HOUSE BILL 17

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

Dennis J. Roch

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

AN ACT

RELATING TO HEALTH CARE PROVIDERS; AMENDING AND ENACTING SECTIONS OF THE DENTAL HEALTH CARE ACT TO PROVIDE FOR DENTAL THERAPIST REGULATION, LICENSURE AND SCOPE OF PRACTICE; AMENDING SECTIONS OF THE IMPAIRED DENTISTS AND DENTAL HYGIENISTS ACT; RENAMING THE IMPAIRED DENTISTS AND DENTAL HYGIENISTS ACT AS THE IMPAIRED DENTISTS, DENTAL THERAPISTS AND DENTAL HYGIENISTS ACT; AMENDING A SECTION OF THE NEW MEXICO DRUG, DEVICE AND COSMETIC ACT TO PROVIDE FOR DENTAL THERAPIST PRESCRIBING; AMENDING A SECTION OF THE INCOME TAX ACT TO MAKE DENTAL THERAPISTS ELIGIBLE FOR THE RURAL HEALTH CARE PRACTITIONER TAX CREDIT; AMENDING SECTIONS OF THE ALLIED HEALTH STUDENT LOAN FOR SERVICE ACT AND THE HEALTH SERVICE CORPS ACT TO MAKE DENTAL THERAPISTS ELIGIBLE FOR PARTICIPATION; PROVIDING PENALTIES; RECONCILING MULTIPLE AMENDMENTS TO SECTIONS OF LAW IN LAWS 2003.

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

SECTION 1. Section 7-2-18.22 NMSA 1978 (being Laws 2007, Chapter 361, Section 2) is amended to read:

"7-2-18.22. [~~TAX CREDIT~~] RURAL HEALTH CARE PRACTITIONER TAX CREDIT.--

A. A taxpayer who files an individual New Mexico tax return, who is not a dependent of another individual, who is an eligible health care practitioner and who has provided health care services in New Mexico in a rural health care underserved area in a taxable year may claim a credit against the tax liability imposed by the Income Tax Act. The credit provided in this section may be referred to as the "rural health care practitioner tax credit".

B. The rural health care practitioner tax credit may be claimed and allowed in an amount that shall not exceed five thousand dollars ($5,000) for all eligible physicians, osteopathic physicians, dentists, clinical psychologists, podiatrists and optometrists who qualify pursuant to the provisions of this section, except the credit shall not exceed three thousand dollars ($3,000) for all eligible dental hygienists, dental therapists, physician assistants, certified nurse-midwives, certified registered nurse anesthetists, certified nurse practitioners and clinical nurse specialists.

C. To qualify for the rural health care

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practitioner tax credit, an eligible health care practitioner shall have provided health care during a taxable year for at least two thousand eighty hours at a practice site located in an approved, rural health care underserved area. An eligible rural health care practitioner who provided health care services for at least one thousand forty hours but less than two thousand eighty hours at a practice site located in an approved rural health care underserved area during a taxable year is eligible for one-half of the credit amount.

D. Before an eligible health care practitioner may claim the rural health care practitioner tax credit, the practitioner shall submit an application to the department of health that describes the practitioner's clinical practice and contains additional information that the department of health may require. The department of health shall determine whether an eligible health care practitioner qualifies for the rural health care practitioner tax credit and shall issue a certificate to each qualifying eligible health care practitioner. The department of health shall provide the taxation and revenue department appropriate information for all eligible health care practitioners to whom certificates are issued.

E. A taxpayer claiming the credit provided by this section shall submit a copy of the certificate issued by the department of health with the taxpayer's New Mexico income tax

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return for the taxable year. If the amount of the credit claimed exceeds a taxpayer's tax liability for the taxable year in which the credit is being claimed, the excess may be carried forward for three consecutive taxable years.

F. As used in this section:

(1) "eligible health care practitioner" means:

(a) a certified nurse-midwife licensed by the board of nursing as a registered nurse and licensed by the public health division of the department of health to practice nurse-midwifery as a certified nurse-midwife;

(b) a dentist, dental therapist or dental hygienist licensed pursuant to the Dental Health Care Act;

(c) an optometrist licensed pursuant to the provisions of the Optometry Act;

(d) an osteopathic physician licensed pursuant to the provisions of Chapter 61, Article 10 NMSA 1978 or an osteopathic physician assistant licensed pursuant to the provisions of the Osteopathic Physicians' Assistants Act;

(e) a physician or physician assistant licensed pursuant to the provisions of Chapter 61, Article 6 NMSA 1978;

(f) a podiatrist licensed pursuant to the provisions of the Podiatry Act;

(g) a clinical psychologist licensed

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pursuant to the provisions of the Professional Psychologist Act; and

(h) a registered nurse in advanced practice who has been prepared through additional formal education as provided in Sections 61-3-23.2 through 61-3-23.4 NMSA 1978 to function beyond the scope of practice of professional registered nursing, including certified nurse practitioners, certified registered nurse anesthetists and clinical nurse specialists;

(2) "health care underserved area" means a geographic area or practice location in which it has been determined by the department of health, through the use of indices and other standards set by the department of health, that sufficient health care services are not being provided;

(3) "practice site" means a private practice, public health clinic, hospital, public or private nonprofit primary care clinic or other health care service location in a health care underserved area; and

(4) "rural" means an area or location identified by the department of health as falling outside of an urban area."

SECTION 2. Section 21-22C-3 NMSA 1978 (being Laws 1994, Chapter 57, Section 5, as amended) is amended to read:

"21-22C-3. DEFINITIONS.--As used in the Allied Health Student Loan for Service Act:

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A. "allied health profession" means physical therapy, occupational therapy, speech-language pathology, audiology, pharmacy, nutrition, respiratory care, laboratory technology, radiologic technology, dental therapy, dental hygiene, mental health services, emergency medical services or a licensed or certified health profession as defined by the department;

B. "department" means the higher education department;

C. "loan" means a grant of money to defray the costs incidental to an allied health profession education, under a contract between the department and an allied health profession student, requiring repayment with services or repayment of principal and interest; and

D. "student" means a resident of New Mexico who is enrolled in an accredited program for one of the allied health professions."

SECTION 3. Section 24-1D-2 NMSA 1978 (being Laws 1994, Chapter 63, Section 2, as amended) is amended to read:

"24-1D-2. DEFINITIONS.--As used in the Health Service Corps Act:

A. "corps" means the New Mexico health service corps;

B. "department" means the department of health;

C. "health professional" means a physician,

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physician assistant, nurse practitioner, nurse-midwife, emergency medical technician-paramedic, dentist, dental therapist or dental hygienist;

D. "physician" means a medical doctor or doctor of osteopathic medicine;

E. "physician assistant" means a physician assistant or osteopathic physician assistant; and

F. "practice site" means a public health clinic or public or private nonprofit primary care clinic that is located in a state-designated medically underserved area or that serves a high-needs population and that uses a sliding fee scale approved by the department."

SECTION 4. Section 26-1-2 NMSA 1978 (being Laws 1967, Chapter 23, Section 2, as amended) 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, corporation, association, institution or establishment;

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

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

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

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

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

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

E. "drug" means articles:

(1) recognized in an official compendium;

(2) intended for use in the diagnosis, cure,

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mitigation, treatment or prevention of disease in humans or other animals and includes the domestic animal biological products regulated under the federal Virus-Serum-Toxin Act, 37 Stat 832-833, 21 U.S.C. 151-158, and the biological products applicable to humans regulated under Federal 58 Stat 690, as amended, 42 U.S.C. 216, Section 351, 58 Stat 702, as amended, and 42 U.S.C. 262;

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

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

F. "dangerous drug" means a drug, other than a controlled substance enumerated in Schedule I of the Controlled Substances Act, that because of a potentiality for harmful effect or the method of its use or the collateral measures necessary to its use is not safe except under the supervision of a practitioner licensed by law to direct the use of such drug and hence for which adequate directions for use cannot be prepared. "Adequate directions for use" means directions under which the layperson can use a drug or device safely and for the purposes for which it is intended. A drug shall be dispensed only upon the prescription of a practitioner licensed by law to administer or prescribe the

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drug if it:

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

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

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

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

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

(6) bears the legend "RX only";

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

(1) "identical copies", which are

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counterfeits made with the same ingredients, formulas and packaging as the originals but not made by the original manufacturer;

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

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

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

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

(1) recognized in an official compendium;

(2) intended for use in the diagnosis of disease or other conditions or in the cure, mitigation, treatment or prevention of disease in humans or other

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animals; or

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

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

J. "practitioner" means a certified advanced practice chiropractic physician, physician, doctor of oriental medicine, dentist, veterinarian, euthanasia technician, certified nurse practitioner, clinical nurse specialist, pharmacist, pharmacist clinician, certified nurse-midwife, physician assistant, prescribing psychologist, dental therapist, dental hygienist or other person licensed or certified to prescribe and administer drugs that are

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subject to the New Mexico Drug, Device and Cosmetic Act;

K. "cosmetic" means:

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

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

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

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

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

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

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

(2) accompanying an article;

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

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

R. "antiseptic", when used in the labeling or advertisement of an antiseptic, shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be or represented as an antiseptic for

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inhibitory use as a wet dressing, ointment, dusting powder or such other use as involves prolonged contact with the body;

S. "new drug" means a drug:

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

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

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

U. "selling of drugs, devices or cosmetics" shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession and holding of any such article for sale and the sale and the supplying

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or applying of any such article in the conduct of a drug or cosmetic establishment;

V. "color additive" means a material that:

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

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

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

X. "restricted device" means a device for which the sale, distribution or use is lawful only upon the written or oral authorization of a practitioner licensed by law to administer, prescribe or use the device and for which the federal food and drug administration requires special training or skills of the practitioner to use or prescribe. This definition does not include custom devices defined in the federal act and exempt from performance standards or premarket approval requirements under Section 520(b) of the

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federal act;

Y. "prescription device" means a device that, because of its potential for harm, the method of its use or the collateral measures necessary to its use, is not safe except under the supervision of a practitioner licensed in this state to direct the use of such device and for which "adequate directions for use" cannot be prepared, but that bears the label: "Caution: federal law restricts this device to sale by or on the order of a _____", the blank to be filled with the word "physician", "physician assistant", "certified advanced practice chiropractic physician", "doctor of oriental medicine", "dentist", "veterinarian", "euthanasia technician", "certified nurse practitioner", "clinical nurse specialist", "pharmacist", "pharmacist clinician", "certified nurse-midwife", "dental therapist" or "dental hygienist" or with the descriptive designation of any other practitioner licensed in this state to use or order the use of the device;

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

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

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

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

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

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

B. The primary duties of the New Mexico board of dental health care are:

(1) to issue licenses to qualified dentists and owners of dental practices;

(2) to certify qualified dental assistants, expanded-function dental auxiliaries and community dental health coordinators;

(3) to license dental therapists through the joint committee;

[~~(3)~~] (4) to issue licenses to dental hygienists through the dental hygienists committee;

[~~(4)~~] (5) to discipline incompetent or unprofessional dentists, dental assistants and owners of dental practices [~~and, through the dental hygienists~~

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~~committee, dental hygienists; and~~];

(6) through the committee, to discipline incompetent or unprofessional dental hygienists;

(7) through the joint committee, to discipline incompetent or unprofessional dental therapists; and

[~~(5)~~] (8) to aid in the rehabilitation of impaired dentists, dental therapists and dental hygienists for the purpose of protecting the public."

SECTION 6. 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;

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

F. "community dental health coordinator" means a dental assistant, a dental therapist, 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

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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) has graduated and received a degree from a dental therapy educational program that provides a minimum of three thousand hours of dental therapy curriculum that has been developed in partnership with an institution of higher education;

(2) is from the community or a similarly

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situated community where the dental therapist intends to practice;

(3) has been vetted by the community or a similarly situated community as part of the application process for the dental therapy education program;

(4) maintains an ongoing relationship with the sponsoring entity, including undertaking one community dental prevention project in the supporting community or a similarly situated community during the individual's participation in the dental therapy educational program;

(5) has passed a competency-based examination administered by a nationally recognized regional testing agency, if available. If an examination is not available through a nationally recognized regional testing agency, the individual shall have passed a competency-based examination administered by an institution of higher education with a dental therapy education program, following the individual's completion of a dental therapy educational program;

(6) has completed a minimum of four hundred dental therapy clinical hours under the indirect supervision of a dentist;

(7) has passed a written examination covering the laws and rules for practice in the state;

(8) holds a license to practice dental

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therapy in the state; and

(9) once licensed, practices under the general supervision of a dentist under a written dental therapy management agreement;

N. "dental therapist advocate" means an individual who publicly supports or recommends the practice of dental therapy in the state and who has been nominated by a representative of New Mexico health resources, health action New Mexico, a state or regional dental therapists' association or a state institution of higher education that has a dental therapy education program;

O. "dental therapy management agreement" means a written general supervision agreement between a dentist and a dental therapist that conforms to the requirements of Subsection P of Section 7 of this 2013 act;

[~~M.~~] 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;

[~~N.~~] 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;

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(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;

[~~O.~~] R. "expanded-function dental auxiliary" means a dental assistant, dental therapist, dental hygienist or other dental practitioner [~~that~~] who has received education beyond that required for licensure or certification in that individual's scope of practice and [~~that~~] who has been certified by the board as an expanded-function dental auxiliary who works under the direct supervision of a dentist;

[~~P.~~] S. "general supervision" means the authorization by a dentist of the procedures to be used by a dental therapist, 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;

[~~Q.~~] T. "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

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student;

U. "joint committee" means a committee that is made up of the New Mexico board of dental health care, two dental therapists or dental therapist advocates, the dental hygienists committee and two public members and that licenses and supervises the practice of dental therapy;

V. "licensing authority" means:

(1) for dentists, the New Mexico board of dental health care;

(2) for dental hygienists, the committee; and

(3) for dental therapists, the joint committee;

[~~R.~~] W. "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, dental therapist or dental hygienist to provide dental, dental therapy or dental hygiene services;

[~~S.~~] X. "palliative procedures" means nonsurgical, reversible procedures that are meant to alleviate pain and stabilize acute or emergent problems; and

[~~T.~~] Y. "teledentistry" means a dentist's use of health information technology in real time to provide [~~limited~~] diagnostic and treatment planning services in

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cooperation with another dentist, a dental therapist, a dental hygienist, a community dental health coordinator or a student enrolled in a program of study to become a dental assistant, dental therapist, dental hygienist or dentist."

SECTION 7. Section 61-5A-4 NMSA 1978 (being Laws 1994, Chapter 55, Section 4, as amended) is amended to read:

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

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

(1) the diagnosis, treatment, correction, change, relief, prevention, prescription of remedy, surgical operation and adjunctive treatment for any disease, pain, deformity, deficiency, injury, defect, lesion or physical condition involving both the functional and aesthetic aspects of the teeth, gingivae, jaws and adjacent hard and soft tissue of the oral and maxillofacial regions, including the prescription or administration of any drug, medicine, biologic, apparatus, brace, anesthetic or other therapeutic or diagnostic substance or technique by an individual or the individual's agent or employee gratuitously or for any fee, reward, emolument or any other form of compensation whether direct or indirect;

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

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

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

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

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

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

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

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(d) correct a malposition;

(e) treat a fracture;

(f) remove calcareous deposits;

(g) replace missing anatomy with an artificial substitute;

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

(I) give interpretations or readings of dental radiographs;

(j) provide limited diagnostic and treatment planning via teledentistry; or

(k) do any other remedial, corrective or restorative work.

B. As used in the Dental Health Care Act, [~~the~~] "practice of dental hygiene" means the application of the science of the prevention and treatment of oral disease through the provision of educational, assessment, preventive, clinical and other therapeutic services under the general supervision of a dentist. A dental hygienist in a collaborative practice may perform the procedures listed in this section without general supervision while the hygienist is in a cooperative working relationship with a consulting

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dentist, pursuant to rules promulgated by the board and the committee. "The practice of dental hygiene" includes:

(1) prophylaxis, which is the removal of plaque, calculus and stains from the tooth structures as a means to control local irritational factors;

(2) removing diseased crevicular tissue and related nonsurgical periodontal procedures;

(3) except in cases where a tooth exhibits cavitation of the enamel surface, assessing without a dentist's evaluation whether the application of pit and fissure sealants is indicated;

(4) except in cases where a tooth exhibits cavitation of the enamel surface, applying pit and fissure sealants without mechanical alteration of the tooth;

(5) applying fluorides and other topical therapeutic and preventive agents;

(6) exposing and assessing oral radiographs for abnormalities;

(7) screening to identify indications of oral abnormalities;

(8) performing dental hygiene-focused assessments;

(9) assessing periodontal conditions; and

(10) such other closely related services as permitted by the rules of the committee and the board.

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

D. In addition to performing dental hygiene as defined in Subsection B of this section, dental hygienists who have met the criteria as the committee [~~shall establish~~] establishes and the board [~~shall ratify~~] ratifies may administer local anesthesia under indirect supervision of a dentist.

E. The board may certify a dental hygienist to administer local anesthetic under the general supervision of a dentist if the dental hygienist, in addition to performing dental hygiene as defined in Subsection B of this section:

(1) has administered local anesthesia under the indirect supervision of a dentist for at least two years, during which time the dental hygienist has competently administered at least twenty cases of local anesthesia and can document this with a signed affirmation by the supervising dentist;

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(2) administers local anesthetic under the written prescription or order of a dentist; and

(3) emergency medical services are available in accordance with rules promulgated by the board.

F. A dental hygienist:

(1) may prescribe, administer and dispense a fluoride supplement, topically applied fluoride or topically applied antimicrobial only when the prescribing, administering or dispensing is performed:

(a) under the supervision of a dentist;

(b) pursuant to rules the board and the committee have adopted;

(c) within the parameters of a drug formulary approved by the board in consultation with the board of pharmacy;

(d) within the parameters of guidelines established pursuant to Section 61-5A-10 NMSA 1978; and

(e) in compliance with state laws concerning prescription packaging, labeling and recordkeeping requirements; and

(2) shall not otherwise dispense dangerous drugs or controlled substances.

G. A New Mexico licensed dental hygienist may be

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

H. An expanded-function dental auxiliary may perform the following procedures under the direct supervision of a dentist:

(1) placing and shaping direct restorations;

(2) taking final impressions, excluding those for fixed or removable prosthetics involving multiple teeth;

(3) cementing indirect and provisional restorations for temporary use;

(4) applying pit and fissure sealants without mechanical alteration of the tooth;

(5) placing temporary and sedative restorative material in hand-excavated carious lesions and unprepared tooth fractures;

(6) removal of orthodontic bracket cement; and

(7) fitting and shaping of stainless steel crowns to be cemented by a dentist.

I. An expanded-function dental auxiliary may re-cement temporary or permanent crowns with temporary cement under the general supervision of a dentist in a situation that a dentist deems to be an emergency.

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J. An expanded-function dental auxiliary may perform other related functions for which the expanded-function dental auxiliary meets the training and educational standards established by the board and that are not expressly prohibited by the board.

K. For the purpose of this section, "collaborative dental hygiene practice" means the application of the science of the prevention and treatment of oral disease through the provision of educational, assessment, preventive, clinical and other therapeutic services as specified in Subsection B of this section in a cooperative working relationship with a consulting dentist, but without general supervision as set forth by the rules established and approved by both the board and the committee.

L. As used in the Dental Health Care Act, "practice of dental therapy" means the application of the science of the prevention and treatment of oral disease by providing education, prevention, assessment, diagnosis and clinical and other therapeutic services under the general supervision of a dentist. "Practice of dental therapy" includes:

(1) prophylaxis, which is the treatment of the human tooth by removing from its supragingival surface calcareous deposits and stain, removing plaque and calcareous deposits by full-mouth debridement, removing accumulated

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accretions and polishing the surfaces of the tooth;

(2) behavioral management, oral health instruction and disease prevention education, including nutritional counseling and dietary analysis;

(3) diagnosis of dental disease and the formulation of an individualized treatment plan, including caries risk assessment;

(4) preliminary charting of the oral cavity;

(5) prescribing, exposing and interpreting radiographs;

(6) mechanical polishing of teeth and restorations;

(7) application of topical preventive or prophylactic agents, including fluoride varnishes and pit and fissure sealants;

(8) pulp vitality testing;

(9) application of desensitizing medication or resin;

(10) fabrication of athletic mouthguards;

(11) placement of temporary restoration;

(12) fabrication of occlusal guards;

(13) tissue conditioning and soft reline;

(14) atraumatic restorative therapy;

(15) dressing changes;

(16) tooth reimplantation and stabilization

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of reimplanted teeth;

(17) administration of local anesthetic and nitrous oxide;

(18) extractions of primary teeth;

(19) extractions of permanent teeth that have no eruptions, no impactions and no need of sectioning for removal;

(20) emergency palliative treatment of dental pain;

(21) placement and removal of space maintainers;

(22) cavity preparation;

(23) restoration of primary and permanent teeth;

(24) placement of temporary crowns;

(25) preparation and placement of pre-formed crowns;

(26) pulpotomy of primary teeth;

(27) indirect and direct pulp capping on primary and permanent teeth;

(28) suture removal;

(29) brush biopsies;

(30) simple repairs and adjustments to removable prosthetic appliances;

(31) re-cementing of permanent crowns;

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(32) prevention of potential orthodontic problems by early identification and appropriate referral;

(33) prevention, identification and management of dental and medical emergencies, and maintenance of current basic life-support certification;

(34) prescriptive authority, including prescription, dispensing and administration of analgesics, anti-inflammatory medications and antibiotics only in the following circumstances:

(a) within the parameters of a dental therapy management agreement;

(b) within the scope of practice of a dental therapist; and

(c) with the authorization of the supervising dentist; and

(35) other closely related services as permitted by board rules.

M. The board shall regulate, license and discipline dental therapists in collaboration with the joint committee. To achieve a quorum at a meeting of the joint committee, a dental therapist or dental therapist advocate member of the joint committee shall be in attendance.

N. A dental therapist shall practice under the general supervision of a dentist pursuant to a written supervision agreement between the dentist and the dental

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therapist. The joint committee may establish minimum requirements for dental therapy supervision agreements.

O. A dental therapist may provide dental therapy services in private and public dental and medical offices, public and community medical facilities, schools, hospitals and long-term care facilities and other settings as determined by board rules.

P. To practice under the general supervision of a dentist, a dental therapist shall enter into a dental therapy management agreement with that dentist. The dental therapy management agreement shall set forth the scope of practice and conditions under which the dentist will provide general supervision of the dental therapist. A dental therapy agreement shall not be subject to board, committee or joint committee approval. The dental therapy agreement shall be:

(1) submitted annually to the board; and

(2) signed and maintained by the dentist and dental therapist.

Q. A dentist and a dental therapist shall notify the board upon the dissolution of their dental therapy agreement."

SECTION 8. Section 61-5A-5 NMSA 1978 (being Laws 1994, Chapter 55, Section 5, as amended) is amended to read:

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

A. Unless licensed to practice as a dentist under

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the Dental Health Care Act, no person shall:

(1) practice dentistry;

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

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

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

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

(2) New Mexico licensed dental hygienists and community dental health coordinators may provide those services within their scope of practice that are also within the scope of the practice of dentistry;

(3) a dental therapist licensed in the state may provide those dental services that are within the dental therapist's scope of practice that are also within the scope of practice of dentistry;

[~~(3)~~] (4) any dental student duly enrolled

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in an accredited school of dentistry recognized by the board, while engaged in educational programs offered by the school in private offices, public clinics or educational institutions within the state of New Mexico under the indirect supervision of a licensed dentist;

(5) a dental therapy, dental hygiene or dental assisting student enrolled in an accredited school of dentistry, dental hygiene or dental assisting, or a dental therapy student enrolled in a school of dental therapy, who performs procedures within or outside the respective scope of dental therapy or dental hygiene practice that are part of the curriculum or program in the school setting and under the indirect supervision of a faculty member of the program who is a licensed dentist, dental therapist or dental assistant certified in the procedures being taught;

(6) an applicant for licensure in dental therapy who has graduated from a dental therapy education program, passed a competency-based examination in dental therapy and received a permit to practice during fulfillment of the applicant's four-hundred-clinical-hour requirement;

[~~(4)~~] (7) any dental hygiene or dental assisting student duly enrolled in an accredited school of dental hygiene or dental assisting engaged in procedures within or outside the scope of dental hygiene that are part of the curriculum of that program in the school setting and

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under the indirect supervision of a faculty member of the accredited program who is a licensed dentist, dental therapist, dental hygienist or dental assistant certified in the procedures being taught;

[~~(5)~~] (8) unlicensed persons performing for a licensed dentist merely mechanical work upon inert matter in the construction, making, alteration or repairing of any artificial dental substitute, dental restorative or corrective appliance, when the casts or impressions for the work have been furnished by a licensed dentist and where the work is prescribed by a dentist pursuant to a written authorization by that dentist;

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

[~~(7)~~] (10) dental assistants performing adjunctive services to the provision of dental care, under the indirect supervision of a dentist, as determined by rule of the board if such services are not within the practice of dental hygiene as specifically listed in Subsection B of

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Section 61-5A-4 NMSA 1978, unless allowed in Subsection E of this section.

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

(1) practice as a dental hygienist;

(2) use the title "dental hygienist" or abbreviation "R.D.H." or any other title, abbreviation, letters, figures, signs or devices that indicate the person is a licensed dental hygienist; or

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

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

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

(2) dental assistants and community dental health coordinators working under general supervision who:

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

(b) perform rubber cup coronal

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polishing, which is not represented as a prophylaxis, having satisfied the educational requirements as established by rules of the board;

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

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

(3) dental assistants certified in expanded functions, working under the indirect supervision of a dental hygienist certified for collaborative practice and under the protocols established in a collaborative practice agreement <u>or dental therapists working under a dental therapy management agreement</u> with a consulting dentist.

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

(1) expose dental radiographs;

(2) perform rubber cup coronal polishing that is not represented as a prophylaxis;

(3) apply fluoride and pit and fissure sealants without mechanical alteration of the tooth;

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

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

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

(1) place temporary and sedative restorative material in unexcavated carious lesions and unprepared tooth fractures;

(2) collect and transmit diagnostic data and images via telemetric connection;

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

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

(5) perform other related functions for which the community dental health coordinator meets training and educational standards established by the board and that are not expressly prohibited by statute or rules promulgated by the board.

G. Unless licensed as a dentist or non-dentist owner, or as otherwise exempt from the licensing requirements of the Dental Health Care Act, no individual or corporate

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entity shall:

(1) employ or contract with a dentist, dental therapist or dental hygienist for the purpose of providing dental, dental therapy or dental hygiene services as defined by their respective scopes of practice; or

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

H. The following, under stipulations described, may function as a non-dentist owner without a New Mexico license:

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

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

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

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

(5) a school of dental therapy that provides dental services solely in an educational setting;

[~~(5)~~] (6) dental hygienists licensed in New Mexico or corporate entities with a majority interest owned

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by a dental hygienist licensed in New Mexico;

(7) dental therapists licensed in New Mexico or corporate entities with a majority interest owned by a dental therapist licensed in New Mexico;

[~~(6)~~] (8) federally qualified health centers, as designated by the United States department of health and human services, providing dental services;

[~~(7)~~] (9) nonprofit community-based entities and organizations that use public funds to provide dental, dental therapy and dental hygiene services for indigent persons; and

[~~(8)~~] (10) hospitals licensed by the department of health.

I. Except as provided in Subsection M of Section 61-5A-5 NMSA 1978, unless licensed to practice as a dental therapist pursuant to the Dental Health Care Act, a person shall not:

(1) practice as a dental therapist;

(2) use the title "dental therapist" or any other title, abbreviation, letters, figure, sign or device to indicate that the person is a licensed dental therapist; or

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

SECTION 9. Section 61-5A-5.1 NMSA 1978 (being Laws 2003, Chapter 409, Section 12) is amended to read:

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"61-5A-5.1. NON-DENTIST OWNER--EMPLOYING OR CONTRACTING FOR DENTAL SERVICES.--

A. A person, corporation or agency that desires to function as a non-dentist owner in New Mexico shall apply to the board for the proper license and shall adhere to the requirements, re-licensure criteria and fees as established by the rules of the board.

B. Unless licensed as a dentist or non-dentist owner, or as otherwise exempt from the licensing requirements of the Dental Health Care Act, an individual or corporate entity shall not:

(1) employ or contract with a dentist, dental therapist or dental hygienist for the purpose of providing dental, dental therapy or dental hygiene services as defined by their respective scopes of practice; or

(2) enter into a managed care or other agreement to provide dental, dental therapy or dental hygiene services in New Mexico."

SECTION 10. Section 61-5A-8 NMSA 1978 (being Laws 1994, Chapter 55, Section 8, as amended by Laws 2003, Chapter 408, Section 4 and by Laws 2003, Chapter 409, Section 6) is amended to read:

"61-5A-8. BOARD CREATED.--

A. There is created the nine-member "New Mexico board of dental health care". The board [~~shall be~~] is

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administratively attached to the regulation and licensing department. The board [~~shall consist~~] consists of five dentists, two dental therapists or dental therapist advocates, two dental hygienists and two public members. The dentists shall be actively practicing and shall have been licensed practitioners and residents of New Mexico for a period of five years preceding the date of appointment. The dental therapist or dental therapist advocate members shall be members of the committee. The dental hygienist members shall be members of the committee and shall be elected annually to sit on the board by those sitting on the committee. The appointed public members shall be residents of New Mexico and shall have no financial interest, direct or indirect, in the professions regulated in the Dental Health Care Act.

B. The governor may appoint the dentist members from a list of names submitted by the New Mexico dental association. There shall be one member from each district. All board members shall serve until their successors have been appointed. No more than one member may be employed by or receive remuneration from a dental or dental hygiene educational institution.

C. Appointments for dentists and public members shall be for terms of five years. Dentists' appointments shall be made so that the term of one dentist member expires

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on July 1 of each year. Public members' five-year terms begin at the date of appointment.

D. A board member failing to attend three board or committee meetings, either regular or special, during the board member's term shall automatically be removed as a member of the board unless excused from attendance by the board for good cause shown. Members of the board not sitting on the committee shall not be required or allowed to attend committee disciplinary hearings.

E. A board member shall not serve more than two full terms on any state-chartered board whose responsibility includes the regulation of practice or licensure of dentistry or dental hygiene in New Mexico. A partial term of three or more years shall be considered a full term.

F. In the event of a vacancy, the secretary of the board shall immediately notify the governor, the board and committee members and the New Mexico dental association of the reason for its occurrence and action taken by the board, so as to expedite appointment of a new board member.

G. The board shall meet at least four times every year, and no more than two meetings shall be public rules hearings. Regular meetings shall not be more than one hundred twenty days apart. The board may also hold special meetings and emergency meetings in accordance with rules of the board upon written notice to all members of the board and

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the committee.

H. Members of the board shall be reimbursed as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance; however, the secretary-treasurer may be compensated at the discretion of the board.

I. A simple majority of the board members currently serving shall constitute a quorum, provided at least two of that quorum are not dentist members and three are dentist members.

J. The board shall elect officers annually as deemed necessary to administer its duties and as provided in its rules."

SECTION 11. Section 61-5A-9 NMSA 1978 (being Laws 1994, Chapter 55, Section 9, as amended by Laws 2003, Chapter 408, Section 5 and by Laws 2003, Chapter 409, Section 7) is amended to read:

"61-5A-9. COMMITTEE CREATED.--

A. There is created the nine-member "New Mexico dental hygienists committee". The committee [~~shall be~~] is administratively attached to the regulation and licensing department. The committee [~~shall consist~~] consists of five dental hygienists, two dentists, [~~and~~] two public members and two dental therapists or dental therapist advocates. The two dental therapists or dental therapist advocates shall be

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members of the board. The dental hygienists shall be actively practicing and shall have been licensed practitioners and residents of New Mexico for a period of five years preceding the date of their appointment. The dentists and public members shall be members of the board and shall be elected annually to sit on the committee by those members sitting on the board.

B. The governor may appoint the dental hygienists from a list of names submitted by the New Mexico dental hygienists association. There shall be one member from each district. Members shall serve until their successors have been appointed. No more than one member may be employed by or receive remuneration from a dental or dental hygiene educational institution.

C. Appointments for dental hygienist members shall be for terms of five years. Appointments shall be made so that the term of one dental hygienist expires on July 1 of each year.

D. Within thirty days of the effective date of this 2013 act, the governor shall appoint the dental therapist or dental therapist advocate members from a list of names submitted by New Mexico health resources, health action New Mexico, a state or regional dental therapists' association or a state institution of higher education that has a dental therapy education program.

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E. Appointments for dental therapist or dental therapist advocate members shall be for terms of five years.

F. Within six months of the appointment of the dental therapist or dental therapist advocate members, the joint committee shall adopt and promulgate rules relating to the practice of dental therapy.

[~~D.~~] G. A committee member failing to attend three committee or board meetings, either regular or special, during the committee member's term shall automatically be removed as a member of the committee unless excused from attendance by the committee for good cause shown. Members of the committee not sitting on the board shall not be required or allowed to attend board disciplinary hearings.

[~~E.~~] H. A committee member shall not serve more than two full terms on any state-chartered board whose responsibility includes the regulation of practice or licensure of dentistry or dental hygiene in New Mexico. A partial term of three or more years shall be considered a full term.

[~~F.~~] I. In the event of a vacancy, the secretary of the committee shall immediately notify the governor, the committee and board members and the New Mexico dental hygienists association of the reason for its occurrence and action taken by the committee, so as to expedite appointment of a new committee member.

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[~~G.~~] J. The committee shall meet at least four times every year, and no more than two meetings shall be public rules hearings. Regular meetings shall not be more than one hundred twenty days apart. The committee may also hold special meetings and emergency meetings in accordance with the rules of the board and committee, upon written notification to all members of the committee and the board.

[~~H.~~] K. Members of the committee shall be reimbursed as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

[~~I.~~] L. A simple majority of the committee members currently serving shall constitute a quorum, provided at least two of that quorum are not hygienist members and three are hygienist members.

M. A decision that has a potential impact upon, or otherwise relates to, the practice of dental therapy shall be referred to the joint committee.

[~~J.~~] N. The committee shall elect officers annually as deemed necessary to administer its duties and as provided in rules [~~and regulations~~] of the board and committee."

SECTION 12. Section 61-5A-10 NMSA 1978 (being Laws 1994, Chapter 55, Section 10, as amended) is amended to read:

"61-5A-10. POWERS AND DUTIES OF THE BOARD, [~~AND~~] THE COMMITTEE AND THE JOINT COMMITTEE.--In addition to any other

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authority provided by law, the board, [~~and~~] the committee and the joint committee, when designated, shall:

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

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

(1) regulate the examination and licensure of dentists [~~and, through the committee, regulate the examination and licensure of dental hygienists~~];

(2) through the committee, regulate the examination and licensure of dental hygienists;

(3) through the joint committee, regulate the examination and licensure of dental therapists;

[~~(2)~~] (4) provide for the examination and certification of dental assistants by the board;

[~~(3)~~] (5) provide for the regulation of dental technicians by the board;

[~~(4)~~] (6) regulate the practice of dentistry and dental assisting [~~and, through the committee, regulate the practice of dental hygiene; and~~];

(7) through the committee, regulate the practice of dental hygiene;

(8) through the joint committee, regulate the practice of dental therapy; and

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[~~(5)~~] (9) provide for the regulation and licensure of non-dentist owners by the board;

C. adopt and use a seal;

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

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

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

F. in accordance with the Uniform Licensing Act, for any cause stated in the Dental Health Care Act, grant, deny, review, censure, reprimand, fine and place on probation and stipulation, suspend and revoke:

(1) licenses to practice dentistry;

(2) certificates to practice dental assisting;

(3) through the committee, licenses to practice dental hygiene; and

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(4) through the joint committee, licenses to practice dental therapy;

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

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

I. hire and contract for services from persons as necessary to carry out the board's duties;

J. establish ad hoc committees whose members shall be appointed by the chair with the advice and consent of the board or committee and shall include at least one member of the board or committee as it deems necessary for carrying on its business. An ad hoc committee that the board or committee establishes to address issues related to the practice of dental therapy shall include at least one joint

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committee member who is a dental therapist or dental therapist advocate;

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

L. have the authority to hire or contract with investigators to investigate possible violations of the Dental Health Care Act;

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

N. have the authority to sue or be sued and to retain the services of an attorney at law for counsel and representation regarding the carrying out of the board's duties;

O. have the authority to create and maintain a formulary, in consultation with the board of pharmacy, of medications that a dental therapist or dental hygienist may prescribe, administer or dispense in accordance with rules the board has promulgated; and

P. establish continuing education or continued

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competency requirements for [~~dentists, certified dental assistants in expanded functions, dental technicians and, through the committee, dental hygienists~~]:

(1) dentists;

(2) certified dental assistants in expanded functions;

(3) dental technicians;

(4) through the board and joint committee, dental therapists; and

(5) through the committee, dental hygienists."

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

"61-5A-14. TEMPORARY LICENSURE.--[~~The board or the committee~~]

A. A licensing authority may issue a temporary license to practice dentistry, dental therapy or dental hygiene to [~~any~~] an applicant who is licensed to practice dentistry, dental therapy or dental hygiene in another state or territory of the United States and who is otherwise qualified to practice dentistry, dental therapy or dental hygiene in [~~this~~] the state. The following provisions shall apply:

[~~A.~~] (1) the applicant shall hold a valid license in good standing in another state or territory of the

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United States;

[~~B.~~] (2) the applicant shall practice dentistry, dental therapy or dental hygiene under the sponsorship of or in association with a licensed New Mexico dentist, dental therapist or dental hygienist;

[~~C.~~] (3) the temporary license may be issued for those activities as stipulated by the [~~board or committee~~] licensing authority in the rules of the board. It may be issued upon written application of the applicant when accompanied by such proof of qualifications as the secretary-treasurer of the board or committee, in [~~his~~] the secretary-treasurer's discretion, may require. Temporary licensees shall engage in only those activities specified on the temporary license for the time designated, and the temporary license shall identify the licensed New Mexico dentist, dental therapist or dental hygienist who will sponsor or associate with the applicant during the time the applicant practices dentistry, dental therapy or dental hygiene in New Mexico;

[~~D.~~] (4) the sponsoring or associating dentist, dental therapist or dental hygienist shall submit an affidavit attesting to the qualifications of the applicant and the activities the applicant will perform;

[~~E.~~] (5) the temporary license shall be issued for a period not to exceed twelve months and may be

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renewed upon application and payment of required fees;

[~~F.~~] (6) the application for a temporary license under this section shall be accompanied by a license fee; and

[~~G.~~] (7) the temporary licensee shall be required to comply with the Dental Health Care Act and all rules promulgated pursuant thereto.

B. A licensing authority may grant to a dentist, dental therapist or dental hygienist who meets the requirements of Subsection A of this section and who is licensed to practice dentistry, dental therapy or dental hygiene in another state or territory of the United States temporary licensure to practice and serve as faculty for a dental therapy education program in a state institution, a program approved or maintained by the department of health or a program or clinic that the department of health designates as serving a health care underserved area."

SECTION 14. Section 61-5A-15 NMSA 1978 (being Laws 1994, Chapter 55, Section 15) is amended to read:

"61-5A-15. CONTENT OF [~~LICENSE~~] LICENSES AND CERTIFICATES--DISPLAY OF [~~LICENSE--RENEWALS--RETIRE LICENSE~~] LICENSES AND CERTIFICATES.--

A. All dental licenses issued by the board shall bear:

(1) a serial number;

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(2) the full name of the licensee;

(3) the date of issue;

(4) the seal of the board;

(5) if the license is a specialty license, the specialty to which practice is limited;

(6) the signatures of a majority of the board members; and

(7) the attestation of the board president and secretary.

B. All dental hygienist licenses issued by the board shall bear:

(1) a serial number;

(2) the full name of the licensee;

(3) the date of issue;

(4) the seal of the board;

(5) the signatures of a majority of the committee members; and

(6) the attestation of the board president and secretary.

C. A dental therapist license shall bear:

(1) a serial number;

(2) the full name of the licensee;

(3) the date of issue;

(4) the seal of the board;

(5) the signatures of a majority of the

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members of the joint committee; and

(6) the attestation of the board president and secretary.

[~~C.~~] D. Certificates issued to dental assistants shall bear:

(1) a serial number;

(2) the full name of the assistant;

(3) the date of issue;

(4) the date of expiration;

(5) the expanded functions certified to perform; and

(6) the attestation of the board secretary.

[~~D.~~] E. All licenses and certificates shall be displayed in a conspicuous place in the office where the holder practices. The license or certificate shall, upon request, be exhibited to any of the members of the board, the committee or its authorized agent."

SECTION 15. Section 61-5A-16 NMSA 1978 (being Laws 1994, Chapter 55, Section 16, as amended) is amended to read:

"61-5A-16. LICENSE AND CERTIFICATE RENEWALS.--

A. Except as provided in Subsection I of this section, all licensees and certificate holders shall [~~be required to~~] renew their licenses or certificates triennially as established by board rules [~~of the board~~].

B. All dental assistants certified in expanded

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functions, expanded-function dental auxiliaries and community dental health coordinators shall [~~be required to~~] renew their certificates triennially as established by board rules [~~of the board~~].

C. [~~The board or committee may establish a method to provide for~~] Terms of licensure and certification may be in staggered triennial terms. [~~and may prorate~~] Triennial renewal fees and impaired dentist, dental therapist and dental hygienist fees may be prorated until staggered triennial renewal is established. The fact that a licensee or certificate holder has not received a renewal form [~~from the board or committee~~] shall not relieve the licensee or certificate holder of the duty to renew the license or certificate nor [~~shall such omission on the part of the board or committee operate to exempt the~~] exempt a licensee or certificate holder from the penalties for failure to renew [~~the licensee's~~] a license or certificate.

D. All licensees and certificate holders shall pay a triennial renewal fee and [~~an~~] a fee for impaired [~~dentist and dental hygienist fee, and~~] dentists, dental therapists and dental hygienists. All licensees and certificate holders shall return a completed renewal application form that includes proof of continuing education or continued competency.

E. Each application for triennial renewal of

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license or certificate shall state the licensee's or certificate holder's full name, business address, the date and number of the license or certificate and all other information requested [~~by the board or committee~~].

F. A licensee or certificate holder who fails to submit an application for triennial renewal on or before July 1 but who submits an application for triennial renewal within thirty days thereafter shall be assessed a late fee.

G. A licensee or certificate holder who fails to submit application for triennial renewal between thirty and sixty days of the July 1 deadline may have the licensee's or certificate holder's license or certificate suspended. If the licensee or certificate holder renews by that time, the licensee or certificate holder shall be assessed a cumulative late fee.

H. [~~The board or the committee may summarily revoke~~] For nonpayment of fees or failure to comply with continuing education or continued competency requirements, a licensing authority may revoke the license or certificate of a licensee or certificate holder who has failed to renew the license or certificate on or before August 31.

I. A license for a non-dentist owner shall be renewed triennially as established by rules. An application for renewal of a non-dentist owner license shall state the name, business address, date and number of the license and

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all other information as required by board rule [~~of the board~~]. If a non-dentist owner fails to submit the application for renewal of the license by July 1, the board may assess a late fee. If the non-dentist owner fails to submit the application for a renewal license within sixty days of the July 1 renewal deadline, the board may suspend the license. The license of a non-dentist owner may be summarily revoked by the board for nonpayment of fees.

J. Assessment of fees pursuant to this section is not subject to the Uniform Licensing Act."

SECTION 16. Section 61-5A-17 NMSA 1978 (being Laws 1994, Chapter 55, Section 17, as amended) is amended to read:

"61-5A-17. RETIREMENT AND INACTIVE STATUS--REACTIVATION.--

A. [~~Any dentist or dental hygienist~~] A licensee who wishes to retire from the practice of dentistry, dental therapy or dental hygiene shall meet all requirements for retirement as set by board rules [~~of the board and the committee~~]. The licensee shall notify the [~~board or the committee~~] licensee's respective licensing authority in writing before the expiration of the licensee's current license, and the [~~secretary of the board or the committee~~] licensing authority shall acknowledge the receipt of notice and record [~~the same~~] it. If, within a period of three years from the date of retirement, the [~~dentist or dental~~

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~~hygienist~~] licensee wishes to resume practice, the [~~applicant~~] licensee shall [~~so~~] notify the [~~board or the committee~~] licensing authority in writing and give proof of completing all requirements as prescribed by board rules [~~of the board and the committee~~] to reactivate the license.

B. At any time during the three-year period following retirement, a [~~dentist or dental hygienist~~] licensee with a retired New Mexico license may request in writing to the [~~board or the committee~~] licensee's respective licensing authority that [~~his~~] the licensee's license be placed in inactive status. Upon the receipt of the application and fees as [~~determined by the board or the committee~~] the licensing authority determines and with the approval of the [~~board or the committee~~] licensing authority, the license may be placed in inactive status.

C. A licensee whose license has been placed in inactive status may not engage in any of the activities contained within the licensee's respective scope of practice [~~of dentistry or dental hygiene~~] in New Mexico described in Section 61-5A-4 NMSA 1978.

D. [~~Licensees with~~] A licensee holding an inactive [~~licenses must~~] license shall renew [~~their licenses~~] the license triennially and comply with all the requirements set by the [~~board and the committee~~] licensing authority.

E. If a licensee with an inactive license wishes

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to resume [~~the~~] active practice [~~of dentistry or dental hygiene~~], the licensee must notify the [~~board or the committee~~] licensing authority in writing and provide proof of completion of all requirements to reactivate the license as prescribed by [~~rule of the board or the committee~~] board rules. Upon payment of all fees due, the [~~board~~] licensing authority may reactivate the license and the licensee may resume the practice of dentistry, dental therapy or dental hygiene subject to any stipulations of the [~~board or the committee~~] licensing authority.

F. [~~Inactive licenses must~~] An inactive license shall be reactivated or permanently retired within nine years of having been placed in inactive status.

G. Assessment of fees pursuant to this section is not subject to the Uniform Licensing Act."

SECTION 17. Section 61-5A-18 NMSA 1978 (being Laws 1994, Chapter 55, Section 18, as amended) is amended to read:

"61-5A-18. PRACTICING WITHOUT A LICENSE--PENALTY.--

A. Any person who practices dentistry or who attempts to practice dentistry without first complying with the provisions of the Dental Health Care Act and without being the holder of a license entitling the practitioner to practice dentistry in New Mexico is guilty of a fourth degree felony and upon conviction shall be sentenced pursuant to the provisions of the Criminal Sentencing Act to imprisonment for

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a definite period not to exceed eighteen months and, in the discretion of the sentencing court, to a fine not to exceed five thousand dollars ($5,000), or both. Each occurrence of practicing dentistry or attempting to practice dentistry without complying with the Dental Health Care Act shall be a separate violation.

B. Any person who practices as a dental hygienist or who attempts to practice as a dental hygienist without first complying with the provisions of the Dental Health Care Act and without being the holder of a license entitling the [~~practitioner~~] person to practice as a dental hygienist in New Mexico is guilty of a misdemeanor and upon conviction shall be sentenced under the provisions of the Criminal Sentencing Act to imprisonment for a definite period of less than one year and, in the discretion of the sentencing court, to a fine not to exceed one thousand dollars ($1,000), or both. Each occurrence of practicing as a dental hygienist or attempting to practice as a dental hygienist without complying with the Dental Health Care Act shall be a separate violation.

C. A person who practices as a dental therapist or who attempts to practice as a dental therapist without first complying with the provisions of the Dental Health Care Act and without being the holder of a license entitling the person to practice as a dental therapist in the state is

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guilty of a misdemeanor and upon conviction shall be sentenced to imprisonment for a definite period of less than one year and, in the discretion of the sentencing court, to a fine not to exceed one thousand dollars ($1,000), or both. Each occurrence of practicing as a dental therapist or attempting to practice as a dental therapist without complying with the Dental Health Care Act shall be a separate violation.

[~~C.~~] D. A person that functions or attempts to function as a non-dentist owner or who is an officer of a corporate entity that functions or attempts to function as a non-dentist owner in New Mexico without first complying with the provisions of the Dental Health Care Act is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to the provisions of the Criminal Sentencing Act to imprisonment for a definite period not to exceed one year and, in the discretion of the sentencing court, to a fine not to exceed one thousand dollars ($1,000), or both. Each occurrence of functioning as a non-dentist owner without complying with the Dental Health Care Act shall be a separate violation.

[~~D.~~] E. The attorney general or district attorney shall prosecute all violations of the Dental Health Care Act.

[~~E.~~] F. Upon conviction of any person for violation of any provision of the Dental Health Care Act, the

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convicting court may, in addition to the penalty provided in this section, enjoin the person from any further or continued violations of the Dental Health Care Act and enforce the order of contempt proceedings."

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

"61-5A-19. REINSTATEMENT OF REVOKED OR SUSPENDED LICENSE.--

A. Unless otherwise stated in the order of revocation, a motion for reinstatement of a revoked license may not be filed for a period of at least three years from the effective date of the revocation.

B. If the motion for reinstatement is denied, no further motions for reinstatement shall be considered for a period of one year.

C. A licensee who has been suspended for a specific period of time shall be automatically reinstated at the expiration of the period specified in the order of suspension. The suspended [~~dentist or dental hygienist will~~] licensee shall be automatically [~~be~~] reinstated as of the day after the expiration of the period of suspension; provided that prior to the expiration of [~~such time~~] that period, if the administrative prosecutor has filed with the board [~~or committee~~] the written objections, the suspended [~~dentist or dental hygienist~~] licensee shall not be automatically

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reinstated. Should objections be filed, the petition for reinstatement shall be referred to the [~~board or committee~~] licensing authority for hearing [~~under~~] pursuant to provisions of Subsection E of this section.

D. [~~Suspended dentists or dental hygienists indefinite suspension~~] Procedures for reinstatement of licensees who have been suspended for an indefinite period of time are as follows:

(1) at any time after complying with the conditions of reinstatement, a licensee who has been suspended for an indefinite period of time may [~~at any time after complying with the conditions of reinstatement~~] file a petition for reinstatement with the board [~~or committee~~];

(2) the petition shall be referred to the [~~board or committee~~] applicant's respective licensing authority for hearing [~~under~~] pursuant to provisions of Subsection E of this section; and

(3) if the motion for reinstatement is denied, no further motions for reinstatement will be considered for a period of one year.

E. [~~Procedure~~] Procedures for reinstatement hearings are as follows:

(1) applications for reinstatement shall be referred to the [~~board or committee~~] applicant's respective licensing authority for hearing if the applicant meets the

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criteria set forth in this section;

(2) the [~~board or committee~~] applicant's respective licensing authority shall schedule a hearing as soon as practical at which the applicant shall have the burden of demonstrating that the applicant has the moral qualifications for reinstatement, that the applicant is once again fit to resume the practice of dentistry, dental therapy or dental hygiene and that the resumption of the applicant's practice of dentistry, dental therapy or dental hygiene will not be detrimental to the public interest;

(3) the [~~board or committee~~] applicant's licensing authority shall file its findings of fact, conclusions of law and decision within ninety days of the hearing; and

(4) the [~~board's or committee's~~] licensing authority's decision to refuse to reinstate a license shall not be reviewable except for an abuse of discretion."

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

"61-5A-20. FEES.--The board, [~~and~~] the committee and the joint committee shall establish a schedule of reasonable fees not to exceed the following:

	Dentists	Dental Therapists	Dental Hygienists
A. licensure by			

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examination	$1,500	$1,000	$1,000
B. licensure by credential	$3,000	$1,500	$1,500
C. specialty license by examination	$1,500		
D. specialty license by credential	$3,000		
E. temporary license			
48 hours	$ 50	$ 50	$ 50
six months	$ 300	$ 200	$ 200
12 months	$ 450	$ 300	$ 300
F. application for certification in local anesthesia			$ 40
G. examination in local anesthesia			$ 150
H. triennial license renewal	$ 600	$ 450	$ 450
I. late renewal	$ 100	$ 100	$ 100
J. reinstatement of license	$ 450	$ 300	$ 300
K. administrative fees	$ 300	$ 300	$ 300
L. impaired dentist or dental hygienist	$ 150	$ 75	$ 75

M. assistant, expanded-

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	function dental auxiliary or community dental health coordinator certificate		$ 100
N.	application for certification for collaborative practice	$ 150	$ 150
O.	annual renewal for collaborative practice	$ 50	$ 50
P.	application for inactive status $ 50	$ 50	$ 50
Q.	triennial renewal of inactive license $ 90	$ 90	$ 90
		Non-dentist Owners	
R.	non-dentist owners license (initial)		$ 300
S.	non-dentist owners license triennial renewal		$ 150."

SECTION 20. 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 board rules, [~~of the board, the board and committee~~] a licensing authority may fine and may deny, revoke, suspend, stipulate or otherwise limit any license or certificate, including those of licensed non-dentist owners, held or

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applied for under the Dental Health Care Act, upon findings by the [~~board or the committee~~] licensing authority 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 that 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 hygiene, dental therapy 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 or certificate holder 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 the committee;

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

(9) is guilty of practicing dentistry, [~~or~~] dental therapy, dental hygiene [~~without a license~~] or dental assisting without the required licensure or certification or aiding or abetting the practice of dentistry, [~~or~~] dental therapy, dental hygiene or dental assisting by a person not licensed or certified as required 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~~] licensing authority any adverse action taken against the licensee or certificate holder by a licensing authority, peer review body, malpractice insurance carrier or other entity as defined in board 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

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licensee or certificate holder similar to acts described in this subsection. A certified copy of the decision of the jurisdiction taking such disciplinary action will be conclusive evidence; or

(14) has failed to furnish the [~~board~~] licensing authority, its investigators or its representatives with information requested by the [~~board or the committee~~] licensing authority in the course of an official investigation.

B. Disciplinary proceedings may be instituted by sworn complaint by any person, including a board, [~~or~~] committee or joint 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. [~~Licensee whose licenses are~~] A licensee or certificate holder whose license or certificate is in a probationary status shall pay reasonable expenses for maintaining probationary status, including but not limited to laboratory costs when laboratory testing of biological fluids or accounting costs when audits are included as a condition of probation."

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SECTION 21. Section 61-5A-24 NMSA 1978 (being Laws 1994, Chapter 55, Section 24) is amended to read:

"61-5A-24. INJUNCTION TO STOP [~~UNLICENSED~~] UNAUTHORIZED DENTAL, DENTAL THERAPY, [~~OR~~] DENTAL HYGIENE OR DENTAL ASSISTING PRACTICE.--

A. The attorney general, the district attorney, the board, the committee, the joint committee or any citizen of any county where any person practices dentistry, [~~or~~] dental therapy, dental hygiene or dental assisting without possessing a valid license or certificate to do so may, in accordance with the laws of New Mexico governing injunctions, maintain an action in the name of the state to enjoin such person from practicing dentistry,[~~or~~] dental therapy, dental hygiene or dental assisting until a valid license to practice dentistry,[~~or~~] dental therapy, dental hygiene or dental assisting is secured. [~~and~~] Any person who has been enjoined and who violates the injunction shall be punished for contempt of court; provided that the injunction does not relieve any person practicing dentistry, [~~or~~] dental therapy, dental hygiene or dental assisting without a valid license or certificate from a criminal prosecution [~~therefore~~] as provided by law.

B. In charging any person in a complaint for injunction, or in an affidavit, information or indictment with practicing dentistry, [~~or~~] dental therapy, dental hygiene or

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dental assisting without a valid license or certificate, it is sufficient to charge that the person did, upon a certain day and in a certain county, engage in the practice of dentistry, [~~or~~] dental therapy, dental hygiene or dental assisting without a valid license or certificate, without averring any further or more particular facts concerning the same."

SECTION 22. Section 61-5B-1 NMSA 1978 (being Laws 1994, Chapter 55, Section 30) is amended to read:

"61-5B-1. SHORT TITLE.--[~~Sections 31 through 41 of this act~~] Chapter 61, Article 5B NMSA 1978 shall be cited as the "Impaired Dentists, Dental Therapists and Dental Hygienists Act"."

SECTION 23. Section 61-5B-2 NMSA 1978 (being Laws 1994, Chapter 55, Section 31, as amended) is amended to read:

"61-5B-2. DEFINITIONS.--As used in the Impaired Dentists, Dental Therapists and Dental Hygienists Act:

A. "board" means the New Mexico board of dental health care;

B. "dental hygienists committee" means the New Mexico dental hygienists committee;

C. "dentistry or dental hygiene" means the practice of dentistry or dental hygiene; [~~and~~]

D. "joint committee" means a committee made up of the New Mexico board of dental health care and the dental hygienists committee that licenses and supervises the practice

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of dental therapy;

[~~D.~~] E. "licensee" means a dentist or dental hygienist licensed by the board; and

F. "licensing authority" means:

(1) for dentists, the New Mexico board of dental health care;

(2) for dental hygienists, the dental hygienists committee; and

(3) for dental therapists, the joint committee."

SECTION 24. Section 61-5B-3 NMSA 1978 (being Laws 1994, Chapter 55, Section 32) is amended to read:

"61-5B-3. GROUNDS FOR RESTRICTION, SUSPENSION, REVOCATION, STIPULATION OR OTHER LIMITATION OF LICENSE OR CERTIFICATE.--The license of any [~~dentist or dental hygienist~~] licensee to practice dentistry, dental therapy or dental hygiene or the certificate of a dental assistant to practice dental assisting in this state shall be subject to restriction, suspension, revocation or stipulation or may otherwise be limited in case of inability of the licensee or certificate holder to practice with reasonable skill and safety to patients by reason of one or more of the following:

A. mental illness;

B. physical illness, including but not limited to deterioration through the aging process or loss of motor

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skills;

C. habitual or excessive use or abuse of drugs, as defined in the Controlled Substances Act; or

D. habitual or excessive use or abuse of alcohol."

SECTION 25. Section 61-5B-4 NMSA 1978 (being Laws 1994, Chapter 55, Section 33) is amended to read:

"61-5B-4. BOARD, [~~OR~~] DENTAL HYGIENISTS COMMITTEE OR JOINT COMMITTEE--ADDITIONAL POWERS AND DUTIES AS RELATED TO THE IMPAIRED DENTISTS, DENTAL THERAPISTS AND DENTAL HYGIENISTS ACT.--

A. If [~~the board or dental hygienists committee~~] a licensing authority has reasonable cause to believe that a [~~person licensed to practice dentistry or dental hygiene~~] licensee is unable to practice with reasonable skill and safety to patients because of a condition described in the Impaired Dentists, Dental Therapists and Dental Hygienists Act, the [~~board~~] licensing authority shall cause an examination of [~~such~~] the licensee to be made and shall, following the examination, take appropriate action within the provisions of the Impaired Dentists, Dental Therapists and Dental Hygienists Act.

B. Examination of a licensee pursuant to an order of the [~~board~~] licensee's respective licensing authority shall be conducted by an examining committee designated by the [~~board. Each examining committee shall be composed of two duly~~

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~~licensed dentists, or two duly licensed dental hygienists if the licensee is a dental hygienist, and two duly licensed physicians, one of whom shall be a psychiatrist who is knowledgeable and experienced in the field of chemical dependency if a question of mental illness or dependency is involved. Whenever possible, examining committee members shall be selected for their knowledge or experience in the areas of alcoholism, chemical dependency, mental health and geriatrics and may be rehabilitated impaired dentists, dental hygienists or physicians. In designating the members of such examining committee, the board may consider nominations from the New Mexico dental association for the dentist member, the New Mexico dental hygienists' association for dental hygiene members thereof and nomination from the New Mexico medical society for the physician members thereof. No current members of the board, dental hygienists committee or New Mexico board of medical examiners shall be designated as a member of an examining committee~~] licensing authority. An examining committee shall be composed of two licensed physicians, one of whom shall be a psychiatrist who is knowledgeable and experienced in the field of chemical dependency if a question of mental illness or dependency is involved. An examining committee shall also include additional members in the following manner:

(1) if the licensee is a dentist, the

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examining committee shall include two licensed dentists;

(2) if the licensee is a dental therapist, the examining committee shall include two licensed dental therapists or two dental therapist advocates; and

(3) if the licensee is a dental hygienist, the examining committee shall include two licensed dental hygienists.

C. Whenever possible, examining committee members shall be selected for their knowledge of or experience in the areas of alcoholism, chemical dependency, mental health and geriatrics. Members of the examining committee may be rehabilitated impaired dentists, dental therapists, dental hygienists or physicians.

D. In designating the members of an examining committee, the licensing authority may consider nominations from the New Mexico medical society for physician members and nominations from the following entities:

(1) for dentist members, from the New Mexico dental association;

(2) for dental therapist members, a state or regional dental therapists' association, if available, or dental therapy education program faculty; and

(3) for dental hygienist members, the New Mexico dental hygienists' association.

E. A current member of the board, the dental

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hygienists committee or the New Mexico board of medical examiners shall not be designated as a member of an examining committee."

SECTION 26. Section 61-5B-5 NMSA 1978 (being Laws 1994, Chapter 55, Section 34) is amended to read:

"61-5B-5. EXAMINATION BY COMMITTEE.--

A. The examining committee assigned to examine a licensee pursuant to referral by the [~~board~~] licensee's licensing authority shall conduct an examination of the licensee for the purpose of determining the fitness of the licensee to practice dentistry, dental therapy or dental hygiene with reasonable skill and safety to patients, either on a restricted or unrestricted basis, and shall report its findings and recommendations to the [~~board~~] licensee's licensing authority. The findings and recommendations shall be based on findings by the examining committee that the licensee examined possesses one or more of the impairments set forth in the Impaired Dentists, Dental Therapists and Dental Hygienists Act and [~~such~~] the impairment does, in fact, affect the ability of the licensee to skillfully and safely practice dentistry, dental therapy or dental hygiene. The examining committee shall order the licensee to appear before it for hearing and give the licensee fifteen days' notice of the time and place of the hearing, together with a statement of the cause for [~~such examination~~] the hearing. The notice shall be

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served upon the licensee either personally or by registered or certified mail with return receipt requested.

B. If the examining committee, in its discretion, deems a mental or physical examination of the licensee necessary to its determination of the fitness of the licensee to practice, the examining committee shall order the licensee to submit to such examination. Any [~~person licensed to practice dentistry or dental hygiene~~] licensee in this state shall, by so practicing or by making or filing an annual registration to practice dentistry, dental therapy or dental hygiene in this state, be deemed to have:

(1) given consent to submit to mental or physical examination when so directed by the examining committee; and

(2) waived all objections to the admissibility of the report of the examining committee to the [~~board or the dental hygienists committee~~] licensee's licensing authority on the grounds of privileged communication.

C. Any licensee who submits to a diagnostic mental or physical examination as ordered by the examining committee shall have a right to designate an accompanying individual to be present at the examination and make an independent report to the [~~board~~] licensee's licensing authority.

D. Failure of a licensee to comply with an

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examining committee order under Subsection B of this section to appear before it for hearing or to submit to mental or physical examination under this section shall be reported by the examining committee to the [~~board or dental hygienists committee~~] licensee's licensing authority and, unless due to circumstances beyond the control of the licensee, shall be grounds for the immediate and summary suspension by the [~~board of the licensee~~] licensing authority to practice dentistry, dental therapy or dental hygiene in this state until further order of the board."

SECTION 27. Section 61-5B-6 NMSA 1978 (being Laws 1994, Chapter 55, Section 35) is amended to read:

"61-5B-6. VOLUNTARY RESTRICTION OF LICENSURE.--

A. A licensee may request in writing to the board a restriction to practice under [~~his~~] the licensee's existing license, and the [~~board and the dental hygienists committee~~] licensee's licensing authority shall have authority, if [~~it deems~~] deemed appropriate, to attach stipulations to the licensure of the licensee to practice dentistry, dental therapy or dental hygiene within specified limitations and waive the commencement of [~~any~~] a proceeding. Removal of a voluntary restriction on licensure to practice dentistry, dental therapy or dental hygiene shall be subject to the procedure for reinstatement of license. As a condition for accepting such voluntary limitation of practice, the [~~board~~]

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licensing authority may require [~~each~~] the licensee to:

(1) agree to and accept care, counseling or treatment of physicians or other appropriate health care providers acceptable to the [~~board~~] licensing authority;

(2) participate in a program of education prescribed by the [~~board~~] licensing authority; or

(3) practice under the direction of a dentist acceptable to the [~~board~~] licensing authority for a specified period of time.

B. Subject to the provisions of the Impaired Dentists, Dental Therapists and Dental Hygienists Act, a violation of any of the conditions of the voluntary limitation of practice statement by [~~such~~] the licensee shall be due cause for the refusal of renewal, or the suspension or revocation, of the license by the [~~board~~] licensee's licensing authority."

SECTION 28. Section 61-5B-7 NMSA 1978 (being Laws 1994, Chapter 55, Section 36) is amended to read:

"61-5B-7. REPORT TO THE BOARD, JOINT COMMITTEE OR DENTAL HYGIENISTS COMMITTEE--ACTION.--

A. The examining committee shall report to the board, joint committee or the dental hygienists committee its findings on the examination of the licensee, the determination of the examining committee as to the fitness of the licensee to engage in the practice of dentistry, dental therapy or

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dental hygiene with reasonable skill and safety to patients, either on a restricted or unrestricted basis, and any intervention that the examining committee may recommend. Such recommendation by the examining committee shall be advisory only and shall not be binding on the board.

B. The board, joint committee or dental hygienists committee may accept or reject the recommendation of the examining committee to permit a licensee to continue to practice with or without any restriction on [~~his~~] the licensee's licensure to practice dentistry, dental therapy or dental hygiene or may refer the matter back to the examining committee for further examination and report [~~thereon~~] on it.

C. In the absence of a voluntary agreement by a licensee for restriction of the licensure of the [~~dentist or the dental hygienist~~] licensee to practice dentistry, dental therapy or dental hygiene, [~~any~~] the licensee shall be entitled to a hearing before the [~~board~~] licensee's licensing authority under and in accordance with the procedure contained in the Uniform Licensing Act and a determination on the evidence as to whether [~~or not~~] restriction, suspension or revocation of licensure shall be imposed."

SECTION 29. Section 61-5B-9 NMSA 1978 (being Laws 1994, Chapter 55, Section 38) is amended to read:

"61-5B-9. REINSTATEMENT OF LICENSE.--

A. A licensee whose licensure has been restricted,

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suspended or revoked under the Impaired Dentists, Dental Therapists and Dental Hygienists Act, voluntarily or by action of the [~~board~~] licensee's licensing authority, shall have a right at reasonable intervals to petition for reinstatement of the license and to demonstrate that the licensee can resume the competent practice of dentistry, dental therapy or dental hygiene with reasonable skill and safety to patients.

B. The petition shall be made in writing. If the licensee is a dental hygienist, the [~~dental hygienists~~] committee shall be advised and given all information [~~so that their~~] that the committee requests to inform its decision. The committee shall provide its recommendation [~~can be given~~] to the board for ratification. If the licensee is a dental therapist, the joint committee shall be advised and given all information that the joint committee requests to inform its decision.

C. Action of the [~~board~~] licensing authority on the petition shall be initiated by referral to and examination by [~~the~~] an examining committee.

D. [~~The board~~] A licensing authority may, in its discretion, upon written recommendation of the examining committee, restore the licensure of the licensee on a general or limited basis."

SECTION 30. Section 61-5B-10 NMSA 1978 (being Laws 1994, Chapter 55, Section 39) is amended to read:

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"61-5B-10. IMPAIRED DENTISTS, DENTAL THERAPISTS AND DENTAL HYGIENISTS TREATMENT PROGRAM.--

A. The board, the joint committee and the dental hygienists committee each has the authority to enter into an agreement with a nonprofit corporation to implement an impaired dentists, dental therapists and dental hygienists treatment program.

B. For the purposes of this section, "impaired dentists, dental therapists and dental hygienists treatment program" means a program of care and rehabilitation services provided by those organizations authorized by [~~the board~~] a licensing authority to provide for the detention, intervention and monitoring of an impaired [~~dentist or dental hygienist~~] licensee."

SECTION 31. Section 61-5B-11 NMSA 1978 (being Laws 1994, Chapter 55, Section 40) is amended to read:

"61-5B-11. IMPAIRED DENTISTS, DENTAL THERAPISTS AND DENTAL HYGIENISTS FUND CREATED.--

A. There is created an "impaired dentists, dental therapists and dental [~~hygienist~~] hygienists fund".

B. The fund shall be initially established by an assessment to all licensees as determined by the board, the joint committee and the dental hygienists committee.

C. All [~~funds~~] money received by the board for an impaired assessment, either special or at time of relicensure,

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shall be deposited with the state treasurer. The state treasurer shall credit this money to the [~~impaired dentists and dental hygienists~~] fund.

D. Payments out of the fund shall be on vouchers issued and signed by the secretary-treasurer of the board upon warrants drawn by the department of finance and administration in accordance with the responsibilities of the board as approved by that department.

E. All amounts paid into the fund are subject to the order of the board and are to be used only for meeting necessary expenses incurred in executing the provisions and duties of the Impaired Dentists, Dental Therapists and Dental Hygienists Act. All money unused at the end of any fiscal year shall remain in the fund for use in accordance with provisions of the Impaired Dentists, Dental Therapists and Dental Hygienists Act.

F. Licensees shall be assessed an impaired fee at the time of renewal. The amount of the impaired fee shall be determined by the board, the joint committee and the dental hygienists committee and shall be established to meet the need for enforcing the Impaired Dentists, Dental Therapists and Dental Hygienists Act.

G. The fund shall be used for the purpose of administration, testing, monitoring, hearings and consultation fees by the board, joint committee or dental hygienists

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committee or [~~their~~] its agent, which are necessary to enforce the Impaired Dentists, Dental Therapists and Dental Hygienists Act. It is not the purpose of the fund to pay for treatment of impaired dentists, [~~and~~] dental therapists or dental hygienists."

SECTION 32. A new section of the Dental Health Care Act is enacted to read:

"[NEW MATERIAL] DENTAL THERAPISTS--LICENSURE.--

A. Except as provided pursuant to Subsection C of this section, an applicant for dental therapist licensure by examination shall be required to:

(1) pass a written examination covering the laws and rules for practice in the state; and

(2) submit proof to the joint committee for its approval and recommendation:

(a) of graduation and receipt of a degree from a dental therapy educational program that provides a minimum of three thousand hours of dental therapy curriculum and that is developed in partnership with an institution of higher education;

(b) that the applicant: 1) is from the community or a similarly situated community where the applicant plans to practice; 2) has been vetted by the community as part of the application process for the dental therapy education program; and 3) maintains an ongoing

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relationship with the sponsoring entity, including one community prevention project in the supporting community during coursework;

(c) of passage of a competency-based examination given by a nationally recognized regional testing agency if available or, if not available, by an institution of higher education with a dental therapy education program or passage of competency-based examination that the applicant has passed following the applicant's completion of a dental therapy educational program; and

(d) of completion of a minimum of four hundred additional clinical hours under the indirect supervision of a dentist.

B. Upon notification from the dental therapy education program that the dental therapist applicant has graduated from the education program and passed the competency-based examination, the joint committee shall issue a permit for the applicant to practice during the applicant's requirement to complete four hundred additional clinical hours pursuant to Subparagraph (d) of Paragraph (2) of Subsection A of this section.

C. The board shall issue a license to practice as a dental therapist without a practical or clinical examination to an applicant who is a licensed dental therapist by examination under the laws of another state or territory of

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the United States; provided that the license is in good standing for the two previous years in that jurisdiction and that the applicant meets the requirements of the Dental Health Care Act, including payment of appropriate fees and the passing of an examination covering the laws and rules of the practice of dental therapy in the state.

D. Upon receipt of a recommendation from the joint committee, the board shall issue the applicant a license to practice as a dental therapist.

E. The committee may license as a dental hygienist a dental therapist if the dental therapist has completed a minimum of one year of a dental hygiene education program from an accredited dental hygiene education program, in accordance with rules that the committee has established."

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