

54 N.J.R. 83(a)

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RULE ADOPTIONS

Reporter

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NJ - New Jersey Register > 2022 > JANUARY > JANUARY 3, 2022 > RULE ADOPTIONS > LAW AND PUBLIC SAFETY -- DIVISION OF CONSUMER AFFAIRS

Agency

LAW AND PUBLIC SAFETY > DIVISION OF CONSUMER AFFAIRS > STATE BOARD OF DENTISTRY

Administrative Code Citation

Adopted Amendments: N.J.A.C. 13:30-1A.4, 8.2, and 8.3

Text

Dental Hygienist Scope of Practice in School Settings and Sedation Office Inspection Period

Proposed: November 18, 2019, at 51 N.J.R. 1648(a) (the notice of proposal would have expired on May 18, 2021, but was extended through the notice of substantial changes and by Executive Order No. 127 (2020) and P.L. 2021, c. 103, to January 1, 2022).

Notice of Proposed Substantial Changes Upon Adoption to Proposed Amendments: April 19, 2021, at 53 N.J.R. 614(a) (the notice of proposal would have expired on May 18, 2021, but was extended by Executive Order No. 127 (2020) and P.L. 2021, c. 103, to January 1, 2022).

Adopted: July 7, 2021, by the State Board of Dentistry, John Edward Feeney, DDS, President.

Filed: December 2, 2021, as R.2022 d.003, **with substantial changes** to proposal after additional notice and public comment, pursuant to N.J.S.A. 52:14B-4.10, and **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 45:1-15 and 45:6-19.4.

Effective Date: January 3, 2022.

Expiration Date: October 11, 2024.

Summary of Public Comments and Agency Responses:

The official comment period to the original notice of proposed amendments ended January 17, 2020 (see 51 N.J.R. 1648(a)). The State Board of Dentistry (Board) received comments from:

1. Dorrie Gagnon, RDH, Kinder Smile Foundation;
2. Faith Occhiogrosso;
3. Michael A. Carey DMD;
4. Margarite Ramsey, RDH, MS;
5. Rebecca Welch Pugh, Executive Director for the New Jersey Coalition on Oral Health for the Aging (NJCOHA);
6. Kevin Heaney, DDS, MPH;
7. Robert McTaggart DMD;
8. Dr. John F. Mielo, Round Valley Family Dentistry;
9. Gary White, DDS;
10. Ari Krug, DMD, Krug Orthodontics;
11. Robert P Praisner, DMD;
12. Hillel Ephros, DMD, MD, OMS Program Director and Chairman, Department of Dentistry/OMS with full agreement and consensus of core faculty members: Richard P. Szumita, DDS, Associate Program Director, [page=84] OMS and Associate Chairman, Department of Dentistry/OMS; Michael C. Erlichman, DDS, Assistant Program Director, OMS; Robert J. DeFalco, DDS, Attending Oral & Maxillofacial Surgeon; Meredith Blitz, DDS, Attending Oral & Maxillofacial Surgeon and former Director of Anesthesia, Department of OMS, Rutgers School of Dental Medicine; Henna DeSimone, DDS, Program Director, Pediatric Dentistry;
13. Benjamin Jacobs DMD, Diplomate, American Board of Oral & Maxillofacial Surgery;
14. Dr. Ronen Gold;
15. Lee C. Kojanis, DDS, Associate, Premier Oral Surgery Group PC, Assistant Clinical Professor, NYU/Bellevue Hospital Center, Attending, Englewood Hospital Medical Center;
16. Suzanne Gilman, DDS, FAGD, Esq.;
17. Paul J. Condello, DMD;
18. Michael DiPietro, DMD, Daniel Winston, DDS, and John Soliman, DMD, MD, Coastal Oral Surgery;
19. Daniel P. Sullivan, DDS, Warren Oral Surgery;
20. Jocelyn Jeffries-Bruno, DDS, President of the Monmouth-Ocean County Dental Society;

21. Petar Hinic, DDS, President, New Jersey Dental Society of Anesthesiology;
22. Ted Rosner, DMD;
23. Stuart S. Albin, DMD;
24. Dr. Elisa Velazquez, President of New Jersey Academy of Pediatric Dentists (NJAPD);
25. Paul J. Condello, DMD;
26. Manaf Saker, DMD, Ridgewood Oral Surgery & Implant Center;
27. Joseph J. Sansevere, West Jersey Oral and Maxillofacial Surgeons, PC., DMD;
28. Bradford J. Porter, DDS, Gene J. Martin, DDS, MD, and James B. Salman, DMD, Porter, Martin, Salman, P.A., Oral and Maxillofacial Surgery;
29. Dr. Caprice, Vineland Oral Surgeons, PA;
30. Dr. Leonard Infranco, DMD, Vineland Oral Surgeons, PA;
31. Dr. Palma, Vineland Oral Surgeons, PA;
32. Juan C. Alonso, DMD;
33. Michael K. Goulston, DMD, MD, FACS, Oral and Maxillofacial Surgery and Implant Specialists of Middlesex;
34. Lee M. Lichtenstein, DMD, MBA;
35. Arthur Meisel, Executive Director, on behalf of Thomas A. Rossi, DMD and the New Jersey Dental Association;
36. Katherine Landsberg, Director, Government Relations, Dental Assisting National Board, Inc.;
37. Cecile A. Feldman, DMD, Dean, Rutgers School of Dental Medicine;
38. Dr. Narpat Jain, DMD, President, New Jersey Academy of General Dentistry;
39. Torin W. Rutner, DMD, MD, Center For Oral & Facial Surgery;
40. Lillian Vidal DDS;
41. Edward Kozlovsky, DMD, Oral and Maxillofacial Surgeon;
42. Jonathan Mendia, DMD, Advanced Dental Anesthesia;
43. Gregg A. Jacob, DMD, FACS, Assistant Clinical Professor of Surgery, Department of Oral and Maxillofacial Surgery, New York Presbyterian Hospital, Weill-Cornell Medical College, Vice President, New Jersey Society of Oral and Maxillofacial Surgeons;
44. Muna Khan, DDS;

45. Dr. Juliet Siegel, ADA member dentist;
46. Alison Chan DDS;
47. Dr. Michael Grizzaffi, Member: NJDA, NJDSA and AGD;
48. Travis W. Reed, DMD, West Jersey Oral and Maxillofacial Surgeons, PC.;
49. Shahid R. Aziz, DMD, MD, FACS, FRCSED, President, and Alan Hecht, DMD, Chairman, Anesthesia Committee, Past President, of the New Jersey Society of Oral and Maxillofacial Surgeons;
50. John W. Vitale, DMD, Oral and Maxillofacial Surgery;
51. Philip M. Echo, DMD;
52. George W. Sandau, DMD, Westwood Oral Surgery Associates, P.A.;
53. Michael H. Kirsch, DDS, NJ Center for Oral Surgery; and
54. Kevin Corry, DDS, Vice Chair, Department of Dentistry, Overlook Medical Center.

The official comment period to the notice of proposed substantial changes upon adoption ended June 18, 2021 (see 53 N.J.R. 619(c)). The Board received comments from:

1. Rebecca Welch Pugh, Executive Director, New Jersey Coalition on Oral Health for the Aging (NJCOHA); and
2. Kim Attanasi, Ph.D, MS, RDH, President, American Dental Hygiene Association-New Jersey (ADHA-NJ).

1. Comments Received During Initial Comment Period Affecting the Provision that Was Substantially Changed

Dental Hygienists Scope of Practice

1. COMMENT: Several commenters recommended that the Board amend N.J.A.C. 13:30-1A.4(c) to allow dental hygienists to provide child prophylaxis under general supervision in a school setting. The commenters believe that allowing for only fluoride and sealants is inadequate because the standard of care is to provide prophylaxis prior to the application of fluoride and sealants.

One of these commenters noted that without first removing biofilm with a prophylaxis, the effectiveness of fluoride and sealant applications is limited. This commenter also stated that dental hygienists are licensed, mid-level health care providers who can effectively serve this population with preventive treatments without direct supervision by a licensed dentist present.

RESPONSE: The Board agreed with the commenters that providing prophylaxis is the standard of care and providing it in a school setting would expand access to care. The Board proposed to amend N.J.A.C. 13:30-1A.4(c)1 to allow a licensed dental hygienist practicing under the general supervision of a licensed dentist in a school setting to perform a complete prophylaxis, so long as the Federal Occupational Safety and Health Administration (OSHA) and Centers for Disease Control and Prevention (CDC) guidelines are followed, as is currently required at N.J.A.C. 13:30-1A.4(c)1i.

Sedation

2. COMMENT: Several commenters stated that office inspections for each level of anesthesia permit holder should be conducted every five years. One commenter stated that such a change is consistent with all of the other states requiring inspection. Another commenter noted that the national standard takes into consideration guidelines across the United States wherein the average inspection period is for every five years.

RESPONSE: The Board agreed with the commenter that there would be a benefit in having the office inspection period for offices administering PCS and general anesthesia consistent with an existing standard. Accordingly, the Board proposed to amend the office inspection for PCS and general anesthesia from six to five years at N.J.A.C. 13:30-8.2(e) and 8.3(h). The Board noted that there is evidence-based science to conclude inspections of facilities every five years protects the health, safety, and welfare of the public. To the extent that the commenters are suggesting that even facilities administering enteral sedation should have office inspections, the Board disagreed. The Board does not believe that office inspections are warranted because these offices do not have the same level of facility requirements (for example, operating room and recovery area) as the offices that administer PCS and general anesthesia. The Board will maintain the requirement that mobile equipment, drugs, and supplies must be inspected every three years.

2. Comments Received upon Publication of Notice of Proposed Substantial Changes upon Adoption to Proposed Amendments to N.J.A.C. 13:30-1A.4, 8.2, and 8.3.

3. COMMENT: One commenter expressed support for the Board's notice of proposed substantial changes upon adoption.

RESPONSE: The Board thanks the commenter for its support.

4. COMMENT: One commenter commended the Board for adding to the dental hygienists' scope of practice in a school setting under general supervision providing prophylaxis because true preventive care cannot be accomplished without that and is needed to meet the standard of care.

The commenter suggested that the changes should be applied to other settings as well, such as long term care facilities. The commenter stated [page=85] that numerous surveys cite the needs of seniors and noted that the American Dental Association (ADA) has indicated 63 percent of seniors have no dental coverage. The commenter also stated that, in 2018, Oral Health America noted that New Jersey seniors ranked 44th out of 50 states in oral health. The commenter believes that there is little that can be done to improve this without being able to offer preventive care, as well as referrals to dentists for truly needed care in this population.

In addition, the commenter stated that New Jersey's seniors, as well as other special populations, need increased access to oral health care and education. The commenter stated that this is critical to not only oral health, but to overall health because seniors without oral health problems have less pain, better nutrition, and higher quality of life. In addition, the commenter stated that the rising incidence of oral health problems can be correlated to heart disease, lung disease, and other significant health problems.

RESPONSE: The Board notes that, in accordance with N.J.A.C. 13:30-1A.4(b), dental hygienists may perform certain functions in an institution, including making radiographic exposures and performing a

prophylaxis, under the general supervision of a State licensed dentist. In accordance with N.J.S.A. 45:6-49 and N.J.A.C. 13:30-1A.1, an "institution" means any nursing home, veterans' home, hospital, or prison, or any State or county facility providing inpatient care, supervision, and treatment for persons with developmental disabilities. The Board does not have the statutory authority to broaden the locations encompassed by the term "institution."

Summary of Agency-Initiated Changes:

The Board is changing the language at N.J.A.C. 13:30-1A.4(c)1 to clarify that a prophylaxis performed by dental hygienists under general supervision in a school setting must be within the context of statutorily permitted procedures. The Board's intent is to ensure that a child's teeth are prepared before the application of fluoride treatments or sealants. N.J.S.A. 45:6-69.2 limits the services that a dental hygienist may perform in a school setting. As the term "a complete prophylaxis" could be interpreted to allow the use of hand instrumentation, which would exceed the permitted statutory practice, upon adoption, the Board is changing the language to clarify that dental hygienists may provide the complete removal of biofilm with prophy paste containing fluoride. The Board believes that the revised language ensures that the standard of care is met and is consistent with statutory parameters. Additional public notice of this change is not necessary because it does not change the effect of this section, so as to destroy the value of the original notice. By clarifying that dental hygienists will be able to remove the biofilm with prophy paste containing fluoride, the standard of care is met, without diminishing patient health, safety, and welfare.

Federal Standards Statement

A Federal standards analysis is not required because the adopted amendments are governed by N.J.S.A. 45:6-1 et seq., and are not subject to any Federal requirements or standards.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 1A. DENTAL HYGIENISTS

13:30-1A.4 Scope of practice of licensed dental hygienist under general supervision

(a)-(b) (No change.)

(c) School setting. A licensed dental hygienist practicing under the general supervision of a licensed dentist in a school setting:

1. May administer to that school's students, with written parental or guardian consent, preventive measures such as the application of fluorides, *[a]* complete *[prophylaxis]* ***removal of biofilm with prophy paste containing fluoride***, pit and fissure sealants, as well as other recognized topical agents, including topical anesthetics, for the prevention of oral disease or associated discomfort and the detection of caries, and may use a curing light for the application of sealants, provided that:

i.-ii. (No change.)

2.-3. (No change.)

(d)-(f) (No change.)

SUBCHAPTER 8. GENERAL PROVISIONS

13:30-8.2 Parenteral conscious sedation

(a)-(d) (No change.)

(e) All offices in which parenteral conscious sedation is conducted shall be inspected and approved once every *[six]* ***five*** years by the State Board of Dentistry, or its designee, and shall, at a minimum, have the equipment and supplies set forth at (i) below and at N.J.A.C. 13:30-8.26, which shall be readily accessible and maintained in good operating condition and shall meet the following standards:

1. The operating room shall have space large enough to provide adequate accommodation of the patient on a table or in an operating chair, and allow an operating team consisting of at least three individuals to move about the patient without restriction or limitation;
2. A recovery area that has available oxygen and monitoring equipment, adequate lighting, suction, and electrical outlets. The recovery area can be the operating theatre; and
3. A lighting system adequate to permit visual evaluation of the patient's skin and mucosal color.

(f)-(o) (No change.)

13:30-8.3 Use of general anesthesia

(a)-(g) (No change.)

(h) The dental facility of any permit holder shall be inspected and approved by the State Board of Dentistry, or its designee, once every *[six]* ***five*** years.

(i)-(r) (No change.)

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