

AN ACT

RELATING TO HEALTH CARE; AMENDING THE NEW MEXICO DRUG, DEVICE AND COSMETIC ACT AND THE DENTAL HEALTH CARE ACT TO PROVIDE FOR EXPANDED-FUNCTION DENTAL AUXILIARIES AND COMMUNITY DENTAL HEALTH COORDINATORS; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2003.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 26-1-2 NMSA 1978 (being Laws 1967, Chapter 23, Section 2, as amended) is amended to read:

"26-1-2. DEFINITIONS.--As used in the New Mexico Drug, Device and Cosmetic Act:

A. "board" means the board of pharmacy or its duly authorized agent;

B. "person" includes an individual, partnership, corporation, association, institution or establishment;

C. "biological product" means a virus, therapeutic serum, toxin, antitoxin or analogous product applicable to the prevention, treatment or cure of diseases or injuries of humans and domestic animals, and, as used within the meaning of this definition:

(1) a "virus" is interpreted to be a product containing the minute living cause of an infectious disease and includes filterable viruses, bacteria, rickettsia, fungi and protozoa;

(2) a "therapeutic serum" is a product obtained from blood by removing the clot or clot components and the blood cells;

(3) a "toxin" is a product containing a soluble substance poisonous to laboratory animals or humans in doses of one milliliter or less of the product and, following the injection of nonfatal doses into an animal, having the property of or causing to be produced therein another soluble substance that specifically neutralizes the poisonous substance and that is demonstrable in the serum of the animal thus immunized; and

(4) an "antitoxin" is a product containing the soluble substance in serum or other body fluid of an immunized animal that specifically neutralizes the toxin against which the animal is immune;

D. "controlled substance" means a drug, substance or immediate precursor enumerated in Schedules I through V of the Controlled Substances Act;

E. "drug" means articles:

(1) recognized in an official compendium;

(2) intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or other animals and includes the domestic animal biological products regulated under the federal Virus-Serum-Toxin Act, 37 Stat 832-833, 21 U.S.C. 151-158, and the biological

products applicable to humans regulated under Federal 58 Stat 690, as amended, 42 U.S.C. 216, Section 351, 58 Stat 702, as amended, and 42 U.S.C. 262;

(3) other than food, that affect the structure or any function of the human body or the bodies of other animals; and

(4) intended for use as a component of Paragraph (1), (2) or (3) of this subsection, but "drug" does not include devices or their component parts or accessories;

F. "dangerous drug" means a drug, other than a controlled substance enumerated in Schedule I of the Controlled Substances Act, that because of a potentiality for harmful effect or the method of its use or the collateral measures necessary to its use is not safe except under the supervision of a practitioner licensed by law to direct the use of such drug and hence for which adequate directions for use cannot be prepared. "Adequate directions for use" means directions under which the layperson can use a drug or device safely and for the purposes for which it is intended. A drug shall be dispensed only upon the prescription of a practitioner licensed by law to administer or prescribe the drug if it:

(1) is a habit-forming drug and contains any quantity of a narcotic or hypnotic substance or a chemical derivative of such substance that has been found under the

federal act and the board to be habit forming;

(2) because of its toxicity or other potential for harmful effect or the method of its use or the collateral measures necessary to its use is not safe for use except under the supervision of a practitioner licensed by law to administer or prescribe the drug;

(3) is limited by an approved application by Section 505 of the federal act to the use under the professional supervision of a practitioner licensed by law to administer or prescribe the drug;

(4) bears the legend: "Caution: federal law prohibits dispensing without prescription.";

(5) bears the legend: "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."; or

(6) bears the legend "RX only";

G. "counterfeit drug" means a drug that is deliberately and fraudulently mislabeled with respect to its identity, ingredients or sources. Types of such pharmaceutical counterfeits may include:

(1) "identical copies", which are counterfeits made with the same ingredients, formulas and packaging as the originals but not made by the original manufacturer;

(2) "look-alikes", which are products that

feature high-quality packaging and convincing appearances but contain little or no active ingredients and may contain harmful substances;

(3) "rejects", which are drugs that have been rejected by the manufacturer for not meeting quality standards; and

(4) "relabels", which are drugs that have passed their expiration dates or have been distributed by unauthorized foreign sources and may include placebos created for late-phase clinical trials;

H. "device", except when used in Subsection P of this section and in Subsection G of Section 26-1-3, Subsection L and Paragraph (4) of Subsection A of Section 26-1-11 and Subsection C of Section 26-1-24 NMSA 1978, means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article, including any component, part or accessory, that is:

(1) recognized in an official compendium;

(2) intended for use in the diagnosis of disease or other conditions or in the cure, mitigation, treatment or prevention of disease in humans or other animals;
or

(3) intended to affect the structure or a function of the human body or the bodies of other animals and that does not achieve any of its principal intended purposes

through chemical action within or on the human body or the bodies of other animals and that is not dependent on being metabolized for achievement of any of its principal intended purposes;

I. "prescription" means an order given individually for the person for whom prescribed, either directly from a licensed practitioner or the practitioner's agent to the pharmacist, including by means of electronic transmission, or indirectly by means of a written order signed by the prescriber, and bearing the name and address of the prescriber, the prescriber's license classification, the name and address of the patient, the name and quantity of the drug prescribed, directions for use and the date of issue;

J. "practitioner" means a certified advanced practice chiropractic physician, physician, doctor of oriental medicine, dentist, veterinarian, euthanasia technician, certified nurse practitioner, clinical nurse specialist, pharmacist, pharmacist clinician, certified nurse-midwife, physician assistant, prescribing psychologist, dental hygienist or other person licensed or certified to prescribe and administer drugs that are subject to the New Mexico Drug, Device and Cosmetic Act;

K. "cosmetic" means:

(1) articles intended to be rubbed, poured, sprinkled or sprayed on, introduced into or otherwise applied

to the human body or any part thereof for cleansing, beautifying, promoting attractiveness or altering the appearance; and

(2) articles intended for use as a component of any articles enumerated in Paragraph (1) of this subsection, except that the term shall not include soap;

L. "official compendium" means the official United States pharmacopoeia national formulary or the official homeopathic pharmacopoeia of the United States or any supplement to either of them;

M. "label" means a display of written, printed or graphic matter upon the immediate container of an article. A requirement made by or under the authority of the New Mexico Drug, Device and Cosmetic Act that any word, statement or other information appear on the label shall not be considered to be complied with unless the word, statement or other information also appears on the outside container or wrapper, if any, of the retail package of the article or is easily legible through the outside container or wrapper;

N. "immediate container" does not include package liners;

O. "labeling" means all labels and other written, printed or graphic matter:

(1) on an article or its containers or wrappers; or

(2) accompanying an article;

P. "misbranded" means a label to an article that is misleading. In determining whether the label is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device or any combination of the foregoing, but also the extent to which the label fails to reveal facts material in the light of such representations or material with respect to consequences that may result from the use of the article to which the label relates under the conditions of use prescribed in the label or under such conditions of use as are customary or usual;

Q. "advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or that are likely to induce, directly or indirectly, the purchase of drugs, devices or cosmetics;

R. "antiseptic", when used in the labeling or advertisement of an antiseptic, shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be or represented as an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder or such other use as involves prolonged contact with the body;

S. "new drug" means a drug:

(1) the composition of which is such that

the drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and efficacy of drugs, as safe and effective for use under the conditions prescribed, recommended or suggested in the labeling thereof; or

(2) the composition of which is such that the drug, as a result of investigation to determine its safety and efficacy for use under such conditions, has become so recognized, but that has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions;

T. "contaminated with filth" applies to a drug, device or cosmetic not securely protected from dirt, dust and, as far as may be necessary by all reasonable means, from all foreign or injurious contaminations, or a drug, device or cosmetic found to contain dirt, dust, foreign or injurious contamination or infestation;

U. "selling of drugs, devices or cosmetics" shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession and holding of any such article for sale and the sale and the supplying or applying of any such article in the conduct of a drug or cosmetic establishment;

V. "color additive" means a material that:

(1) is a dye, pigment or other substance

made by a process of synthesis or similar artifice or extracted, isolated or otherwise derived, with or without intermediate or final change of identity, from a vegetable, mineral, animal or other source; or

(2) when added or applied to a drug or cosmetic or to the human body or a part thereof, is capable, alone or through reaction with other substances, of imparting color thereto; except that such term does not include any material that has been or hereafter is exempted under the federal act;

W. "federal act" means the Federal Food, Drug and Cosmetic Act;

X. "restricted device" means a device for which the sale, distribution or use is lawful only upon the written or oral authorization of a practitioner licensed by law to administer, prescribe or use the device and for which the federal food and drug administration requires special training or skills of the practitioner to use or prescribe. This definition does not include custom devices defined in the federal act and exempt from performance standards or premarket approval requirements under Section 520(b) of the federal act;

Y. "prescription device" means a device that, because of its potential for harm, the method of its use or the collateral measures necessary to its use, is not safe except under the supervision of a practitioner licensed in

this state to direct the use of such device and for which "adequate directions for use" cannot be prepared, but that bears the label: "Caution: federal law restricts this device to sale by or on the order of a _____", the blank to be filled with the word "physician", "physician assistant", "certified advanced practice chiropractic physician", "doctor of oriental medicine", "dentist", "veterinarian", "euthanasia technician", "certified nurse practitioner", "clinical nurse specialist", "pharmacist", "pharmacist clinician", "certified nurse-midwife" or "dental hygienist" or with the descriptive designation of any other practitioner licensed in this state to use or order the use of the device;

Z. "valid practitioner-patient relationship" means a professional relationship, as defined by the practitioner's licensing board, between the practitioner and the patient; and

AA. "pedigree" means the recorded history of a drug."

SECTION 2. Section 61-5A-2 NMSA 1978 (being Laws 1994, Chapter 55, Section 2, as amended) is amended to read:

"61-5A-2. PURPOSE.--

A. In the interest of the public health, safety and welfare and to protect the public from the improper, unprofessional, incompetent and unlawful practice of dentistry and dental hygiene, it is necessary to provide laws and rules controlling the granting and use of the privilege to practice

dentistry and dental hygiene and to establish a board of dental health care and a dental hygienists committee to implement and enforce those laws and rules.

B. The primary duties of the New Mexico board of dental health care are:

(1) to issue licenses to qualified dentists and owners of dental practices;

(2) to certify qualified dental assistants, expanded-function dental auxiliaries and community dental health coordinators;

(3) to issue licenses to dental hygienists through the dental hygienists committee;

(4) to discipline incompetent or unprofessional dentists, dental assistants, owners of dental practices and, through the dental hygienists committee, dental hygienists; and

(5) to aid in the rehabilitation of impaired dentists and dental hygienists for the purpose of protecting the public."

SECTION 3. Section 61-5A-3 NMSA 1978 (being Laws 1994, Chapter 55, Section 3, as amended) is amended to read:

"61-5A-3. DEFINITIONS.--As used in the Dental Health Care Act:

A. "assessment" means the review and documentation of the oral condition, and the recognition and documentation

of deviations from the healthy condition, without a diagnosis to determine the cause or nature of disease or its treatment;

B. "board" means the New Mexico board of dental health care;

C. "certified dental assistant" means an individual certified by the dental assisting national board;

D. "collaborative dental hygiene practice" means a New Mexico licensed dental hygienist practicing according to Subsections D through G of Section 61-5A-4 NMSA 1978;

E. "committee" means the New Mexico dental hygienists committee;

F. "community dental health coordinator" means a dental assistant, a dental hygienist or other trained personnel certified by the board as a community dental health coordinator to provide educational, preventive and limited palliative care and assessment services working collaboratively under the general supervision of a licensed dentist in settings other than traditional dental offices and clinics;

G. "consulting dentist" means a dentist who has entered into an approved agreement to provide consultation and create protocols with a collaborating dental hygienist and, when required, to provide diagnosis and authorization for services, in accordance with the rules of the board and the committee;

H. "dental hygiene-focused assessment" means the documentation of existing oral and relevant system conditions and the identification of potential oral disease to develop, communicate, implement and evaluate a plan of oral hygiene care and treatment;

I. "dental assistant certified in expanded functions" means a dental assistant who meets specific qualifications set forth by rule of the board;

J. "dental hygienist" means an individual who has graduated and received a degree from a dental hygiene educational program that is accredited by the commission on dental accreditation, that provides a minimum of two academic years of dental hygiene curriculum and that is an institution of higher education; and "dental hygienist" means, except as the context otherwise requires, an individual who holds a license to practice dental hygiene in New Mexico;

K. "dental laboratory" means any place where dental restorative, prosthetic, cosmetic and therapeutic devices or orthodontic appliances are fabricated, altered or repaired by one or more persons under the orders and authorization of a dentist;

L. "dental technician" means an individual, other than a licensed dentist, who fabricates, alters, repairs or assists in the fabrication, alteration or repair of dental restorative, prosthetic, cosmetic and therapeutic devices or

orthodontic appliances under the orders and authorization of a dentist;

M. "dentist" means an individual who has graduated and received a degree from a school of dentistry that is accredited by the commission on dental accreditation and, except as the context otherwise requires, who holds a license to practice dentistry in New Mexico;

N. "direct supervision" means the process under which an act is performed when a dentist licensed pursuant to the Dental Health Care Act:

(1) is physically present throughout the performance of the act;

(2) orders, controls and accepts full professional responsibility for the act performed; and

(3) evaluates and approves the procedure performed before the patient departs the care setting;

O. "expanded-function dental auxiliary" means a dental assistant, dental hygienist or other dental practitioner that has received education beyond that required for licensure or certification in that individual's scope of practice and that has been certified by the board as an expanded-function dental auxiliary who works under the direct supervision of a dentist;

P. "general supervision" means the authorization by a dentist of the procedures to be used by a dental

hygienist, dental assistant or dental student and the execution of the procedures in accordance with a dentist's diagnosis and treatment plan at a time the dentist is not physically present and in facilities as designated by rule of the board;

Q. "indirect supervision" means that a dentist, or in certain settings a dental hygienist or dental assistant certified in expanded functions, is present in the treatment facility while authorized treatments are being performed by a dental hygienist, dental assistant or dental student;

R. "non-dentist owner" means an individual not licensed as a dentist in New Mexico or a corporate entity not owned by a majority interest of a New Mexico licensed dentist that employs or contracts with a dentist or dental hygienist to provide dental or dental hygiene services;

S. "palliative procedures" means nonsurgical, reversible procedures that are meant to alleviate pain and stabilize acute or emergent problems; and

T. "teledentistry" means a dentist's use of health information technology in real time to provide limited diagnostic and treatment planning services in cooperation with another dentist, a dental hygienist, a community dental health coordinator or a student enrolled in a program of study to become a dental assistant, dental hygienist or dentist."

is enacted to read:

"EXPANDED-FUNCTION DENTAL AUXILIARY--CERTIFICATION.--

A. The board shall establish academic standards and criteria for certifying dental assistants, dental hygienists or other dental personnel to practice as expanded-function dental auxiliaries. Those standards and criteria shall include a formal curriculum and a certifying examination.

B. The board shall promulgate rules relating to the certification of expanded-function dental auxiliaries pursuant to the State Rules Act."

SECTION 5. Section 61-5A-4 NMSA 1978 (being Laws 1994, Chapter 55, Section 4, as amended) is amended to read:

"61-5A-4. SCOPE OF PRACTICE.--

A. As used in the Dental Health Care Act, "practice of dentistry" means:

(1) the diagnosis, treatment, correction, change, relief, prevention, prescription of remedy, surgical operation and adjunctive treatment for any disease, pain, deformity, deficiency, injury, defect, lesion or physical condition involving both the functional and aesthetic aspects of the teeth, gingivae, jaws and adjacent hard and soft tissue of the oral and maxillofacial regions, including the prescription or administration of any drug, medicine,

biologic, apparatus, brace, anesthetic or other therapeutic or

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diagnostic substance or technique by an individual or the individual's agent or employee gratuitously or for any fee, reward, emolument or any other form of compensation whether direct or indirect;

(2) representation of an ability or willingness to do any act mentioned in Paragraph (1) of this subsection;

(3) the review of dental insurance claims for therapeutic appropriateness of treatment, including but not limited to the interpretation of radiographs, photographs, models, periodontal records and narratives;

(4) the offering of advice or authoritative comment regarding the appropriateness of dental therapies, the need for recommended treatment or the efficacy of specific treatment modalities for other than the purpose of consultation to another dentist; or

(5) with specific reference to the teeth, gingivae, jaws or adjacent hard or soft tissues of the oral and maxillofacial region in living persons, to propose, agree or attempt to do or make an examination or give an estimate of cost with intent to, or undertaking to:

(a) perform a physical evaluation of a patient in an office or in a hospital, clinic or other medical or dental facility prior to, incident to and appropriate to the performance of any dental services or oral or

maxillofacial surgery;

(b) perform surgery, an extraction or any other operation or to administer an anesthetic in connection therewith;

(c) diagnose or treat a condition, disease, pain, deformity, deficiency, injury, lesion or other physical condition;

(d) correct a malposition;

(e) treat a fracture;

(f) remove calcareous deposits;

(g) replace missing anatomy with an artificial substitute;

(h) construct, make, furnish, supply, reproduce, alter or repair an artificial substitute or restorative or corrective appliance or place an artificial substitute or restorative or corrective appliance in the mouth or attempt to adjust it;

(i) give interpretations or readings of dental radiographs;

(j) provide limited diagnostic and treatment planning via teledentistry; or

(k) do any other remedial, corrective or restorative work.

B. As used in the Dental Health Care Act, "the practice of dental hygiene" means the application of the

science of the prevention and treatment of oral disease through the provision of educational, assessment, preventive, clinical and other therapeutic services under the general supervision of a dentist. A dental hygienist in a collaborative practice may perform the procedures listed in this section without general supervision while the hygienist is in a cooperative working relationship with a consulting dentist, pursuant to rules promulgated by the board and the committee. "The practice of dental hygiene" includes:

- (1) prophylaxis, which is the removal of plaque, calculus and stains from the tooth structures as a means to control local irritational factors;
- (2) removing diseased crevicular tissue and related nonsurgical periodontal procedures;
- (3) except in cases where a tooth exhibits cavitation of the enamel surface, assessing without a dentist's evaluation whether the application of pit and fissure sealants is indicated;
- (4) except in cases where a tooth exhibits cavitation of the enamel surface, applying pit and fissure sealants without mechanical alteration of the tooth;
- (5) applying fluorides and other topical therapeutic and preventive agents;
- (6) exposing and assessing oral radiographs for abnormalities;

- (7) screening to identify indications of oral abnormalities;
- (8) performing dental hygiene-focused assessments;
- (9) assessing periodontal conditions; and
- (10) such other closely related services as permitted by the rules of the committee and the board.

C. In addition to performing dental hygiene as defined in Subsection B of this section, a dental hygienist may apply preventive topical fluorides and remineralization agents without supervision in public and community medical facilities, schools, hospitals, long-term care facilities and such other settings as the committee may determine by rule ratified by the board, so long as the dental hygienist's license is not restricted pursuant to the Impaired Dentists and Dental Hygienists Act.

D. In addition to performing dental hygiene as defined in Subsection B of this section, dental hygienists who have met the criteria as the committee shall establish and the board shall ratify may administer local anesthesia under indirect supervision of a dentist.

E. The board may certify a dental hygienist to administer local anesthetic under the general supervision of a dentist if the dental hygienist, in addition to performing dental hygiene as defined in Subsection B of this section:

(1) has administered local anesthesia under the indirect supervision of a dentist for at least two years, during which time the dental hygienist has competently administered at least twenty cases of local anesthesia and can document this with a signed affirmation by the supervising dentist;

(2) administers local anesthetic under the written prescription or order of a dentist; and

(3) emergency medical services are available in accordance with rules promulgated by the board.

F. A dental hygienist:

(1) may prescribe, administer and dispense a fluoride supplement, topically applied fluoride or topically applied antimicrobial only when the prescribing, administering or dispensing is performed:

(a) under the supervision of a dentist;

(b) pursuant to rules the board and the committee have adopted;

(c) within the parameters of a drug formulary approved by the board in consultation with the board of pharmacy;

(d) within the parameters of guidelines established pursuant to Section 61-5A-10 NMSA 1978; and

(e) in compliance with state laws concerning prescription packaging, labeling and recordkeeping

requirements; and

(2) shall not otherwise dispense dangerous drugs or controlled substances.

G. A New Mexico licensed dental hygienist may be certified for collaborative dental hygiene practice in accordance with the educational and experience criteria established collaboratively by the committee and the board.

H. An expanded-function dental auxiliary may perform the following procedures under the direct supervision of a dentist:

(1) placing and shaping direct restorations;
(2) taking final impressions, excluding those for fixed or removable prosthetics involving multiple teeth;

(3) cementing indirect and provisional restorations for temporary use;

(4) applying pit and fissure sealants without mechanical alteration of the tooth;

(5) placing temporary and sedative restorative material in hand-excavated carious lesions and unprepared tooth fractures;

(6) removal of orthodontic bracket cement;
and

(7) fitting and shaping of stainless steel crowns to be cemented by a dentist.

I. An expanded-function dental auxiliary may re-
cement temporary or permanent crowns with temporary cement
under the general supervision of a dentist in a situation that
a dentist deems to be an emergency.

J. An expanded-function dental auxiliary may
perform other related functions for which the expanded-
function dental auxiliary meets the training and educational
standards established by the board and that are not expressly
prohibited by the board.

K. For the purpose of this section, "collaborative
dental hygiene practice" means the application of the science
of the prevention and treatment of oral disease through the
provision of educational, assessment, preventive, clinical and
other therapeutic services as specified in Subsection B of
this section in a cooperative working relationship with a
consulting dentist, but without general supervision as set
forth by the rules established and approved by both the board
and the committee."

SECTION 6. Section 61-5A-5 NMSA 1978 (being Laws 1994,
Chapter 55, Section 5, as amended) is amended to read:

"61-5A-5. LICENSE REQUIRED--EXEMPTIONS.--

A. Unless licensed to practice as a dentist under
the Dental Health Care Act, no person shall:

- (1) practice dentistry;
- (2) use the title "dentist", "dental

surgeon", "oral surgeon" or any other title, abbreviation, letters, figures, signs or devices that indicate the person is a licensed dentist; or

(3) perform any of the acts enumerated under the definition of the practice of dentistry as defined in the Dental Health Care Act.

B. The following, under the stipulations described, may practice dentistry or an area of dentistry without a New Mexico dental license:

(1) regularly licensed physicians or surgeons are not prohibited from extracting teeth or treating any disease coming within the province of the practice of medicine;

(2) New Mexico licensed dental hygienists and community dental health coordinators may provide those services within their scope of practice that are also within the scope of the practice of dentistry;

(3) any dental student duly enrolled in an accredited school of dentistry recognized by the board, while engaged in educational programs offered by the school in private offices, public clinics or educational institutions within the state of New Mexico under the indirect supervision of a licensed dentist;

(4) any dental hygiene or dental assisting student duly enrolled in an accredited school of dental

hygiene or dental assisting engaged in procedures within or outside the scope of dental hygiene that are part of the curriculum of that program in the school setting and under the indirect supervision of a faculty member of the accredited program who is a licensed dentist, dental hygienist or dental assistant certified in the procedures being taught;

(5) unlicensed persons performing for a licensed dentist merely mechanical work upon inert matter in the construction, making, alteration or repairing of any artificial dental substitute, dental restorative or corrective appliance, when the casts or impressions for the work have been furnished by a licensed dentist and where the work is prescribed by a dentist pursuant to a written authorization by that dentist;

(6) commissioned dental officers of the uniformed forces of the United States and dentists providing services to the United States public health service, the United States department of veterans affairs or within federally controlled facilities in the discharge of their official duties, provided that such persons who hold dental licenses in New Mexico shall be subject to the provisions of the Dental Health Care Act; and

(7) dental assistants performing adjunctive services to the provision of dental care, under the indirect supervision of a dentist, as determined by rule of the board

if such services are not within the practice of dental hygiene as specifically listed in Subsection B of Section 61-5A-4 NMSA 1978, unless allowed in Subsection E of this section.

C. Unless licensed to practice as a dental hygienist under the Dental Health Care Act, no person shall:

(1) practice as a dental hygienist;

(2) use the title "dental hygienist" or abbreviation "R.D.H." or any other title, abbreviation, letters, figures, signs or devices that indicate the person is a licensed dental hygienist; or

(3) perform any of the acts defined as the practice of dental hygiene in the Dental Health Care Act.

D. The following, under the stipulations described, may practice dental hygiene or the area of dental hygiene outlined without a New Mexico dental hygiene license:

(1) students enrolled in an accredited dental hygiene program engaged in procedures that are part of the curriculum of that program and under the indirect supervision of a licensed faculty member of the accredited program;

(2) dental assistants and community dental health coordinators working under general supervision who:

(a) expose dental radiographs after being certified in expanded functions by the board;

(b) perform rubber cup coronal

polishing, which is not represented as a prophylaxis, having satisfied the educational requirements as established by rules of the board;

(c) apply fluorides as established by rules of the board; and

(d) perform those other dental hygienist functions as recommended to the board by the committee and set forth by rule of the board; and

(3) dental assistants certified in expanded functions, working under the indirect supervision of a dental hygienist certified for collaborative practice and under the protocols established in a collaborative practice agreement with a consulting dentist.

E. Dental assistants working under the indirect supervision of a dentist and in accordance with the rules and regulations established by the board may:

(1) expose dental radiographs;

(2) perform rubber cup coronal polishing that is not represented as a prophylaxis;

(3) apply fluoride and pit and fissure sealants without mechanical alteration of the tooth;

(4) perform those other dental hygienist functions as recommended to the board by the committee and set forth by rule of the board; and

(5) perform such other related functions

that are not expressly prohibited by statute or rules of the board.

F. A community dental health coordinator working under the general supervision of a dentist and in accordance with the rules established by the board may:

(1) place temporary and sedative restorative material in unexcavated carious lesions and unprepared tooth fractures;

(2) collect and transmit diagnostic data and images via telemetric connection;

(3) dispense and apply medications on the specific order of a dentist;

(4) provide limited palliative procedures for dental emergencies in consultation with a supervising dentist as allowed by the rules the board has promulgated; and

(5) perform other related functions for which the community dental health coordinator meets training and educational standards established by the board and that are not expressly prohibited by statute or rules promulgated by the board.

G. Unless licensed as a dentist or non-dentist owner, or as otherwise exempt from the licensing requirements of the Dental Health Care Act, no individual or corporate entity shall:

(1) employ or contract with a dentist or

dental hygienist for the purpose of providing dental or dental hygiene services as defined by their respective scopes of practice; or

(2) enter into a managed care or other agreement to provide dental or dental hygiene services in New Mexico.

H. The following, under stipulations described, may function as a non-dentist owner without a New Mexico license:

(1) government agencies providing dental services within affiliated facilities;

(2) government agencies engaged in providing public health measures to prevent dental disease;

(3) spouses of deceased licensed dentists or dental hygienists for a period of one year following the death of the licensee;

(4) accredited schools of dentistry, dental hygiene and dental assisting providing dental services solely in an educational setting;

(5) dental hygienists licensed in New Mexico or corporate entities with a majority interest owned by a dental hygienist licensed in New Mexico;

(6) federally qualified health centers, as designated by the United States department of health and human services, providing dental services;

(7) nonprofit community-based entities and organizations that use public funds to provide dental and dental hygiene services for indigent persons; and

(8) hospitals licensed by the department of health."

SECTION 7. Section 61-5A-6 NMSA 1978 (being Laws 1994, Chapter 55, Section 6) is amended to read:

"61-5A-6. CERTIFICATION OF DENTAL ASSISTANTS, EXPANDED-FUNCTION DENTAL AUXILIARIES AND COMMUNITY DENTAL HEALTH COORDINATORS.--

A. A certified dental assistant, an expanded-function dental auxiliary, a community dental health coordinator or a dental assistant certified in expanded functions shall be required to adhere to the educational requirements, examinations, recertification criteria and fees as established by rules and regulations of the board. The fee shall be the same for one or more expanded functions.

B. Certificates granted by the board may be revoked, suspended, stipulated or otherwise limited, and a certificate holder may be fined or placed on probation if found guilty of violation of the Dental Health Care Act.

C. No individual shall use the title "C.D.A." unless granted certification by the dental assistant national board.

D. Unless certified to practice as a dental

assistant certified in expanded functions or an expanded-function dental auxiliary, no person shall:

(1) practice as a dental assistant certified in expanded functions as defined by rules of the board; or

(2) use the title or represent oneself as an assistant certified in expanded functions or an expanded-function dental auxiliary or use any title, abbreviation, letters, figures, signs or devices that indicate the person is a dental assistant certified in expanded functions or an expanded-function dental auxiliary."

SECTION 8. Section 61-5A-10 NMSA 1978 (being Laws 1994, Chapter 55, Section 10, as amended by Laws 2003, Chapter 408, Section 6 and by Laws 2003, Chapter 409, Section 8) is amended to read:

"61-5A-10. POWERS AND DUTIES OF THE BOARD AND COMMITTEE.--In addition to any other authority provided by law, the board and the committee, when designated, shall:

A. enforce and administer the provisions of the Dental Health Care Act;

B. adopt, publish, file and revise, in accordance with the Uniform Licensing Act and the State Rules Act, all rules as may be necessary to:

(1) regulate the examination and licensure of dentists and, through the committee, regulate the examination and licensure of dental hygienists;

(2) provide for the examination and certification of dental assistants by the board;

(3) provide for the regulation of dental technicians by the board;

(4) regulate the practice of dentistry, dental assisting and, through the committee, regulate the practice of dental hygiene; and

(5) provide for the regulation and licensure of non-dentist owners by the board;

C. adopt and use a seal;

D. administer oaths to all applicants, witnesses and others appearing before the board or the committee, as appropriate;

E. keep an accurate record of all meetings, receipts and disbursements;

F. grant, deny, review, suspend and revoke licenses and certificates to practice dentistry, dental assisting and, through the committee, dental hygiene and censure, reprimand, fine and place on probation and stipulation dentists, dental assistants and, through the committee, dental hygienists, in accordance with the Uniform Licensing Act for any cause stated in the Dental Health Care Act;

G. grant, deny, review, suspend and revoke licenses to own dental practices and censure, reprimand, fine

and place on probation and stipulation non-dentist owners, in accordance with the Uniform Licensing Act, for any cause stated in the Dental Health Care Act;

H. maintain records of the name, address, license number and such other demographic data as may serve the needs of the board of licensees, together with a record of license renewals, suspensions, revocations, probations, stipulations, censures, reprimands and fines. The board shall make available composite reports of demographic data but shall limit public access to information regarding individuals to their names, addresses, license numbers and license actions or as required by statute;

I. hire and contract for services from persons as necessary to carry out the board's duties;

J. establish ad hoc committees whose members shall be appointed by the chair with the advice and consent of the board or committee and shall include at least one member of the board or committee as it deems necessary for carrying on its business;

K. have the authority to pay per diem and mileage to individuals who are appointed by the board or the committee to serve on ad hoc committees;

L. have the authority to hire or contract with investigators to investigate possible violations of the Dental Health Care Act;

M. have the authority to issue investigative subpoenas prior to the issuance of a notice of contemplated action for the purpose of investigating complaints against dentists, dental assistants and, through the committee, dental hygienists licensed under the Dental Health Care Act;

N. have the authority to sue or be sued and to retain the services of an attorney at law for counsel and representation regarding the carrying out of the board's duties;

O. have the authority to create and maintain a formulary, in consultation with the board of pharmacy, of medications that a dental hygienist may prescribe, administer or dispense in accordance with rules the board has promulgated; and

P. establish continuing education or continued competency requirements for dentists, certified dental assistants in expanded functions, dental technicians and, through the committee, dental hygienists."

SECTION 9. Section 61-5A-12 NMSA 1978 (being Laws 1994, Chapter 55, Section 12, as amended) is amended to read:

"61-5A-12. DENTISTS--REQUIREMENTS FOR LICENSURE--
SPECIALTY LICENSE.--

A. All applicants for licensure as a dentist shall have graduated and received a degree from a school of dentistry that is accredited by the commission on dental

accreditation and shall have passed the written portion of the dental examination administered by the joint commission on national dental examinations of the American dental association or, if the test is not available, another written examination determined by the board.

B. Applicants for a general license to practice dentistry by examination shall be required, in addition to the requirements set forth in Subsection A of this section, to pass a test covering the laws and rules for the practice of dentistry in New Mexico. Written examinations shall be supplemented by the board or its agents by administering to each applicant a practical or clinical examination that reasonably tests the applicant's qualifications to practice general dentistry. These examinations shall include examinations offered by the central regional dental testing service, northeast regional board of dental examiners, southern regional testing agency or western regional examining board or any other comparable practical clinical examination the board approves; provided, however, that the board may disapprove any examination after it considers compelling evidence to support disapproval. Upon an applicant passing the written and clinical examinations and payment in advance of the necessary fees, the board shall issue a license to practice dentistry.

C. The board may issue a general license to

practice dentistry, by credentials, without a practical or clinical examination to an applicant who is duly licensed by a clinical examination as a dentist under the laws of another state or territory of the United States; provided that license is active and that all dental licenses that individual possesses have been in good standing for five years prior to application. The credentials must show that no dental board actions have been taken during the five years prior to application; that no proceedings are pending in any states in which the applicant has had a license in the five years prior to application; and that a review of public records, the national practitioner data bank or other nationally recognized data resources that record actions against a dentist in the United States does not reveal any activities or unacquitted civil or criminal charges that could reasonably be construed to constitute evidence of danger to patients, including acts of moral turpitude.

D. The board may issue a general license to practice dentistry by credentials to an applicant who meets the requirements, including payment of appropriate fees and the passing of an examination covering the laws and rules of the practice of dentistry in New Mexico, of the Dental Health Care Act and rules promulgated pursuant to that act, and who:

(1) has maintained a uniform service practice in the United States military or public health

service for three years immediately preceding the application;
or

(2) is duly licensed by examination as a dentist pursuant to the laws of another state or territory of the United States.

E. The board may issue a specialty license by examination to an applicant who has passed a clinical and written examination given by the board or its examining agents that covers the applicant's specialty. The applicant shall have a postgraduate degree or certificate from an accredited dental college, school of dentistry of a university or other residency program that is accredited by the commission on dental accreditation in one of the specialty areas of dentistry recognized by the American dental association. The applicant shall also meet all other requirements as established by rules of the board, which shall include an examination covering the laws and rules of the practice of dentistry in New Mexico. A specialty license limits the licensee to practice only in that specialty area.

F. The board may issue a specialty license, by credentials, without a practical or clinical examination to an applicant who is duly licensed by a clinical examination as a dentist under the laws of another state or territory of the United States and who has a postgraduate degree or certificate from an accredited dental college, school of dentistry of a

university or other residency program that is accredited by the commission on dental accreditation in one of the specialty areas of dentistry recognized by the American dental association; provided that license is active and that all dental licenses that individual possesses have been in good standing for five years prior to application. The credentials must show that no dental board actions have been taken during the five years prior to application; that no proceedings are pending in any states in which the applicant has had a license in the five years prior to application; and that a review of public records, the national practitioner data bank or other nationally recognized data resources that record actions against a dentist in the United States does not reveal any activities or unacquitted civil or criminal charges that could reasonably be construed to constitute evidence of danger to patients, including acts of moral turpitude. The applicant shall also meet all other qualifications as deemed necessary by rules of the board, which shall include an examination covering the laws and rules of the practice of dentistry in New Mexico. A specialty license limits the licensee to practice only in that specialty area."

SECTION 10. A new section of the Dental Health Care Act is enacted to read:

"PUBLIC-SERVICE LICENSURE.--The board or the committee may issue a temporary public-service license to practice

dentistry or dental hygiene to an applicant who is licensed to practice dentistry or dental hygiene in another state or territory of the United States or who is enrolled as a dental resident in a residency program in this state and the commission on dental accreditation has accredited that program. That applicant shall be otherwise qualified to practice dentistry or dental hygiene in this state. The following provisions shall apply:

A. the applicant for public-service licensure shall hold a valid license in good standing in another state or territory of the United States or be enrolled as a dental resident in a residency program in the state that the commission on dental accreditation has accredited;

B. a temporary public-service license issued to a dental residency student who has not taken and passed a clinical examination accepted by the board shall not be renewed after the student has completed the residency program;

C. the applicant shall practice dentistry or dental hygiene under the sponsorship of or in association with a licensed New Mexico dentist or dental hygienist;

D. the public-service license may be issued for those activities as stipulated by the board or committee in the rules of the board. It may be issued upon written application of the applicant when accompanied by such proof of qualifications as the secretary-treasurer of the board or

committee, in the secretary-treasurer's discretion, may require. Public-service licensees shall engage in only those activities specified on the public-service license for the time designated, and the public-service license shall identify the licensed New Mexico dentist or dental hygienist who will sponsor or associate with the applicant during the time the applicant practices dentistry or dental hygiene in New Mexico;

E. the sponsoring or associating dentist or dental hygienist shall submit an affidavit attesting to the qualifications of the applicant and the activities the applicant will perform;

F. the public-service license shall be issued for a period not to exceed twelve months and may be renewed upon application and payment of required fees;

G. the application for a public-service license under this section shall be accompanied by a license fee;

H. the public-service licensee shall be required to comply with the Dental Health Care Act and all rules promulgated pursuant to that act; and

I. a dentist or dental hygienist providing dental care services to a charitable dental care project may provide dental care pursuant to a presumptive temporary public-service license valid for a period of no longer than three days. The dentist or dental hygienist shall be otherwise subject to the provisions of this section and board rules governing public-

service licensure. This presumptive temporary public-service license is only valid when:

(1) the dentist or dental hygienist receives no compensation;

(2) the project is sponsored by an entity that meets the board's definition of "entity" and that the board has approved to undertake the charitable project;

(3) the dental care is performed within the limits of the license that the dentist or dental hygienist holds in another jurisdiction;

(4) upon request, the out-of-state dentist or dental hygienist produces any document necessary to verify the dentist's or dental hygienist's credentials; and

(5) the out-of-state dentist or dental hygienist works under the indirect supervision of a dentist or dental hygienist licensed in this state."

SECTION 11. Section 61-5A-16 NMSA 1978 (being Laws 1994, Chapter 55, Section 16, as amended) is amended to read:

"61-5A-16. LICENSE AND CERTIFICATE RENEWALS.--

A. Except as provided in Subsection I of this section, all licensees shall be required to renew their licenses triennially as established by rules of the board.

B. All dental assistants certified in expanded functions, expanded-function dental auxiliaries and community dental health coordinators shall be required to renew their

certificates triennially as established by rules of the board.

C. The board or committee may establish a method to provide for staggered triennial terms and may prorate triennial renewal fees and impaired dentist and dental hygienist fees until staggered triennial renewal is established. The fact that a licensee has not received a renewal form from the board or committee shall not relieve the licensee of the duty to renew the license or certificate nor shall such omission on the part of the board or committee operate to exempt the licensee from the penalties for failure to renew the licensee's license or certificate.

D. All licensees shall pay a triennial renewal fee and an impaired dentist and dental hygienist fee, and all licensees shall return a completed renewal application form that includes proof of continuing education or continued competency.

E. Each application for triennial renewal of license shall state the licensee's full name, business address, the date and number of the license and all other information requested by the board or committee.

F. A licensee who fails to submit an application for triennial renewal on or before July 1 but who submits an application for triennial renewal within thirty days thereafter shall be assessed a late fee.

G. A licensee who fails to submit application for

triennial renewal between thirty and sixty days of the July 1 deadline may have the licensee's license or certificate suspended. If the licensee renews by that time, the licensee shall be assessed a cumulative late fee.

H. The board or the committee may summarily revoke, for nonpayment of fees or failure to comply with continuing education or continued competency requirements, the license or certificate of a licensee or certificate holder who has failed to renew the license or certificate on or before August 31.

I. A license for a non-dentist owner shall be renewed triennially as established by rules. An application for renewal of a non-dentist owner license shall state the name, business address, date and number of the license and all other information as required by rule of the board. If a non-dentist owner fails to submit the application for renewal of the license by July 1, the board may assess a late fee. If the non-dentist owner fails to submit the application for a renewal license within sixty days of the July 1 renewal deadline, the board may suspend the license. The license of a non-dentist owner may be summarily revoked by the board for nonpayment of fees.

J. Assessment of fees pursuant to this section is not subject to the Uniform Licensing Act."

1994, Chapter 55, Section 20, as amended) is amended to read:

"61-5A-20. FEES.--The board and the committee shall establish a schedule of reasonable fees not to exceed the following:

	<u>Dentists</u>	<u>Dental Hygienists</u>
A. licensure by examination	\$1,500	\$1,000
B. licensure by credential	\$3,000	\$1,500
C. specialty license by examination	\$1,500	
D. specialty license by credential	\$3,000	
E. temporary license		
48 hours	\$ 50	\$ 50
six months	\$ 300	\$ 200
12 months	\$ 450	\$ 300
F. application for certification in local anesthesia		\$ 40
G. examination in local anesthesia		\$ 150
H. triennial license renewal	\$ 600	\$ 450
I. late renewal	\$ 100	\$ 100
J. reinstatement of license	\$ 450	\$ 300
K. administrative fees	\$ 300	\$ 300
L. impaired dentist or		

	dental hygienist	\$ 150	\$ 75
M.	assistant, expanded-function dental auxiliary or community dental health coordinator certificate		\$ 100
N.	application for certification for collaborative practice		\$ 150
O.	annual renewal for collaborative practice		\$ 50
P.	application for inactive status	\$ 50	\$ 50
Q.	triennial renewal of inactive license	\$ 90	\$ 90

Non-dentist Owners

R.	non-dentist owners license (initial)	\$ 300	
S.	non-dentist owners license triennial renewal	\$ 150."	<u> </u>