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AN ACT

RELATING TO HEALTH CARE; AMENDING THE DEFINITION OF  
"TELEDENTISTRY"; CLARIFYING THAT A DENTIST, DENTAL HYGIENIST  
OR DENTAL THERAPIST PRACTICING TELEDENTISTRY IS SUBJECT TO  
DISCIPLINARY PROCEEDINGS PERTAINING TO LICENSURE.

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

SECTION 1. 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

1 dental assistant, a dental hygienist or other trained  
2 personnel certified by the board as a community dental health  
3 coordinator to provide educational, preventive and limited  
4 palliative care and assessment services working  
5 collaboratively under the general supervision of a licensed  
6 dentist in settings other than traditional dental offices and  
7 clinics;

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

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

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

22 J. "dental hygienist" means an individual who has  
23 graduated and received a degree from a dental hygiene  
24 educational program that is accredited by the commission on  
25 dental accreditation, that provides a minimum of two academic

1 years of dental hygiene curriculum and that is an institution  
2 of higher education; and "dental hygienist" means, except as  
3 the context otherwise requires, an individual who holds a  
4 license to practice dental hygiene in New Mexico;

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

10 L. "dental technician" means an individual, other  
11 than a licensed dentist, who fabricates, alters, repairs or  
12 assists in the fabrication, alteration or repair of dental  
13 restorative, prosthetic, cosmetic and therapeutic devices or  
14 orthodontic appliances under the orders and authorization of  
15 a dentist;

16 M. "dental therapist" means an individual who:

17 (1) is licensed as a dental hygienist;

18 (2) has provided, in accordance with board  
19 rules, evidence to the board that the individual has  
20 graduated and received a degree from a dental therapy  
21 education program that is accredited by the commission on  
22 dental accreditation; and

23 (3) except as the context otherwise  
24 requires, is licensed to practice dental therapy in the  
25 state;

1           N. "dental therapy post-graduate clinical  
2 experience" means advanced training in patient management and  
3 technical competency:

4                   (1) that is approved by the board, based on  
5 educational and supervisory criteria developed by the board  
6 and established by board rule;

7                   (2) that is sanctioned by a regionally  
8 accredited educational institution with a program accredited  
9 by the commission on dental accreditation;

10                  (3) that consists of two thousand hours of  
11 advanced training or, if the dental therapy educational  
12 program graduate has five years of experience as a dental  
13 hygienist, one thousand five hundred hours of advanced  
14 training; and

15                  (4) for which the dental therapist may have  
16 been compensated;

17           O. "dental therapy practice agreement" means a  
18 contract between a supervising dentist and a dental therapist  
19 that outlines the parameters of care, level of supervision  
20 and protocols to be followed while performing dental therapy  
21 procedures on patients under the supervising dentist's and  
22 dental therapist's care;

23           P. "dentist" means an individual who has graduated  
24 and received a degree from a school of dentistry that is  
25 accredited by the commission on dental accreditation and,

1 except as the context otherwise requires, who holds a license  
2 to practice dentistry in New Mexico;

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

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

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

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

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

19 S. "federally qualified health center" means a  
20 health facility that the United States department of health  
21 and human services has deemed to qualify for federal funds as  
22 a federally qualified health center;

23 T. "federally qualified health center look-alike  
24 facility" means a health facility that the federal centers  
25 for medicare and medicaid services certifies as a federally

1 qualified health center look-alike facility;

2 U. "general supervision" means the authorization  
3 by a dentist of the procedures to be used by a dental  
4 therapist, community dental health coordinator, dental  
5 hygienist, dental assistant or dental student and the  
6 execution of the procedures in accordance with a dentist's  
7 diagnosis and treatment plan at a time the dentist is not  
8 physically present and in facilities as designated by rule of  
9 the board;

10 V. "indirect supervision" means that a dentist, or  
11 in certain settings, a dental therapist, dental hygienist or  
12 dental assistant certified in expanded functions, is present  
13 in the treatment facility while authorized treatments are  
14 being performed by a dental therapist, dental hygienist,  
15 dental assistant or dental student;

16 W. "long-term care facility" means a nursing home  
17 licensed by the department of health to provide intermediate  
18 or skilled nursing care;

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

24 Y. "nonprofit community dental organization" means  
25 a community-supported entity that:

1 (1) provides clinical dental services  
2 primarily to low-income patients or medicaid recipients; and

3 (2) has demonstrated to the taxation and  
4 revenue department that it has been granted exemption from  
5 the federal income tax by the United States commissioner of  
6 internal revenue as an organization described in Section  
7 501(c)(3) of the United States Internal Revenue Code of 1986,  
8 as amended or renumbered;

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

12 AA. "teledentistry" means a dentist's, dental  
13 hygienist's or dental therapist's use of electronic  
14 information, imaging and communication technologies,  
15 including interactive audio, video and data communications as  
16 well as store-and-forward technologies, to provide and  
17 support dental health care delivery, diagnosis, consultation,  
18 treatment, transfer of dental data and education."

19 SECTION 2. Section 61-5A-21 NMSA 1978 (being Laws 1994,  
20 Chapter 55, Section 21, as amended) is amended to read:

21 "61-5A-21. DISCIPLINARY PROCEEDINGS--APPLICATION OF  
22 UNIFORM LICENSING ACT.--

23 A. In accordance with the Uniform Licensing Act  
24 and rules of the board, the board and, as relates to dental  
25 hygienist licensure, committee may fine and may deny, revoke,

1 suspend, stipulate or otherwise limit any license or  
2 certificate, including those of licensed non-dentist owners,  
3 held or applied for under the Dental Health Care Act, upon  
4 findings by the board or the committee that the licensee,  
5 certificate holder or applicant:

6 (1) is guilty of fraud or deceit in  
7 procuring or attempting to procure a license or certificate;

8 (2) has been convicted of a crime punishable  
9 by incarceration in a federal prison or state penitentiary;  
10 provided a copy of the record of conviction, certified to by  
11 the clerk of the court entering the conviction, shall be  
12 conclusive evidence of such conviction;

13 (3) is guilty of gross incompetence or gross  
14 negligence, as defined by rules of the board, in the practice  
15 of dentistry, dental therapy, dental hygiene or dental  
16 assisting;

17 (4) is habitually intemperate or is addicted  
18 to the use of habit-forming drugs or is addicted to any vice  
19 to such degree as to render the licensee unfit to practice;

20 (5) is guilty of unprofessional conduct as  
21 defined by rule;

22 (6) is guilty of any violation of the  
23 Controlled Substances Act;

24 (7) has violated any provisions of the  
25 Dental Health Care Act or rule or regulation of the board or,

1 as relates to the practice of dental hygiene, the committee;

2 (8) is guilty of willfully or negligently  
3 practicing beyond the scope of licensure;

4 (9) is guilty of practicing dentistry,  
5 dental therapy or dental hygiene without a license or aiding  
6 or abetting the practice of dentistry, dental therapy or  
7 dental hygiene by a person not licensed under the Dental  
8 Health Care Act;

9 (10) is guilty of obtaining or attempting to  
10 obtain any fee by fraud or misrepresentation or has otherwise  
11 acted in a manner or by conduct likely to deceive, defraud or  
12 harm the public;

13 (11) is guilty of patient abandonment;

14 (12) is guilty of failing to report to the  
15 board any adverse action taken against the licensee by a  
16 licensing authority, peer review body, malpractice insurance  
17 carrier or other entity as defined in rules of the board and  
18 the committee;

19 (13) has had a license, certificate or  
20 registration to practice as a dentist, dental therapist or  
21 dental hygienist revoked, suspended, denied, stipulated or  
22 otherwise limited in any jurisdiction, territory or  
23 possession of the United States or another country for  
24 actions of the licensee similar to acts described in this  
25 subsection. A certified copy of the decision of the

1 jurisdiction taking such disciplinary action will be  
2 conclusive evidence; or

3 (14) has failed to furnish the board, its  
4 investigators or its representatives with information  
5 requested by the board or the committee in the course of an  
6 official investigation.

7 B. Disciplinary proceedings may be instituted by  
8 sworn complaint by any person, including a board or committee  
9 member, and shall conform with the provisions of the Uniform  
10 Licensing Act.

11 C. Licensees and certificate holders shall bear  
12 the costs of disciplinary proceedings unless exonerated.

13 D. Any person filing a sworn complaint shall be  
14 immune from liability arising out of civil action if the  
15 complaint is filed in good faith and without actual malice.

16 E. Licensees whose licenses are in a probationary  
17 status shall pay reasonable expenses for maintaining  
18 probationary status, including laboratory costs when  
19 laboratory testing of biological fluids or accounting costs  
20 when audits are included as a condition of probation.

21 F. A dentist, dental hygienist or dental therapist  
22 practicing teledentistry is subject to the provisions of this  
23 section." \_\_\_\_\_