

Testimony presented to the ADMINISTRATIVE RULES COMMITTEE
Rita Sommers, Executive Director, NDSBDE
Friday, March 6, 2015
Prairie Room, State Capitol Bismarck, North Dakota

Chairman Devlin and Members of the 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.

In response to your February 20, 2015 email I offer the following:

1. These rules amendments were not a result of statutory changes made by the Legislative Assembly.
2. The rules are not related to any federal statute or regulation.
3. Rule making 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 four 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. A copy of a letter dated February 20, 2015 to Representative Devlin contains a timeline and is attached to this testimony as Exhibit A.

4. Attached is a copy of the comments and the response from the ND Board of Dental Examiners; Exhibit B. All comments addressed expanded functions of the dental assistant. Supragingival scaling was the issue in every comment submitted in opposition.
5. The approximate cost of giving public notice and holding hearings was \$4100.

6. EXPLANATION OF SUBJECT MATTER OF THE PROPOSED RULE:

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.”

The content and structure of Title 20 has reorganized 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 can briefly summarize.

CHAPTER 20-01-02

Pages 4, 5, 6, 7

20-01-02-01. Definitions.

13. "Contiguous supervision" means that the supervising oral and maxillofacial surgeon whose patient is being treated and has personally authorized the procedures to be performed. The supervising oral surgeon is continuously on-site and physically present in the treatment facility while the procedures are performed by the dental anesthesia

auxiliary and capable of responding immediately in the event of an emergency. The term does not require a supervising dentist to be physically present in the operatory.

18. "Direct visual supervision" means supervision by an oral and maxillofacial surgeon by verbal command and under direct line of sight.

25. "Oral assessment" means the evaluation of data pertaining to the patient's condition to help identify dental problems leading to a professional treatment plan. The final diagnosis of disease or treatment plan is the sole responsibility of the supervising or collaborative dentist.

2326. "Oral hygiene treatment planning" means the process of assessing and determining, by the dentist and the hygienist, the services the dental hygienist will perform, including preventative, educational, and instrumentation. This treatment plan is an organized sequence of events that is a part of the dentist's total treatment plan. The total treatment plan and diagnosis are to be determined by the dentist is a component of a comprehensive treatment plan developed by the hygienist or dentist to provide the hygienist a framework for addressing the preventative, educational, and clinical treatment needs of the patient.

30. "Supragingival scaling" means to remove hard deposits and accretions from the coronal surfaces of teeth or tooth replacements.

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 8

GENERAL REQUIREMENTS

20-02-01-01. Advertising.

3. A dentist engaged in general practice who wishes to announce the services available in the dentist's practice is permitted to announce the availability of those services as long as the dentist avoids using language that expresses or implies that the dentist is a specialist. If a dentist, other than a specialist, wishes to advertise a limitation of practice, such advertisement must state that the limited practice is being conducted by a general dentist. A dentist who is a specialist may announce the dentist's ~~specialization~~ bona fide specialty provided that the dentist has successfully completed an educational program accredited by the commission on

accreditation of dental and dental auxiliary educational programs, two or more years in length, as specified by the commission on dental accreditation of the American dental association or be a diplomate of a nationally recognized certifying board. Such a dentist may announce that the dentist's practice is limited to the special area of dental practice in which the dentist has or wishes to announce.

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

Pages 9 - 10

20-02-01-03. Nitrous oxide.

2. A dentist who induces a patient into a state of psychosedation or relative analgesia using nitrous oxide shall ensure that the patient will be continually and personally monitored by a dentist. A dentist may delegate the monitoring tasks to a licensed dental hygienist or a registered dental assistant utilizing ~~direct~~ indirect supervision only after the patient has been stabilized at the desired level of conscious sedation or relative analgesia by the action of the dentist. The licensed dental hygienist or registered dental assistant who is assigned the monitoring task shall remain in the treatment room with the patient at all times. A dental hygienist or a dental assistant may not initiate the administration of nitrous oxide to a patient. A

dental hygienist or a registered dental assistant may terminate or reduce the amount of nitrous oxide previously administered by the dentist.

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.

Pages 10

20-02-01-03.1. Additional requirements for licensure by examination. The board may grant a license to practice dentistry to an applicant who has met the requirements of North Dakota Century Code section 43-28-10.1 and all the following requirements:

1. The applicant has passed the examination administered by the joint commission on national dental examinations examiners or the national dental examining board of Canada within five years of application.
2. The applicant has passed, within five years of application, a clinical competency examination. Required components shall include a patient-based periodontal component, a patient-based restorative component, an endodontic component, administered by one or more of the following:
 - a. Central regional dental testing service.
 - b. Council of interstate testing agencies.
 - c. Northeast regional examining board ~~of dental examiners, except after December 31, 2009, the examination approved by the American board of dental examiners.~~

- d. Southern regional testing agency, ~~except the applicant must pass the periodontal part of an examination administered by another approved regional dental testing service.~~
 - e. Western regional examining board.
3. The applicant has successfully completed a cardiopulmonary resuscitation course within two years of application.
 4. The applicant has the physical health and visual acuity to enable the applicant to meet the minimum standards of professional competence.

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 11

20-02-01-03.3. Additional requirements for applications. Applications must be completed within six months of filing. The board may require an interview with the applicant. In addition to the application requirements of North Dakota Century Code sections 43-28-11 and 43-28-17, the board may require an application to include:

1. Proof of identity, including any name change.
2. An official transcript sent by an accredited dental school directly to the board.
3. Evidence demonstrating the applicant passed the examination administered by the joint commission on national dental examinations within five years of application.
4. Evidence demonstrating the applicant passed a clinical competency examination, approved by the board, within five years of application.

5. ~~An interview by the board.~~
6. Anything necessary for a criminal history record check pursuant to North Dakota Century Code section 43-28-11.2.
- ~~7. 6.~~ A certification, from the licensing board of every jurisdiction in which the applicant is licensed, that the applicant is licensed in good standing.
- ~~8. 7.~~ Certification that the applicant has completed a cardiopulmonary resuscitation course within two years of application.
- ~~9. 8.~~ Verification of physical health and visual acuity.
- ~~10. 9.~~ For applications for licensure by credential review, the law and rules stating the requirements for licensure, when the applicant was licensed, of the jurisdiction in which the applicant is licensed.
- ~~11. 10.~~ For applications for licensure by credential review and reinstatement from inactive status, proof of completion of thirty-two hours of continuing education in accordance with section 20-02-01-06 within two years of application.
- ~~12. 11.~~ Any information required by the application forms prescribed by the board.

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

Pages 12 - 13

20-02-01-04. Temporary license to practice dentistry. The board may grant a nonrenewable temporary license to practice dentistry in the state of North Dakota for a period not to exceed one year. The

~~temporary license will be issued only for special purposes that are unique and cannot be satisfied by the normal means to licensure.~~ Between meetings of the board, the executive director of the board may review the temporary license application and grant a provisional license if all requirements are met.

1. A temporary license to practice dentistry in North Dakota may be granted to a dentist when the dentist:
 - a. Has applied to the board as prescribed in North Dakota Century Code section 43-28-11.
 - b. Has paid the nonrefundable application and license fee that may be prescribed by the board.
 - c. Holds an active dental license in another jurisdiction, has been a full-time student or resident of a dental program accredited by the American dental association's commission on dental accreditation within the last six months, or has held a North Dakota dental license within the previous five years.
 - d. Has provided a statement from the licensing authority of all the states in which the dentist is licensed that the dentist's license is unencumbered, unrestricted, and that the dentist's professional record is free of blemish for professional misconduct, substandard care, or violations of the state's practice act.
 - e. Has certified that no disciplinary actions are pending in other states or jurisdictions.
 - f. Has authorized the board to seek information concerning the dentist's professional and personal background and agrees to hold harmless those individuals who may provide such information to the board.
2. The board may apply such restrictions as it deems appropriate to limit the scope of the practice of dentistry under the authority of the temporary license.

3. The board may restrict the licensee to engage in dental practice, as may be limited above, only at certain and specifically defined practice locations.
4. The board may require the North Dakota jurisprudence examination.

Pages 13 - 14

20-02-01-04.2. Volunteer license to practice dentistry. A patient who is seen by a dentist who holds a volunteer license to practice dentistry shall not be considered a patient of record of the volunteer dentist. The dentist is not obligated to treat the patient outside of the volunteer practice setting. Between meetings of the board, the executive director of the board may review the volunteer license application and grant a provisional license if all the requirements are met. The board may grant a A volunteer license to practice dentistry in North Dakota, renewable annually by application to the board, may be granted when the following conditions are met:

1. The applicant was formerly licensed and actively practicing in the state of North Dakota or another jurisdiction for at least three of the five years immediately preceding application, where the requirements are at least substantially equivalent to those of this state; or
 - a. the applicant is the resident of a board approved specialty program; or
 - b. the board determines that the applicant is qualified and satisfies the criteria specified under 43-28-10.1. and is in good standing with the board.
2. The applicant agrees to provide primary health services without remuneration in a board-approved setting.
3. The applicant holds a current cardiopulmonary resuscitation course certification.
4. The applicant has completed continuing education requirements of the board.

5. The applicant has made application for a volunteer dental license in a manner prescribed by the board.
6. The board may collect from the applicant ~~has paid~~ the nonrefundable application and license fee prescribed by the board.
7. The board may apply such restrictions as it deems appropriate to limit the scope of the practice of dentistry under the authority of the volunteer license.

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 14

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

1. The rules in this chapter are adopted for the purpose of defining standards for the administration of anesthesia by dentists. The standards specified in this chapter shall apply equally to general anesthesia, deep sedation, moderate (conscious) sedation, or a combination of any of these with inhalation, but do not apply to sedation administered through inhalation alone. A dentist licensed under North Dakota Century Code chapter 43-28 and practicing in North Dakota may not use any form of sedation if the intent is

beyond anxiolysis on any patient unless such dentist has a permit, currently in effect, issued by the board, ~~initially for a period of twelve months~~ and renewable biennially thereafter, authorizing the use of such general anesthesia, deep sedation, moderate (conscious) sedation, or minimal sedation when used in combination with inhalation.

2. An applicant may not be issued a permit initially as required in subsection 1 unless:
 - a. The board of dental examiners approves the applicant's facility and any other facility, clinic, or mobile dental clinic where anesthesia services are provided after an inspection conducted by an individual or individuals designated by the dental examiners;
 - b. The board of dental examiners is satisfied that the applicant is in compliance with the American dental association's most recent policy statement: the use of sedation and general anesthesia by dentists;
 - c. The initial application includes payment of a fee in the amount determined by the dental examiners; and
 - d. If the application appears to be in order, the board may issue a temporary permit prior to the site evaluation. The temporary permit may be revoked if the applicant fails the site inspection or if the applicant fails to cooperate with the timely scheduling of the site inspection.

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 16

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

6. The board may audit the continuing education credits of a dentist. Each licensee shall maintain certificates or records of continuing education activities from the previous renewal cycle. Upon receiving notice of an audit from the board, a licensee shall provide satisfactory documentation of attendance at, or participation in the continuing education activities listed on the licensee's continuing education form. Failure to comply with the audit is grounds for nonrenewal of or disciplinary action against the license.

Summary: Audit of the dentists continuing education (CE) was repealed by S.L. in 2009

No Comment

Pages 16 - 17

20-02-01-08. Discontinuance of practice - Retirement - Discontinuance of treatment. These rules are adopted for the purpose of avoiding practice abandonment. A licensed dentist shall maintain patient records in a manner consistent with the protection of the welfare of the patient. Upon request of the patient or patient's legal guardian, the dentist shall furnish the dental records or copies of the records, including dental radiographs or copies of the radiographs. The dentist may charge a nominal fee for duplication of records as provided by North Dakota Century Code section 23-12-14, but may not refuse to transfer records for nonpayment of any fees.

1. A licensee, upon retirement, or upon discontinuation of the practice of dentistry, or upon moving from a community, shall notify all active patients in writing and by publication once a week for three consecutive weeks in a newspaper of general

circulation in the community that the licensee intends to discontinue the practice of dentistry. The licensee shall make reasonable arrangements with active patients for the transfer of patient records, or copies thereof, to the succeeding licensee. In the event of a transfer of patient records to another licensee assuming the practice, written notice must be furnished to all patients as hereinbefore specified. "Active patient" is defined as a person whom the licensee has examined, treated, cared for, or otherwise consulted with during the two-year period prior to the discontinuation of the practice of dentistry by the licensee. In the event of a nontransfer of records, a licensee shall have the ongoing obligation of not less than two years to afford the licensee's prior patients access to those records not previously provided to the patient.

2. In the event of termination of a dentist-patient relationship by a licensee, notice of the termination must be provided to the patient. A dentist-patient relationship exists if a dentist has provided treatment to a patient on at least one occasion within the preceding year. The dentist who is the owner or custodian of the patient's dental records shall mail notice of the termination of the dentist's relationship to the patient, which shall provide the following:
 - a. The date that the termination becomes effective, and the date on which the dentist and patient relationship may resume, if applicable;
 - b. A location at which the patient may receive emergency dental care for at least thirty days following the termination of the dentist and patient relationship;
 - c. A statement of further dental treatment required, if any; and
 - d. A means for the patient to obtain a copy of the patient's dental records. The dentist shall respond to a written request to examine or copy a patient's record

within ten working days after receipt. A dentist shall comply with section 23-12-14 for all patient record requests.

3. If a licensee dies or becomes unable to practice dentistry due to disability, for the purpose of selling or otherwise disposing of the deceased or disabled licensee's dental practice, a person who is not licensed to practice dentistry but who is the personal representative of the estate of a deceased dentist or the personal representative of a disabled dentist may contract with a dentist to manage the dental practice for a period not to exceed twenty-four months.
4. If a dentist agrees to provide dental care without remuneration to underserved patients in the absence of a public health setting, the patient may not be considered a patient of record of the dentist providing the donated dental service.

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.

Pages 17 - 19

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

1. The rules in this chapter are adopted for the purpose of defining standards for the administration of dermal fillers and botulinum toxin by a dentist if the use is limited to the practice of dentistry as defined in North Dakota Century Code section 43-28-01(7). Notwithstanding a dentist who specializes in oral and maxillofacial surgery, the board may issue a permit to a dentist who applies on forms prescribed by the board and pays the fee as required by section 20-05-01-01(1) to administer botulinum toxin or dermal fillers for the purpose of functional, therapeutic and aesthetic dental treatment purposes under the following conditions:

a. The dentist provides evidence that demonstrates:

1) The applicant has completed a course and received satisfactory training in a residency or other educational program accredited by the Commission on Dental Accreditation of the American Dental Association; or

2) The applicant has successfully completed a board-approved continuing education course of instruction within the previous three months of application which includes neurophysiology, including facial tissues, parasympathetic, sympathetic and peripheral nervous systems relative to peri-oral tissue, and facial architecture, and:

i) Patient assessment and consultation for Botox and dermal fillers;

- ii) Indications and contraindications for techniques;
- iii) Proper preparation and delivery techniques for desired outcomes;
- iv) Enhancing and finishing esthetic dentistry cases with dermal fillers;
- v) Botulinum neurotoxin treatment of temporomandibular joint syndrome and bruxism;
- vi) Knowledge of adverse reactions and management and treatment of possible complications;
- vii) Patient evaluation for best esthetic and therapeutic outcomes;
- viii) Integrating botulinum neurotoxin and dermal filler therapy into dental therapeutic and esthetic treatment plans; and
- ix) Live patient hands-on training including diagnosis, treatment planning, and proper dosing and delivery of Botox and dermal fillers.

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 20 - 25

20-03-01-01. Duties. A dental assistant may perform the duties listed in subsections 1 through 5 under direct, indirect or general supervision of a dentist as follows: ~~A qualified dental assistant may perform duties set forth in subsections 1 through 7 under direct supervision of a dentist. A registered dental assistant may perform the duties set forth in subsections 1 through 24 under indirect supervision of a dentist. A registered dental assistant may perform duties set forth in subsections 25 through 31 under direct supervision of a dentist. A registered dental assistant may perform duties set forth in subsections 32 and 33 under general supervision of a dentist.~~

1. ~~Take and record pulse, blood pressure, and temperature.~~
2. ~~Take and record preliminary dental and medical history for the interpretation by the dentist.~~
3. ~~Apply topical medications and drugs to oral tissues, including topical anesthetic, but not including desensitizing or caustic agents or anticariogenic agents.~~
4. ~~Receive removable dental prosthesis for cleaning or repair.~~
5. ~~Take impressions for study casts.~~
6. ~~Hold impression trays in the mouth (e.g., reversible hydrocolloids, rubber base).~~
7. ~~Take dental radiographs.~~
8. ~~Apply anticariogenic agents topically.~~
9. ~~Apply desensitizing solutions to the external surfaces of the teeth.~~

- ~~10. Dry root canal with paper points.~~
- ~~11. Place and remove rubber dams.~~
- ~~12. Take occlusal bite registration for study casts.~~
- ~~13. Place retraction cord in the gingival sulcus of a prepared tooth prior to the dentist taking an impression of the tooth.~~
- ~~14. Remove excess cement from inlays, crowns, bridges, and orthodontic appliances with hand instruments only.~~
- ~~15. Perform nonsurgical clinical and laboratory oral diagnosis tests, including pulp testing, for interpretation by the dentist.~~
- ~~16. Apply pit and fissure sealants if the registered dental assistant has provided documentation of a board-approved sealant course. Adjust sealants with slow-speed handpiece.~~
- ~~17. Polish the coronal surfaces of the teeth with a rubber cup or brush only after necessary scaling by a hygienist or dentist.~~
- ~~18. Polish restorations.~~
- ~~19. Place and remove periodontal dressings, dry socket medications, and packing.~~
- ~~20. Remove sutures.~~
- ~~21. Monitor a patient who has been inducted by a dentist into nitrous oxide relative analgesia.~~
- ~~22. Take impressions for fixed or removable orthodontic appliances, athletic mouth guards, bleaching trays, bite splints, flippers, and removable prosthetic repairs.~~
- ~~23. Preselect and prefit orthodontic bands.~~
- ~~24. Place, tie, and remove ligature wires and elastic ties, and place orthodontic separators.~~
- ~~25. Place and remove arch wires or appliances that have been activated by a dentist.~~

- ~~26. Acid etch enamel surfaces prior to direct bonding of orthodontic brackets or composite restorations.~~
- ~~27. Place orthodontic brackets using an indirect bonding technique by seating the transfer tray loaded with brackets previously positioned in the dental laboratory by a licensed dentist.~~
- ~~28. Take face bow transfers.~~
- ~~29. Place and remove matrix bands and wedges.~~
- ~~30. Adjust permanent crowns outside of the mouth.~~
- ~~31. Orally transmit a prescription that has been authorized by the supervising dentist.~~
- ~~32. Fabricate, adjust, place, recement, or remove a temporary crown, bridge, or onlay or temporary restorative material. This applies only to dentitions actively under treatment for which a permanent restoration is being fabricated.~~
- ~~33. Cut and remove arch wires or replace loose bands, loose brackets, or other orthodontic appliances for palliative treatment.~~

1. A dental assistant who is not registered with the board employed by a dentist may perform the following duties under direct supervision:

- a. Take and record pulse, blood pressure, and temperature.
- b. Take and record preliminary dental and medical history for the interpretation by the dentist.
- c. Apply topical medications and drugs to oral tissues, including topical anesthetic, but not including desensitizing or caustic agents or anticariogenic agents.
- d. Receive removable dental prosthesis for cleaning or repair.
- e. Take impressions for study casts.

- f. Hold impression trays in the mouth (e.g., reversible hydrocolloids, rubber base).
2. A qualified dental assistant may perform the duties set forth in subsection 1 and take dental radiographs under the direct supervision of a dentist.
3. A registered dental assistant may perform the duties set forth in subsection 2 and the following duties under the direct supervision of a dentist:
- a. Place and remove arch wires or appliances that have been activated by a dentist.
 - b. Acid etch enamel surfaces prior to direct bonding of orthodontic brackets or composite restorations.
 - c. Place orthodontic brackets using an indirect bonding technique by seating the transfer tray loaded with brackets previously positioned in the dental laboratory by a licensed dentist.
 - d. Take face bow transfers.
 - e. Place and remove matrix bands and wedges.
 - f. Adjust permanent crowns outside of the mouth.
 - g. Orally transmit a prescription that has been authorized by the supervising dentist.
 - h. Administer emergency medications to a patient in order to assist the dentist in an emergency.
4. A registered dental assistant may perform the following duties under the direct or indirect supervision of a dentist:
- a. Apply anticariogenic agents topically.
 - b. Apply desensitizing solutions to the external surfaces of the teeth.

- c. Dry root canal with paper points.
- d. Place and remove rubber dams.
- e. Take occlusal bite registration for study casts.
- f. Place retraction cord in the gingival sulcus of a prepared tooth prior to the dentist taking an impression of the tooth.
- g. Remove excess cement from inlays, crowns, bridges, and orthodontic appliances with hand instruments only.
- h. Perform nonsurgical clinical and laboratory oral diagnosis tests, including pulp testing, for interpretation by the dentist.

MOVE THESE TO SECTION 5

i. Apply pit and fissure sealants if the registered dental assistant has provided documentation of a board approved sealant course. Adjust sealants with slow speed handpiece.

j. Polish the coronal surfaces of the teeth with a rubber cup or brush.

k. Polish restorations with a slow speed handpiece.

- l. Place and remove periodontal dressings, dry socket medications, and packing.
- m. Monitor a patient who has been inducted by a dentist into nitrous oxide relative analgesia.
- n. Take impressions for fixed or removable orthodontic appliances, athletic mouth guards, bleaching trays, bite splints, flippers, and removable prosthetic repairs.
- o. Preselect and prefit orthodontic bands.
- p. Place, tie, and remove ligature wires and elastic ties, and place orthodontic separators.

5. A registered dental assistant may perform the following duties under the direct, indirect or general supervision of a dentist:

TYPO

- a. Take and record pulse, blood pressure, and ~~temperature~~ temperature.
- b. Take and record preliminary dental and medical history for the interpretation by the dentist.
- c. Apply topical medications and drugs to oral tissues, including topical anesthetic, but not including desensitizing or caustic agents or anticariogenic agents.
- d. Receive removable dental prosthesis for cleaning or repair.
- e. Take impressions or occlusal bite registrations for study casts.
- f. Fabricate, adjust, place, recement, or remove a temporary crown, bridge, or onlay or temporary restorative material. This applies only to dentitions actively under treatment for which a permanent restoration is being fabricated.
- g. Remove sutures.
- h. Cut and remove arch wires or replace loose bands, loose brackets, or other orthodontic appliances for palliative treatment.
- i. Provide oral hygiene education and instruction.
- j. Provide an oral assessment for interpretation by the dentist.
- k. Repack dry socket medication and packing for palliative treatment.

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.

Pages 25 - 26

20-03-01-01.1 Expanded duties of registered dental assistants. A registered dental assistant shall apply for a permit to perform the following duties:

1. A registered dental assistant under the direct supervision of a dentist may perform the following restorative functions:
 - a. Place, carve and adjust class I and class V supragingival amalgam or glass ionomer restorations with hand instruments or a slow speed handpiece; and
 - b. Adapt and cement stainless steel crowns;
 - c. Place, contour, and adjust class I and class V supragingival composite restorations where the margins are entirely within the enamel with hand instruments or a slow speed handpiece.
2. A registered dental assistant authorized by permit and under the direct supervision of a dentist may perform supragingival scaling duties ~~to~~for a patient ~~that~~who is at least twelve years of age or less.
3. A registered dental assistant authorized by permit and under the contiguous supervision of an oral and maxillofacial surgeon may provide anesthesia duties as follows:
 - a. Initiate and discontinue an intravenous line for a patient being prepared to receive intravenous medications, sedation, or general anesthesia; and

b. Adjust the rate of intravenous fluids infusion only to maintain or keep the line patent or open.

4. A registered dental assistant authorized by permit and under the direct visual supervision of an oral and maxillofacial surgeon shall provide anesthesia duties as follows:

a. Draw up and prepare medications;

b. Follow instructions to deliver medication into an intravenous line upon verbal command;

c. Adjust the rate of intravenous fluids infusion beyond a keep open rate;

d. Adjust an electronic device to provide medications, such as an infusion pump.

Comments from the North Dakota Dental Hygienists' Association: 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 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 26 - 27

20-03-01-01.2. Registered dental assistant in a public health setting. For the purposes of this section a public health setting shall include schools, nursing homes and long term care facilities, medical facilities, mobile dental health programs, Head Start programs and any other facilities or programs where Medicaid and other vulnerable populations are targeted. A registered dental assistant under the general supervision of a dentist and in a public health setting may perform the following duties:

1. Assist a dental hygienist who is performing services within the scope and supervision requirements as provided by 20-04-01.
2. Take and record pulse, blood pressure, and temperature.
3. Take and record preliminary dental and medical history for the interpretation by the dentist.
4. Apply topical medications and drugs to oral tissues, including topical anesthetic, but not including desensitizing or caustic agents or anticariogenic agents.
5. Receive removable dental prosthesis for cleaning or repair.

6. Take impressions for study casts.
7. Take occlusal bite registration for study casts.
8. Apply pit and fissure sealants if the registered dental assistant has provided documentation of a board approved sealant course. Adjust sealants with slow speed handpiece.
9. Polish the coronal surfaces of the teeth with a rubber cup or brush.
10. Polish restorations with a slow speed handpiece.
11. Place and remove periodontal dressings, dry socket medications, and packing.
12. Remove sutures.
13. Fabricate, adjust, place, recement, or remove a temporary crown, bridge, or onlay or temporary restorative material. This applies only to dentitions actively under treatment for which a permanent restoration is being fabricated.
14. Cut and remove arch wires or replace loose bands, loose brackets, or other orthodontic appliances for palliative treatment.
15. Provide oral hygiene education and instruction.
16. Provide an oral assessment for interpretation by the dentist.

~~17. Repack dry socket medication and packing for palliative treatment. / See # 11~~

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.

20-03-01-02. Prohibited services. A dental assistant, qualified dental assistant, or registered dental assistant may not perform the following services:

1. Diagnosis and treatment planning.
2. Surgery on hard or soft tissue.
3. Administer ~~or titrate~~ local anesthetics, sedation or general anesthesia drugs or titrate local anesthetics, sedation, or general anesthesia drugs without a board authorized permit.
4. Any irreversible dental procedure or procedures which require the professional judgment and skill of a licensed dentist.
5. ~~Placing a final restoration.~~
6. ~~Contouring a final restoration, excluding Adjust~~ a crown which has ~~not~~ been cemented by a dentist.
7. ~~6.~~ Activate Activating any type of orthodontic appliance.
8. ~~7.~~ Cementing or bonding orthodontic bands or brackets that have not been previously placed by a dentist.
9. ~~8.~~ Place ~~Placing~~ bases or cavity liners.
10. ~~9.~~ Subgingival scaling ~~Sealing~~, root planing, or gingival curettage.
11. ~~10.~~ Measure ~~Measuring~~ the gingival sulcus with a periodontal probe.
11. Use a high speed hand piece inside the mouth.

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.

20-03-01-05.1. Additional expanded duties of registered dental assistants. The board may grant a permit to a registered dental assistant for the following:

1. The board may issue or renew a permit authorizing a registered dental assistant to provide anesthesia assistance under the supervision of a dentist who specializes in oral and maxillofacial surgery, and meets the following requirements:

a. The applicant submits evidence on forms prescribed by the board that the applicant meets any of the following requirements:

(1) The applicant has completed a board approved dental anesthesia assistant education and training course within one year of application and has proof of current certification status from a board approved competency examination.

(2) The applicant has completed a board approved dental anesthesia assistant education and training course and has proof of current certification status from a board approved competency examination.

b. The applicant has successfully completed training in intravenous access or phlebotomy that includes experience starting and maintaining intravenous lines;

c. The applicant holds current and valid certification for health care provider basic life support, or advanced cardiac life support or pediatric advanced life support;
and

d. The applicant provides a copy of a valid North Dakota general anesthesia permit of the oral and maxillofacial surgeon where the registered dental assistant will be performing anesthesia assistant services.

2. The board may issue or renew a permit on forms prescribed by the board authorizing a registered dental assistant under the direct supervision of a dentist to provide restorative functions under the following conditions:

a. The applicant meets any of the following requirements:

(1) The applicant has successfully completed a board approved curriculum from a program accredited by the commission on dental accreditation of the American dental association or other board approved course and successfully passed the western regional examining board's restorative examination or other equivalent examinations approved by the board within the last five years, and successfully completed the restorative function component of the dental assisting national board's certified restorative functions dental assistant certification exam, or

(2) The applicant has successfully passed the western regional examining board's restorative examination or other board approved examination over five years from the date of application and successfully completed the restorative function component of the dental assisting national board's certified restorative functions dental assistant certification exam and provide evidence from another state or jurisdiction where the applicant legally is or was authorized to perform restorative functions and certification from the supervising dentist of successful completion of at least 25 restorative procedures within the immediate five years from the date of application.

- b. A registered dental assistant may perform the placement and finishing of direct alloy or direct composite restorations, under the direct supervision of a licensed dentist, after the supervising dentist has prepared the dentition for restoration.
- c. The restorative functions shall only be performed after the patient has given informed consent for the placement of the restoration by a restorative functions dental assistant.
- d. Before the patient is released, the final restorations shall be checked and documented by the supervising dentist.

3. The board may issue or renew a permit on forms prescribed by the board authorizing a registered dental assistant under the direct supervision of a dentist to provide supragingival scaling under the following conditions:

a. The applicant meets any of the following requirements:

(1) The applicant has successfully completed a board approved supragingival didactic and clinical training course and

successfully passed an examination approved by the board within one year of application. The board may require a competency examination.

(2) The applicant provides verification of successfully completed a supragingival scaling didactic and clinical training approved by the board and provides verification of continuous use in another jurisdiction during the past five years. The board may require a competency examination. Verification may consist of:

(a) A letter from the program with the school seal affixed.

Photocopies will not be accepted.

- (b) A notarized copy of the certificate of completion from the board approved course.
- (c) A notarized letter stating that the registered dental assistant has performed supragingival scaling within the last five years.
- (d) A notarized copy of the dental assisting program transcript with the supragingival course recorded.

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.

Each qualified or registered dental assistant shall provide evidence on forms supplied by the board that the qualified or registered dental assistant has attended or participated in continuing dental education in accordance with the following conditions:

1. Continuing education activities include publications, seminars, symposiums, lectures, college courses, and online education.
2. The continuing dental education hours will accumulate on the basis of one hour of credit for each hour spent in education. Subject matter directly related to clinical dentistry will be accepted by the board without limit.
3. The minimum number of hours required within a two-year cycle is sixteen. Of these hours, a qualified or registered dental assistant may earn no more than eight hours from publications and online education. The continuing education must include:
 - a. Two hours of ethics or jurisprudence. Passing the laws and rules examination is the equivalent of two hours of ethics or jurisprudence.
 - b. Two hours of infection control.
 - c. A cardiopulmonary resuscitation course.
 - d. For registered dental anesthesia assistant permitholders, two hours related to sedation or anesthesia.
 - e. For registered dental restorative assistant permitholders, two hours related to restorative dentistry.
4. Mere registration at a dental convention without specific attendance at continuing education presentations will not be creditable toward the continuing dental education requirement.
5. All qualified or registered dental assistants must hold a current cardiopulmonary resuscitation certificate.

6. The board may audit continuing education credits of a registered dental assistant. Proof of continuing education shall be maintained from the previous renewal cycle. Upon receiving notice of an audit from the board, a registered dental assistant shall provide satisfactory documentation of attendance at, or participation in, the continuing education activities listed on the licensee's continuing education form. Failure to comply with the audit is grounds for nonrenewal of or disciplinary action against the registration.

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 Comments

Pages 32 - 33

CHAPTER 20-04-01

20-04-01-01. Duties. A dental hygienist may perform the following services under the general, direct, or indirect supervision of a dentist:

1. Complete prophylaxis to include removal of accumulated matter, deposits, accretions, or stains from the natural and restored surfaces of exposed teeth. The dental hygienist may also do root planing and soft tissue curettage upon direct order of the dentist.
2. Polish and smooth existing restorations with a slow-speed handpiece.
3. Apply topical applications of drugs to the surface tissues of the mouth and to exposed surfaces of the teeth, including anticariogenic agents and desensitizing solutions.
4. Take impressions for study casts.
5. Take and record preliminary medical and dental histories for the

interpretation by the dentist.

6. Take and record pulse, blood pressure, and temperature.

7. Provide oral hygiene treatment planning after an oral assessment or dentist's diagnosis.

8. Take dental radiographs.

9. Apply therapeutic agents subgingivally for the treatment of periodontal disease.

10. Hold impression trays in the mouth after placement by a dentist (e.g., reversible hydrocolloids, rubber base, etc.).

11. Receive removable dental prosthesis for cleaning and repair.

12. Dry root canal with paper points.

13. Place and remove rubber dams.

14. Place and remove matrix bands or wedges.

15. Take occlusal bite registration for study casts.

16. Place retraction cord in the gingival sulcus of a prepared tooth prior to the dentist taking an impression of the tooth.

17. Fabricate, adjust, place, recement, or remove a temporary crown, bridge, onlay, or temporary restorative material. This applies only to dentitions actively under treatment for which a permanent restoration is being fabricated.

18. Adjust permanent crowns outside of the mouth.

19. Perform nonsurgical clinical and laboratory oral diagnostic tests for interpretation by the dentist.

20. Apply pit and fissure sealants. Adjust sealants with slow-speed handpiece.

21. Place and remove periodontal dressings, dry socket medications, and packing.

22. Remove sutures.
23. Monitor a patient who has been inducted by a dentist into nitrous-oxide relative analgesia.
24. Take impressions for fixed or removable orthodontic appliances, athletic mouth guards, bleaching trays, bite splints, flippers, and removable prosthetic repairs.
25. Preselect and prefit orthodontic bands.
26. Place, tie, and remove ligature wires and elastic ties, and place orthodontic separators.
27. Place and remove arch wires or appliances that have been activated by a dentist.
28. Cut and remove arch wires or replace loose bands, loose brackets, or other orthodontic appliances for palliative treatment.
29. Acid-etch enamel surfaces prior to pit and fissure sealants, direct bonding of orthodontic brackets, or composite restorations.
30. Place orthodontic brackets using an indirect bonding technique by seating the transfer tray loaded with brackets previously positioned in the dental laboratory by a dentist.
31. Take face bow transfers.
32. Orally transmit a prescription that has been authorized by the supervising dentist.
33. Repack dry socket medication and packing for palliative treatment.
34. Administer emergency medications to a patient in order to assist the dentist.
35. A dental hygienist authorized by the board under contiguous supervision of an oral and maxillofacial surgeon may:
 - a. Initiate and discontinue an intravenous line for a patient being prepared to receive intravenous medications, sedation or general anesthesia; and
 - b. Adjust the rate of intravenous fluids infusion only to maintain or keep the line patent or open.

36. A dental hygienist authorized by the board under direct visual supervision of an oral and maxillofacial surgeon may:

- a. Draw up and prepare medications;
- b. Follow instructions to deliver medication into an intravenous line upon verbal command;
- c. Adjust the rate of intravenous fluids infusion beyond a keep-open rate; and
- d. Adjust an electronic device to provide medications, such as an infusion pump.

37. A dental hygienist under the direct supervision of a dentist may:

- a. Place, carve, and adjust class I and class V supragingival amalgam or glass ionomer restorations with hand instruments or a slow-speed handpiece;
- b. Adapt and cement stainless steel crowns; and
- c. Place, contour, and adjust class I and class V supragingival composite restorations where the margins are entirely within the enamel with hand instruments or a slow-speed handpiece.

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

#7 Adds clarification and 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.

20-04-01-02. Prohibited services. A dental hygienist may not perform the following services:

1. Diagnosis and treatment planning.
2. Surgery on hard or soft tissue.

3. Administer ~~or titrate~~ anesthetics, except topical and local anesthetic, as permitted under sections 20-04-01-01 and 20-04-01-03, or titrate local anesthetics, sedation or general anesthesia drugs without a board authorized permit.

4. Any irreversible dental procedure or procedures which require the professional judgment and skill of a dentist.

5. ~~Place a final restoration.~~

6. ~~5. Contour a final restoration, excluding Adjust~~ a crown which has ~~not~~ been cemented by a dentist.

7. ~~6. Activating~~ Activate any type of orthodontic appliance.

8. ~~7. Cementing or bonding~~ Cement or bond orthodontic bands or brackets that have not been previously placed by a dentist.

9. ~~8. Placing~~ Place bases or cavity liners.

9. Use a high-speed handpiece inside the mouth.

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 35 - 37

20-04-01-03.1. Duties of the dental hygienist requiring a permit. The board may issue or renew a permit to a dental hygienist for the following:

1. The board may issue or renew a permit authorizing a dental hygienist to provide anesthesia assistance under the supervision of a dentist who specializes in oral and maxillofacial surgery, and meets the following requirements:

a. The applicant submits evidence on forms prescribed by the board that the applicant meets any of the following requirements:

(1) The applicant has completed a board-approved dental anesthesia assistant education and training course within one year of application and has proof of current certification status from a board-approved competency examination.

(2) The applicant has completed a board-approved dental anesthesia assistant education and training course and has proof of current certification status from a board-approved competency examination.

b. The applicant has successfully completed training in intravenous access or phlebotomy that includes experience starting and maintaining intravenous lines;

c. The applicant holds current and valid certification for health care provider basic life support, or advanced cardiac life support or pediatric advanced life support; and

d. The applicant provides a copy of a valid North Dakota general anesthesia permit of the oral and maxillofacial surgeon where the registered dental hygienist will be performing anesthesia assistant services.

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

No Comment

2. The board may issue or renew a permit on forms prescribed by the board to authorize a dental hygienist under the direct supervision of a dentist to provide restorative functions under the following conditions:

a. The applicant meets any of the following requirements:

(1) The applicant successfully completes a board-approved curriculum from a program accredited by the commission on dental accreditation of the American dental association or other board-approved course and successfully passed the western regional examining board's restorative examination or other equivalent examinations approved by the board within the last five years, and was successfully completed the restorative function component of the dental assisting national board's certified restorative functions dental assistant certification examination; or

(2) Successfully passed the western regional examining board's restorative examination or other board-approved examination over five years from the date of application and provides evidence from another state or jurisdiction where the applicant legally is or was authorized to perform restorative functions and certification from the supervising dentist of successful completion of at least twenty-five restorative procedures within the previous five years from the date of application.

b. A dental hygienist may perform the placement and finishing of direct alloy or direct composite restorations, under the direct supervision of a licensed dentist, after the supervising dentist has prepared the dentition for restoration.

c. The restorative functions shall only be performed after the patient has given informed consent for the placement of the restoration by a restorative functions dental hygienist.

d. Before the patient is released, the final restorations shall be checked and documented by the supervising dentist.

20-04-01-04.1. Clinical competency examination retakes. A dental hygiene applicant may take a clinical examination three times before remedial training is required. After failing the examination for a third time, and prior to the fourth attempt of the examination, an applicant shall:

1. Submit to the board a detailed plan for remedial training by an accredited dental hygiene school. The board must approve the proposed remedial training.
2. Submit proof to the board of passing the remedial training within twenty-four months of its approval by the board. The board may grant or deny a fourth attempt of the clinical examination. A fourth attempt must occur within twelve months of the date of the board's decision. If an applicant fails any part of the examination after remedial training, the board must approve additional retakes.

Summary: Three consecutive failures of a clinical licensure examination happen 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 37 - 38

20-04-01-06. Additional requirements for applications. Applications must be completed within twelve months of filing. The board may require an interview with the applicant. In addition to the application requirements of North Dakota Century Code sections 43-20-01.2, 43-20-01.3, and 43-20-06, the board may require an application to include:

1. Proof of identity, including any name change.
2. An official transcript sent by an accredited dental school directly to the board.

3. Evidence demonstrating the applicant passed the examination administered by the joint commission on national dental examinations within two years of application.
4. Evidence demonstrating the applicant passed a clinical competency examination, approved by the board, within two years of application.
- ~~5. An interview by the board.~~
6. 5. A certification, from the licensing board of every jurisdiction in which the applicant is licensed, that the applicant is licensed in good standing.
- ~~7.~~ 6. Certification that the applicant has completed a cardiopulmonary resuscitation course within two years of application.
8. 7. Verification of physical health and visual acuity.
9. 8. For applications for licensure by credential review, the law and rules stating the requirements for licensure, when the applicant was licensed, of the jurisdiction in which the applicant is licensed.
- ~~10.~~ 9. For applications for licensure by credential review and reinstatement from inactive status, proof of completion of sixteen hours of continuing education in accordance with section 20-04-01-08 within two years of application.
- ~~11.~~ 10. Any information required by the application forms prescribed by the board.

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 38 - 39

20-04-01-08. Continuing dental education for dental hygienists. Each dental hygienist shall provide evidence on forms supplied by the board that the dental hygienist has attended or participated in continuing dental education in accordance with the following conditions:

1. Continuing education activities include publications, seminars, symposiums, lectures, college courses, and online education.
2. The continuing dental education hours will accumulate on the basis of one hour of credit for each hour spent in education. Subject matter directly related to clinical dentistry will be accepted by the board without limit.
3. The minimum number of hours required within a two-year cycle is sixteen. Of these hours, a dental hygienist may earn no more than eight hours from publications and online education.

The continuing education must include:

- a. Two hours of ethics or jurisprudence. Passing the laws and rules examination is the equivalent of two hours of ethics or jurisprudence.
- b. Two hours of infection control.
- c. A cardiopulmonary resuscitation course.
- d. For registered dental anesthesia hygienist permitholders, two hours related to sedation or anesthesia.
- e. For registered dental restorative hygienist permitholders, two hours related to restorative dentistry.

4. Mere registration at a dental convention without specific attendance at continuing education presentations will not be creditable toward the continuing dental education requirement.

5. All dental hygienists must hold a current cardiopulmonary resuscitation certificate.

No Comments

Page 40

CHAPTER 20-05-01

20-05-01-01. Fees. The board shall charge the following nonrefundable

fees:

1. For dentists:

- a. License by examination application fee \$440.00
- b. License by credential review application fee \$1,200.00
- c. Renewal fee \$400.00
- d. Late fee \$400.00
- e. Temporary license application and license fee \$250.00
- f. Volunteer license application and license fee \$65.00
- g. Inactive status application fee \$35.00
- h. Inactive status renewal fee \$35.00
- i. Inactive status reinstatement fee \$400.00
- j. Dermal fillers and botulinum toxin permit \$200.00

2. For dental hygienists:

- a. License by examination application fee \$200.00
- b. License by credential review application fee \$450.00
- c. Renewal fee \$150.00

- d. Late fee \$150.00
- e. Inactive status application fee \$35.00
- f. Inactive status renewal fee \$35.00
- g. Inactive status reinstatement fee \$150.00

3. For registered and qualified dental assistants:

- a. Application fee \$130.00
- b. Renewal fee \$100.00
- c. Late fee \$100.00

4. For anesthesia permits:

- a. Application fee \$200.00
- b. Inspection fee actual cost
- c. Renewal fee \$200.00
- d. Late fee \$200.00

5. For a duplicate license, registration, or permit \$45.00

No Comments

- 7. Regulatory analysis pursuant to § 28-32-08 is not required in the amendment process of Title 20, North Dakota Administrative Rules, considered at public hearing on March 12, 2014 and July 23, 2014, in that the proposed rule is not expected to have an impact on the regulated community in excess of \$50,000. In addition, a practical or quantifiable method to measure the impact on the regulated community does not exist.
- 8. 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).

9. 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.
10. 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.
11. The proposed rules amendments were not adopted as emergency rules.

Thank you for the opportunity to present information on behalf of the NDSBDE.

Questions

Advertising: [BORGNER V. FLORIDA BD. OF DENTISTRY - Cornell University](#)

www.law.cornell.edu/supct/html/02-165.ZD.html



North Dakota State Board of Dental Examiners

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February 20, 2015

North Dakota Legislative Council
State Capitol
600 East Boulevard
Bismarck, ND 58505-0360

Re: December 8, 2014 Administrative Rules Committee meeting

Dear Representative Devlin,

This letter is in response to your inquiry dated December 29, 2014. At the December 8, 2014 meeting of the Administrative Rules Committee, the committee moved to carry over the rules adopted by the State Board of Dental Examiners until the committee reconvened.

Response to question #1.

The ND State Board of Dental Examiners was in compliance with the administrative agency rulemaking notices and rulemaking proceedings including public hearing requirements. In summary, during its April 2, 2014 review of comments, the ND Dental Assisting Association requested further amendments to include supragingival scaling which the Board adopted at their April 12 meeting. The Dental Examiners determined that given the subject matter was a significant amendment and in order to be in compliance with rulemaking proceedings it was appropriate to re-notice the rulemaking process to include the amendment to authorize dental assistants under direct supervision to provide the duty of supragingival scaling. During the 2nd comment period, several dental hygienists requested the Board strike the amendment or restrict the age limit. As a result of input provided during the second comment period the Board moved to restrict the duty by adding the language "on a patient that is 12 years of age or less". The following excerpts from the NDSBDE minutes from April 2, April 12, June 16 and August 6, 2014 illustrate the time line of events in more detail.

Amendments to Title 20 / Time Line

April 2, 2014: NDSBDE convened via teleconference to consider comments and views regarding final adoption.

"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.

April 12, 2014

"The Board reviewed comments received at the March 12, 2014 Public Hearing. The Board moved and seconded to ~~accept the amendments with the revisions~~. A roll call vote was taken. All voted in favor of the motion. Moved and seconded to (20-03-01-01.1(2)) to authorize ~~supraginival scaling under the direct supervision of a dentist~~. Discussion; 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 addressed by board was the issue of whether or not the 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. A roll call vote was taken. Malktaris, yes; Brewster, no; Evanoff, yes; Petersen, yes; Lauf, yes. The motion carried 4-1."

June 16, 2014

"The Attorney General's Office is in the process of reviewing the proposed Administrative Rules and comments submitted subsequent to the end of the rules comment period. In light of the recent NDDHA letter to the Board regarding concern over procedures, the ~~Board determined that a second public hearing should be held as soon as possible~~. The E.D. was directed to make such arrangements. Nate Martindale will communicate the Board's decision to the AG's office."

August 6, 2014

"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.

~~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."

Response to question #2.

The language is confusing and I recommend modifying the language by striking the words "on", "that" and "at least" as follows: A registered dental assistant authorized by permit and under the direct supervision of a dentist may perform supragingival scaling duties on for a patient thatwho is at least twelve years of age or less.

Response to question #3.

20-02-01-06 Clarification: Audit of the dentists continuing education (CE) was repealed by S.L. in 2009 with the intent of moving CE regs and renewal regs to the administrative rules. Renewal statute for dentist [43-28-16.2], dental hygienist and dental assistant [43-20-01.4] remain in statute. Audit regulation remains in statute for dental hygienist and dental assistant. Currently, there is no CE audit regulation in law or rule for a dentist.

6. The board may audit the continuing education credits of a dentist. Each licensee shall maintain certificates or records of continuing education activities from the previous renewal cycle. Upon receiving notice of an audit from the board, a licensee shall provide satisfactory documentation of attendance at, or participation in the continuing education activities listed on the licensee's continuing education form. Failure to comply with the audit is grounds for nonrenewal of or disciplinary action against the license.

Response to question #4.

The NDSBDE Executive Director, Rita Sommers engaged the North Dakota Dental Hygienists' lobbyist, Rod St. Aubyn in a conversation to determine what if any amendments would both sides be amicable to negotiate. The discussion resulted in a stalemate.

I hope the information adequately addresses the questions from your December 29, 2014 letter. Thank you for your consideration.

Sincerely,



Rita Sommers, Executive Director
North Dakota State Board of Dental Examiners

cc: Vonette J. Richter, Assistant Code Revisor
Rob Lauf, DDS, President, NDSBDE



North Dakota State Board of Dental Examiners

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MINUTES SPECIAL MEETING VIA TELECONFERENCE AUG 6, 2014, 5:40 PM

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 (14): 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, and Marsha Krumm. 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; 33 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." (Letter #?)</i></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." (Letter #12)</i></p> <p><i>"Even educated patients sometimes struggle with understanding the disease process of periodontal disease." (Letter #13)</i></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." (Letter #7)</i></p> <p><i>"Supra-gingival scaling has no evidence-based research that demonstrates a therapeutic benefit to the patient" (Letter #2)</i></p> <p><i>"The one instance in which a dental assistant may be used is to perform prophys on children under age 12." (Letter #1)</i></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." (Letter #8)</i></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 the gumline. The excess cement, if not properly removed could cause</p>

	<p>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 a 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>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 "it is not cost effective for a dentist to provide a proph; this is what happens in rural areas. Even children can get subgingival calculus. The Board is not preventing disease they are perpetuating the disease."</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 members commented that:</p> <p>"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</p>

	<p><i>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 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)</i></p> <p><i>"The United States is graduating the highest number of dental hygienists ever through an increase in the number of</i></p>	<p>Some areas of the state have job vacancies for hygienists and dental 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 therefor provide</p>

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)

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 assistants came up in several comments received by the Board; this being brought to the Boards 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, 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

	<p>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.” (Letter #5)</i></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.” (Letter #9)</i></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.” (Letter #10)</i></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 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</p>

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