

VOLUME 48, ISSUE 14
ISSUE DATE: **JULY 18, 2016**
RULE ADOPTIONS
LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF DENTISTRY

Adopted Amendments: N.J.A.C. 13:30-1.1, 1A.1, 1A.2, 2.1, 4.10, 8.17, and 8.20

Adopted New Rules: N.J.A.C. 13:30-1A.1, 1A.4, 1A.6, 8.25, and 8.26

Adopted Recodification: N.J.A.C. 13:30-1A.3 as 1A.5

Dental Hygienists Scope of Practice; Emergency Protocol

Proposed: December 21, 2015, at 47 N.J.R. 3097(a).

Adopted: April 6, 2016, by the State Board of Dentistry, Emil Cappetta, DDS, President.

Filed: June 20, 2016, as R.2016 d.084, **without change**.

Authority: N.J.S.A. 45:1-15.1 and 45:6-3.

Effective Date: July 18, 2016.

Expiration Date: January 5, 2018.

Summary of Public Comments and Agency Responses:

The official comment period ended on March 4, 2016. The Board of Dentistry (Board) received comments from:

1. LeeAnn Simmons, RDH, MS;
2. Rebecca Welch Pugh, RDH, Executive Director, New Jersey Dental Hygienists Association;
3. Lori Mangano, RDH, MA;
4. Yvonne Goldman, RDH, BA;
5. Cathleen Balance, MD, MPH, FAAP, Pediatric Hospitalist - K. Hovnanian Children's Hospital at Jersey Shore University Medical Center, NJ - Community Oral Health Advocate for Children, Pediatric Oral Health Champion - NJ AAP;
6. Samuel Zwetchkenbaum, DDS, MPH, Senior Dental Solutions of NJ, LLC;
7. Deborah A. Cook, RDH, MAEd, Academic Chair, Dental Hygiene Department, Associate Professor, Oral Hygiene III & IV and Enhanced Clinical Techniques, Bergen Community

College; and

8. Linda Hall, Assistant Professor, Dental Hygiene, Bergen Community College.

1. COMMENT: Two of the commenters supported the Board of Dentistry's (Board) proposal amending the scope of practice of dental hygienists under general supervision in a dental office or dental clinic, in an institution, and in a school setting. The commenters also support the amended and new definitions that clarify the difference between general supervision, as well as the amendments and new definitions for dental clinic, institution, and school setting. The commenters believe the changes will enhance the dental hygienists' ability to practice in school settings and institutions. The commenters also believe that underserved populations will benefit from the access to care and treatment provided by dental hygienists.

RESPONSE: The Board thanks the commenters for their support.

2. COMMENT: Six of the commenters expressed support for the amendments because they will enable dental hygienists to increase the [page=1463] public access to dental sealants, an effective preventive service. One of these commenters noted that dental hygienists would like to use all of the training that they have received in dental hygiene school to improve preventive oral care in their communities and that one of the most underserved segment is children, who have a litany of reasons preventing them from having any continuity in dental care. This commenter believes that most of these children attend school and that it would be the perfect setting for a dental hygienist to practice; assessing patients for decay, providing prophylaxis, fluoride treatments, and placing sealants would reduce the number of days children miss school or are in pain. In addition, the commenters noted that allowing dental hygienists to place sealants under general supervision in schools and other community locations would be a good start to improving the dental health of New Jersey residents with limited access to care.

RESPONSE: The Board thanks the commenters for their support.

Federal Standards Statement

A Federal Standards analysis is not required because the adopted amendments to N.J.A.C. 13:30-1A.4(c) do not exceed, but rather references the requirements of the Occupational Safety and Health Administration (OSHA) and Centers for Disease Control and Prevention (CDC) as specified in N.J.A.C. 13:30-8.5.

Full text of the adoption follows:

SUBCHAPTER 1. LICENSURE TO PRACTICE DENTISTRY

13:30-1.1 Purpose and scope

(a) (No change.)

(b) The provisions of this chapter shall apply to all licensed dentists, licensed dental hygienists, registered dental assistants, limited registered dental assistants, and holders of dental clinic permits, and all applicants seeking licensure to engage in the practice of dentistry, dental hygiene, and dental assisting, and applicants seeking permits to operate dental clinics.

(c) (No change.)

SUBCHAPTER 1A. DENTAL HYGIENISTS

13:30-1A.1 Definitions

For purposes of this subchapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

"Commission on Dental Accreditation" means the Commission on Dental Accreditation of the American Dental Association (CODA).

"Dental clinic" as defined in N.J.S.A. 45:6-15.1 means and includes any clinic, infirmary, hospital, institution, or other place of any kind whatsoever in which science of dentistry in any of its branches is practiced, demonstrated, or taught, upon or with respect to human beings, but shall not include the private office of a regularly licensed dentist of this State. A dental clinic located inside a school setting is also considered a dental clinic.

"Direct supervision" means that a licensed dentist is physically present in the office or facility at all times during the performance of any act and that such acts are performed pursuant to the licensed dentist's order, control, and full professional responsibility.

"General supervision" means that a licensed dentist shall provide a written order or protocol and shall maintain control and full professional responsibility for the performance of any act, whether or not the licensed dentist is physically present at the setting.

"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.

"School setting" means any public or private school, with any grade(s) pre-kindergarten (pre-k) through 12, in the State. School setting shall not include a dental clinic located inside a school setting.

13:30-1A.2 Application for licensure as dental hygienist

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

(c) As part of its review of applicants for licensure as dental hygienists, the Board shall consider and evaluate any prior record of disciplinary action or pending disciplinary action against the applicant or investigation of the applicant in any other state or jurisdiction and the applicant's complete professional employment history.

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

13:30-1A.3 Scope of practice of licensed dental hygienist under direct supervision

(a) A licensed dental hygienist practicing under the direct supervision of a licensed dentist may:

1.-2. (No change.)

3. (No change in text.)

4. (No change in text.)

5. Assess soft and hard tissue of the head, neck and oral cavity and note deformities, defects, and abnormalities therein;

6. (No change in text.)

Recodify existing 14.-15. as 7.-8. (No change in text.)

Recodify existing 22.-23. as 9.-10. (No change in text.)

Recodify 25.-30. as 11.-16. (No change in text.)

Recodify existing 32.-33. as 17.-18. (No change in text.)

19. (No change in text.)

20. Assess whether there is carious activity by the use of detecting agents and carious detection instruments. Such instruments shall not include lasers that are capable of altering, cutting, burning, or damaging hard or soft tissue;

21. Etch teeth in preparation for bonding, sealants, and desensitizing agents;

22. Use a curing light for any dental procedure. Such curing light shall not include a laser capable of altering, cutting, burning, or damaging hard or soft tissue or electrosurgery for tissue retraction;

23. Isolate the operative field, including the placement and removal of rubber dams;

24. Take alginate impressions;

25. Place and remove matrices and wedges;

26. Place temporary restorations;

27. Perform hand removal of soft temporary restorations;

28. Fabricate and cement temporary crowns and bridges after preparation of tooth (teeth) by a dentist. This shall not include intra-oral occlusal adjustment;

29. Perform hand removal of crowns and bridges that have been temporarily cemented;

30. Place amalgam, composite or gold foil in a tooth for condensation by the dentist;

31. Place and remove retraction cords and medicated pellets. This shall not include electrosurgery or the use of lasers for tissue retraction;

32. Perform bite registration procedures;

33. Place and remove arch wires and ligature wires;

34. Demonstrate home-use bleaching systems and apply bleaching agents;

35. Use an in-office light activated bleaching system;

36. Assist a licensed dentist in the administration of nitrous oxide, provided the licensed dentist is physically present in the operatory at all times during the procedure.

i. In accordance with this subsection, a licensed dental hygienist who is monitoring a patient to whom the supervising dentist has administered nitrous oxide/oxygen inhalation analgesia may, while monitoring the patient, perform other functions within the dental hygienist scope of practice as delegated by the supervising dentist even if the dentist is not physically present in the operatory; and

37. Administer local anesthesia provided he or she satisfies the requirements set forth in N.J.A.C. 13:30-1A.5.

(b) In addition to the activities set forth in (a) above, a licensed dental hygienist practicing under the direct supervision of a licensed dentist pursuant to N.J.A.C. 13:30-8.20 may monitor a patient to whom the supervising dentist has administered nitrous oxide/oxygen inhalation analgesia, provided that:

1. The licensed dental hygienist has successfully completed a Board-approved course offered in a Commission on Dental Accreditation accredited college or university or in a hospital licensed by the Department of Health, which emphasizes the administration of nitrous oxide simultaneously with the administration of oxygen and safe and effective patient monitoring;

[page=1464] i.-iii. (No change.)

2.-4. (No change.)

5. Upon any untoward reaction of the patient, the licensed dental hygienist immediately turns off the flow of nitrous oxide, maintains the established oxygen level, and immediately summons the dentist.

(c) The monitoring of nitrous oxide/oxygen inhalation analgesia by a licensed dental hygienist without first having met the minimum standards of training and procedures pursuant to (b) above, shall constitute a deviation from normal standards of practice required of a licensee.

(d) A licensed dental hygienist who engages in the activities outlined in (a) and (b) above without direct supervision, except as provided in N.J.A.C. 13:30-1A.4, shall be deemed to be engaging in the unauthorized practice of dental hygiene and shall be subject to the penalties set forth in N.J.S.A. 45:6-58 and 45:1-25.

(e) A licensed dentist who permits a licensed dental hygienist to engage in the activities outlined in (a) and (b) above without direct supervision, except as provided in N.J.A.C. 13:30-1A.4, shall be subject to the penalties set forth in N.J.S.A. 45:1-21 and 45:1-25.

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

(a) Dental office or dental clinic. A licensed dental hygienist practicing under the general supervision of a licensed dentist in a dental office or a dental clinic may:

1. Perform a complete prophylaxis including the removal of all hard and soft deposits from

all surfaces of human natural and restored teeth to the epithelial attachments and the polishing of natural and restored teeth;

2. Perform root planing;
3. Provide prophylactic and preventive measures such as the application of fluorides and pit and fissure sealants and other recognized topical agents for the prevention of oral disease or discomfort;
4. Place intrasulcular therapeutic medications approved by the Food and Drug Administration, as directed by a dentist;
5. Assess soft and hard tissue of the head, neck, and oral cavity and note deformities, defects, and abnormalities therein;
6. Fabricate mouth guard appliances;
7. Remove excess cement from crowns or other restorations and orthodontic appliances;
8. Remove sutures;
9. Place and remove periodontal dressings and other surgical dressings;
10. Trial size (pre-select) orthodontic bands, wires, stainless steel crowns, and temporary crowns intra-orally or on diagnostic models;
11. Make radiographic exposures as permitted by the Department of Environmental Protection pursuant to N.J.S.A. 26:2D-24 et seq.;
12. Provide oral health education including dietary analysis and clinical instruction in order to promote dental health;
13. Apply topical anesthetic agents;
14. Take and record vital signs;
15. Retract patient's cheek, tongue, or other tissue parts during a dental procedure;
16. Remove such debris as is normally created in the course of treatment during or after dental procedures by vacuum devices, compressed air, mouthwashes, and water;
17. Take dental photographs including the use of intraoral cameras;
18. Select shades of prosthetic appliances;
19. Apply hot or cold packs pursuant to the direction of a licensed dentist;
20. Assess whether there is carious activity by the use of detecting agents and carious detection instruments. Such instruments shall not include lasers that are capable of altering, cutting, burning, or damaging hard or soft tissue;
21. Etch teeth in preparation for sealants and desensitizing agents;

22. Use a curing light for the application of sealants;

23. Isolate the operative field for the placement of sealants, including the placement and removal of rubber dams; and

24. Take alginate impressions for diagnostic casts, bleaching trays, and athletic mouth guards.

(b) Institution. A licensed dental hygienist practicing under the general supervision of a New Jersey licensed dentist in an institution may:

1. Perform a complete prophylaxis including the removal of all hard and soft deposits from all surfaces of human natural and restored teeth to the epithelial attachments and the polishing of natural and restored teeth;

2. Perform root planing;

3. Provide prophylactic and preventive measures such as the application of fluorides and pit and fissure sealants and other recognized topical agents for the prevention of oral disease or discomfort;

4. Assess soft and hard tissue of the head, neck, and oral cavity and note deformities, defects, and abnormalities therein;

5. Make radiographic exposures as permitted by the Department of Environmental Protection pursuant to N.J.S.A. 26:2D-24 et seq.;

6. Provide oral health education including dietary analysis and clinical instruction in order to promote dental health;

7. Take and record vital signs;

8. Take dental photographs including the use of intra-oral cameras;

9. Use a curing light for the application of sealants;

10. Etch teeth in preparation for sealants and desensitizing agents;

11. Isolate the operative field for the placement of sealants, including the placement and removal of rubber dams; and

12. Apply topical anesthetic agents.

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

1. Administer to that school's students, with written parental or guardian consent, preventive measures such as the application of fluorides, 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. The licensed dental hygienist complies with the Occupational Safety and Health

Administration (OSHA) and Centers for Disease Control and Prevention (CDC) requirements of N.J.A.C. 13:30-8.5; and

ii. When applying sealants, the licensed dental hygienist conforms to the assessment guidelines set forth by the supervising dentist and adheres to acceptable treatment protocol standards, including maintaining a dry field.

2. The licensed dental hygienist must comply with the notification requirements of (e)3 below and provide written notice of the administered treatment to the supervising dentist, school, and parent/guardian.

i. The notification to the parent/guardian shall include a statement that the assessment performed by the licensed dental hygienist is not a comprehensive dental examination and a list of sources for dental referrals in the community.

ii. If, after performing an assessment, a licensed dental hygienist reasonably believes that a student has either dental caries or some other medical or dental condition requiring diagnosis, treatment, or medical referral by a licensed dentist, the notification to the parent/guardian shall also include a statement that the student should be seen by a licensed dentist for a definitive diagnosis and possible treatment or medical referral.

3. The supervising dentist shall maintain for at least seven years:

i. A copy of the parental/guardian consent; and

ii. The written record of treatment by the licensed dental hygienist.

4. The supervising dentist shall review, within 30 days of treatment by the licensed dental hygienist, the written record of treatment to ensure compliance with the assessment guidelines, treatment protocol standards, and notification requirements set forth in (c)1 and 2 above.

i. If, upon review, the supervising dentist determines that the proper notification was not sent to the parent/guardian, the supervising dentist shall ensure that it is sent to the parent/guardian.

(d) Notwithstanding the provisions of (a) above, a New Jersey licensed dentist, in his or her sole discretion, may require direct supervision in his or her dental office.

(e) A licensed dental hygienist may practice dental hygiene under general supervision provided that:

1. The licensed dental hygienist treats only existing patients of record, except for school settings, as provided in (c) above. For purposes of this subchapter, an existing patient of record is a dental patient examined by a licensed dentist of the dental office, dental clinic, or institution, within the immediately preceding 365-day period and who has a dental treatment plan that is prescribed by the dentist.

[page=1465] 2. In dental offices, the patient is notified, as soon as it is known, that the dentist will not be present, and is given the option to reschedule to a time when the dentist will be present.

3. After performing an assessment, a licensed dental hygienist who reasonably believes that

a person has either dental caries or some other medical or dental condition requiring diagnosis, treatment, or medical referral by a dentist shall so inform the supervising dentist in writing, within seven days. If it appears that emergent care is indicated, the licensed dental hygienist shall immediately, but no later than 24 hours, notify the supervising dentist.

4. The licensed dental hygienist holds a current certification in Basic or Advanced Cardiac Life Support by the American Heart Association, the American Red Cross, or an equivalent organization approved by the Board.

13:30-1A.5 (No change in text.)

13:30-1A.6 Scope of practice of licensed dental hygienists; general provisions

(a) A licensed dental hygienist may practice dental hygiene in a dental office, dental clinic, or institution under the general supervision or direct supervision of a licensed dentist provided that:

1. The facility has readily available emergency equipment as specified in N.J.A.C. 13:30-8.26; and

2. A second employee, who is also trained to implement the emergency protocol as required in N.J.A.C. 13:30-8.26, is present in the treatment facility at all times when patient care is rendered.

(b) A licensed dental hygienist may not establish an independent office or engage in independent practice in connection with the performance of traditional hygienist services under either the general supervision or direct supervision of a licensed dentist.

(c) Each licensed dentist may supervise, whether they are under general supervision or direct supervision, no more than a total of three licensed dental hygienists at one time in any setting.

(d) For patient care rendered by a licensed dental hygienist practicing under general supervision in an institution, a licensed dentist shall review all chart entries within 30 days of treatment of the patient by a licensed dental hygienist.

(e) A licensed dental hygienist may provide a written work authorization for emergency repair of a dental prosthesis provided that the prosthesis shall not require any intra-oral procedure and shall be thereafter inserted by a licensed dentist.

SUBCHAPTER 2. DENTAL ASSISTANTS

13:30-2.1 Definitions

For purposes of this subchapter, the following words and terms, shall have the following meanings, unless the context clearly indicates otherwise:

"Commission on Dental Accreditation" means the Commission on Dental Accreditation of the American Dental Association (CODA).

. . .

SUBCHAPTER 4. INDUSTRIAL OR CORPORATE CLINICS

13:30-4.10 Inspection; requirements of director

(a)-(e) (No change.)

(f) Dental hygienists employed by the dental clinic shall provide only those services permitted pursuant to N.J.A.C. 13:30-1A.3 and 1A.4.

(g) (No change.)

SUBCHAPTER 8. GENERAL PROVISIONS

13:30-8.17 Delegation of physical modalities

(a) A dentist may delegate the administration of certain physical modalities to licensed dental hygienists, registered dental assistants, limited registered dental assistants, and unregistered dental assistants consistent with their particular scopes of practice as set forth in N.J.A.C. 13:30-1A.3, 1A.4, 2.4, 2.5, and 2.6 and as set forth in this section.

(b) (No change.)

(c) A dentist may delegate the administration of the physical modalities set forth in (b) above to licensed dental hygienists, registered dental assistants, and limited registered dental assistants consistent with their particular scopes of practice as set forth in N.J.A.C. 13:30-1A.3, 1A.4, 2.4, and 2.5, provided all of the following conditions are satisfied:

1.-4. (No change.)

(d)-(e) (No change.)

13:30-8.20 Nitrous oxide/oxygen inhalation analgesia; duties of a licensed dentist, delegation to licensed dental hygienist and registered dental assistant

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

(c) A supervising dentist may delegate the monitoring of the nitrous oxide/oxygen inhalation analgesia to a licensed dental hygienist during the performance of dental hygiene procedures provided that the patient is stabilized and that the licensed dental hygienist satisfies the requirements set forth in N.J.A.C. 13:30-1A.3.

(d) (No change.)

(e) If a supervising dentist delegates the monitoring of the nitrous oxide/oxygen inhalation analgesia to a licensed dental hygienist pursuant to N.J.A.C. 13:30-1A.3, or to a registered dental assistant pursuant to N.J.A.C. 13:30-2.4, the supervising dentist shall ensure that:

1.-2. (No change.)

(f)-(h) (No change.)

(i) The delegation of the monitoring of nitrous oxide/oxygen inhalation analgesia to a licensed dental hygienist pursuant to N.J.A.C. 13:30-1A.3 or registered dental assistant

pursuant to N.J.A.C. 13:30-2.4 who has not yet met the minimum standards of training and procedures as stated therein shall constitute a deviation from normal standards of practice required of a licensee.

13:30-8.25 Prohibited acts

(a) Except as otherwise provided in N.J.S.A. 45:6-16.1 et seq., 45:6-19, and 45:6-20, no person other than a person duly licensed to practice dentistry in this State shall:

1. Make any diagnosis or develop any treatment plan with respect to the dental condition or treatment of any living person in this State;
2. Perform any surgical or irreversible procedure, including but not limited to, the cutting of hard or soft tissue or the extraction of any tooth on any living person in this State;
3. Either bill or submit a claim for any service rendered involving the practice of dentistry or dental hygiene in this State; or
4. Receive payment for the performance of dental or dental hygienist services from any source other than an employer authorized by law to practice dentistry in this State or any dental clinic, institution, or employment agency, as defined pursuant to N.J.S.A. 34:8-43, that employs licensed dental hygienists to provide temporary dental hygiene services.

13:30-8.26 Emergency protocol

(a) Each dental office, facility, dental clinic, or institution at which there is patient contact, at a minimum, shall:

1. Have a written protocol for managing medical or dental emergencies;
2. Have equipment to maintain adult and pediatric airways;
3. Have an ambu bag (bag-valve-mask resuscitator); and
4. Ensure that all staff are trained upon hire, and at least annually thereafter, to implement the emergency protocol.