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
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. "dental therapist" means an individual who:
   (1) is licensed as a dental hygienist;
   (2) has provided, in accordance with board
   rules, evidence to the board that the individual has
   graduated and received a degree from a dental therapy
   education program that is accredited by the commission on
dental accreditation; and
   (3) except as the context otherwise
   requires, is licensed to practice dental therapy in the
   state;
N. "dental therapy post-graduate clinical experience" means advanced training in patient management and technical competency:

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

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

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

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

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

P. "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;

Q. "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;

R. "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;

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

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

U. "general supervision" means the authorization by a dentist of the procedures to be used by a dental therapist, community dental health coordinator, 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;

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

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

X. "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;

Y. "nonprofit community dental organization" means a community-supported entity that:
(1) provides clinical dental services primarily to low-income patients or medicaid recipients; and

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

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

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

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

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

A. In accordance with the Uniform Licensing Act and rules of the board, the board and, as relates to dental hygienist licensure, committee may fine and may deny, revoke,
suspend, stipulate or otherwise limit any license or
certificate, including those of licensed non-dentist owners,
held or applied for under the Dental Health Care Act, upon
findings by the board or the committee that the licensee,
certificate holder or applicant:

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

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

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

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

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

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

(7) has violated any provisions of the
Dental Health Care Act or rule or regulation of the board or,
as relates to the practice of dental hygiene, the committee;

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

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

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

(11) is guilty of patient abandonment;

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

(13) has had a license, certificate or registration to practice as a dentist, dental therapist or dental hygienist revoked, suspended, denied, stipulated or otherwise limited in any jurisdiction, territory or possession of the United States or another country for actions of the licensee similar to acts described in this subsection. A certified copy of the decision of the
B. Disciplinary proceedings may be instituted by sworn complaint by any person, including a board or committee member, and shall conform with the provisions of the Uniform Licensing Act.

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

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

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

F. A dentist, dental hygienist or dental therapist practicing teledentistry is subject to the provisions of this section.