

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 676

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO DENTAL HEALTH CARE; EXPANDING THE SCOPE OF PRACTICE
OF DENTAL HYGIENISTS; AMENDING PROVISIONS OF THE DENTAL HEALTH
CARE ACT; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION
OF LAW IN LAWS 2003.

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

Section 1. Section 26-1-2 NMSA 1978 (being Laws 1967,
Chapter 23, Section 2, as amended by Laws 2008, Chapter 9,
Section 3 and by Laws 2008, Chapter 44, Section 4) is amended
to read:

"26-1-2. DEFINITIONS.--As used in the New Mexico Drug,
Device and Cosmetic Act:

A. "board" means the board of pharmacy or its duly
authorized agent;

B. "person" includes an individual, partnership,

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underscoring material = new
[bracketed material] = delete

1 corporation, association, institution or establishment;

2 C. "biological product" means a virus, therapeutic
3 serum, toxin, antitoxin or analogous product applicable to the
4 prevention, treatment or cure of diseases or injuries of humans
5 and domestic animals, and, as used within the meaning of this
6 definition:

7 (1) a "virus" is interpreted to be a product
8 containing the minute living cause of an infectious disease and
9 includes filterable viruses, bacteria, rickettsia, fungi and
10 protozoa;

11 (2) a "therapeutic serum" is a product
12 obtained from blood by removing the clot or clot components and
13 the blood cells;

14 (3) a "toxin" is a product containing a
15 soluble substance poisonous to laboratory animals or humans in
16 doses of one milliliter or less of the product and having the
17 property, following the injection of nonfatal doses into an
18 animal, or causing to be produced therein another soluble
19 substance that specifically neutralizes the poisonous substance
20 and that is demonstrable in the serum of the animal thus
21 immunized; and

22 (4) an "antitoxin" is a product containing the
23 soluble substance in serum or other body fluid of an immunized
24 animal that specifically neutralizes the toxin against which
25 the animal is immune;

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1 D. "controlled substance" means a drug, substance
2 or immediate precursor enumerated in Schedules I through V of
3 the Controlled Substances Act;

4 E. "drug" means articles:

5 (1) recognized in an official compendium;

6 (2) intended for use in the diagnosis, cure,
7 mitigation, treatment or prevention of disease in humans or
8 other animals and includes the domestic animal biological
9 products regulated under the federal Virus-Serum-Toxin Act,
10 37 Stat 832-833, 21 U.S.C. 151-158, and the biological products
11 applicable to humans regulated under Federal 58 Stat 690, as
12 amended, 42 U.S.C. 216, Section 351, 58 Stat 702, as amended,
13 and 42 U.S.C. 262;

14 (3) other than food, that affect the structure
15 or any function of the human body or the bodies of other
16 animals; and

17 (4) intended for use as a component of
18 Paragraph (1), (2) or (3) of this subsection, but does not
19 include devices or their component parts or accessories;

20 F. "dangerous drug" means a drug, other than a
21 controlled substance enumerated in Schedule I of the Controlled
22 Substances Act, that because of a potentiality for harmful
23 effect or the method of its use or the collateral measures
24 necessary to its use is not safe except under the supervision
25 of a practitioner licensed by law to direct the use of such

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1 drug and hence for which adequate directions for use cannot be
2 prepared. "Adequate directions for use" means directions under
3 which the layperson can use a drug or device safely and for the
4 purposes for which it is intended. A drug shall be dispensed
5 only upon the prescription of a practitioner licensed by law to
6 administer or prescribe the drug if it:

7 (1) is a habit-forming drug and contains any
8 quantity of a narcotic or hypnotic substance or a chemical
9 derivative of such substance that has been found under the
10 federal act and the board to be habit forming;

11 (2) because of its toxicity or other potential
12 for harmful effect or the method of its use or the collateral
13 measures necessary to its use is not safe for use except under
14 the supervision of a practitioner licensed by law to administer
15 or prescribe the drug;

16 (3) is limited by an approved application by
17 Section 505 of the federal act to the use under the
18 professional supervision of a practitioner licensed by law to
19 administer or prescribe the drug;

20 (4) bears the legend: "Caution: federal law
21 prohibits dispensing without prescription.";

22 (5) bears the legend: "Caution: federal law
23 restricts this drug to use by or on the order of a licensed
24 veterinarian."; or

25 (6) bears the legend "RX only";

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1 G. "counterfeit drug" means a drug that is
2 deliberately and fraudulently mislabeled with respect to its
3 identity, ingredients or sources. Types of such pharmaceutical
4 counterfeits may include:

5 (1) "identical copies", which are counterfeits
6 made with the same ingredients, formulas and packaging as the
7 originals but not made by the original manufacturer;

8 (2) "look-alikes", which are products that
9 feature high-quality packaging and convincing appearances but
10 contain little or no active ingredients and may contain harmful
11 substances;

12 (3) "rejects", which are drugs that have been
13 rejected by the manufacturer for not meeting quality standards;
14 and

15 (4) "relabels", which are drugs that have
16 passed their expiration dates or have been distributed by
17 unauthorized foreign sources and may include placebos created
18 for late-phase clinical trials;

19 H. "device", except when used in Subsection P of
20 this section and in Subsection G of Section 26-1-3, Subsection
21 L and Paragraph (4) of Subsection A of Section 26-1-11 and
22 Subsection C of Section 26-1-24 NMSA 1978, means an instrument,
23 apparatus, implement, machine, contrivance, implant, in vitro
24 reagent or other similar or related article, including any
25 component, part or accessory, that is:

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1 (1) recognized in an official compendium;
2 (2) intended for use in the diagnosis of
3 disease or other conditions or in the cure, mitigation,
4 treatment or prevention of disease in humans or other animals;
5 or

6 (3) intended to affect the structure or a
7 function of the human body or the bodies of other animals and
8 that does not achieve any of its principal intended purposes
9 through chemical action within or on the human body or the
10 bodies of other animals and that is not dependent on being
11 metabolized for achievement of any of its principal intended
12 purposes;

13 I. "prescription" means an order given individually
14 for the person for whom prescribed, either directly from a
15 licensed practitioner or the practitioner's agent to the
16 pharmacist, including by means of electronic transmission, or
17 indirectly by means of a written order signed by the
18 prescriber, and bearing the name and address of the prescriber,
19 the prescriber's license classification, the name and address
20 of the patient, the name and quantity of the drug prescribed,
21 directions for use and the date of issue;

22 J. "practitioner" means a certified advanced
23 practice chiropractic physician, physician, doctor of oriental
24 medicine, dentist, veterinarian, certified nurse practitioner,
25 clinical nurse specialist, pharmacist, pharmacist clinician,

1 certified nurse-midwife, physician assistant, prescribing
2 psychologist, dental hygienist or other person licensed or
3 certified to prescribe and administer drugs that are subject to
4 the New Mexico Drug, Device and Cosmetic Act;

5 K. "cosmetic" means:

6 (1) articles intended to be rubbed, poured,
7 sprinkled or sprayed on, introduced into or otherwise applied
8 to the human body or any part thereof for cleansing,
9 beautifying, promoting attractiveness or altering the
10 appearance; and

11 (2) articles intended for use as a component
12 of any articles enumerated in Paragraph (1) of this subsection,
13 except that the term shall not include soap;

14 L. "official compendium" means the official United
15 States pharmacopoeia national formulary or the official
16 homeopathic pharmacopoeia of the United States or any
17 supplement to either of them;

18 M. "label" means a display of written, printed or
19 graphic matter upon the immediate container of an article. A
20 requirement made by or under the authority of the New Mexico
21 Drug, Device and Cosmetic Act that any word, statement or other
22 information appear on the label shall not be considered to be
23 complied with unless the word, statement or other information
24 also appears on the outside container or wrapper, if any, of
25 the retail package of the article or is easily legible through

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1 the outside container or wrapper;

2 N. "immediate container" does not include package
3 liners;

4 O. "labeling" means all labels and other written,
5 printed or graphic matter:

6 (1) on an article or its containers or
7 wrappers; or

8 (2) accompanying an article;

9 P. "misbranded" means a label to an article that is
10 misleading. In determining whether the label is misleading,
11 there shall be taken into account, among other things, not only
12 representations made or suggested by statement, word, design,
13 device or any combination of the foregoing, but also the extent
14 to which the label fails to reveal facts material in the light
15 of such representations or material with respect to
16 consequences that may result from the use of the article to
17 which the label relates under the conditions of use prescribed
18 in the label or under such conditions of use as are customary
19 or usual;

20 Q. "advertisement" means all representations
21 disseminated in any manner or by any means, other than by
22 labeling, for the purpose of inducing, or that are likely to
23 induce, directly or indirectly, the purchase of drugs, devices
24 or cosmetics;

25 R. "antiseptic", when used in the labeling or

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1 advertisement of an antiseptic, shall be considered to be a
2 representation that it is a germicide, except in the case of a
3 drug purporting to be or represented as an antiseptic for
4 inhibitory use as a wet dressing, ointment, dusting powder or
5 such other use as involves prolonged contact with the body;

6 S. "new drug" means a drug:

7 (1) the composition of which is such that the
8 drug is not generally recognized, among experts qualified by
9 scientific training and experience to evaluate the safety and
10 efficacy of drugs, as safe and effective for use under the
11 conditions prescribed, recommended or suggested in the labeling
12 thereof; or

13 (2) the composition of which is such that the
14 drug, as a result of investigation to determine its safety and
15 efficacy for use under such conditions, has become so
16 recognized, but that has not, otherwise than in such
17 investigations, been used to a material extent or for a
18 material time under such conditions;

19 T. "contaminated with filth" applies to a drug,
20 device or cosmetic not securely protected from dirt, dust and,
21 as far as may be necessary by all reasonable means, from all
22 foreign or injurious contaminations, or a drug, device or
23 cosmetic found to contain dirt, dust, foreign or injurious
24 contamination or infestation;

25 U. "selling of drugs, devices or cosmetics" shall

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1 be considered to include the manufacture, production,
2 processing, packing, exposure, offer, possession and holding of
3 any such article for sale and the sale and the supplying or
4 applying of any such article in the conduct of a drug or
5 cosmetic establishment;

6 V. "color additive" means a material that:

7 (1) is a dye, pigment or other substance made
8 by a process of synthesis or similar artifice or extracted,
9 isolated or otherwise derived, with or without intermediate or
10 final change of identity, from a vegetable, mineral, animal or
11 other source; or

12 (2) when added or applied to a drug or
13 cosmetic or to the human body or a part thereof, is capable,
14 alone or through reaction with other substances, of imparting
15 color thereto; except that such term does not include any
16 material that has been or hereafter is exempted under the
17 federal act;

18 W. "federal act" means the Federal Food, Drug and
19 Cosmetic Act;

20 X. "restricted device" means a device for which the
21 sale, distribution or use is lawful only upon the written or
22 oral authorization of a practitioner licensed by law to
23 administer, prescribe or use the device and for which the
24 federal food and drug administration requires special training
25 or skills of the practitioner to use or prescribe. This

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1 definition does not include custom devices defined in the
2 federal act and exempt from performance standards or premarket
3 approval requirements under Section 520(b) of the federal act;

4 Y. "prescription device" means a device that,
5 because of its potential for harm, the method of its use or the
6 collateral measures necessary to its use, is not safe except
7 under the supervision of a practitioner licensed in this state
8 to direct the use of such device and for which "adequate
9 directions for use" cannot be prepared, but that bears the
10 label: "Caution: federal law restricts this device to sale by
11 or on the order of a _____", the blank to be filled with
12 the word "physician", "physician assistant", "certified
13 advanced practice chiropractic physician", "doctor of oriental
14 medicine", "dentist", "veterinarian", "certified nurse
15 practitioner", "clinical nurse specialist", "pharmacist",
16 "pharmacist clinician", [~~or~~] "certified nurse-midwife" or
17 "dental hygienist" or with the descriptive designation of any
18 other practitioner licensed in this state to use or order the
19 use of the device;

20 Z. "valid practitioner-patient relationship" means
21 a professional relationship, as defined by the practitioner's
22 licensing board, between the practitioner and the patient; and

23 AA. "pedigree" means the recorded history of a
24 drug."

25 Section 2. Section 61-5A-2 NMSA 1978 (being Laws 1994,

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1 Chapter 55, Section 2, as amended) is amended to read:

2 "61-5A-2. PURPOSE.--

3 A. In the interest of the public health, safety and
4 welfare and to protect the public from the improper,
5 unprofessional, incompetent and unlawful practice of dentistry
6 and dental hygiene, it is necessary to provide laws and rules
7 controlling the granting and use of the privilege to practice
8 dentistry and dental hygiene and to establish a board of dental
9 health care and a dental hygienists committee to implement and
10 enforce those laws and rules.

11 B. The primary duties of the New Mexico board of
12 dental health care are to issue licenses to qualified dentists
13 and owners of dental practices; to certify qualified dental
14 assistants and community dental health coordinators; to issue
15 licenses to dental hygienists through the dental hygienists
16 committee; to discipline incompetent or unprofessional
17 dentists, dental assistants, owners of dental practices and,
18 through the dental hygienists committee, dental hygienists; and
19 to aid in the rehabilitation of impaired dentists and dental
20 hygienists for the purpose of protecting the public."

21 Section 3. Section 61-5A-3 NMSA 1978 (being Laws 1994,
22 Chapter 55, Section 3, as amended) is amended to read:

23 "61-5A-3. DEFINITIONS.--As used in the Dental Health Care
24 Act:

25 A. "assessment" means the review and documentation

1 of the oral condition, and the recognition and documentation of
2 deviations from the healthy condition, without a diagnosis to
3 determine the cause or nature of disease or its treatment;

4 B. "board" means the New Mexico board of dental
5 health care;

6 C. "certified dental assistant" means an individual
7 certified by the dental [~~assistant~~] assisting national board;

8 D. "collaborative dental hygiene practice" means a
9 New Mexico licensed dental hygienist practicing according to
10 Subsections [~~D~~] B and [~~E~~] F of Section 61-5A-4 NMSA 1978;

11 E. "committee" means the New Mexico dental
12 hygienists committee;

13 F. "community dental health coordinator" means a
14 dental assistant, licensed dental hygienist or other trained
15 dental personnel who:

16 (1) has met the educational criteria and has
17 been certified in one or more functions for a community dental
18 health coordinator established by the board;

19 (2) provides educational, preventive, limited
20 palliative and assessment services; and

21 (3) works collaboratively under the general
22 supervision of a licensed dentist in settings other than
23 traditional dental offices and clinics;

24 [~~F.~~] G. "consulting dentist" means a dentist who
25 has entered into an approved agreement to provide consultation

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1 and create protocols with a collaborating dental hygienist and,
2 when required, to provide diagnosis and authorization for
3 services, in accordance with the rules of the board and the
4 committee;

5 [G.] H. "dental assistant certified in expanded
6 functions" means a dental assistant who meets specific
7 qualifications set forth by rule of the board;

8 I. "dental hygiene focused examination" means the
9 documentation of existing oral and relevant systemic conditions
10 and the identification of potential oral disease to develop,
11 communicate, implement and evaluate a plan of oral hygiene care
12 and treatment;

13 [H.] J. "dental hygienist" means an individual who
14 has graduated and received a degree from a dental hygiene
15 educational program accredited by the [~~joint~~] commission on
16 dental accreditation, which provides a minimum of two academic
17 years of dental hygiene curriculum and is an institution of
18 higher education and, except as the context otherwise requires,
19 who holds a license to practice dental hygiene in New Mexico;

20 [~~I.~~] K. "dental laboratory" means any place where
21 dental restorative, prosthetic, cosmetic and therapeutic
22 devices or orthodontic appliances are fabricated, altered or
23 repaired by one or more persons under the orders and
24 authorization of a dentist;

25 [~~J.~~] L. "dental technician" means an individual,

1 other than a licensed dentist, who fabricates, alters, repairs
2 or assists in the fabrication, alteration or repair of dental
3 restorative, prosthetic, cosmetic and therapeutic devices or
4 orthodontic appliances under the orders and authorization of a
5 dentist;

6 ~~[K.]~~ M. "dentist" means an individual who has
7 graduated and received a degree from a school of dentistry that
8 is accredited by the ~~[joint]~~ commission on dental accreditation
9 and, except as the context otherwise requires, who holds a
10 license to practice dentistry in New Mexico;

11 ~~[L.]~~ N. "general supervision" means the
12 authorization by a dentist of the procedures to be used by a
13 dental hygienist, dental assistant or dental student and the
14 execution of the procedures in accordance with a dentist's
15 diagnosis and treatment plan at a time the dentist is not
16 physically present and in facilities as designated by rule of
17 the board;

18 ~~[M.]~~ O. "indirect supervision" means that a
19 dentist, or in certain settings a dental hygienist or dental
20 assistant certified in expanded functions, is present in the
21 treatment facility while authorized treatments are being
22 performed by a dental hygienist, dental assistant or dental
23 student; ~~[and~~

24 ~~N.]~~ P. "non-dentist owner" means an individual not
25 licensed as a dentist in New Mexico or a corporate entity not

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1 owned by a majority interest of a New Mexico licensed dentist
2 that employs or contracts with a dentist or dental hygienist to
3 provide dental or dental hygiene services;

4 Q. "palliative procedures" means non-surgical
5 reversible procedures that are meant to alleviate pain and
6 stabilize acute or emergent problems; and

7 R. "teledentistry" means a dentist's use of health
8 information technology in real time to provide limited
9 diagnostic and treatment planning services in cooperation with
10 a dental student, community dental health coordinator, licensed
11 dental hygienist or another licensed dentist."

12 Section 4. Section 61-5A-4 NMSA 1978 (being Laws 1994,
13 Chapter 55, Section 4, as amended) is amended to read:

14 "61-5A-4. SCOPE OF PRACTICE.--

15 A. As used in the Dental Health Care Act, "practice
16 of dentistry" means:

17 (1) the diagnosis, treatment, correction,
18 change, relief, prevention, prescription of remedy, surgical
19 operation and adjunctive treatment for any disease, pain,
20 deformity, deficiency, injury, defect, lesion or physical
21 condition involving both the functional and aesthetic aspects
22 of the teeth, gingivae, jaws and adjacent hard and soft tissue
23 of the oral and maxillofacial regions, including the
24 prescription or administration of any drug, medicine, biologic,
25 apparatus, brace, anesthetic or other therapeutic or diagnostic

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1 substance or technique by an individual or the individual's
2 agent or employee gratuitously or for any fee, reward,
3 emolument or any other form of compensation whether direct or
4 indirect;

5 (2) representation of an ability or
6 willingness to do any act mentioned in Paragraph (1) of this
7 subsection;

8 (3) the review of dental insurance claims for
9 therapeutic appropriateness of treatment, including but not
10 limited to the interpretation of radiographs, photographs,
11 models, periodontal records and narratives;

12 (4) the offering of advice or authoritative
13 comment regarding the appropriateness of dental therapies, the
14 need for recommended treatment or the efficacy of specific
15 treatment modalities for other than the purpose of consultation
16 to another dentist; or

17 (5) with specific reference to the teeth,
18 gingivae, jaws or adjacent hard or soft tissues of the oral and
19 maxillofacial region in living persons, to propose, agree or
20 attempt to do or make an examination or give an estimate of
21 cost with intent to, or undertaking to:

22 (a) perform a physical evaluation of a
23 patient in an office or in a hospital, clinic or other medical
24 or dental facility prior to, incident to and appropriate to the
25 performance of any dental services or oral or maxillofacial

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1 surgery;

2 (b) perform surgery, an extraction or
3 any other operation or to administer an anesthetic in
4 connection therewith;

5 (c) diagnose or treat a condition,
6 disease, pain, deformity, deficiency, injury, lesion or other
7 physical condition;

8 (d) correct a malposition;

9 (e) treat a fracture;

10 (f) remove [~~calcareous deposits~~] plaque,
11 calculus and stains;

12 (g) replace missing anatomy with an
13 artificial substitute;

14 (h) construct, make, furnish, supply,
15 reproduce, alter or repair an artificial substitute or
16 restorative or corrective appliance or place an artificial
17 substitute or restorative or corrective appliance in the mouth
18 or attempt to adjust it;

19 (i) give interpretations or readings of
20 dental radiographs; [~~or~~]

21 (j) do any other remedial, corrective or
22 restorative work; or

23 (k) provide limited diagnostic and
24 treatment planning via teledentistry.

25 B. As used in the Dental Health Care Act, "the

1 practice of dental hygiene" means the application of the
 2 science of the prevention and treatment of oral disease through
 3 the provision of educational, assessment, preventive, clinical
 4 and other therapeutic services under the general supervision of
 5 a dentist. A dental hygienist in a collaborative dental
 6 hygiene practice may perform the procedures listed in this
 7 section without general supervision in a cooperative working
 8 relationship with a consulting dentist, pursuant to rules
 9 promulgated by the board and the committee. "The practice of
 10 dental hygiene" includes:

11 (1) prophylaxis, which is the [~~treatment of~~
 12 ~~human teeth by removing from their surface calcareous deposits~~
 13 ~~and stain, removing accumulated accretions and polishing the~~
 14 ~~surfaces of the teeth] removal of plaque, calculus and stains
 15 from tooth structures as a means to control local irritational
 16 factors;~~

17 (2) removing diseased crevicular tissue and
 18 related non-surgical periodontal procedures;

19 (3) assessment for the application of pit and
 20 fissure sealants without a dentist's evaluation except when,
 21 upon clinical evaluation of the tooth surface, a sharp explorer
 22 exhibits resistance to removal;

23 [~~3~~] (4) the application of pit and fissure
 24 sealants without mechanical alteration of the tooth [~~fluorides~~
 25 ~~and other topical therapeutic and preventive agents];~~

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1 (5) the application of fluorides and other
2 topical therapeutic and preventive agents;

3 [~~(4)~~] (6) exposing and [referring to]
4 assessing oral radiographs for abnormalities;

5 [~~(5)~~] (7) screening to identify indications of
6 oral abnormalities;

7 (8) performance of dental hygiene focused
8 examinations;

9 [~~(6)~~] (9) assessment of periodontal
10 conditions; and

11 [~~(7)~~] (10) such other closely related services
12 as permitted by the rules of the committee and the board.

13 C. In addition to performing dental hygiene as
14 defined in Subsection B of this section, a dental hygienist may
15 apply preventive topical fluorides and remineralization agents
16 without supervision in public and community medical facilities,
17 schools, hospitals, long-term care facilities and such other
18 settings as the committee may determine by rule ratified by the
19 board, so long as the dental hygienist's license is not
20 restricted pursuant to the Impaired Dentists and Dental
21 Hygienists Act.

22 D. In addition to performing dental hygiene as
23 defined in Subsection B of this section, dental hygienists who
24 have met the criteria, as the committee shall establish and the
25 board may ratify, may administer local anesthesia under

1 indirect supervision of a dentist. Dental hygienists who, in
2 addition to these criteria, have administered local anesthesia
3 under the indirect supervision of a dentist for at least two
4 years and can document, with a signed affirmation by the
5 dentist, the competent completion of twenty cases during that
6 period may be certified to administer local anesthetic under
7 general supervision on the written prescription of a dentist,
8 if emergency medical services are available in accordance with
9 rules the board shall promulgate.

10 E. Dental hygienists may prescribe, administer and
11 distribute fluoride supplements, topically applied fluoride and
12 topically applied antimicrobials, pursuant to rules adopted by
13 the committee and the board. The dental hygienist shall
14 prescribe, administer or distribute under the direction of a
15 supervising licensed New Mexico dentist, who may be the
16 designated consulting dentist for a collaborative dental
17 hygiene practice, within the parameters of a drug formulary
18 approved by the board of dental health care in consultation
19 with the board of pharmacy and guidelines established pursuant
20 to Subsection M of Section 61-5A-10 NMSA 1978. The
21 distribution process shall comply with state laws concerning
22 prescription packaging, labeling and record-keeping
23 requirements. Dental hygienists shall not otherwise dispense
24 dangerous drugs or controlled substances.

25 [~~E.~~] F. A New Mexico licensed dental hygienist may

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1 be certified for collaborative dental hygiene practice in
2 accordance with the educational and experience criteria
3 established collaboratively by the committee and the board.

4 ~~[F. For the purpose of this section, "collaborative~~
5 ~~dental hygiene practice" means the application of the science~~
6 ~~of the prevention and treatment of oral disease through the~~
7 ~~provision of educational, assessment, preventive, clinical and~~
8 ~~other therapeutic services as specified in Subsection B of this~~
9 ~~section in a cooperative working relationship with a consulting~~
10 ~~dentist, but without general supervision as set forth by the~~
11 ~~rules established and approved by both the board and the~~
12 ~~committee.]"~~

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

15 "61-5A-5. LICENSE REQUIRED--EXEMPTIONS.--

16 A. Unless licensed to practice as a dentist under
17 the Dental Health Care Act, no person shall:

18 (1) practice dentistry;

19 (2) use the title "dentist", "dental surgeon",
20 "oral surgeon" or any other title, abbreviation, letters,
21 figures, signs or devices that indicate the person is a
22 licensed dentist; or

23 (3) perform any of the acts enumerated under
24 the definition of the practice of dentistry as defined in the
25 Dental Health Care Act.

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1 B. The following, under the stipulations described,
2 may practice dentistry or an area of dentistry without a New
3 Mexico dental license:

4 (1) regularly licensed physicians or surgeons
5 are not prohibited from extracting teeth or treating any
6 disease coming within the province of the practice of medicine;

7 (2) New Mexico licensed dental hygienists may
8 provide those services within their scope of practice that are
9 also within the scope of the practice of dentistry;

10 (3) any dental student duly enrolled in an
11 accredited school of dentistry recognized by the board, while
12 engaged in educational programs offered by the school in
13 private offices, public clinics or educational institutions
14 within the state of New Mexico under the indirect supervision
15 of a licensed dentist;

16 (4) any dental hygiene or dental assisting
17 student duly enrolled in an accredited school of dental hygiene
18 or dental assisting engaged in procedures within or outside the
19 scope of dental hygiene that are part of the curriculum of that
20 program in the school setting and under the indirect
21 supervision of a faculty member of the accredited program who
22 is a licensed dentist, dental hygienist or dental assistant
23 certified in the procedures being taught;

24 (5) unlicensed persons performing for a
25 licensed dentist merely mechanical work upon inert matter in

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1 the construction, making, alteration or repairing of any
2 artificial dental substitute, dental restorative or corrective
3 appliance, when the casts or impressions for the work have been
4 furnished by a licensed dentist and where the work is
5 prescribed by a dentist pursuant to a written authorization by
6 that dentist;

7 (6) commissioned dental officers of the
8 uniformed forces of the United States and dentists providing
9 services to the United States public health service, the United
10 States department of veterans [~~administration of the United~~
11 ~~States~~] affairs or within federally controlled facilities in
12 the discharge of their official duties; provided that such
13 persons who hold dental licenses in New Mexico shall be subject
14 to the provisions of the Dental Health Care Act; and

15 (7) dental assistants performing adjunctive
16 services to the provision of dental care, under the indirect
17 supervision of a dentist, as determined by rule of the board if
18 such services are not within the practice of dental hygiene as
19 specifically listed in Subsection B of Section 61-5A-4 NMSA
20 1978, unless allowed in Subsection E of this section.

21 C. Unless licensed to practice as a dental
22 hygienist under the Dental Health Care Act, no person shall:

- 23 (1) practice as a dental hygienist;
24 (2) use the title "dental hygienist" or
25 abbreviation "R.D.H." or any other title, abbreviation,

1 letters, figures, signs or devices that indicate the person is
2 a licensed dental hygienist; or

3 (3) perform any of the acts defined as the
4 practice of dental hygiene in the Dental Health Care Act.

5 D. The following, under the stipulations described,
6 may practice dental hygiene or the area of dental hygiene
7 outlined without a New Mexico dental hygiene license:

8 (1) students enrolled in an accredited dental
9 hygiene program engaged in procedures that are part of the
10 curriculum of that program and under the indirect supervision
11 of a licensed faculty member of the accredited program;

12 (2) dental assistants or community dental
13 health coordinators working under general supervision who:

14 (a) expose dental radiographs after
15 being certified in expanded functions by the board;

16 (b) perform rubber cup coronal
17 polishing, which is not represented as a prophylaxis, having
18 satisfied the educational requirements as established by rules
19 of the board;

20 (c) apply fluorides as established by
21 rules of the board; and

22 (d) perform those other dental hygienist
23 functions as recommended to the board by the committee and set
24 forth by rule of the board; and

25 (3) dental assistants certified in expanded

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1 functions, working under the indirect supervision of a dental
2 hygienist certified for collaborative practice and under the
3 protocols established in a collaborative practice agreement
4 with a consulting dentist.

5 E. Dental assistants working under the indirect
6 supervision of a dentist and in accordance with the rules and
7 regulations established by the board may:

- 8 (1) expose dental radiographs;
- 9 (2) perform rubber cup coronal polishing that
10 is not represented as a prophylaxis;
- 11 (3) apply fluoride and pit and fissure
12 sealants without mechanical alteration of the tooth;
- 13 (4) perform those other dental hygienist
14 functions as recommended to the board by the committee and set
15 forth by rule of the board; and
- 16 (5) perform such other related functions that
17 are not expressly prohibited by statute or rules of the board.

18 F. A community dental health coordinator working
19 under the general supervision of a dentist and in accordance
20 with the rules and regulations established by the board may:

- 21 (1) place temporary and sedative restorative
22 material in unexcavated carious lesions and unprepared tooth
23 fractures;
- 24 (2) collect and transmit data and images using
25 health information technology;

1 (3) dispense and apply medications on the
2 specific order of a dentist;

3 (4) provide limited palliative procedures for
4 dental emergencies in consultation with a supervising dentist
5 as allowed by the rules of the board; and

6 (5) perform such other related functions that
7 are not expressly prohibited by statute or rules of the board.

8 [F.] G. Unless licensed as a dentist or non-dentist
9 owner, or as otherwise exempt from the licensing requirements
10 of the Dental Health Care Act, no individual or corporate
11 entity shall:

12 (1) employ or contract with a dentist or
13 dental hygienist for the purpose of providing dental or dental
14 hygiene services as defined by their respective scopes of
15 practice; or

16 (2) enter into a managed care or other
17 agreement to provide dental or dental hygiene services in New
18 Mexico.

19 [G.] H. The following, under stipulations
20 described, may function as a non-dentist owner without a New
21 Mexico license:

22 (1) government agencies providing dental
23 services within affiliated facilities;

24 (2) government agencies engaged in providing
25 public health measures to prevent dental disease;

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underscoring material = new
[bracketed material] = delete

1 (3) spouses of deceased licensed dentists or
2 dental hygienists for a period of one year following the death
3 of the licensee;

4 (4) accredited schools of dentistry, dental
5 hygiene and dental assisting providing dental services solely
6 in an educational setting;

7 (5) dental hygienists licensed in New Mexico
8 or corporate entities with a majority interest owned by a
9 dental hygienist licensed in New Mexico;

10 (6) federally qualified health centers, as
11 designated by the United States department of health and human
12 services, providing dental services;

13 (7) nonprofit community-based entities and
14 organizations that use public funds to provide dental and
15 dental hygiene services for indigent persons; and

16 (8) hospitals licensed by the department of
17 health."

18 Section 6. Section 61-5A-6 NMSA 1978 (being Laws 1994,
19 Chapter 55, Section 6) is amended to read:

20 "61-5A-6. CERTIFICATION OF DENTAL ASSISTANTS--COMMUNITY
21 DENTAL HEALTH COORDINATORS.--

22 A. A certified dental assistant, community dental
23 health coordinator or [a] dental assistant certified in
24 expanded functions shall be required to adhere to the
25 educational requirements, examinations, recertification

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1 criteria and fees as established by rules and [~~regulation~~]
 2 regulations of the board. The fee shall be the same for one or
 3 more expanded functions.

4 B. Certificates granted by the board may be
 5 revoked, suspended, stipulated or otherwise limited, and [~~a~~
 6 ~~dental assistant~~] certificate holders may be fined or placed on
 7 probation if found guilty of violation of the Dental Health
 8 Care Act.

9 C. No individual shall use the title "C.D.A."
 10 unless granted certification by the dental assistant national
 11 board.

12 D. Unless certified to practice as a dental
 13 assistant certified in expanded functions, no person shall:

14 (1) practice as a dental assistant certified
 15 in expanded functions as defined by [~~rule~~] rules of the board;
 16 or

17 (2) use the title or represent oneself as an
 18 assistant certified in expanded functions or use any title,
 19 abbreviation, letters, figures, signs or devices that indicate
 20 the person is a dental assistant certified in expanded
 21 functions."

22 Section 7. Section 61-5A-10 NMSA 1978 (being Laws 1994,
 23 Chapter 55, Section 10, as amended by Laws 2003, Chapter 408,
 24 Section 6 and by Laws 2003, Chapter 409, Section 8) is amended
 25 to read:

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1 "61-5A-10. POWERS AND DUTIES OF THE BOARD AND
2 COMMITTEE.--In addition to any other authority provided by law,
3 the board and the committee, [~~where~~] when designated, shall
4 have the power to:

5 A. enforce and administer the provisions of the
6 Dental Health Care Act;

7 B. adopt, publish, file and revise, in accordance
8 with the Uniform Licensing Act and the State Rules Act, all
9 rules as may be necessary to:

10 (1) regulate the examination and licensure of
11 dentists and, through the committee, regulate the examination
12 and licensure of dental hygienists;

13 (2) provide for the examination and
14 certification of dental assistants by the board;

15 (3) provide for the regulation of dental
16 technicians by the board;

17 (4) regulate the practice of dentistry, dental
18 assisting and, through the committee, regulate the practice of
19 dental hygiene; and

20 (5) provide for the regulation and licensure
21 of non-dentist owners by the board;

22 C. adopt and use a seal;

23 D. administer oaths to all applicants, witnesses
24 and others appearing before the board or the committee, as
25 appropriate;

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1 E. keep an accurate record of all meetings,
2 receipts and disbursements;

3 F. grant, deny, review, suspend and revoke licenses
4 and certificates to practice dentistry, dental assisting and,
5 through the committee, dental hygiene and censure, reprimand,
6 fine and place on probation and stipulation dentists, dental
7 assistants and, through the committee, dental hygienists, in
8 accordance with the Uniform Licensing Act for any cause stated
9 in the Dental Health Care Act;

10 G. grant, deny, review, suspend and revoke licenses
11 to own dental practices and censure, reprimand, fine and place
12 on probation and stipulation non-dentist owners, in accordance
13 with the Uniform Licensing Act, for any cause stated in the
14 Dental Health Care Act;

15 H. maintain records of the name, address, license
16 number and such other demographic data as may serve the needs
17 of the board of licensees, together with a record of license
18 renewals, suspensions, revocations, probations, stipulations,
19 censures, reprimands and fines. The board shall make available
20 composite reports of demographic data, but shall limit public
21 access to information regarding individuals to their names,
22 addresses, license numbers and license actions or as required
23 by statute;

24 I. establish ad hoc committees whose members shall
25 be appointed by the [~~chairman~~] chair with the advice and

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1 consent of the board or committee and shall include at least
2 one member of the board or committee, as it deems necessary for
3 carrying on its business;

4 J. have the authority to pay per diem and mileage
5 to individuals who are appointed by the board or the committee
6 to serve on ad hoc committees;

7 K. have the authority to hire or contract with
8 investigators to investigate possible violations of the Dental
9 Health Care Act;

10 L. have the authority to issue investigative
11 subpoenas prior to the issuance of a notice of contemplated
12 action for the purpose of investigating complaints against
13 dentists, dental assistants and, through the committee, dental
14 hygienists licensed under the Dental Health Care Act; [~~and~~]

15 M. have the authority to create and maintain a
16 formulary, in consultation with the board of pharmacy, of
17 medications that may be prescribed, administered or dispensed
18 by dental hygienists; and

19 [~~M.~~] N. establish continuing education or continued
20 competency requirements for dentists, certified dental
21 assistants in expanded functions, dental technicians and,
22 through the committee, dental hygienists."