an advanced education/training program.
4. Comments were received from Carla Schneider, CDA, RDA, in favor of expanded functions for dental auxiliary including supragingival scaling and requested the Board consider modifying the supervision level for specific dental assisting duties. Ms. Schneider also requested in addition to the current requirements, more continuing education hours related to the expanded function of the auxiliary should be added. The Board noted that the substance of the total CE hours required would differ depending on the endorsements of the permit holder. For example a dentist with a sedation permit must have 4 hours of CE that pertains to sedation within the total required hours. The same would be true for a dental assistant or hygienist who obtains an endorsement for anesthesia or restorative duties. Cathy Cornell, RDH expressed concern regarding the supervision level requested for a dental assistant to remove sutures (general supervision).
5. Brent Holman, DDS, Past President of the North Dakota Dental Association spoke in support of the proposed amendments that would allow registered dental assistants and hygienists to work in schools and other community settings. Dr. Holman stated that the amendments are a key part of the infrastructure required to authorize auxiliary to health care settings to reach Medicaid and other vulnerable populations while conducting basic oral assessments, hygiene instruction, case management, fluoride varnish, sealants and linkage to a dental home. The "outreach" concept is a variation on the CDHC (ADA's Community Dental Health Coordinator). Dr. Holman noted that case

management has been shown to be effective and stressed the need to utilize the current workforce.

The Board concurred that such a project, especially in the ND rural areas has potential to demonstrate cost efficiency and protect the public in contrast to options initiated in neighboring states. Dr. Holman also noted that in addition to the importance of the use of the existing infrastructure, direct reimbursement would be a key factor in constructing a financially feasible proposed model.

6. Cynthia Durley, M.Ed., MBA, Executive Director of the Dental Assisting National Board (DANB) submitted a written comment in support of proposed amendments that would permit RDA's to perform specified restorative functions under the direct supervision of a dentist. DANB expressed its strong support for the use of independent third party examinations such as the WREB clinical exam; DANB offers the written restorative functions exam. Bismarck and Fargo have test centers for the computerized exam. Results are sent directly to the Board. Katherine Landsberg, Assistant Director of Government Relations also representing DANB commented in favor of the amendments..

No further comments were received by the NDSBDE. Moved and seconded to adjourn the meeting and revisit the amendments and deliberate on any new language proposed from comments provided to the Board at the public hearing March 12th, 2014. A roll call vote was taken. All voted in favor of the motion. The meeting was adjourned at 6:53 p.m.

Respectfully submitted by Rita Sommers, Executive Director