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November 13, 2007

Joann Schaefer, M.D., Director  
Department of Health and Human Services  
Division of Public Health  
301 Centennial Mall South  
PO Box 95007  
Lincoln NE 68509-5007

RE: 172 NAC 53 – *Performance of Duties by Licensed Dental Hygienists and  
Dental Assistants*

Dear Dr. Schaefer:

We have reviewed the amendments to these regulations for statutory authority and constitutionality, but are unable to approve them at this time. In our view, there are two problems with the amendments.

First, Neb. Rev. Stat. §84-907.05(2)(c) requires our office to consider the extent to which the effects of the adopted regulations differ from the effects of the proposed regulations available to the public prior to public hearing. Here, we note that there were a number of changes in the text made between the time of newspaper notice and the adoption of the amended regulations, including several deletions and additions to the list of allowable duties for dental assistants. These changes have resulted in regulations that are substantially different from the proposed regulations referenced in the newspaper notice.

In addition, there is insufficient statutory authority for the detailed list of duties assigned to dental assistants in the amended regulations. We have not found specific statutory authority for these detailed list of procedures which may and may not be performed by dental assistants. Also, we found no statutory authority for the training and educational requirements that dental assistants would have to meet under the amended regulations in order to perform some of the procedures listed.

Joann Schaefer, M.D., Director  
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For these reasons, we are unable to approve the amended regulations. Please feel free to contact us if you have any questions concerning this matter.

Sincerely,

JON BRUNING  
Attorney General

  
Lynn A. Melson  
Assistant Attorney General

09-051-18