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March 18, 2014

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LIFESPAN HEALTH SERVICES

Nebraska Board of Health
Department of Health and Human Services,
Division of Public Health, Licensure Unit,
Research, Policy and Quality Improvement,
PO Box 95026
Lincoln, NE 68509-5026

RE: Order on Declaratory Ruling Request - Application of Sealants by Dental Assistants

Dear Members of the Nebraska Board of Health:

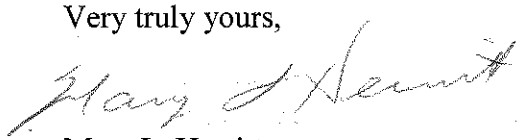
There has been much discussion and confusion in the past years about the application of sealants by a dental assistant. This issue was recently presented to the Department of Health and Human Services, Division of Public Health, through a request for a declaratory order seeking a ruling: (1) that dental assistants could apply sealants; and (2) that a dentist's license would not be disciplined for permitting such practice.

On March 7, 2014, Dr. Joseph Acierno, the Director of Public Health and Chief Medical Officer for the Department, issued an Order on behalf of the Department denying both requests. That is, dental assistants cannot apply sealants and the license of a dentist may be subject to discipline for permitting such practice. A copy of the Order is enclosed for review and dissemination to your respective members.

In the Order, the Department clearly articulated its position that these issues need to be addressed through rulemaking or adjudication. On behalf of the Nebraska Dental Hygienists' Association, we strongly encourage a continued effort by all to work together to give those practicing in the dental profession a clear legislative solution. This proposed solution should both recognize those dental assistants who have succeeded in obtaining advanced skills and seek to protect the public through the licensing of dental assistants who have attended an accredited educational program and met minimum training and competency requirements.

We hope the attached Order and this letter have been helpful in clearing up any confusion about the practice of dental assistants applying sealants. Should you have any questions, please do not hesitate to contact a representative of the Nebraska Dental Hygienists' Association.

Very truly yours,



Mary L. Hewitt
FOR THE FIRM

MLH:mlh
Enclosure

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LEGUS
MEMBER, INTERNATIONAL
NETWORK OF LAW FIRMS

THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF PUBLIC HEALTH
STATE OF NEBRASKA

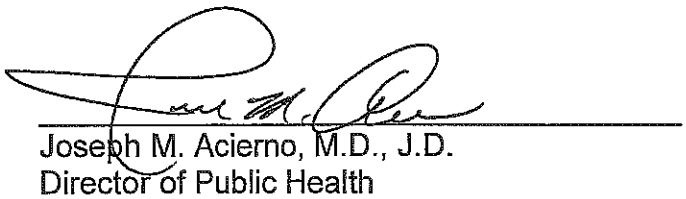
IN THE MATTER OF THE DECLARATORY RULING REQUEST OF JESSICA A. MEESKE, D.D.S., M.S.	)	**ORDER**
Petitioner.	)	

The Petitioner has asked for a Declaratory Order determining whether Petitioner's dental assistants while under the supervision of Petitioner may place sealants on the teeth of patients served by Petitioner. Petitioner requests 1. That such delegation be determined as allowable as a reversible procedure that is not prohibited by 172 NAC 53-002.02D, and 2. That Petitioner's license would not be subject to disciplinary action under 172 NAC § 53-006 and 172 NAC § 56-007. The Department received this Petition on February 5, 2014. The Nebraska Dental Hygientists' Association, Inc. filed a Petition to Intervene on March 5, 2014. I have determined the Petitioner is an interested party and the subject matter of the Petition is not appropriate for consideration pursuant to NEB. REV. STAT. §84-912.01 AND Title 184 NEB. ADMIN. CODE Chapter 2 §§ 005.011A9, 005.11B5 and 005.11B6. A Declaratory Order in this matter would affect the rights or duties of a class of persons beyond those employed by Dr. Meeske and is of a size that it would make the process unmanageable and the matter is more appropriately addressed through rulemaking or adjudication. The facts as presented in the Request and the Petition are overbroad and insufficiently specific to the entire class of persons affected that it would be inappropriate to base a ruling on them. Further, it is not clear that a Declaratory Order would resolve the controversy or the uncertainty.

Order

I decline to issue a Declaratory Order on the Petitioner's Request pursuant to NEB. REV. STAT. §84-912.01 AND Title 184 NEB. ADMIN. CODE Chapter 2 § 005.011A9, §005.11B5 and §005.11B6. The Petition to Intervene is denied as Moot.

DATED this 7 day of March, 2014.



Joseph M. Acierno, M.D., J.D.
Director of Public Health

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 7, 2014, a true and correct copy of the foregoing document was sent by United States Mail, postage prepaid and/or Faxed to:

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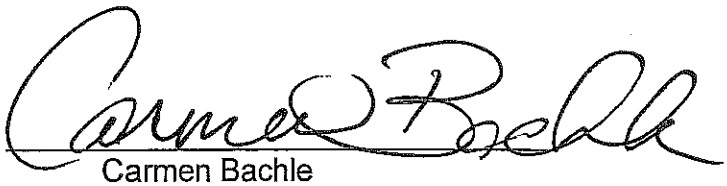

Carmen Bachle