

LEGISLATIVE BILL 18

Approved by the Governor March 29, 2017

Introduced by Kolterman, 24; Hilkemann, 4.

A BILL FOR AN ACT relating to the Dentistry Practice Act; to amend sections 38-1101, 38-1102, 38-1107, 38-1116, 38-1119, 38-1121, 38-1130, 38-1131, 38-1132, 38-1135, and 38-1136, Reissue Revised Statutes of Nebraska; to define and redefine terms; to change provisions relating to dental assistants and licensed dental hygienists; to provide for licensed dental assistants, expanded function dental assistants, and expanded function dental hygienists; to provide powers and duties; to harmonize provisions; to provide an operative date; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 38-1101, Reissue Revised Statutes of Nebraska, is amended to read:

38-1101 Sections 38-1101 to 38-1151 and sections 3, 5 to 8, 10 to 12, 15, 19, and 22 of this act shall be known and may be cited as the Dentistry Practice Act.

Sec. 2. Section 38-1102, Reissue Revised Statutes of Nebraska, is amended to read:

38-1102 For purposes of the Dentistry Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-1103 to 38-1113 and sections 3 and 5 to 8 of this act apply.

Sec. 3. Accredited dental assisting program means a program that is accredited by the American Dental Association Commission on Dental Accreditation, which is an agency recognized by the United States Department of Education as an accrediting body, that is within a school or college approved by the board, and that requires a dental assisting curriculum of not less than one academic year.

Sec. 4. Section 38-1107, Reissue Revised Statutes of Nebraska, is amended to read:

38-1107 Dental assistant means a person who does not hold a license under the Dentistry Practice Act and who is, ~~other than a dental hygienist,~~ employed by a licensed dentist for the purpose of assisting a licensed such dentist in the performance of his or her clinical and clinical-related duties as described in section 38-1135.

Sec. 5. Licensed dental assistant means a dental assistant who holds a license to practice as a dental assistant under the Dentistry Practice Act.

Sec. 6. Expanded function dental assistant means a licensed dental assistant who has met the requirements to practice as an expanded function dental assistant pursuant to section 12 of this act.

Sec. 7. Licensed dental hygienist means a person who holds a license to practice dental hygiene under the Dentistry Practice Act.

Sec. 8. Expanded function dental hygienist means a licensed dental hygienist who has met the requirements to practice as an expanded function dental hygienist pursuant to section 10 of this act.

Sec. 9. Section 38-1116, Reissue Revised Statutes of Nebraska, is amended to read:

38-1116 The Dentistry Practice Act shall not require licensure as a dentist under the act for apply to:

(1) The practice of his or her profession by a physician or surgeon licensed as such under the laws of this state unless he or she practices dentistry as a specialty;

(2) The giving by a qualified anesthetist or registered nurse of an anesthetic for a dental operation under the direct supervision of a licensed dentist or physician;

(3) The practice of dentistry by graduate dentists or dental surgeons who serve in the armed forces of the United States or the United States Public Health Service or who are employed by the United States Department of Veterans Affairs or other federal agencies, if their practice is limited to that service or employment;

(4) The practice of dentistry by a licensed dentist of other states or countries at meetings of the Nebraska Dental Association or components thereof, or other like dental organizations approved by the Board of Dentistry, while appearing as clinicians;

(5) The filling of work authorizations of a licensed and registered dentist as provided in this subdivision by any person or persons, association, corporation, or other entity for the construction, reproduction, or repair of prosthetic dentures, bridges, plates, or appliances to be used or worn as substitutes for natural teeth if such person or persons, association, corporation, or other entity does not solicit or advertise, directly or indirectly by mail, card, newspaper, pamphlet, radio, or otherwise, to the general public to construct, reproduce, or repair prosthetic dentures, bridges, plates, or other appliances to be used or worn as substitutes for natural teeth;

(6) The use of roentgen or X-ray machines or other rays for making radiograms or similar records of dental or oral tissues under the supervision of a licensed dentist or physician if such service is not advertised by any name whatever as an aid or inducement to secure dental patronage, and no person shall advertise that he or she has, leases, owns, or operates a roentgen or X-ray machine for the purpose of making dental radiograms of the human teeth or tissues or the oral cavity or administering treatment thereto for any disease thereof;

(7) The performance by a licensed dental hygienist, under the supervision of a licensed dentist, of the oral prophylaxis procedure which shall include the scaling and polishing of teeth and such additional procedures as are prescribed in accordance with rules and regulations adopted by the department;

(8) ~~The performance, under the supervision of a licensed dentist, by a dental assistant, a licensed dental assistant, or an expanded function dental assistant under the supervision of a licensed dentist,~~ of duties prescribed in accordance with rules and regulations adopted by the department;

(9) ~~The performance by a licensed dental hygienist or an expanded function dental hygienist,~~ by virtue of training and professional ability, under the supervision of a licensed dentist, of taking dental roentgenograms. Any other person is hereby authorized, under the supervision of a licensed dentist, to take dental roentgenograms but shall not be authorized to do so until he or she has satisfactorily completed a course in dental radiology recommended by the board and approved by the department;

(10) Students of dentistry who practice dentistry upon patients in clinics in the regular course of instruction at an accredited school or college of dentistry;

(11) Licensed physicians and surgeons who extract teeth or treat diseases of the oral cavity, gums, teeth, or maxillary bones as an incident to the general practice of their profession; ~~or~~

(12) Dental hygiene students who practice dental hygiene or expanded function dental hygiene upon patients in clinics in the regular course of instruction at an accredited dental hygiene program. Such dental hygiene students are also not engaged in the unauthorized practice of dental hygiene or expanded function dental hygiene; ~~or -~~

(13) ~~Dental assisting students who practice dental assisting or expanded function dental assisting upon patients in clinics in the regular course of instruction at an accredited dental assisting program. Such dental assisting students are also not engaged in the unauthorized practice of dental assisting, expanded function dental assisting, dental hygiene, or expanded function dental hygiene.~~

Sec. 10. (1) Every applicant for a permit to practice expanded function dental hygiene shall (a) present proof of current, valid licensure under the Dentistry Practice Act as a licensed dental hygienist at the time of application, (b) present proof of at least one thousand five hundred hours of experience as a licensed dental hygienist, (c) present proof of successful completion of courses and examinations in expanded function dental hygiene approved by the board, (d) pass a jurisprudence examination approved by the board that is based on the Nebraska statutes, rules, and regulations governing the practice of expanded function dental hygiene, and (e) complete continuing education as a condition of the permit if required by the board.

(2) Upon completion of these requirements, the department, with the recommendation of the board, shall issue the applicant the applicable permit to practice expanded function dental hygiene.

Sec. 11. (1) Every applicant for a license to practice as a licensed dental assistant shall (a) have a high school diploma or its equivalent, (b) present proof of (i) graduation from an accredited dental assisting program or (ii) a minimum of one thousand five hundred hours of experience as a dental assistant during the five-year period prior to the application for a license, (c) pass the examination to become a certified dental assistant administered by the Dental Assisting National Board or an equivalent examination approved by the Board of Dentistry, (d) pass a jurisprudence examination approved by the board that is based on the Nebraska statutes, rules, and regulations governing the practice of dental assisting, and (e) complete continuing education as a condition of licensure if required by the board.

(2) Upon completion of these requirements, the department, with the recommendation of the board, shall issue the applicant a license to practice as a licensed dental assistant.

Sec. 12. (1) Every applicant for a permit to practice as an expanded function dental assistant shall (a) present proof of current, valid licensure under the Dentistry Practice Act as a licensed dental assistant at the time of application, (b) present proof of at least one thousand five hundred hours of experience as a licensed dental assistant, (c) present proof of successful completion of courses and examinations in expanded function dental assisting approved by the board, (d) pass a jurisprudence examination approved by the board that is based on the Nebraska statutes, rules, and regulations governing the practice of expanded function dental assisting, and (e) complete continuing education as a condition of the permit if required by the board.

(2) Upon completion of these requirements, the department, with the recommendation of the board, shall issue the applicant the applicable permit to practice as an expanded function dental assistant.

Sec. 13. Section 38-1119, Reissue Revised Statutes of Nebraska, is amended to read:

38-1119 Any person who applies for a license to practice dentistry, ~~or~~

dental hygiene, or dental assisting and who has failed on two occasions to pass any part of the practical examination shall be required to complete a course in clinical dentistry, ~~or dental hygiene, or dental assisting~~ approved by the board before the department may consider the results of a third examination as a valid qualification for a license to practice dentistry, ~~or dental hygiene, or dental assisting~~ in the State of Nebraska.

Sec. 14. Section 38-1121, Reissue Revised Statutes of Nebraska, is amended to read:

38-1121 (1) Every applicant for a license to practice dental hygiene based on a license in another state or territory of the United States or the District of Columbia shall meet the standards set by the board pursuant to section 38-126 and shall have been actively engaged in the practice of dental hygiene for at least three years, one of which must be within the three years immediately preceding the application, under a license in another state or territory of the United States or the District of Columbia. Practice in an accredited dental hygiene program for the purpose of completing a postgraduate or residency program in dental hygiene also serves as active practice toward meeting this requirement.

(2) Every applicant for a license to practice as a licensed dental assistant based on a license in another state or territory of the United States or the District of Columbia shall meet the standards set by the board pursuant to section 38-126 and shall have been actively engaged in practice as a licensed dental assistant for at least three years, one of which must be within the three years immediately preceding the application, under a license in another state or territory of the United States or the District of Columbia. Practice in an accredited dental assisting program for the purpose of completing a postgraduate or residency program in dental assisting also serves as active practice toward meeting this requirement.

Sec. 15. Every person who owns, operates, or controls a facility in which an expanded function dental assistant or an expanded function dental hygienist is practicing shall display the permit of such person issued by the board for expanded functions in a conspicuous place in such facility.

Sec. 16. Section 38-1130, Reissue Revised Statutes of Nebraska, is amended to read:

38-1130 (1) Except as otherwise provided in this section, a licensed dental hygienist shall perform the dental hygiene functions listed in section 38-1131 only when authorized to do so by a licensed dentist who shall be responsible for the total oral health care of the patient.

(2) The department may authorize a licensed dental hygienist to perform the following functions in the conduct of public health-related services in a public health setting or in a health care or related facility: Preliminary charting and screening examinations; oral health education, including workshops and inservice training sessions on dental health; and all of the duties that a any dental assistant who is not licensed is authorized to perform.

(3)(a) The department may authorize a licensed dental hygienist to perform the following functions in the conduct of public health-related services to children in a public health setting or in a health care or related facility:

(i) Oral prophylaxis to healthy children who do not require antibiotic premedication;

(ii) ~~Pulp pulp~~ vitality testing;

(iii) ~~Preventive and preventive~~ measures, including the application of fluorides, sealants, and other recognized topical agents for the prevention of oral disease; -

(iv) Upon completion of education and testing approved by the board, interim therapeutic restoration technique; and

(v) Upon completion of education and testing approved by the board, writing prescriptions for mouth rinses and fluoride products that help decrease risk for tooth decay.

(b) Authorization shall be granted by the department under this subsection upon (i) filing an application with the department and (ii) providing evidence of current licensure and professional liability insurance coverage. Authorization may be limited by the department as necessary to protect the public health and safety upon good cause shown and may be renewed in connection with renewal of the licensed dental hygienist's license.

(c) A licensed dental hygienist performing dental hygiene functions as authorized under this subsection shall (i) report authorized functions performed by him or her to the department on a form developed and provided by the department and (ii) advise the patient or recipient of services or his or her authorized representative that such services are preventive in nature and do not constitute a comprehensive dental diagnosis and care.

(4)(a) The department may authorize a licensed dental hygienist who has completed three thousand hours of clinical experience to perform the following functions in the conduct of public health-related services to adults in a public health setting or in a health care or related facility:

(i) Oral prophylaxis;

(ii) ~~Pulp pulp~~ vitality testing;

(iii) ~~Preventive and preventive~~ measures, including the application of fluorides, sealants, and other recognized topical agents for the prevention of oral disease; -

(iv) Upon completion of education and testing approved by the board, interim therapeutic restoration technique;

(v) Upon completion of education and testing approved by the board, writing prescriptions for mouth rinses and fluoride products that help decrease

risk for tooth decay; and

(vi) Upon completion of education and testing approved by the board, minor denture adjustments.

(b) Authorization shall be granted by the department under this subsection upon (i) filing an application with the department, (ii) providing evidence of current licensure and professional liability insurance coverage, and (iii) providing evidence of three thousand hours of clinical experience. Authorization may be limited by the department as necessary to protect the public health and safety upon good cause shown and may be renewed in connection with renewal of the licensed dental hygienist's license.

(c) A licensed dental hygienist performing dental hygiene functions as authorized under this subsection shall (i) report on a form developed and provided by the department authorized functions performed by him or her to the department and (ii) advise the patient or recipient of services or his or her authorized representative that such services are preventive in nature and do not constitute a comprehensive dental diagnosis and care.

(5) The department shall compile the data from the reports provided under subdivisions (3)(c)(i) and (4)(c)(i) of this section and provide an annual report to the Board of Dentistry and the State Board of Health.

(6) For purposes of this section:

(a) Health care or related facility means a hospital, a nursing facility, an assisted-living facility, a correctional facility, a tribal clinic, or a school-based preventive health program; and

(b) Public health setting means a federal, state, or local public health department or clinic, community health center, rural health clinic, or other similar program or agency that serves primarily public health care program recipients.

(7) Within five years after September 6, 2013, the Health and Human Services Committee of the Legislature shall evaluate the services provided by licensed dental hygienists pursuant to this section to ascertain the effectiveness of such services in the delivery of oral health care and shall provide a report on such evaluation to the Legislature. The report submitted to the Legislature shall be submitted electronically.

Sec. 17. Section 38-1131, Reissue Revised Statutes of Nebraska, is amended to read:

38-1131 When authorized by and under the general supervision of a licensed dentist, a licensed dental hygienist may perform the following intra and extra oral procedures and functions:

(1) Oral prophylaxis, periodontal scaling, and root planing which includes supragingival and subgingival debridement;

(2) Polish all exposed tooth surfaces, including restorations;

(3) Conduct and assess preliminary charting, probing, screening examinations, and indexing of dental and periodontal disease, with referral, when appropriate, for a dental diagnosis by a licensed dentist;

(4) Brush biopsies;

(5) Pulp vitality testing;

(6) Gingival curettage;

(7) Removal of sutures;

(8) Preventive measures, including the application of fluorides, sealants, and other recognized topical agents for the prevention of oral disease;

(9) Impressions for study casts;

(10) Application of topical and subgingival agents;

(11) Radiographic exposures;

(12) Oral health education, including conducting workshops and inservice training sessions on dental health;

(13) Application or administration of antimicrobial rinses, fluorides, and other anticariogenic agents; ~~and~~

(14) Upon completion of education and testing approved by the board, interim therapeutic restoration technique; and

(15) ~~(14)~~ All of the duties that a any dental assistant who is not licensed is authorized to perform.

Upon completion of education and testing approved by the board and when authorized by and under the general supervision of a licensed dentist, a licensed dental hygienist may write prescriptions for mouth rinses and fluoride products that help decrease the risk for tooth decay.

Sec. 18. Section 38-1132, Reissue Revised Statutes of Nebraska, is amended to read:

38-1132 (1)(a) A licensed dental hygienist may monitor nitrous oxide analgesia under the indirect supervision of a licensed dentist.

(b) Upon completion of education and testing approved by the board, a licensed dental hygienist may administer and titrate nitrous oxide analgesia under the indirect supervision of a licensed dentist.

(2) A licensed dental hygienist may be approved by the department, with the recommendation of the board, to administer local anesthesia under the indirect supervision of a licensed dentist. The board may prescribe by rule and regulation: The necessary education and preparation, which shall include, but not be limited to, instruction in the areas of head and neck anatomy, osteology, physiology, pharmacology, medical emergencies, and clinical techniques; the necessary clinical experience; and the necessary examination for purposes of determining the competence of licensed dental hygienists to administer local anesthesia. The board may approve successful completion after July 1, 1994, of a course of instruction to determine competence to administer local anesthesia. The course of instruction must be at an accredited school or

college of dentistry or an accredited dental hygiene program. The course of instruction must be taught by a faculty member or members of the school or college of dentistry or dental hygiene program presenting the course. The board may approve for purposes of this subsection a course of instruction if such course includes:

(a) At least twelve clock hours of classroom lecture, including instruction in (i) medical history evaluation procedures, (ii) anatomy of the head, neck, and oral cavity as it relates to administering local anesthetic agents, (iii) pharmacology of local anesthetic agents, vasoconstrictor, and preservatives, including physiologic actions, types of anesthetics, and maximum dose per weight, (iv) systemic conditions which influence selection and administration of anesthetic agents, (v) signs and symptoms of reactions to local anesthetic agents, including monitoring of vital signs, (vi) management of reactions to or complications associated with the administration of local anesthetic agents, (vii) selection and preparation of the armamentaria for administering various local anesthetic agents, and (viii) methods of administering local anesthetic agents;

(b) At least twelve clock hours of clinical instruction during which time at least three injections of each of the anterior, middle, and posterior superior alveolar, naso and greater palatine, inferior alveolar, lingual, mental, long buccal, and infiltration injections are administered; and

(c) Procedures, which shall include an examination, for purposes of determining whether the licensed dental hygienist has acquired the necessary knowledge and proficiency to administer local anesthetic agents.

Sec. 19. The department, with the recommendation of the board, may, by rule and regulation, prescribe functions, procedures, and services in addition to those in section 38-1135 which may be performed by a licensed dental assistant under the supervision of a licensed dentist when intended to attain or maintain optimal oral health.

Sec. 20. Section 38-1135, Reissue Revised Statutes of Nebraska, is amended to read:

38-1135 (1) Any licensed dentist, public institution, or school may employ dental assistants, licensed dental assistants, and expanded function dental assistants in addition to licensed dental hygienists. Such dental assistants, under the supervision of a licensed dentist, may perform such duties as are prescribed in the Dentistry Practice Act in accordance with rules and regulations adopted and promulgated by the department, with the recommendation of the board.

(2) The department, with the recommendation of the board, shall adopt and promulgate rules and regulations pursuant to section 38-126 governing the performance of duties by dental assistants, licensed dental assistants, and expanded function dental assistants. The rules and regulations shall include the degree of supervision which must be provided by a licensed dentist and the education and proof of competency requirements that must be met for any procedures performed by a dental assistant, a licensed dental assistant, or an expanded function dental assistant.

(3) A dental assistant may perform duties delegated by a licensed dentist for the purpose of assisting the licensed dentist in the performance of the dentist's clinical and clinical-related duties as allowed in the rules and regulations adopted and promulgated under the Dentistry Practice Act.

(4) Under the indirect supervision of a licensed dentist, a dental assistant may (a) monitor nitrous oxide if the dental assistant has current and valid certification for cardiopulmonary resuscitation approved by the board and (b) place topical local anesthesia.

(5) Upon completion of education and testing approved by the board, a dental assistant may:

(a) Take X-rays under the general supervision of a licensed dentist; and

(b) Perform coronal polishing under the indirect supervision of a licensed dentist.

(6) A licensed dental assistant may perform all procedures authorized for a dental assistant. Upon completion of education and testing approved by the board and with a permit from the department for the respective competency, a licensed dental assistant may, under the indirect supervision of a licensed dentist, (a) take dental impressions for fixed prostheses, (b) take dental impressions and make minor adjustments for removable prostheses, (c) cement prefabricated fixed prostheses on primary teeth, and (d) monitor and administer nitrous oxide analgesia.

(7) Upon completion of education and testing approved by the board and with a permit from the department for the respective competency, an expanded function dental assistant may, under the indirect supervision of a licensed dentist, place (a) restorative level one simple restorations (one surface) and (b) restorative level two complex restorations (multiple surfaces).

(8) A dental assistant may be a graduate of an accredited dental assisting program or may be trained on the job.

(9) No person shall practice as a licensed dental assistant in this state unless he or she holds a license as a licensed dental assistant under the Dentistry Practice Act.

(10) No person shall practice as an expanded function dental assistant in this state unless he or she holds a permit as an expanded function dental assistant under the act.

(11) A licensed dentist shall only delegate duties to a dental assistant, a licensed dental assistant, or an expanded function dental assistant in accordance with rules and regulations adopted and promulgated pursuant to the

Dentistry Practice Act. The licensed dentist supervising a dental assistant, a licensed dental assistant, or an expanded function dental assistant shall be responsible for patient care for each patient regardless of whether the patient care is rendered personally by the dentist or by a dental assistant, a licensed dental assistant, or an expanded function dental assistant.

Sec. 21. Section 38-1136, Reissue Revised Statutes of Nebraska, is amended to read:

38-1136 (1) Any licensed dentist, public institution, or school may employ licensed dental hygienists and expanded function dental hygienists.

(2) The department, with the recommendation of the board, shall adopt and promulgate rules and regulations governing the performance of duties by licensed dental hygienists and expanded function dental hygienists. The rules and regulations shall include the degree of supervision which must be provided by a licensed dentist and the education and proof of competency requirements that must be met for any procedures performed by a licensed dental hygienist or an expanded function dental hygienist dental assistants.

(3) No person shall practice dental hygiene in this state unless he or she holds a license as a licensed dental hygienist under the Dentistry Practice Act.

(4) No person shall practice expanded function dental hygiene in this state unless he or she holds a permit as an expanded function dental hygienist under the act.

(5) A licensed dentist shall only delegate duties to a licensed dental hygienist or an expanded function dental hygienist in accordance with rules and regulations adopted and promulgated pursuant to the Dentistry Practice Act. The licensed dentist supervising a licensed dental hygienist or an expanded function dental hygienist shall be responsible for patient care for each patient regardless of whether the patient care is rendered personally by the dentist or by a licensed dental hygienist or an expanded function dental hygienist.

Sec. 22. An expanded function dental hygienist may perform all the procedures authorized for a licensed dental hygienist. Upon completion of education and testing approved by the board and with a permit from the department for the respective competency, an expanded function dental hygienist may, under the indirect supervision of a licensed dentist, place (1) restorative level one simple restorations (one surface) and (2) restorative level two complex restorations (multiple surfaces).

Sec. 23. This act becomes operative on January 1, 2018.

Sec. 24. Original sections 38-1101, 38-1102, 38-1107, 38-1116, 38-1119, 38-1121, 38-1130, 38-1131, 38-1132, 38-1135, and 38-1136, Reissue Revised Statutes of Nebraska, are repealed.