

Historical Background - NDA 407 Introductory Comments



Mr. Briel suggested at this first meeting that we give the Committee members a “big picture” of what is being requested so that they know where all of this is coming from.

I think it is safe to say that in most, if not all 407 Applications, the Applicant group does not meet with the other affected groups *prior* to filing the Application. That is *not the case* with the two Applications before you.

You are going to hear the phrase “*Access to Care*.” That phrase describes the situation of a segment of our population that cannot, for a variety of reasons, access a dental office for their oral care. The reasons for this lack of access are many: *low Medicaid reimbursement rates* . . . approximately 40% of the fees charged by a dental office when the office overhead is 65% or higher; the Kellogg Foundation cited the National *Access to Care Survey*, indicating the major reason for not obtaining dental services was financial (71.5 percent). Other non-financial barriers include the *geographical distribution* of dental professionals, language barriers and cultural biases.

My role is to give you a brief history of the interaction of the three associations leading up to the recently filed 407 Applications.

In 1985, when the Board of Dentistry filled out an ADA “survey” of what the Board considered allowable duties for hygienists and dental assistant duties that can be delegated by a dentist. HHS published “*list*” on HHS letterhead and the dental community considered that list as “*law*” and operated their practices accordingly until 2005. **(#1)**

In 1999, the HHS proposed modification to the Regulations that would allow dental assistants to perform coronal polishing if they received extra education. *The NDHA filed a lawsuit to block the Regulations.* **(#2)** The Court supported HHS’s modifications allowing dental assistants to perform coronal polishing.

June 2004, the NDA’s president gathered members from the hygienist and assistant associations in order to *update duties* performed under the Dental Practice Act and to make the dental team *more efficient* to see more patients as one solution to *Access to Care*. Those individuals met for a few months until the hygiene association announced that they were going to file their own 407 Application, which occurred in 2005.

January 2005, the NDHA introduced LB 182, which contained provisions for *independent hygiene practice*. In July 2005, the 407 Technical Review Committee found that the NDHA Application failed all four Criterion. The Board of Health found that the NDHA Proposal fails three of the four Criterion.

April 2005, the Board of Dentistry recommends to AG that Petition filed against Dr. Tim Adams for allowing his dental assistants to perform duties the BOD considered a violation of 1985 “*list*.” After a hearing in May of 2006, the Chief Medical Officer dismissed the Petition against Dr. Adams, finding that the BOD’s “*list*” was not defined in the Regulations.

March 2006, the three associations met at the NDA’s annual meeting in Omaha, to discuss updating the duties appearing in the Regulations. The three associations met again on May 12th and June 30th. The Board of Dentistry again requested that the NDA submit its findings regarding expanded functions by the July 2006

Board of Dentistry meeting. The NDA submitted the work product of the group and included the Board's list of acceptable duties that was posted on the HSS website.

January 2007, the NDHA introduced **LB 538** which was very similar to LB 182 and the NDA introduced **LB 427**.

February 2007, the three associations met regarding proposed changes to the 172 NAC 53 Regulations - Dental Assistant Duties.

March 2007, the Board of Dentistry considered a draft of 172 NAC 53 Regulations based on the February 2007 Stakeholder's meeting. The Board directed the sub-committee on expanded duties to request the educational community to draft educational requirements for three sections of the Regulations.

April 2007, the Legislature passed **LB 247** which containing *compromise* of LB 538 and LB 427, containing 3 RDH procedures performed in public health settings unsupervised by a DDS. **See Neb.Rev.Stat. § 38-1130 (#3)**

July 2007, BOD approved recommendations to draft of 172 NAC 53 following July 5th public hearing. In December 2007, the Attorney General's office informed BOD that BOD **does not** have statutory authority to define education requirements for dental assistant duties.

November 2008, the Board of Health asked the NDA to sponsor legislation that allowed BOD to establish educational & training requirements for dental assistant duties. **(#4)**

January 2009 –Senator Campbell introduced **LB 542**, allowing BOD to establish educational requirements for dental assistant duties in Regulations. **(#5)**

March 2009 – LB 542 placed on General File; Senator Flood designates as a Speaker Priority Bill.

May 2009 –Senators Karpisek and Lautenbaugh lead **filibuster** on behalf of NDHA; Senator Campbell postpones **LB 542** until 2010 Legislative Session. **(#6)**

* * * * *

***June 2009** – NDA President Dr. Wesch forms Oral Health Task Force with representatives of NDHA and NDAA. Dr. Wesch is a trained mediator and thought that he could bring the three groups together to come forth with a unified proposal for expanding duties of hygienists and assistants.*

February 2010 - Oral Health Task Force meets for the first time.

September 2010 – In response to NDA member questions regarding dental assistants and the current state of affairs with updating the Dental Statutes and Regulations, Executive Director David O'Doherty wrote an article in the NDA newsletter, "*Allowable Duties Delegated to Dental Assistants, the Road is Wider Than You Think.*"¹ NDA newsletter analyzes the current statutes and regulations to see what duties a dental assistant can perform, using Sealants as the "example" duty.

In January 2011 – NDHA introduced **LB 330**, seeking to eliminate the 3,000 hour experience requirement to see all patients unsupervised in public health settings and to remove the restriction to seeing only children to now include adults in nursing homes.

February 2011 – NDHA newsletter stated that “a recent article published by the NDA suggests that the placement of sealants by dental assistants is allowable through rules and regulations. The NDHA’s opinion is that this is NOT an allowable duty. If dental assistants are placing sealants, they are practicing Dental Hygiene without a license.” Info provided as to how to report a dentist to HHS if they are allowing assistants to place sealants. **(#7)**

April 2011 – **Board of Dentistry Minutes** - “Applying the analysis from the NDA, the Board determined that placing sealants is not specifically prohibited in the regulations; placing sealants is not considered to be an irreversible dental procedure; and placing sealants does not require the professional judgment and skill of a licensed dentist.” The Board’s voted 9-1 that dental assistants should be allowed to place sealants, provided that they have received training on placing sealants and that the training is similar to the training received for dental assistants to perform coronal polishing. **(#8)**

June 2011 – NDHA attorney wrote a letter to DHHS, demanding the Board of Health to direct the Board of Dentistry to formally rescind their opinion and any future attempts to *issue opinions* in lieu of legislation or rulemaking would result in being removed from the board. **(#9)**

2013 – introduced **LB 484, which was a continuation of LB 330 as amended**, allowing unsupervised RDHs to see children in public health settings without the 3,000 hour experience requirement. The amendment in 2007 included a **reporting requirement** that none of the permit holders were complying with, so LB 484 included a specific form to be filled out by the hygienist regarding what duties were performed and where they were performed.

April 2013 – NDA House of Delegates establishes a Expanding Practices Scopes Committee to review the work of the Oral Health Task Force, which meet in June and again in August, issuing a report to the NDA House of Delegates.

Sept. 2013 - NDA House of Delegates reviewed the report of the Expanding Practices Scopes Committee and approved an amended Dental Assistant and RDH Chart for use in the upcoming 407 Application.

November 2013 – NDHA sends NDA revised dental assistant and RDH Charts, which includes more hygiene duties than prior charts.

December 5, 2013 – NDA President Dr. Wieting sends letter to NDAA and NDHA Presidents that negotiations regarding the RDH charts are over and he is only authorized to proceed with a 407 Application that the NDA House of Delegates approved in September 2013. NDA asks NDAA and to inform in writing of your support or nonsupport no later than January 17, 2014.

December 17, 2013 – NDHA informed HHS/Ron Briel that they intend to submit their own 407 Application.



**LEGAL PROVISIONS FOR DELEGATING EXPANDED FUNCTIONS
 TO DENTAL ASSISTANTS**

<u>Function</u>	<u>Permission</u>	<u>Supervision</u>
1. Inspecting the oral cavity	Yes	Direct
2. Applying topical anesthetic agents	Yes	Direct
3. Remove excess set cement from coronal surfaces of teeth with an instrument (other than for temporary restorations)	No	N/A
4. Cementing bands and/or bonding brackets	No	N/A
5. Bending archwires	No	N/A
6. Exposing radiographs	Yes (w/course)	General
7. Performing pulp vitality testing	Yes	Direct
8. Making alginate impressions for study casts	Yes	General
9. Coronal polishing	Yes (w/course)	Direct
10. Applying topical anticariogenic agents (floride)	Yes	General
11. Applying pit and fissure sealants	No	N/A
12. Placing periodontal dressings	Yes	Direct
13. Removing periodontal dressings	Yes	General
14. Removing sutures	Yes	General
15. Monitoring nitrous oxide analgesia	Yes (w/CPR cert)	Direct
16. Placing matrices	Yes	Direct
17. Removing matrices	Yes	Direct
18. Placing rubber dams	Yes	Direct
19. Removing rubber dams	Yes	Direct
20. Fabricating temporary/interim restorations	Yes	Direct
21. Placing temporary/interim restorations	Yes	General

#2



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DON STENBERG
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September 16, 1999

SEP 17 1999

Tom Bassett,
Executive Director
Nebraska Dental Association
3120 "O" Street
Lincoln, NE 68510

Dear Tom:

Enclosed is a copy of the Lancaster County District Court decision upholding the validity of the Dental Board's coronal polishing regulations. The case was handled by Lynn Melson of our office, who deserves all the credit for the legal work which resulted in the decision.

Sincerely,

DON STENBERG
Attorney General

James D. Smith
Assistant Attorney General

Enclosure

31-411-13

Jennifer M. Aiken
David K. Amosbury
L. Jay Baret
J. Kirk Brown
Margo C. Clarke
Dale A. Gerner
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Lisa A. Evans

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Admin. Code ch. 53. (Ex. 1 at 2). Included in the 1988 amendments to 172 Neb. Admin. Code ch. 53 was the addition of coronal polishing to the list of authorized activities for dental auxiliaries. (Ex. 1 at 2). This amendment was filed with the Secretary of State for the State of Nebraska on February 27, 1998. (Ex. 1 at 2).

Plaintiffs brought this suit against Richard Nelson, Director of the Department, and the Department, challenging the amendments to 172 Neb. Admin. Code 53 that allow dental auxiliaries to perform coronal dental polishings. (Petition for declaratory judgment at 1-2). Prior to the 1988 amendments, only licensed dental hygienists and licensed dentists were allowed to perform coronal polishing. (Ex. 1 at 2). Plaintiffs brought their action pursuant to Neb. Rev. Stat. § 84-911 (Reissue 1994) and requested this Court to declare the 1988 amendments to 172 Neb. Admin. Code ch. 53 as invalid and beyond the defendants' statutory authority and as being violative of the Separation of Powers Doctrine contained in Article II, Section 1 of the Nebraska Constitution. Defendants maintain that the plaintiffs lack standing to challenge the amended regulations and that the regulations are valid.

STANDARD OF REVIEW

This Court "shall declare [a challenged] rule or regulation invalid if it finds that it violates Constitutional provisions, exceeds the statutory authority of the agency, or was adopted without compliance with statutory procedures." Neb. Rev. Stat. § 84-911 (Reissue 1994).

ANALYSIS

The Nebraska Legislature provided in section 71-193.13 that dentists practicing in Nebraska may employ dental auxiliaries. Neb. Rev. Stat. § 71-193.13 (Reissue of 1996). The

Department to determine the proper duties of a dental auxiliary. While there are undoubtedly duties that the Department could bestow on a dental auxiliary that would be beyond the scope of the legislative intent of § 71-193.14, plaintiffs have not established that coronal polishing is beyond the scope of duties the Department can authorize dental auxiliaries to perform under § 71-193.14. Instead, plaintiffs simply assert their view that "it would be more consistent with the legislative intent of the act as a whole to allow dental auxiliaries to perform procedures significantly less than those allowed by dental hygienists." (Plaintiffs' trial brief at 5.)

However, the Legislature by statute entrusted the Department to determine what duties dental auxiliaries can perform. Plaintiffs have not established that the Department has exceeded that authority in this case.

The plaintiffs' second contention, that the regulation is a violation of the Separation of Powers Doctrine contained in Article II, Section I of the Nebraska Constitution. This argument is intertwined with plaintiffs' assertion that the Department acted outside the authority granted to the Department by the Legislature, and it is also without merit.

Because the Department clearly acted within the authority granted it by the Legislature, there is no need for this Court to consider whether plaintiffs had proper standing to bring this action.

CONCLUSION

Judgment is entered in favor of defendants as set forth above. Costs of this action are to be paid by plaintiffs.

#3

43-1411 A civil proceeding to establish the paternity of a child may be instituted, in the court of the district where the child is domiciled or found or, for cases under the Uniform Interstate Family Support Act, where the alleged father is domiciled, by (1) the mother or the alleged father of such child, either during pregnancy or within four years after the child's birth, unless consent or relinquishment has been made pursuant to sections 43-104.08 to 43-104.24 or section 43-105 for purposes of adoption (a) a valid consent or relinquishment has been made pursuant to sections 43-104.08 to 43-104.24 and section 18 of this act or section 43-105 for purposes of adoption or (b) a county court or separate juvenile court has jurisdiction over the custody of the child or jurisdiction over an adoption matter with respect to such child pursuant to sections 43-101 to 43-116 or (2) the guardian or next friend of such child or the state, either during pregnancy or within eighteen years after the child's birth. Summons shall issue and be served as in other civil proceedings, except that such summons may be directed to the sheriff of any county in the state and may be served in any county.

Sec. 23. Section 71-101, Revised Statutes Cumulative Supplement, 2006, is amended to read:

71-101 Sections 71-101 to 71-1,107.30, 71-1,133 to 71-1,338, 71-1,343 to 71-1,361, and 71-1301 to 71-1354, sections 39 and 42 of this act, and the Physical Therapy Practice Act shall be known and may be cited as the Uniform Licensing Law.

For purposes of the Uniform Licensing Law, unless the context otherwise requires:

(1) Board or professional board means one of the boards appointed by the State Board of Health pursuant to sections 71-111 and 71-112;

(2) Licensed, when applied to any licensee in any of the professions named in section 71-102, means a person licensed under the Uniform Licensing Law;

(3) Profession or health profession means any of the several groups named in section 71-102;

(4) Department means the Department of Health and Human Services Regulation and Licensure;

(5) Whenever a particular gender is used, it is construed to include both the masculine and the feminine, and the singular number includes the plural when consistent with the intent of the Uniform Licensing Law;

(6) License, licensing, or licensure means permission to engage in a health profession which would otherwise be unlawful in this state in the absence of such permission and which is granted to individuals who meet prerequisite qualifications and allows them to perform prescribed health professional tasks and use a particular title;

(7) Certificate, certify, or certification, with respect to professions, means a voluntary process by which a statutory, regulatory entity grants recognition to an individual who has met certain prerequisite qualifications specified by such regulatory entity and who may assume or use the word certified in the title or designation to perform prescribed health professional tasks. When appropriate, certificate means a document issued by the department which designates particular credentials for an individual;

(8) Lapse means the termination of the right or privilege to represent oneself as a licensed, certified, or registered person and to practice the profession when a license, certificate, or registration is required to do so;

(9) Credentialing means the totality of the process associated with obtaining state approval to provide health care services or human services or changing aspects of a current approval. Credentialing grants permission to use a protected title that signifies that a person is qualified to provide the services of a certain profession. Credential includes a license, certificate, or registration; and

(10) Dependence means a compulsive or chronic need for or an active addiction to alcohol or any controlled substance or narcotic drug.

Sec. 24. Section 71-193.15, Reissue Revised Statutes of Nebraska, is amended to read:

71-193.15 A (1) Except as otherwise provided in this section, a licensed dental hygienist shall perform the traditional dental hygiene functions set forth listed in section 71-193.17 only when authorized to do so by a licensed dentist who shall be responsible for the total oral health care of the patient.

(2) The Department of Health and Human Services Regulation and Licensure in the conduct of public health-related services department may authorize a licensed dental hygienist to conduct preliminary perform the following functions in the conduct of public health-related services in a public health setting or in a health care or related facility: Preliminary

renumbered
to § 33-1130

State Board of Health
November 17, 2008
Page 3 D R A F T

- Other potential upcoming reviews: Optometry, Radiology, Polysomnographers, Surgical Technicians
- Approval of Committee Recommendations for the Dental Hygienists Credentialing Review. Dr. Discoe reported that the Technical Review Committee (TRC) found the proposal failed on two points; the Credentialing Review Committee (CRC) met on November 7th and felt the same things.
Dr. Lazure asked if there was discussion. Dr. Westerman said that regarding Criterion One, he would not vote in favor of criterion one, which is in opposition of what the Technical Review Committee recommendation is. He does not feel that adequate information has been presented showing that OJT for dental assistants creates any greater harm, and is not a problem.
Dr. Lazure asked who would like to speak about the report or any of the ancillary recommendations. There will be a presentation from each side of the issue, limited to five minutes each.
Dr. Discoe explained that there were four recommendations from the TRC, and an additional two from the CRC:

TRC ancillary recommendations:

1. Representatives of the applicant group and the Board of Dentistry should cooperate to develop a uniform education and training program for those dental assistants who would be providing expanded functions, and which would include a consistent curriculum and a testing component.
2. Parameters and guidelines should be defined for the on-the-job training so that there are requirements for a consistent curriculum and competency testing.
3. Standardized training for the procedures associated with radiography and coronal polishing should be established for all dental assistants, along with testing for competency for each of these two components of dental assisting practice.
4. Expanded function dental assistants, including those who would provide orthodontic expanded functions, should be educated, tested, and credentialed on the functions they would be providing.

CRC ancillary recommendations:

1. Recommend that there be a statutory change that would allow the Board of Dentistry to establish educational and training provisions for dental assistants.
2. Recommend that the Board of Dentistry define how many dental assistants a dentist can supervise consistent with the goals of public safety and effectiveness. All interested parties to this issue should be involved in any process for the development of such educational provisions and oversight standards.

Ms. Coleman explained that the ancillary recommendations of the TRC were all approved unanimously, as were the CRC recommendations. The recommendations in general state that

IT WAS A LITTLE LIKE PULLING TEETH AT THE BEGINNING AND MORE LIKE A ROOT CANAL AT THE END.

Dental bill stopped by filibuster

Story Discussion

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DON WALTON / Lincoln Journal Star | Posted: Thursday, May 21, 2009 12:00 am | No Comments Posted

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Sen. Russ Karpisek, District 32

It was a little like pulling teeth at the beginning and more like a root canal at the end.

Sen. Kathy Campbell of Lincoln pulled the plug Friday on her dental assistant regulation bill after Sen. Russ Karpisek of Wilber shut the Legislature down with a lengthy filibuster.

Efforts to reach a compromise on the sidelines while debate dragged on were not accepted, Campbell informed the Legislature, so she asked that the bill be shelved for consideration by the 2010 Legislature.

With senators eager to complete their work week and head home, Campbell said she wanted to be "respectful of your time and your plans."

LB542 would authorize the state Department of Health and Human Services to establish education and training standards for dental assistants. The bill has been the subject of intense lobbying pressure,

including opposition mounted by dental hygienists.

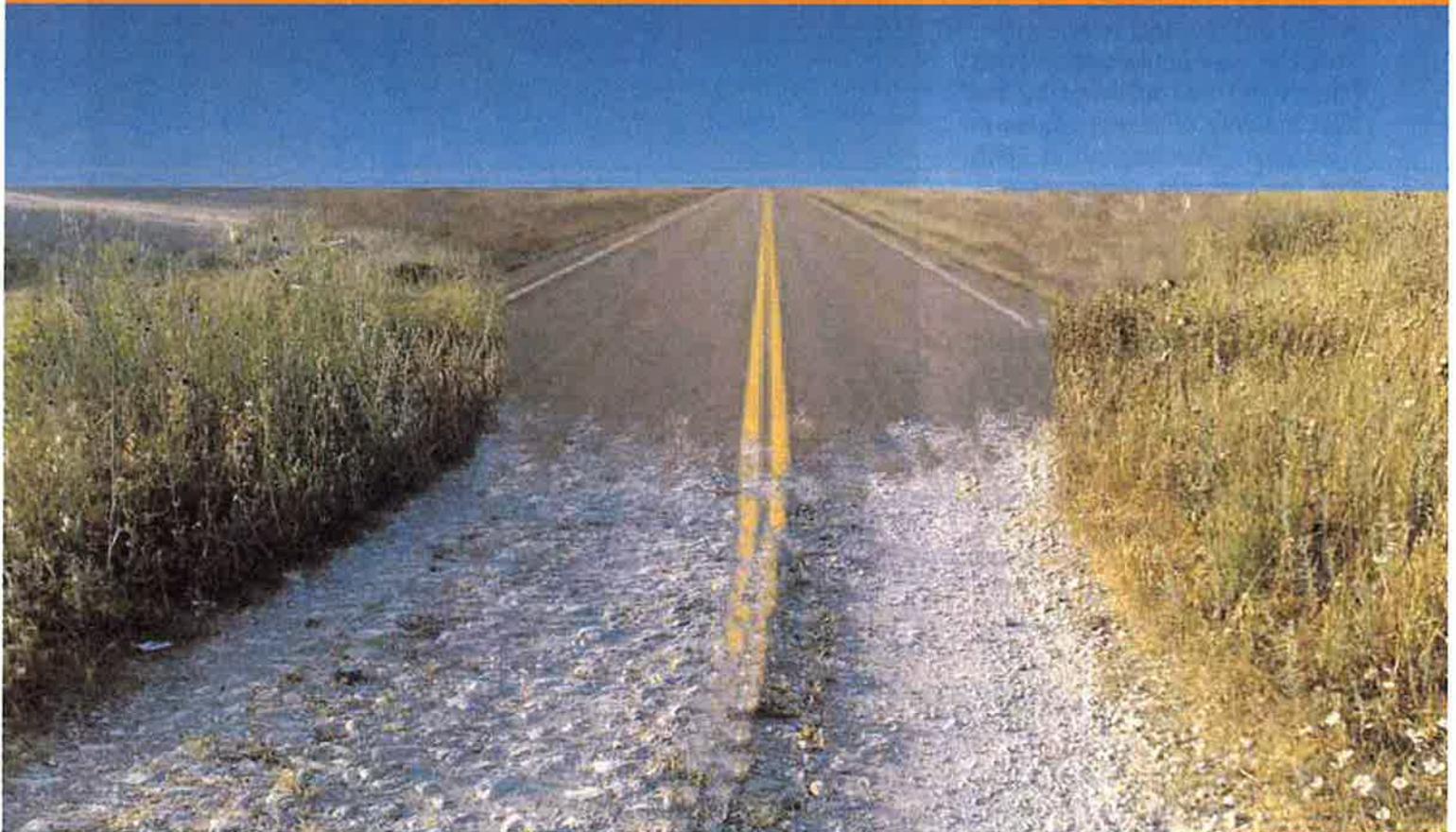
Karpisek said dentists, dental hygienists and dental assistants should reach agreement among themselves.

The logo for the Nebraska Dental Association (NDA) is a circular seal with the text "NEBRASKA DENTAL ASSOCIATION" around the perimeter and a central emblem. It is rendered in a light blue, semi-transparent style in the background.

nda

A publication of the Nebraska Dental Association

SEPT / OCT 2010



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This Year, Gone Next Year? p. 10**

**Annual Session 2011 Preview
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The Facebook logo, consisting of the word "facebook." in white lowercase letters on a dark blue rectangular background.

facebook.

The NDA is now on Facebook.

licensed dental hygienists. Such dental assistants, under the supervision of a licensed dentist, may perform such duties as are prescribed in accordance with rules and regulations adopted and promulgated by the department, with the recommendation of the board.

§ 38-1136 Dental hygienists; dental assistants; performance of duties; rules and regulations.

The department, with the recommendation of the board, shall adopt and promulgate rules and regulations governing the performance of duties by licensed dental hygienists and dental assistants.

**172 NAC 53.003.01
SCOPE OF PRACTICE OF DENTAL AUXILIARIES.**

Authorized Services. A licensed dentist is authorized to delegate to a dental auxiliary, other than a dental hygienist, only those procedures for which the dentist exercises supervision, for which he assumes full responsibility and which do not conflict with these regulations. The phrase "other than a dental hygienist" is used in this section of Subsection 003 to specifically differentiate between "dental hygienist" and any other dental auxiliary, and for no other purpose.

172 NAC 53.004 004 & 172 NAC 53.005

Assistants must take an educational course for x-rays and Coronal Polishing.

The Nebraska Regulations are specific to what duties a dental assistant cannot perform:

172 NAC 53.003.02 Prohibited Services.

Other dental auxiliaries are not authorized to perform any of the clinical services which may be performed by a licensed dental hygienist pursuant to Subsections 002.01A - Scaling of teeth; 002.01C - Chemical Curettage; or any of the clinical services which are prohibited to dental auxiliaries pursuant to Subsection 002.03:

- Any intra-oral procedure which would lead to the fabrication of any prosthesis.
- Placing or contouring of a final restoration.

172 NAC 53.002 -002.02 Other Prohibited Services.

A licensed dental hygienist or any other dental auxiliary, under no circumstances, is ever authorized to perform, whether under the supervision of a licensed dentist or not, the following clinical services:

- 002.02A - Diagnosis and treatment planning.
- 002.02B - Surgery on hard or soft tissue.
- 002.02C - Administering of local or general anesthetics.
- **002.02D - Any other irreversible dental procedure or procedures which require the professional judgment and skill of a licensed dentist.**

What Duties Can Dental Assistants Perform?

Reading the above referenced statutes and regulations together,

dental assistants can perform only those procedures for which the dentist exercises supervision, for which he assumes full responsibility and which do not conflict with these regulations and are not prohibited by 172 NAC 53.002 and 172 NAC 53.003 listed above.

The key prohibition is found in 172 NAC 53.002.02D, "*Any other irreversible dental procedure or procedures which require the professional judgment and skill of a licensed dentist.*"

For example, one of the questions that we receive is "can dental assistants place sealants?"

The answer requires a three part analysis: (1) Are sealants specifically prohibited in the Regulations? (2) Are sealants an irreversible dental procedure? (3) Does placing sealants require the professional judgment and skill of a licensed dentist?

If the answer to these three questions is no, then dental assistants can place sealants under the supervision of a dentist.

The NDA has formed a task force to review a list of possible duties that dental assistants could perform that would not violate the statutes and regulations listed above.



NOHA

Feb. 2011

#7

PUBLIC HEALTH

Lincoln People's City Mission (PCM) Free Medical/Dental Clinic

Looking for a way to feel great? We all feel better after we give of ourselves and reach out to help another. At the PCM, we are in need of more dental help (dental hygienists, dentists, and dental assistants). Here is a perfect opportunity to give our skills and knowledge by giving to others what they so desperately need. By volunteering, you can make a life time change for that individual and receive a great amount of pleasure yourself.

We all deserve to feel great, help someone and reap the rewards! Look for information at NDHA Annual Session.

For more information, contact Angela Washington at 402-475-1303 or awashington@peoplescitymission.org

SAVE THE DATE

Save the dates of June 3rd and 4th for the 2011 Mission of Mercy being held in Grand Island. I hope many of you that have helped in the past will be able to volunteer again for this wonderful outreach. If you already know that you will be available, please send me an e-mail and I will add you to the list. Thank you for considering helping with the Mission of Mercy in Grand Island.

Jane Lott, RDH, BSDH
lottjane@yahoo.com

LEGISLATIVE

A recent article published by the NDA suggests that the placement of sealants by dental assistants is allowable through rules & regulations. The NDHA's opinion is that this is NOT an allowable duty. If you have firsthand knowledge of this delegation of service the Uniform Credentialing Act requires you to report it to DHHS under mandatory reporting laws.

If Dental Assistants are placing sealants, they are practicing Dental Hygiene without a license. What activities must be reported by a licensee, certificate holder, or registrant? Every credentialed person who has first-hand knowledge of unlicensed, illegal or unethical activities is required to report (includes self-reporting) within 30 days of the occurrence. Failure to report may result in discipline. Report practicing without a license; gross incompetence; pattern of negligent conduct; unprofessional conduct; practice while impaired by alcohol/drugs or physical, mental or emotional disability; violations of other regulatory provisions of the profession (172 NAC 5). Report! It is your professional obligation if you have first-hand knowledge of unlicensed people practicing your scope of practice (see www.dhhs.ne.gov for more information or call 402-471-0175). These complaints are anonymous and if valid will be investigated by DHHS.

38-1115. Dentistry practice, defined in Statute

Any person shall be deemed to be practicing dentistry who:

(1) Performs, or attempts or professes to perform, any dental operation or oral surgery or dental service of any kind, gratuitously or for a salary, fee, money, or other remuneration paid, or to be paid directly or indirectly, to such person or to any other person or agency who is a proprietor of a place where dental operations, oral surgery, or dental services are performed;

NDHA continues to work hard to improve access to care to all Nebraskans. We are interested in cutting the 3000 hours required to hold a Public Health permit and expanding the Public Health scope of practice to include all ages. Watch for emails about contacting your Senator, bill language and other pressing issues in the days ahead!

Deb Schardt, PHRDH
Legislative Chair

NDHA voted to recognize PHRDH as the official acronym for those hygienists holding the Nebraska Public Health Authorization.

Ethics Article

What is ADHA's code of ethics? As a member of our professional association we agree to uphold these ethical standards. Even as a non-member, each hygienist is held to the ethical standards of the ADHA professional association that represents dental hygiene. Ethics affect us all, at every level in society as we have seen lately with New York Congressman Charles Rangel, who was censured by Congress, which is the harshest punishment next to expulsion, due to unethical behavior.

To get more familiar with these ethical standards, please visit www.adha.org. They can be found in the About ADHA section; just click on the ADHA Bylaws and Code of Ethics link. As health care providers, we all must be aware of our professional ethics so we can remind ourselves continually of the expectations of us by the public we serve.

Cynthia Carlson, RDH
ADHA Ethics Committee
Region C

April 2011 BOO
Minutes

#8

LETTER FROM THE NEBRASKA DENTAL ASSOCIATION (NDA) REGARDING ALLOWABLE DUTIES FOR DENTAL ASSISTANTS

Wilwerding provided the Board with background information regarding the letter from the NDA that requested the Board's opinion with the NDA's analysis of the current statutes, rules and regulations pertaining to allowable duties for dental assistants. Nebraska dentists look to the Board for its interpretation of the statutes, and in this case, they are asking whether or not dental assistants can place sealants.

The NDA's analysis of the current statutes, rules and regulations summarizes the review of a specific dental assistant duty as follows:

- Is the duty specifically prohibited in the regulations?
- Is the duty considered to be an irreversible dental procedure?
- Does performance of the duty require the professional judgment and skill of a licensed dentist?

The Regulations Governing the Performance of Duties by Licensed Dental Hygienists and Other Dental Auxiliaries, 172 NAC 53-002, include specific prohibited services. The Board or a committee of the Board could examine specific duties to determine whether the duties are irreversible and whether the duties require the professional judgment and skill of a licensed dentist. However, there is currently no specific statutory authority for the Board to require education or training for dental assistant duties other than for taking dental x-rays.

The Board focused on the question posed by the NDA regarding whether dental assistants can place sealants. The Board talked about whether surrounding states allow dental assistants to place sealants. A comment was raised about whether sealant placement is truly a reversible procedure. Although Nebraska statutes clearly define certain dental hygiene duties, allowable duties for dental assistants are not clearly defined in statute but are addressed in the 172 NAC 53 Regulations.

Applying the analysis from the NDA, the Board determined that placing sealants is not specifically prohibited in the regulations; placing sealants is not considered to be an irreversible dental procedure; and placing sealants does not require the professional judgment and skill of a licensed dentist. There was discussion about whether a dental assistant should have training in order to place sealants and whether that training should be formal training or on-the-job training. Consensus was that formal training would be preferred and that it could be structured similarly to the training required for dental assistants to perform coronal polishing.

In response to the letter submitted by the NDA, Ahlschwede moved, seconded by Gaskill, that it is the Board's opinion that dental assistants should be allowed to place sealants, provided that they have received training on placing sealants and that the training is similar to the training received for dental assistants to perform coronal polishing. Voting aye: Ahlschwede, Bauer, Blaha, Gaskill, Hinrichs, Kissell, Lott, Sneckenberg, Wilwerding. Voting nay: Sivers. Motion carried.

2011 LEGISLATION UPDATE

The update included that LB 330 has not come out of committee discussion. The amendment mentioned during committee discussions would require dental hygienists to have only 1,000 hours of clinical training. The Board discussed that the dental hygiene education is different now than when the original legislation was passed in 2003. There has been an increase in

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RE: Nebraska Board of Dentistry - Dental Assistant "Opinion"

Dear Mr. Winterer, Dr. Wilwerding, Dr. Westerman and Mr. Bruning:

Our office represents the Nebraska Dental Hygienists' Association and is writing in relation to a disturbing "opinion" issued by the Nebraska Board of Dentistry at its regular meeting on April 8, 2011. This type of "opinion" is clearly outside the scope of the Board of Dentistry authority, is contrary to Nebraska law and may result in irreversible harm to the public.

The opinion issued by the Board of Dentistry was in response to a request from the Nebraska Dental Association ("NDA"), based on the NDA's analysis of statutes, rules and regulations, as to whether a dental assistant in Nebraska can place sealants. The Board of Dentistry's response as set forth in the draft minutes of that meeting states as follows:

"Applying the analysis from the NDA, the Board determined that placing sealants is not specifically prohibited in the regulations; placing sealants is not considered to be an

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completely removed (usually with a powered rotary instrument or an air abrasion instrument); (4) the pits and fissures are then acid etched to roughen the enamel surface (using 37% phosphoric acid); (5) the sealant is applied to only the etched enamel; and (6) the sealant is then hardened, typically with a special high intensity light. Because sealants are considered a covered preventative treatment, the procedure can be billed to insurance or to the patient at \$28 to \$45 for each tooth treated.

There are several risks involved with sealants. If a sealant is not properly applied, the sealant can fail leading to bigger and potentially irreversible problems. Improper sealant placement can: (1) result in micro leakage or complete failure of the sealant leaving the tooth more vulnerable to decay; (2) prevent the early detection of a progressing cavity; and (3) adversely affect the occlusion causing pain and damage especially with today's filled resin sealants. In addition to failure risks, a person acting alone often cannot effectively isolate the tooth from mouth fluids without using a rubber dam. A person acting alone also puts young children at risk for injury from sharp instruments and acid etch burns to soft tissue or the eye.

Based on the procedure requirements and risks involved, applying a sealant requires a significant amount of knowledge and ability. The areas of education and training necessarily include dental anatomy, assessment for the presence of dental decay, assessment for the presence of plaque, training for proper removal of plaque, universal infection control practices, defined psychomotor skills and technique, manipulation of sharp instruments and use of acid etching to a limited depth and area. Moreover, this procedure is routinely performed within the confined space of the mouth of a very young and uncooperative child.

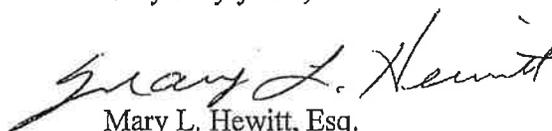
Contrary to the NDA's analysis presented to the BOD, the education, training and licensing required for application of sealants is already set forth in the Nebraska Dental Practice Act. Nebraska Revised Statutes § 38-1131(8) expressly states that the application of sealants is a procedure within the scope of practice of a Registered Dental Hygienist (RDH). However, before a RDH can perform the procedure, the RDH must graduate from an accredited program, pass a national board exam, pass a regional or state practical exam, pass a Nebraska jurisprudence exam, maintain 30 hours of continuing education, obtain a recommendation from the Board and obtain a license from the Department of Health and Human Services (DHHS). Clearly, the legislatures who approved and adopted the Nebraska Dental Practice Act have already determined that the application of sealants requires a bit more than some "training" and that the procedure requires the professional judgment and skill of either a licensed dentist or a registered dental hygienist.

DHHS, upon recommendation from the Board of Dentistry, is statutorily responsible for adopting rules and regulations which define the duties of dental assistants practicing in the state of Nebraska. Upon recommendation by the Board of Dentistry, DHHS recommended rules and regulations defining dental assistant practices in 2008. These proposed rules and regulations exceeded the authority granted to DHHS in the Dental Practice Act and, accordingly, the rules

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Very truly yours,



Mary L. Hewitt, Esq.
FOR THE FIRM

MLH:mlh
Enclosure

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