



What every dentist should know

A GUIDE TO NEW YORK'S DENTAL PRACTICE ACT

The following guide is provided as a service to members of NYSDA who need a concise source of information regarding the laws and regulations that make up the body of the New York State Dental Practice Act. It should be noted that sections of law and regulation outside of the Dental Practice Act are not included in this guide and that anyone needing additional information should contact an attorney or NYSDA. Also, it is important to remember that New York's Dental Practice Act is a "living" document that is continually subject to amendment. This updated version of the guide is current through July 1, 2011. Additional copies of this guide are available from the NYSDA, Office of General Counsel, 20 Corporate Woods, # 602, Albany, New York 12211.

July 12, 2011

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INTRODUCTION

Admission to the practice of dentistry or to any other profession is not a "right," and anyone seeking to practice a profession in New York State must fulfill stringent requirements as prescribed in Title VIII of the New York State Education Law. In addition to meeting these admission requirements, which include educational and examination criteria, professional licensees must submit to the supervision of the New York State Board of Regents, the highest policymaking body for education in New York State. The New York State Education Department, under the policy leadership of the Regents and the executive leadership of the Commissioner of Education, actually administers the admission to practice and performs the regulatory oversight of the practice of the professions. A State Board for each profession assists the Regents and the Department in technical matters of professional licensing, practice, and conduct. The Office of Professional Discipline (OPD), which investigates and prosecutes professional disciplinary cases, is an office within the Education Department.

NEW YORK STATE EDUCATION LAW

Article 133 – Dentistry and Dental Hygiene

§6600. Introduction

This article applies to the professions of dentistry and dental hygiene. The general provisions for all professions contained in article one hundred thirty of this title apply to this article.

Although not explicitly stated in this introductory section of the law, the Dental Practice Act also applies to the newest profession of certified dental assisting. The reference to the general provisions contained in Article 130 of the Education Law covers generic matters about filing for a license, registering with the Education Department, the general powers of the Board of Regents and the Commissioner of Education with respect to the professions, and the role of the state boards for the professions. Most importantly, those general provisions also set forth the statutory definitions of what constitutes professional misconduct, as well as the procedures used by the Education Department to handle professional discipline cases.

§6601. Definition of practice of dentistry

The practice of the profession of dentistry is defined as diagnosing, treating, operating, or prescribing for any disease, pain, injury, deformity, or physical condition of the oral and maxillofacial area related to restoring and maintaining dental health. The practice of dentistry includes the prescribing and fabrication of dental prostheses and appliances. The practice of dentistry may include performing physical evaluations in conjunction with the provision of dental treatment.

The definition of the practice of dentistry is written in general terms. Providing a detailed laundry list of allowable services is unnecessary due to the dentist's broad training and concomitant ability to exercise discretion in treating conditions of the human mouth and maxillofacial area. On December 19, 2001, Chapter 576 of the Laws of 2001 was signed into law and took immediate effect – the first amendment to the definition of the practice of dentistry since 1981. The actual definition of dentistry itself had not substantively changed since 1947.

The amended definition of dentistry accomplishes several things. Under the current law, reconstructive surgery of the entire maxillofacial area is permitted, even in non-emergent situations, provided that the surgery has as one of its purposes restoring or maintaining some aspect of dental health, including the health of the oral cavity, jaws, or related tissues.

Second, the Legislature indicated in its negotiations and history of the amended definition of dentistry that the maxillofacial area is to be given a liberal interpretation. In response to questions, attorneys for the Legislature have indicated that the maxillofacial area certainly encompasses the cheekbone and associated structures. Consequently, full facial reconstruction performed with some relation to any dental health matter is now possible. Similarly, dentists may use Botox and dermal fillers under the same terms.

The new definition does allow for cosmetic surgery to be performed on the maxillofacial area where that surgery is related to preserving some aspect of dental health. Again, dental health is to be interpreted broadly as encompassing all aspects of dentistry, not just the health of teeth.

The last line in the definition of dentistry specifies that dental practice "may include performing physical evaluations in conjunction with the provision of dental treatment." NYSDA requested that this reference to physical evaluation be included in Section 6601 for the purpose of clarifying a dentist's right and professional obligation to evaluate the general medical condition of his or

her patients. The extent of any physical evaluation, of course, depends upon the nature of the condition being treated. For a routine dental visit, the evaluation may be brief, including little more than the taking of a medical history; for a complicated oral surgical procedure, the evaluation may include the performance of a complete physical examination. In any case, the dentist is responsible for assessing the medical risks inherent to the performance of any given dental procedure.

As a final matter, it has always been the law in New York that dentists may access remote sites of the body in order to carry out a dental procedure. For example, dentists may harvest bone from the thigh to use in a dental procedure.

If a dentist has any doubt as to whether a particular procedure would fall within the scope of dental practice, it is always acceptable to contact the Education Department for an official opinion before going ahead with the procedure. For example, a dentist had his license revoked for diagnosing that a patient suffered from mercury toxicity and sensitivity, and then proceeding to remove the patient's amalgam fillings to correct the patient's systemic symptoms. A call to the Education Department would have revealed that diagnosing and treating mercury toxicity to alleviate systemic symptoms is considered by the Education Department to be the practice of medicine and not dentistry. Instead, the dentist took an unnecessary gamble with his license and lost. The Regents never even had to reach the issue of whether the dentist's theories about amalgam fillings were valid.

§6602. Practice of dentistry and use of title "dentist"

Only a person licensed or otherwise authorized to practice under this article shall practice dentistry or use the title "dentist."

Only a dentist can practice dentistry as defined in Section 6601. Any unlicensed individual who engages in dental practice is guilty of a class E felony under Section 6512 of the Education Law. In addition, any unlicensed person who aids or abets another unlicensed individual in the unauthorized practice of the profession is guilty of a class E felony. Finally, any licensed dentist who aids or abets three or more unlicensed persons in the practice of the profession is guilty of a class E felony.

Section 6602 also prohibits the use of the title "dentist" by unlicensed individuals, even if they are not actually practicing the profession. Section 6513 of the Education Law provides that an unlicensed person who uses the title "dentist" is guilty of a class A misdemeanor. Section 6513 also provides that anyone aiding or abetting three or more individuals in the unauthorized use of the title or knowingly employs three or more persons who use the unauthorized professional title in their employment is guilty of a class E felony.

It is important for all dentists witnessing the illegal practice of dentistry to report the matter to NYSDA or to the Education Department for action. One of the most-discussed topics under this section of law is the potential practice of dentistry by corporations that do not possess a professional license or are not a licensed hospital under Article 28 of the Public Health Law. Such “corporate practice” remains illegal in New York. However, corporations have evolved sophisticated ways to legally outmaneuver this prohibition. What many corporations desire is not outright ownership or investment in a dental practice – which is always prohibited – but enough control over the practice to be able to earn a profit from that control. Existing law does not prohibit certain types of control over non-dental activities. Thus, any person can provide marketing, financial, and management services to a dental practice for a fee. Also, any person can lease office space, lease equipment, or lease supplies to a dental practice for a fee. Note that none of these management or leasing fees may be based on a percentage of the dentist’s professional fees or revenues, or the dentist will be guilty of professional misconduct for fee splitting with an unlicensed person. By combining all these perfectly legal activities into one service, a corporation can achieve a fair degree of control over a particular dental practice. Nothing about that control legally relates to the clinical practice of dentistry – which remains the responsibility of the dentist. Thus, such control arrangements are technically legal, but they do raise debate about how much legal control a corporation can exercise before it exerts pressure on the clinical side.

§6603. State board for dentistry

A state board for dentistry shall be appointed by the board of regents on recommendation of the commissioner for the purpose of assisting the board of regents and the department on matters of professional licensing and professional conduct in accordance with section sixty-five hundred eight of this title. The board shall be composed of not less than thirteen dentists licensed in this state for at least five years, not less than three dental hygienists licensed in this state for at least five years, and not less than one certified dental assistant licensed in this state for at least one year. An executive secretary to the board shall be appointed by the board of regents on recommendation of the commissioner and shall be a dentist licensed in this state.

In addition to the prescribed number of dentists, dental hygienists, and certified dental assistants, the State Board for Dentistry is required to include at least one public member selected by the Board of Regents. This requirement was imposed in 1977 in response to consumer pressure on the New York State Legislature to take steps to ensure that non-professional viewpoints are heard on all the professional boards. The law stipulates that the public representative must be selected from the general public and must be a consumer of the services provided by the profession for which the person will serve as a public member. In addition, the public member must not be, nor have been for at least five years

immediately preceding appointment, a licensee or person otherwise subject to the supervision or regulation of the board to which he/she is appointed. The public member also must not have, nor have had for at least five years immediately preceding appointment, any contract with a licensee of the particular profession where the contract would account for more than two percent of the licensee's practice, nor be an officer, director, or representative of any person or group having such a contract.

Duties of the State Board for Dentistry include: advising the Education Department on examination and practice issues, and conducting disciplinary hearings. The State Board for Dentistry serves as the chief resource of the Education Department in assessing all issues in dentistry. Nevertheless, the State Board for Dentistry remains an advisory body without the authority to enact regulations or render binding opinions for either licensees or the Education Department.

The Executive Secretary for the State Board for Dentistry is a full-time employee of the Education Department and, as required, a licensed dentist. The Executive Secretary can be contacted in writing at: Education Building, 89 Washington Avenue, Second Floor – West Wing, Albany, New York 12234-1000; by telephone at: 518-474-3817, #1, ext. 550; by fax at: 518-473-6995; or by e-mail at: dcottrel@mail.nysed.gov

§6604. Requirements for a license as a dentist

To qualify for a license as a dentist, an applicant shall fulfill the following requirements:

1. Application: file an application with the department;
2. Education: have received an education, including a doctoral degree in dentistry, in accordance with the commissioner's regulations;
3. Experience: have experience satisfactory to the board and in accordance with the commissioner's regulations, provided that such experience shall consist of satisfactory completion of a clinically-based postdoctoral general practice or specialty dental residency program, of at least one year's duration, in a hospital or dental facility accredited for teaching purposes by a national accrediting body approved by the department, provided, further that any such residency program shall include a formal outcome assessment evaluation of the resident's competence to practice dentistry acceptable to the department;
4. Examination: pass a written examination satisfactory to the board and in accordance with the commissioner's regulations;
5. Age: be at least twenty-one years of age;
6. Citizenship or immigration status: be a United States citizen or an alien lawfully admitted for permanent residence in the United States; provided, however, that the board of regents may grant a three year waiver for an alien to practice in an area which has been designated a federal dental

health professions shortage area, except that the board of regents may grant an additional extension not to exceed six years to an alien to enable him or her to secure citizenship or permanent resident status, provided such status is being actively pursued;

7. Character: be of good moral character as determined by the department; and
8. Fees: pay a fee of two hundred twenty dollars to the department for admission to a department conducted examination and for an initial license, a fee of one hundred fifteen dollars for each reexamination, a fee of one hundred thirty-five dollars for an initial license for persons not requiring admission to a department conducted examination, and a fee of two hundred ten dollars for each triennial registration period.

While the Education Law sets out the most basic requirements for obtaining a dental license, much of the detail of these basic requirements is left to regulations of the Commissioner of Education. Those regulations are contained in Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York (or "8 NYCRR" for short). Sections 61.1 and 61.2 of 8 NYCRR implement this section of the Dental Practice Act and require applicants for licensure to complete no less than 60 semester hours of preprofessional education, including courses in general chemistry, organic chemistry, biology or zoology, and physics. In addition, applicants for licensure must also complete a program of professional dental education of not less than four academic years, or the equivalent thereof, registered by the Education Department or accredited by an accrediting organization acceptable to the Education Department. Traditionally, only programs provided by dental schools accredited by the American Dental Association have received Education Department approval. Graduates of unaccredited, typically foreign, dental schools – where such schools provide not less than four academic years of professional dental education and which issue a diploma or certificate that the civil authorities in the foreign country would accept for entry into dental practice in that country – must additionally complete no less than two additional years of study in an accredited dental school, including such subjects as may be necessary for certification by such accredited school that the candidate has achieved the level of knowledge and clinical proficiency expected of a graduate of the school.

The licensing examination referred to in Section 6604 consists of two parts designed to sample knowledge from all areas related to dentistry. New York accepts an examination from the National Board Dental Examiners for parts one and two of the licensing examination. Students in accredited dental schools may be admitted to part one of the licensing examination after not less than two academic years, and to part two of the licensing examination in their last year of study. Students from an unaccredited dental school do not have these options.

toral clinical dental residency program in either general dentistry or a specialty of dentistry. The duration of the residency program must not be less than one year in a hospital or dental facility accredited for teaching purposes by an acceptable national accrediting body. Specialty areas satisfactory to meet the residency program requirement include: endodontics, oral and maxillofacial surgery, orthodontics and dentofacial orthopedics, pediatric dentistry, periodontics, prosthodontics, oral and maxillofacial pathology, or oral and maxillofacial radiology. Although this list is not exhaustive, other specialties require that 50 percent of the residency program entail either general dentistry or one or more of the previously mentioned specialties. At the end of a residency program, it is necessary to obtain a formal outcome assessment in writing. Usually this will include a notarized written statement from the program's director in both general and specialty programs, attesting that the applicant has completed the program and that the applicant possesses the level of knowledge and skills necessary to perform safely and independently the practice of dentistry. Also, part of the assessment for a general dentistry residency program will be a notarized statement by some type of supervisor who oversaw the dental procedures performed by the applicant (if different from the program director) and who can attest that the applicant completed independently, and to generally accepted professional standards for dentistry, two full crowns, two endodontically treated teeth, four restorations (two anterior, two posterior) and one periodontal case during the residency program.

In addition to meeting educational, experience, character, examination, age, and citizenship requirements, dentists must also pay fees on an ongoing basis in order to retain their right to practice. As indicated in Section 6604, a dentist must pay \$210 every three years for registration. This charge is intended to offset the cost incurred by the Education Department in regulating the dental profession.

The Board of Regents has the power, pursuant to Section 6506 of the Education Law to waive education, experience, and examination requirements for any person seeking a dental license in New York State if the Regents are satisfied that the requirements for licensure have otherwise been substantially met. Also, the Board of Regents can waive, on a time-limited basis, the citizenship requirement. Interestingly, the Regents do not have the power to waive the application, age, character, or fee requirements. The citizenship waiver authority became effective August 13, 2002, so that the Board of Regents may authorize licensure of dentists who are resident aliens for a period of three years if they practice in a federal dental health professions shortage area and may also grant additional extensions of up to six years if such dental professionals are actively seeking permanent resident status or citizenship. Federal dental health professional shortage areas are designated by the United States Department of Health and Human Services and represent the federal government's primary attempt to address the distribution and, to a lesser extent, the diversity, of dental health professionals.

censes are not issued on the basis of specialization in certain fields of dentistry. Thus, the one generic dental license entitles each dentist to perform any dental services the dentist chooses. Naturally, a dentist should only perform procedures he or she feels competent to perform. In addition, professional conduct rules for advertising limit the ability of a dentist to *advertise or otherwise claim* that he or she is a specialist, even though the dentist can *perform* the specialty service

The Education Department also controls the form of any application for a license, as well as any determinations concerning the character of an applicant. In fact, if a moral character issue is raised about an applicant for a dental license, there is an entire hearing process devoted to deciding such cases. That process is set forth in Sections 28-1.1 through 28-1.8 of 8 NYCRR, and vests the final decision on any moral character appeal in the hands of a body known as the Committee on the Professions – a three-member panel of Education Department officials appointed by the Board of Regents to hear such cases. Prior to such a final appeal, a moral character case will be initially heard by a three-member panel drawn from the State Board for Dentistry.

Finally, New York has a system known as licensure by endorsement. Many people mistake this for a reciprocity system, but New York does not automatically recognize licenses from other states; nor does New York make its endorsement process dependent on another state granting New York licensees the same treatment. The liberality with which the Education Department administers the licensure by endorsement process tends to create the illusion that New York simply accepts licenses granted by other states. In truth, New York requires that any dentist holding an out-of-state license (including a license from a foreign country) must demonstrate to the satisfaction of the Education Department that: 1) an application has been filed with the Education Department for a New York dental license; 2) the person has met the education requirements for a license as set forth in the commissioner's regulations; 3) the person has experience satisfactory to the Board of Regents as set forth in the commissioner's regulations (and for endorsement there is a true experience requirement of at least two years of dental practice following licensure by the other state or country, at least eight months of which must have occurred within the two years immediately preceding the filing of the application for a license by endorsement); 4) the person has passed an examination satisfactory to the Board of Regents; 5) the person is at least twenty-one years of age; 6) the person is a United States citizen or an alien lawfully admitted for permanent residence; 7) the person is of good moral character as determined by the Education Department; and 8) the person has not attempted unsuccessfully a licensing examination used by New York either prior to or after filing the application for a license by endorsement, unless the applicant has subsequently passed a comparable licensing examination. In addition, the Board of Regents may deny endorsement based upon prior professional conduct the applicant engaged in while practicing in another jurisdiction, where that conduct, in New York, would have constituted practicing the profession beyond its authorized scope, with gross incompetence, with gross negligence on a partic-

ular occasion, or with negligence or incompetence on more than one occasion. Similarly, the Board of Regents may also deny licensure if the applicant has voluntarily or otherwise surrendered his or her professional license in another jurisdiction after a disciplinary action was brought against him or her based upon the previously mentioned types of conduct.

On paper it does not appear easy to obtain a license by endorsement in New York. However, the Education Department is very generous in accepting the education, examination, and experience elements of other states, so the net effect is that New York is actually a relatively easy state from which to secure a license by endorsement. New York has been a trendsetter in this area. A number of states either have no licensure by endorsement process, or have not been so liberal in the administration of their endorsement process (often referred to as licensure by credentialing). Over time, many states have gradually moved closer to the New York model. However, where there are pockets of resistance to this concept, that resistance has tended to be fierce. Unlike medicine, or even law, dentistry is afflicted by an unusual insistence on states' rights when it comes to licensing matters. Consequently, movement towards a national examination system or the granting of full faith and credit to licenses issued by sister states has been significantly retarded in dentistry when compared to the medical and legal professions. Nevertheless, a slow and halting progress has been made, with NYSDA often the lone voice leading the way on this issue.

§6604-a. Mandatory continuing education for dentists

1. (a) Each dentist, licensed pursuant to this article, required to register triennially with the department to practice in this state shall comply with the provisions of the mandatory continuing education requirements, except as set forth in paragraphs (b) and (c) of this subdivision. Dentists who do not satisfy the mandatory continuing education requirements shall not practice until they have met such requirements and have been issued a registration or conditional registration certificate.
(b) Dentists shall be exempt from the mandatory continuing education requirement for the triennial registration period during which they are first licensed. In accordance with the intent of this section, adjustments to the mandatory continuing education requirement may be granted by the department for reasons of health, certified by a physician, for extended active duty with the armed forces of the United States, or for other good cause acceptable to the department which may prevent compliance.
(c) A licensed dentist not engaged in public practice as an individual practitioner, a partner of a partnership, a shareholder of a professional service corporation, or an employee of such practice units, shall be exempt from the mandatory continuing education requirement upon the filing of a statement with the department declaring such status. Any licensee who

returns to the public practice of dentistry during the triennial registration period shall notify the department prior to reentering the profession and shall meet such mandatory continuing education requirements as shall be prescribed by regulation of the commissioner.

2. During each triennial registration period an applicant for registration shall complete a minimum of sixty hours of acceptable formal continuing education, a maximum of eighteen hours of which may be self-instructional coursework as approved by the department. Beginning with the first registration renewal period for any dentist occurring on or after January first, two thousand two, and before the occurrence of the second registration renewal period following that date, a dentist shall have completed on a one-time basis, as part of the sixty hours of acceptable formal continuing education required by this section, no fewer than two hours of coursework and training regarding the chemical and related effects and usage of tobacco and tobacco products and the recognition, diagnosis, and treatment of the oral health effects, including but not limited to cancers and other diseases, caused by tobacco and tobacco products, provided that any dentist who provides written proof satisfactory to the department that the dentist has completed, at any time subsequent to the effective date of this section, an approved mandatory continuing education course of not less than two hours in the same or substantially similar subject matter shall be deemed to have met this requirement, and further provided that dentists who are exempt from the mandatory continuing education requirement for the triennial registration period during which they are first licensed shall also be exempt from this requirement for that period. Any dentist whose first registration date following the effective date of this section occurs less than three years from such effective date, but on or after January first, nineteen hundred ninety-eight and before July first, two thousand eight, shall complete continuing education hours on a prorated basis at the rate of one and one-quarter hours per month for the period beginning January first, nineteen hundred ninety-seven up to the first registration date thereafter. For any registration period beginning before July first, two thousand eight and ending on or after such date, each dentist shall complete continuing education hours on a pro rata basis at a rate of one and one-quarter hours per month for the period ending June thirtieth, two thousand eight and at a rate of one and two-thirds hours per month for the period beginning July first, two thousand eight up to the first registration date thereafter. A licensee who has not satisfied the mandatory continuing education requirements shall not be issued a triennial registration certificate by the department and shall not practice unless and until a conditional registration certificate is issued as provided in subdivision three of this section. The individual licensee shall determine the selection of courses or programs of study pursuant to subdivision four of this section.
3. The department, in its discretion, may issue a conditional registration to a licensee who fails to meet the continuing education requirements es-

established in subdivision two of this section but who agrees to make up any deficiencies and take any additional education which the department may require. The fee for such a conditional registration shall be the same as, and in addition to, the fee for the triennial registration. The duration of such conditional registration shall be determined by the department. Any licensee who is notified of the denial of registration for failure to submit evidence, satisfactory to the department, of completion of required continuing education and who practices dentistry without such registration, may be subject to disciplinary proceedings pursuant to section sixty-five hundred ten of this title.

4. As used in this section, "acceptable formal continuing education" shall mean formal programs of learning which contribute to professional practice and which meet the standards prescribed by regulations of the commissioner. To fulfill the mandatory continuing education requirement, programs must be taken from sponsors having at least one full-time employee and the facilities, equipment, and financial and physical resources to provide continuing education courses, approved by the department, pursuant to the regulations of the commissioner.
5. The mandatory continuing education fee shall be forty-five dollars, shall be payable on or before the first day of each triennial registration period, and shall be paid in addition to the triennial registration fee required by section six thousand six hundred four of this article.
6. On or after the effective date of this subdivision, and no later than the end of the first registration period commencing on or after such date during which he or she is required to comply with the continuing education requirements of this section, each dentist shall have completed on a one-time basis, as part of the mandatory hours of acceptable formal continuing education required by this section, no fewer than three hours in a course approved by the department in dental jurisprudence and ethics, which shall include the laws, rules, regulations and ethical principles relating to the practice of dentistry in New York state, provided that post-graduate dental students enrolled in New York state dental residency programs may satisfy the requirements of this subdivision by taking such an approved course during the period of their dental residency prior to their initial licensure.

The continuing education requirement was added to the Dental Practice Act in 1996. It was amended in 1998 to better define the requirements for being a legitimate sponsor of dental continuing education courses and again in 2001 to add in a one-time-only education requirement that dentists receive no less than two hours of continuing education concerning tobacco and tobacco products

Very often, the Education Department will raise the issue of continuing competency in the licensed professions because of the changing and developing nature of modern techniques and procedures. The mandatory continuing education law was one way to address this issue for the benefit of the public and the profession.

Citing this, as well as the fact that New York's average number of required hours per year (fifteen hours) lagged behind the average of the other forty-five states mandating continuing education for dentists (twenty hours), the law was further amended in 2007 to mandate a sixty hour, rather than forty-five-hour, requirement for each triennial registration period, as well as to require the taking of a one-time course in jurisprudence and ethics pertaining to the practice of dentistry in New York.

The regulations implementing the dental mandatory continuing education law are found in Section 61.15 of 8 NYCRR. They define acceptable continuing education courses as being formal courses of learning which contribute to professional practice in dentistry in any one or more of the following curricular areas: 1) basic and clinical dental sciences; 2) behavioral science; 3) pharmacology of new and developing drugs; 4) drug interactions; 5) public health issues; 6) infection control; 7) sterile procedures; 8) legal and regulatory issues; 9) patient counseling; 10) other topics which contribute to the professional practice of dentistry as defined in Section 6601 of the Education Law; and 11) other matters of health care, law, and ethics which contribute to the health and welfare of the public. One of the few courses that could not be squeezed into these generous categories is a practice management course that relates solely to financial management of a dental practice. Thus, those kinds of financially oriented courses will not be counted for continuing education credit. However, care must be taken to carefully analyze the content of any course. Some courses with misleading practice management titles that may appear to be only financial in nature may actually have perfectly acceptable course content. It is the content of the course that controls, not the title.

The regulations also prescribe that every dentist must maintain, or ensure access by the Education Department to, a record of completed continuing education which must include: 1) the title of the continuing education program; 2) the number of hours completed; 3) the sponsor's name and any identifying number; 4) attendance verification; 5) the date and location of the continuing education program; and 6) an attestation statement both verifying that an approved sponsor has at least one full-time employee working at least 30 hours a week and a reasonable basis for making such a determination. Such records must be retained for at least six years from the date of completion of the continuing education program.

The Education Department's regulations were amended effective February 2008 to reflect the new continuing education requirements. The dental jurisprudence and ethics course must be completed during the first registration period beginning after January 1, 2008. The course can be delivered by a nonprofit dental education entity chartered for the purpose of providing dental education or by the New York State Dental Association ("NYSDA"). The law was last amended in 2010 to allow dental residents to take the jurisprudence and ethics course during their dental residency, before they are initially licensed in New York.

The NYSDA Continuing Education Registry has been recognized by the Education Department as an appropriate source for records of continuing education for dentists and dental hygienists. However, this merely verifies the record of continuing education taken by a dentist or dental hygienist. The Education Department still has the freedom to challenge the validity of any particular course listed in this record on the basis that the course itself was in an inappropriate subject area or was taken from an inappropriate sponsor.

In order to become a sponsor of continuing dental education, an entity must either apply to the Education Department or be recognized by a sponsor approval agency. The fee for becoming a sponsor of continuing dental education through the Education Department is \$900 for a three-year permit. Each renewal is also \$900 and is also for a three-year period. Sponsors do not need to pay the fee if they are already approved by a recognized sponsor approval agency other than the Education Department. NYSDA is one such sponsor approval agency, as is the American Dental Association Continuing Education Recognition Program and the National Academy of General Dentistry.

§6604-b. Restricted dental faculty license

1. The department may issue a restricted dental faculty license to a full-time faculty member employed at an approved New York state school of dentistry. The holder of such restricted dental faculty license shall have the authority to practice dentistry, as defined in this article, but such practice of dentistry shall be limited to the school's facilities or the school's clinics, or facilities or clinics with relationships to the school confirmed by formal affiliation agreements. Nothing in this section shall be construed to authorize such holder of a restricted dental faculty license to engage in the private practice of dentistry at any other site.
2. To qualify for a restricted dental faculty license the applicant shall present satisfactory evidence of the following:
 - (a) The completion of a total of no less than six academic years of preprofessional and professional education, including:
 - i. courses in general chemistry, organic chemistry, biology or zoology and physics; and
 - ii. not less than four academic years of professional dental education satisfactory to the department culminating in a degree, diploma or certificate in dentistry recognized by the appropriate civil authorities of the jurisdiction in which the school is located as acceptable for entry into practice in the jurisdiction in which the school is located.
 - (b) Within the last five years, have two years of satisfactory practice as a dentist or have satisfactorily completed an advanced education program in general dentistry or in a dental specialty,

provided such program is accredited by an organization accepted by the department as a reliable authority for the purpose of accrediting such programs (such as the commission on dental accreditation); and

(c) Possesses good moral character as determined by the department.

3. The dean of the dental school shall notify the department in writing upon the submission of an initial license application and yearly thereafter that the holder of the dental faculty license is employed full-time at the dental school. Full-time employment means the holder of such dental faculty license devotes at least four full working days per week in teaching or patient care, research or administrative duties at the dental school where employed. The dean of the dental school and the holder of such dental faculty license shall each notify the department in writing within thirty days of the termination of full-time employment.
4. In order to continue to practice dentistry, the holder of a restricted dental faculty license shall apply for and hold a current triennial registration which shall be subject to the same registration requirements as apply to holders of unrestricted dental licenses, except that such registration shall be issued only upon the submission of documentation satisfactory to the department of the holder's continued status as a full-time dental faculty member, provided that such registration shall immediately terminate and the holder shall no longer be authorized to practice if the holder ceases to be a full-time dental faculty member at an approved New York state school of dentistry.
5. The holder of this restricted dental faculty license shall be subject to the professional misconduct provisions set forth in article one hundred thirty of this chapter and in the rules of the board of regents and the regulations of the commissioner.
6. The fee for each restricted dental faculty license shall be three hundred dollars, and the fee for initial registration and each subsequent re-registration shall be three hundred dollars.
7. In order to be eligible for a restricted dental faculty license an applicant must be a United States citizen or an alien lawfully admitted for permanent residence in the United States; provided, however, that the department may grant a three year waiver for an alien who otherwise meets all other requirements for a restricted dental faculty license except that the department may grant an additional extension not to exceed six years to an alien to enable him or her to secure citizenship or permanent resident status, provided such status is being actively pursued. No current faculty member shall be displaced by the holder of a restricted dental faculty license.

This provision of law took effect on February 1, 2009, and is set to expire on February 1, 2015. Whether it will become permanent or not will depend on the experience with it over the course of those six years. The goal of the law was to allow dental schools in New York to compete for qualified faculty members who pos-

sess foreign credentials. Other dental schools across the country had this ability to offer restricted licenses for clinical practice to faculty members, but New York did not allow for this until this law was enacted. It is key to note that the clinical practice permitted with this restricted license must be tied formally to the dental school, whether at the school itself or through a contractual affiliation between the school and another clinical entity. It is not a license to otherwise engage in any private dental practice. The license is also subject to a citizenship or alien lawfully admitted for permanent residence requirement, which, although that requirement may be waived by the Education Department, still exists for this type of restricted license. Presumably, the Education Department will be liberal in granting such waivers or the law would likely become useless as a tool for recruiting foreign-trained faculty members. Finally, note that the citizenship waiver under this section differs from the citizenship waiver under Section 6604. Here the waiver is for faculty practice connected to the faculty member's dental school, whereas the waiver under Section 6604 is for private dental practice limited to a federal dental health professional shortage area.

§6605. Limited permits

1. On recommendation of the board, the department may issue a limited permit to a graduate of a dental college who meets the educational qualifications for admission to the licensing examination in dentistry for employment in a hospital or dental facility approved by an appropriate agency, while under the direction or supervision of a licensed dentist. No such permit shall be issued or renewed unless such graduate has a bona fide offer of a position in such a hospital or dental facility.
2. On recommendation of the board, the department may issue a limited permit for instructing in dentistry to a dentist not licensed under this article to be employed by a registered school of dentistry or dental hygiene to instruct and supervise clinical dentistry or dental hygiene for students in such a registered school in the state, and in so doing to practice dentistry as defined in this article, but only on the premises of such registered school or such other premises as may be used for instruction in the program of education conducted by such institution. No person shall be permitted or authorized to instruct and supervise clinical dentistry for students unless such person is licensed in this state or holds the foregoing limited permit for instructing in dentistry.
3. The holder of a limited permit under this section may practice dentistry, as defined in this article, but only in the performance of duties required by the position for which the limited permit is issued. Nothing in this section shall be construed to authorize such unlicensed dentist to engage in the private practice of dentistry.

4. A limited permit under this section shall be valid for one year or until ten days after notification of denial of an application for license. A limited permit may be renewed for one year, except if the applicant is serving in a residency program in a hospital or school of dentistry in this state. A limited permit may be renewed annually for the duration of such residency program. The fee for each limited permit and for each renewal shall be one hundred five dollars.
5. Notwithstanding subdivision one of this section, dental school graduates who meet the license requirement for education pursuant to subdivision two of section sixty-six hundred four of this article shall be deemed to be exempt persons pursuant to section sixty-six hundred ten of this article and shall not be required to obtain a limited permit, provided that they are employed in an approved residency program for the purpose of fulfilling initial licensure requirements pursuant to section sixty-six hundred four of this article. Not later than sixty days after entry into an approved residency program, the dental resident shall register on a form acceptable to the commissioner and pay to the department a residency registration fee established by the department, which residency registration fee shall be reasonable and shall not exceed the limited permit fee specified in subdivision four of this section. All persons deemed exempt pursuant to this section shall be subject to all provisions of article one hundred thirty of this title, including but not limited to having disciplinary action taken against their residency registration status.

The law creates two distinct types of limited permits. One is for recent dental school graduates seeking additional training; the other is for dental school or dental hygiene school faculty members. The Education Department issues limited permits to practice dentistry primarily to facilitate the training and education of dentists. Secondly, instructors in dental schools and dental hygiene schools for whom licensure in New York would be both unnecessary and burdensome may obtain limited permits. One thing in common for all limited permits of whatever type in dentistry is the requirement of Section 61.3 of 8 NYCRR – the applicant for a limited permit must have met the educational requirements otherwise required for licensure by New York.

The law was amended in 2010 to eliminate the need for a limited permit for dental residents. Instead, the dental residents are treated as exempt persons able to practice dentistry within the confines of their residency program. This exempt status applies only to residents enrolled in New York licensure qualifying dental residency programs. For those enrolled in other residency programs, the limited permit provisions still exist and would still be applicable.

While there is no requirement that faculty members holding the dental school instructor's limited permit be supervised, unlicensed residents in a hospital or dental facility cannot practice unless under the direction or supervision of a licen-

see. Section 61.3 of 8 NYCRR defines “direction” or “supervision” as meaning “that a supervising dentist shall be present on the premises at all times when professional services are being rendered by the holder of a limited permit and shall exercise that degree of supervision appropriate to the circumstances.” Section 61.3 of 8 NYCRR also requires that an application for a limited permit be accompanied by an affidavit from the dentist who will supervise the professional services rendered by the holder of the limited permit.

Limited permits are not a means to perpetually practice dentistry without a license. However, their actual goal has been a matter of debate, which is one reason NYSDA convinced the Legislature to eliminate the limited permit for dental residents. It used to be thought, before mandatory dental residencies became a licensing requirement, that limited permits were either just a technical device to transition students through the period between graduation and becoming licensed, or were a training tool enabling graduates to further their education and experience in order to be able to eventually be licensed (all this conceptualization from a time when there was a clinical licensing examination, which now no longer exists in New York). In 1999, NYSDA, in a major legislative victory, prevailed upon the Legislature to abandon the anachronistic “technical transition device” view and to eliminate examination failure as a grounds for canceling a person’s limited permit. Thus, limited permits in dentistry are now freely renewable for a reasonable period of time to permit the accumulation of additional training regardless of the result on the initial licensing examination. This more enlightened view protects persons with limited permits from the prospect of losing their authorization for clinical training just because they failed a portion of the dental licensing examination. Now, despite such examination failure, the limited permit will not expire for that reason alone. Of course, much of this is moot with the elimination of the clinical licensing examination in New York. The entire philosophy of the limited permit was inextricably tied to that examination, which, with its elimination, was a good reason for the concomitant elimination of the need for a limited permit for dental residents. For those who still do obtain a limited permit for some reason (the Education Department has indicated it will not issue limited permits anymore to a person who would otherwise be an exempt dental resident), the limited permit may be renewed for only one year, but if the applicant is serving in a residency program in a hospital or school of dentistry in this state, then the permit may be renewed annually for the duration of such residency program.

§6605-a. Dental anesthesia certificate

1. A licensed dentist shall not employ conscious sedation, deep sedation or general anesthesia in the practice of dentistry, at any location other than a general hospital, without a dental anesthesia certificate issued by the department.

2. The commissioner shall promulgate regulations, establishing standards and procedures for the issuance of certificates. Such standards shall require completion of an educational program and/or course of training or experience sufficient to ensure that a dentist is specifically trained in the use and administration of conscious sedation, deep sedation or general anesthesia and in the possible effects of such use, and in the recognition of and response to possible emergency situations. Such regulations may also establish standards and safeguards for the use of conscious sedation, deep sedation or general anesthesia.
3. Nothing in this section shall limit a dentist's use of local anesthesia, a dentist's use of nitrous oxide, or a dentist's use of any other substance or agent for a purpose other than achieving deep sedation, conscious sedation, or general anesthesia.
4. The fee for a dental anesthesia certificate shall be one hundred dollars and shall be paid on a triennial basis upon renewal of such certificate. A certificate may be suspended or revoked in the same manner as a license to practice dentistry.

The law requires a certificate for any route of administration of conscious sedation, deep sedation, or general anesthesia. Note that the law has never applied to the use of nitrous oxide or local anesthesia by dentists, for which the anesthesia certificate is not required. Neither does the law apply to the use of conscious sedation, deep sedation, or general anesthesia in a general hospital setting, for which a dentist would not need the anesthesia certificate. The certificate is only required if the dentist plans to use conscious sedation, deep sedation, or general anesthesia in a non-hospital setting.

Section 61.10 of 8 NYCRR has evolved elaborate regulations to implement this particular section of the Dental Practice Act. The key to those regulations is the definition of the items being regulated. *General anesthesia* means "an induced state of unconsciousness, accompanied by partial or complete loss of protective reflexes, including the inability to continually maintain an airway independently and respond purposefully to physical stimulation or verbal command, and is produced by a pharmacologic or non-pharmacologic method or a combination thereof." *Deep sedation* means "an induced state of depressed consciousness accompanied by partial loss of protective reflexes, including the inability to continually maintain an airway independently and/or to respond purposefully to physical stimulation or verbal command, and is produced by a pharmacologic or non-pharmacologic method or a combination thereof." *Conscious sedation* means "a minimally depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and verbal command and that is produced by a pharmacologic or non-pharmacologic method or a combination thereof. Patients whose only response is reflex withdrawal from repeated painful stimuli shall not be considered to be in a state of conscious sedation." It is the achieving by any means of any of these states of sedation that is now regulated. Neverthe-

less, for ease of administration, the Education Department retained its bureaucratic certificate system based on the means used to achieve sedation, merely adding to its regulations a new certificate for enteral conscious sedation. A comprehensive summary of those regulations follows.

Effective January 1, 2001, certificates shall be issued in the titles:

- (i.) Dental General Anesthesia, which authorizes a licensed dentist to employ conscious sedation (enteral or parenteral routes with or without inhalation agents), deep sedation, and general anesthesia; and
- (ii.) Dental Parenteral Conscious Sedation, which authorizes a licensed dentist to employ conscious sedation (enteral or parenteral route with or without inhalation agents); and
- (iii.) Dental Enteral Conscious Sedation, which authorizes a licensed dentist to employ conscious sedation (enteral route only with or without inhalation agents).

Certification in *general anesthesia* and *parenteral sedation* issued prior to January 1, 2001, shall be valid until expiration, at which time application for a new initial certificate must be made.

The general requirements for the three levels of certification are as follows:

Dental General Anesthesia

- ACLS (Advanced Cardiac Life Support) or its equivalent; and
- For post-doctoral education completed prior to January 1, 2002, one year of anesthesia training acceptable to the department, or at least two years of such education in an “approved specialty program or residency...”, provided the candidate has applied for certification prior to January 1, 2004; or
- At least two years “acceptable” post-doctoral education, including one year devoted exclusively to clinical training and general anesthesia and related subjects; or
- A graduate level program in Oral and Maxillofacial Surgery acceptable to the department.

Dental parenteral conscious sedation

- ACLS or its equivalent; and
- Either:
 - 1. If completed prior to January 1, 2002, a 60 clock-hour course acceptable to the department, including a 20-hour, 20-patient clinical experience segment, provided the candidate has applied prior to January 1, 2004; or
 - 2. Post-doctoral education acceptable to the department similar to item 1, except that the 20-patient clinical experience requirement must be completed *in addition* to the 60 clock hours.

Dental enteral conscious sedation

- BLS (Basic Life Support) or its equivalent; and
- Either:
 1. pre-doctoral or post-doctoral education consisting of a specialty program or residency which includes 18 clock hours of course work and "20 clinically-oriented experiences in the use of enteral conscious sedation techniques..."; or
 2. "post-doctoral coursework approved by the department, which has equivalent rigor as coursework..." described in item 1.
Note: The clinical experience requirement that applies to both items 1 and 2 may include group observations of patients undergoing enteral conscious sedation techniques.
- A waiver route to certification which applies to dentists who have "lawfully employed enteral conscious sedation with or without inhalation agents successfully on at least 30 patients during the period beginning January 1, 1997 and ending December 31, 2000...". The *waiver* route to certification is only available to dentists who apply to the department prior to January 1, 2002. Dentists certified by waiver of educational requirements are required to complete BLS training within one year following certification.
Note: It is important to note that dentists currently administering enteral conscious sedation will not be authorized to do so after January 1, 2001, unless they have applied for and received a dental enteral conscious sedation certificate.

Dentists certified in enteral conscious sedation with or without inhalation agents are required, for renewal of certification, to take 6 hours of education in sedation techniques and remain current in BLS certification. This dedicated continuing education requirement, though the 2007 amendments have not been explicitly reflected in the commissioner's regulations, can be credited towards the 60-hour mandatory continuing education requirement for licensure registration provided that it meets all other mandatory continuing education requirements.

Practice Requirements:

- Specific details for monitoring patients (vital signs, oxygen saturation, ventilation, electrical activity of the heart, and body temperature) and those persons authorized to monitor patients' recovery (dentist, physician, registered professional nurse, and licensed practical nurse) are all specified in the regulations.
- Staffing requirements:
 1. Administration of *general anesthesia* or *deep sedation* requires that three persons be present in the operator – the dentist and two additional individuals currently certified in BLS.
 2. Administration of *conscious sedation* by either the *enteral* or *parenteral* route requires that not less than two persons are present in the operator – the dentist and ²²one additional person currently certified in BLS.

- Further practice requirements in the areas of instructions to patients, recordkeeping, documentation of BLS or ACLS, whichever is appropriate, and mortality or morbidity reporting are all expanded in the new regulations.

Other requirements and restrictions set by the Education Department regulations include: 1) a dentist who obtains a general anesthesia or parenteral conscious sedation certificate must be currently certified in Advanced Cardiac Life Support (ACLS); a dentist who obtains an enteral conscious sedation certificate must be currently certified in Basic Life Support (BLS); 2) a dentist may not administer general anesthesia, deep sedation, or conscious sedation to more than one patient at a time; 3) recovery from general anesthesia, deep sedation, or conscious sedation must be personally monitored by either a dentist, a physician, a registered professional nurse, or a licensed practical nurse; 4) the dentist who uses general anesthesia, deep sedation, or conscious sedation is responsible for all aspects of the procedure, including life support, monitoring, recovery, and recordkeeping; 5) vital signs, including blood pressure, pulse, ventilation, oxygen saturation, temperature, and electrical activity of the heart, must be monitored, except that monitoring oxygen saturation by a pulse oximeter is not required if only enteral conscious sedation is being employed *and* the patient's conduct prohibits such oxygen saturation monitoring. Monitoring electrical activity of the heart is only required when general anesthesia, deep sedation, or parenteral conscious sedation is being employed; 6) a device capable of monitoring body temperature must be available during the administration of general anesthesia or deep sedation, and must be continually used when agents that could precipitate malignant hyperthermia are being employed; 7) every facility at which the dentist uses general anesthesia, deep sedation, or parenteral conscious sedation must have a defibrillator; 8) every facility at which the dentist uses general anesthesia, deep sedation, or conscious sedation must permit ready access for emergency equipment and must have posted a protocol for handling emergency situations, including handling transport to an emergency facility; 9) specific dietary instructions must be provided to patients on whom general anesthesia, deep sedation, or conscious sedation has been or will be used; 10) appropriate written or oral instructions must be provided to patients on whom general anesthesia, deep sedation, or conscious sedation has been or will be used; 11) dentists who use general anesthesia, deep sedation, or conscious sedation must maintain proper records, including obtaining patient medical histories and informed consent prior to any procedure, and including time oriented anesthetic records that reflect pre-operative, intra-operative, and pre-discharge monitoring of blood pressure, pulse, and oxygen saturation, as well as drugs and dosages used and persons present during the administration of such drugs; 12) maintain current documentation of ACLS and BLS training for all persons in the operator for six years from completion of the date of such coursework, and similarly maintain documentation of the six-hour continuing education requirement needed to renew a certificate for enteral conscious sedation. All records must include the number of clock hours for the course taken, the course sponsor's name, the date

and location of the course, and any identifying number for the course; and 13) morbidity or mortality during or possibly related to the administration of general anesthesia, deep sedation, or conscious sedation must be reported by any anesthesia certificate holder to the New York State Board for Dentistry within thirty days of the occurrence.

As of July 14, 2009, New York State requires that office-based surgery procedures performed by physicians be conducted in an office that has obtained and maintains accreditation from an entity approved by the Department of Health. Any surgical or other invasive procedure performed outside of a hospital, diagnostic and treatment center or other Article 28 facility in which moderate sedation or deep sedation or general anesthesia is utilized to provide comfort to the patient in order to perform the procedure is defined as "office-based surgery," according to Department of Health guidance. Dentists, including dentists who are dually licensed as physicians but restrict their practice to dentistry, are exempt from this requirement – a point clarified by the Department of Health after much legal wrangling with them over the meaning of the office-based surgery law.

§6605-b. Dental hygiene restricted local infiltration anesthesia/nitrous oxide analgesia certificate

1. A dental hygienist shall not administer or monitor nitrous oxide analgesia or local infiltration anesthesia in the practice of dental hygiene without a dental hygiene restricted local infiltration anesthesia/nitrous oxide analgesia certificate and except under the personal supervision of a dentist and in conjunction with the performance of dental hygiene procedures authorized by law and in accordance with regulations promulgated by the commissioner. Personal supervision, for purposes of this section, means that the supervising dentist remains in the dental office where the local infiltration anesthesia or nitrous oxide analgesia services are being performed, personally authorizes and prescribes the use of local infiltration anesthesia or nitrous oxide analgesia for the patient and, before dismissal of the patient, personally examines the condition of the patient after the use of local infiltration anesthesia or nitrous oxide analgesia is completed. It is professional misconduct for a dentist to fail to provide the supervision required by this section, and any dentist found guilty of such misconduct under the procedures prescribed in section sixty-five hundred ten of this title shall be subject to the penalties prescribed in section sixty-five hundred eleven of this title.
2. The commissioner shall promulgate regulations establishing standards and procedures for the issuance of such certificate. Such standards shall require completion of an educational program and/or course of training or experience sufficient to ensure that a dental hygienist is specifically trained in the administration and monitoring of nitrous oxide analgesia

and local infiltration anesthesia, the possible effects of such use, and in the recognition of and response to possible emergency situations.

3. The fee for a dental hygiene restricted local infiltration anesthesia/nitrous oxide analgesia certificate shall be twenty-five dollars and shall be paid on a triennial basis upon renewal of such certificate. A certificate may be suspended or revoked in the same manner as a license to practice dental hygiene.

This law requires that a licensed dental hygienist receive a renewable, three-year certificate in order to administer or monitor nitrous oxide analgesia or local infiltration anesthesia. Other key elements are that the dentist must provide personal supervision to dental hygienists performing these services. Personal supervision requires that the dentist be physically present in the office, that the dentist personally authorizes and prescribes the use of either the anesthesia or analgesia, and that the dentist, prior to dismissing the patient, personally examines the patient's condition after the use of such procedures. Further, a dental hygienist may only administer nitrous oxide or local infiltration anesthesia in conjunction with dental hygiene duties that the hygienist is otherwise licensed to perform. Finally, the law does not permit dental hygienists to administer block anesthesia of any kind.

Dental hygienist certification for local infiltration anesthesia and nitrous oxide analgesia requires that an applicant pay a twenty-five dollar fee for initial licensure and the same every three years for renewal. Further, initial certification requires that an applicant complete a registered program by an approved institution, in which the applicant finished at least 30 hours of didactic instruction and at least 15 hours of clinical and laboratory experience, both relating to the administration and monitoring of local infiltration anesthesia and nitrous oxide analgesia in the practice of dental hygiene. Alternately, an applicant may complete equivalent educational preparation by an institution that has programs leading to licensure in dentistry and/or dental hygiene that are accredited by a body acceptable to the department.

§66o6. Definition of practice of dental hygiene

1. The practice of the profession of dental hygiene is defined as the performance of dental services which shall include removing calcareous deposits, accretions and stains from the exposed surfaces of the teeth which begin at the epithelial attachment and applying topical agents indicated for a complete dental prophylaxis, removing cement, placing or removing rubber dam, removing sutures, placing matrix band, providing patient education, applying topical medication, placing and exposing X-ray films, performing topical fluoride applications and topical anesthetic applications, polishing teeth, taking medical history, charting caries, taking impressions for study casts, placing and removing temporary res-

torations, administering and monitoring nitrous oxide analgesia and administering and monitoring local infiltration anesthesia, subject to certification in accordance with section sixty-six hundred five-b of this article, and any other function in the definition of the practice of dentistry as may be delegated by a licensed dentist in accordance with regulations promulgated by the commissioner. The practice of dental hygiene may be conducted in the office of any licensed dentist or in any appropriately equipped school or public institution but must be done under the supervision of a licensed dentist.

2. **The commissioner shall promulgate regulations defining the functions a dental hygienist may perform that are consistent with the training and qualifications for a license as a dental hygienist.**

Unlike dentistry, the practice of dental hygiene is defined in laundry-list fashion; virtually nothing is left to the discretion of either the hygienists or supervising dentists. The list of duties performable by dental hygienists is open ended, because the Commissioner of Education is permitted to add duties to those specifically cited in Section 6606 of the law. All of the duties of hygienists are included in the practice of dentistry; in effect, the practice of dental hygiene entails the performance of duties that originally were performable solely by licensed dentists. However, since hygienists do not have as extensive an educational background as dentists, the law requires that they be supervised.

While Section 6606 mandates "supervision," the Commissioner of Education actually defines the term in Section 61.9 of 8 NYCRR as follows:

1. General supervision shall mean that a supervising dentist is available for consultation, diagnosis and evaluation, has authorized the dental hygienist to perform the services, and exercises that degree of supervision appropriate to the circumstances.
2. Personal supervision shall mean that the dentist in the dental office or facility, personally diagnoses the condition to be treated, personally authorizes the procedure and, before dismissal of the patient, personally examines the condition after treatment is completed.

The requirements for personal supervision are far more restrictive than those for general supervision, which simply require the dentist to be available for consultation and to authorize the hygienist to perform a particular service. Indeed, the dentist does not have to be physically present in the office in order to exercise general supervision; he or she must simply be "available." Some dentists have erroneously construed "available" to mean that they can be at some remote location, but reachable by telephone. The Education Department has construed the term "available" to mean "readily physically available." In other words, the dentist can only be off premises if the dentist is able to return to the premises within a very short time frame, assuming an emergency situation were to arise on

the premises.

The services that a dental hygienist may perform are differentiated on the basis of the type of supervision required. The following services may be provided by a dental hygienist under *general supervision*:

- (1) removing calcareous deposits, accretions and stains, including scaling and planing of exposed root surfaces indicated for a complete prophylaxis;
- (2) applying topical agents indicated for a complete dental prophylaxis;
- (3) removing excess cement from surfaces of the teeth;
- (4) providing patient education;
- (5) placing and exposing X-ray films;
- (6) performing topical fluoride applications and topical anesthetic applications;
- (7) polishing teeth, including existing restorations;
- (8) taking medical history including the measuring and recording of vital signs;
- (9) charting caries and periodontal conditions as an aid to diagnosis by the dentist;
- (10) applying pit and fissure sealants; and
- (11) applying desensitizing agents to the teeth.

The following services may be provided by a dental hygienist under *personal supervision*:

- (1) placing or removing rubber dam;
- (2) removing sutures;
- (3) taking impressions for study casts. *Study casts* shall mean only such casts as will be used for purposes of diagnosis and treatment planning by the dentist and for the purposes of patient education;
- (4) placing or removing matrix bands;
- (5) applying a topical medication not related to a complete dental prophylaxis;
- (6) placing and removing periodontal dressings;
- (7) selecting and prefitting provisional crowns and orthodontic bands;
- (8) removing orthodontic arch wires and ligature ties;
- (9) taking impressions for space maintainers, orthodontic appliances, and occlusal guards;
- (10) placing and removing temporary separating devices; and
- (11) placing orthodontic ligatures.

Assuming appropriate certification, a dental hygienist may also administer and monitor nitrous oxide analgesia, as well as local infiltration anesthesia. In addition, a dental hygienist may perform any task that may be performed by a dental assistant, so long as the hygienist is personally supervised by a licensed dentist, unless general supervision is otherwise permitted.

§6607. Practice of dental hygiene and use of title “dental hygienist”

Only a person licensed under section sixty-six hundred nine of this article or exempt shall practice dental hygiene or use the title “dental hygienist”.

Only a licensed dental hygienist may practice dental hygiene or call themselves a dental hygienist. Any other person who does so would be guilty of a criminal offense for unlicensed practice or unauthorized use of a protected title. Similarly, a dental hygienist who strays beyond the scope of dental hygiene and practices dentistry is subject to the same criminal prosecution as any other person who does not possess a license as a dentist. Plus, the dental hygienist would also be subject to professional discipline charges for practicing beyond the authorized scope of his or her dental hygiene license.

§6608. Definition of practice of certified dental assisting

The practice of certified dental assisting is defined as providing supportive services to a dentist in his/her performance of dental services authorized under this article. Such support shall include providing patient education, taking preliminary medical histories and vital signs to be reviewed by the dentist, placing and removing rubber dams, selecting and prefitting provisional crowns, selecting and prefitting orthodontic bands, removing orthodontic arch wires and ligature ties, placing and removing matrix bands, taking impressions for study casts or diagnostic casts, removing periodontal dressings, and such other dental supportive services authorized by the dentist consistent with regulations promulgated by the commissioner, provided that such functions are performed under the direct personal supervision of a licensed dentist in the course of the performance of dental services. Such services shall not include diagnosing and/or performing surgical procedures, irreversible procedures or procedures that would alter the hard or soft tissue of the oral and maxillofacial area or any other procedures determined by the department. The practice of certified dental assisting may be conducted in the office of any licensed dentist or in any appropriately equipped school or public institution but must be done under the direct personal supervision of a licensed dentist. Direct personal supervision, for purposes of this section, means supervision of dental procedures based on instructions given by a licensed dentist in the course of a procedure who remains in the dental office where the supportive services are being performed, personally diagnoses the condition to be treated, personally authorizes the procedures, and before dismissal of the patient, who remains the responsibility of the licensed dentist, evaluates the services performed by the dental assistant. Nothing herein authorizes a dental assistant to perform any of the services or functions defined as part of the practice of dental hygiene in accordance with the provisions of subdivision one of section sixty-six hundred six of this article, except

those functions authorized pursuant to this section. All dental supportive services provided in this section may be performed by currently registered dental hygienists under a dentist's supervision, as defined in regulations of the commissioner.

Amended in 2007, the law allows for greater flexibility on the part of the supervising dentist to expand the range of services which certified dental assistants may provide. Dentists now have the authority to allow such certified assistants to perform any supportive service which is not irreversible, is non-surgical, or is non-diagnostic, and does not alter hard or soft tissue. The Department, however, still retains authority to restrict certified dental assistants from performing specific procedures "not deemed appropriate." Note that the law does not eliminate the old laundry list of procedures that certified dental assistants can perform, but allows for supplementing that list with approved procedures that are neither surgical, diagnostic, nor irreversible in nature. Although a vast improvement over the old laundry list, the law is often mischaracterized as having eliminated all restrictions in favor of any reversible procedure – which is not an accurate way to describe the expanded law.

The supervision required for a certified dental assistant mandates that the dentist must always be on the premises when the assistant is performing any authorized services. The law is careful to stress that a certified dental assistant cannot engage in the practice of dental hygiene, and is also careful to stress that any duty listed as being authorized for a certified dental assistant is automatically also authorized for a dental hygienist to perform. Thus, the law was specifically designed to ensure that dental hygiene practice totally subsumed the duties of certified dental assisting practice, and to avoid ever having certified dental assistants claim that dental hygienists could not perform the same services as certified dental assistants.

Unlicensed dental assistants cannot perform any of the duties listed in Section 6608 of the Education Law (those restricted by law in New York to a New York State licensed "certified dental assistant"), but they can continue to perform all of the following activities: 1) opening and closing the dental office; 2) receiving and seating patients promptly; 3) giving patient reassurance; relaying patient mood, questions and comments, fears, etc., to the dentist; 4) preparing patient for treatment by seating patient, obtaining records and applying protective garb; 5) assisting patient to execute prepared health history forms supplied by the dentist; 6) preparing instruments, materials and medicaments to be used for each specific procedure by the dentist; 7) preparing restorative materials, dental cements, and impression materials for placement by the dentist; 8) setting up equipment for the administration of nitrous oxide and checking for proper functioning of the unit prior to seating the patient; 9) keeping oral operative areas clear of debris during dental procedures by use of suction devices, water/air sprays, cotton rolls, and by retraction of cheek and tongue; 10) monitoring office safety; 11) at the request of the dentist, taking, developing, and mounting X-rays

that are necessary for diagnostic evaluation in accordance with Public Health Laws and regulations; 12) maintaining adequate solutions and supplies for dark-room function; 13) assuming responsibility for all methods of sterilization: decontaminating, scrubbing, packaging, and sterilizing all instruments; maintaining the sterilization area by restocking and solution changes; 14) performing routine maintenance on a daily, weekly and monthly duty rotation basis, i.e., lubricating equipment, sharpening instruments, restocking operatories, replacing expendable parts, and cleaning equipment and treatment areas, laboratory, etc.; 15) performing routine laboratory procedures: pouring, trimming, mounting and polishing models of plastic or plaster made from impressions taken by the dentist; 16) holding materials and devices *in situ*, for example, holding matrix strip or curing light; 17) clipping excess wire or cutting excess suture material; 18) shade matching; 19) performing clerical and stenographic duties: a) handles all telephone communications; b) receives patients; c) arranges appointments; d) records treatment; e) sends charges to financial management for billing to patients' accounts; f) obtains all dental charts for the day and returns them upon completion of treatment; g) receives, sorts and handles all incoming mail; h) logs out all laboratory cases sent to commercial laboratories, contacts the laboratory for pick-up, records their return and channels them to the appropriate doctor; i) responsible for all typewritten office communications; j) responsible for operation and routine maintenance checks of all business machines within the department (i.e., typewriters, photocopy machines, etc.); k) collects monetary payments for dental treatments, and records their receipt.

Section 61.13 of 8 NYCRR mimics the laundry list found in the statute's language and adds eight other supportive services to the list, the last of which is a catch-all provision permitting certified dental assistants to perform "other dental supportive services authorized by the licensed dentist while the certified dental assistant is under the direct personal supervision of the licensed dentist..." The other seven supportive services certified dental assistants may perform are: 1) the removal of sutures placed by a licensed dentist; 2) the taking of impressions for space maintainers, orthodontic appliances, and occlusal guards; 3) the removal of temporary cement (not including temporary fillings); 4) the application of topical anticariogenic agents to the teeth; 5) the application of desensitizing agents to the teeth; 6) the placing and removal of temporary spacing devices; and 7) the placing of orthodontic ligatures.

§66o8-a. Practice of certified dental assisting and use of title "certified dental assistant"

Only a person certified under section sixty-six hundred eight-b of this article or exempt pursuant to section sixty-six hundred ten of this article shall practice certified dental assisting. Only a person certified pursuant to section sixty-six hundred eight-b of this article shall use the title "certified dental assistant."

This provision follows the same provision for dentists in Section 6602 and dental hygienists in Section 6607. The same considerations that apply to Sections 6602 and 6607 regarding unlicensed practice or illegal use of a professional title also apply to Section 6608-a. A person who is not licensed by the New York State Education Department as a certified dental assistant who either practices certified dental assisting or calls themselves a certified dental assistant would be committing a criminal offense. A certified dental assistant who strays beyond the scope of certified dental assisting and practices either dentistry or dental hygiene is subject to the same criminal prosecution as any other person who does not possess a license as a dentist or dental hygienist. Plus, the certified dental assistant would also be subject to professional discipline charges for practicing beyond the authorized scope of his or her certified dental assisting license.

It should be noted that there are persons who have been certified by the Dental Assisting National Board (DANB) who often refer to themselves as certified dental assistants. Section 6608-a prohibits such persons from using the title "certified dental assistant" in New York State unless the person is also licensed by New York as a certified dental assistant. The DANB certification by itself is insufficient to confer any status on a person under Section 6608-a. The Education Department's enforcement policies under Section 6608-a are unclear when it comes to use of the title "certified dental assistant." However, until a court declares the statute unconstitutional in some respect, all persons are advised to follow the law as written by the New York State Legislature.

§6608-b. Requirements for certification as a certified dental assistant

To qualify for certification as a certified dental assistant, an applicant shall fulfill the following requirements:

1. **Application:** file an application with the department;
2. **Age:** be at least seventeen years of age;
3. **Fees:** pay a fee of forty-five dollars to the department for initial certification and a fee of fifty dollars for each triennial registration period;
4. **Education and experience:** (A) have received a high school diploma, or its equivalent, and (B) have successfully completed, in accordance with the commissioner's regulations, (i) an approved one-year course of study in dental assisting in a degree-granting institution or a board of cooperative educational services program which includes at least two hundred hours of clinical experience, or an equivalent approved course of study in dental assisting in a non-degree granting institution which shall not be a professional association or professional organization or (ii) an alternate course of study in dental assisting acceptable to the department which shall be provided by a degree-granting institution or a board of cooperative educational services program which includes at least one thousand hours of relevant work experience; and

5. **Examination: pass an examination given by an organization which administers examinations for certifying dental assistants and which is acceptable to the department.**

The law establishes two pathways to licensure (the Education Department views certification and licensure as identical) as a certified dental assistant. The first pathway, which has three separate routes a person can follow, is for a person to complete an Education Department-approved one-year course of dental assisting study in a degree-granting institution or a Board of Cooperative Educational Services (BOCES) dental assisting program – either of which program must include at least two hundred hours of clinical experience – or an equivalent Education Department-approved program in a non-degree-granting institution, excluding, however, professional associations and/or organizations.

The Education Department has selected as the licensing examination for certified dental assistants a special New York State version of the examination administered by the Dental Assisting National Board (DANB). In certain instances, the Education Department will accept scores received from previous versions of the regular DANB examination for licensure purposes. However, none of this is spelled out in either the Dental Practice Act or the Education Department's regulations. Instead, the Education Department has created internal policies regarding the licensing examination in order to be able to use the DANB examination – for which the Education Department needs to be contacted to see if they will apply to any particular individual.

There is no citizenship requirement for a license as a certified dental assistant. This differs from both dentistry and dental hygiene where there still remains a citizenship requirement.

There also appears to be no moral character requirement for a license as a certified dental assistant. However, the Education Department asserts that as part of the general authority of the Board of Regents to regulate all the licensed professions, an applicant for a certified dental assistant's license can still be held to a moral character requirement.

§6608-c. Exempt persons

Nothing in this article shall be construed to affect or prevent a student from engaging in any procedure authorized under section sixty-six hundred eight of this article in clinical practice as part of a course of study approved by the department pursuant to subdivision four of section sixty-six hundred eight-b of this article.

This law permits certified dental assisting²² students, who are otherwise unlicensed persons, the ability to engage in clinical study in order to obtain a license.

Similar provisions exist for both dental students and dental hygiene students in other parts of the Dental Practice Act. Note that the student exemption only applies to dental assisting students who are engaging in clinical practice as part of an approved licensure qualifying course of study – which may or may not include a clinical placement in a dentist's private office, depending on the nature of the approved course of study.

§66o8-d. Limited permits

The department shall issue a limited permit to an applicant who meets all requirements for admission to the licensing examination. All practice under a limited permit shall be under the direct personal supervision of a licensed dentist. Limited permits shall be for one year and may be renewed at the discretion of the department for one additional year. The fee for each limited permit and for each renewal shall be forty dollars.

Just as with dentistry, there are limited permits in certified dental assisting. Like limited permits in dentistry, dental assisting limited permits are the kind that can be renewed even if the permittee fails the licensing examination. Only one such renewal is allowed for dental assisting limited permits, and it is always at the discretion of the Education Department. In order to obtain the limited permit, the dental assisting student must have completed all the requirements for admission to the certified dental assisting licensing examination.

§66o9. Requirements for a license as a dental hygienist

To qualify for a license as a dental hygienist, an applicant shall fulfill the following requirements:

1. **Application:** file an application with the department;
2. **Education:** have received an education, including high school graduation and completion of a program in dental hygiene, in accordance with the commissioner's regulations;
3. **Experience:** have experience satisfactory to the board and in accordance with the commissioner's regulations;
4. **Examination:** pass an examination satisfactory to the board and in accordance with the commissioner's regulations;
5. **Age:** be at least seventeen years of age;
6. **Citizenship or immigration status:** be a United States citizen or an alien lawfully admitted for permanent residence in the United States; provided, however, that the board of regents may grant a three year waiver for an alien to practice in an area which has been designated a federal dental

health professions shortage area, except that the board of regents may grant an additional extension not to exceed six years to an alien to enable him or her to secure citizenship or permanent resident status, provided such status is being actively pursued;

7. Character: be of good moral character as determined by the department; and
8. Fees: pay a fee of one hundred fifteen dollars to the department for admission to a department conducted examination and for an initial license, a fee of fifty dollars for each reexamination, a fee of seventy dollars for an initial license for persons not requiring admission to a department conducted examination, and a fee of fifty dollars for each triennial registration period.

The Education Department accepts for educational purposes satisfactory completion of any dental hygiene program either registered by the Education Department itself or accredited by an accrediting organization acceptable to the Education Department. The Education Department uses a two-part licensing examination for dental hygienists. Part I is an examination of the National Board of Dental Hygiene Examinations and Part II is a clinical test given by the Northeast Regional Board of Dental Examiners or another clinical testing agency acceptable to the Education Department.

In many ways, the licensing process for dental hygienists tracks the process used for dentists, except that dentists no longer take a clinical examination, but take a residency program. Thus, a dental hygiene student may take Part I of the licensing examination after completion of not less than one year of dental hygiene study in a qualified educational program. A dental hygiene student may take Part II of the licensing examination during the last year of study in a qualified educational program. Similarly, the recently enacted citizenship waivers and exceptions for immigration status for practice in federal shortage areas have been carried over to dental hygienists as well.

A question that is often encountered is whether a dentist or a dental student can become licensed as a dental hygienist or take the dental hygiene licensing examination. The answer is "no." In order to become a dental hygienist, a person must complete a qualified educational program in *dental hygiene*.

§6609-a. Mandatory continuing education for dental hygienists

1. (A) Each dental hygienist, licensed pursuant to this article and required to register triennially with the department to practice in this state shall comply with the provisions of the mandatory continuing education requirements, except as set forth in paragraphs (B) and (C) of this subdivision. Dental hygienists who do not satisfy the mandatory continuing education requirements shall not practice until they have met such re-

quirements and have been issued a registration or conditional registration certificate.

(B) Dental hygienists shall be exempt from the mandatory continuing education requirement for the triennial registration period during which they are first licensed. In accordance with the intent of this section, adjustments to the mandatory continuing education requirement may be granted by the department for reasons of health, certified by a physician, for extended active duty with the Armed Forces of the United States, or for other good cause acceptable to the department which may prevent compliance.

1.(C) A licensed dental hygienist not engaged in the practice of dental hygiene shall be exempt from the mandatory continuing education requirement upon the filing of a statement with the department declaring such status. Any licensee who returns to the practice of dental hygiene during the triennial registration period shall notify the department prior to reentering the profession and shall meet such mandatory continuing education requirements as shall be prescribed by regulation of the commissioner.

2. During each triennial registration period an applicant for registration shall complete a minimum of twenty-four hours of acceptable formal continuing education including currently mandated child abuse reporting instruction and infection control training as approved by the department. Of these twenty-four hours a maximum of ten hours may be self-instructional coursework as approved by the department. Any dental hygienist whose first registration date following the effective date of this section occurs less than three years from such effective date, but on or after January first, nineteen hundred ninety-eight, shall complete continuing education hours on a prorated basis at the rate of one and one-quarter hours per month for the period beginning January first, nineteen hundred ninety-seven up to the first registration date thereafter. A licensee who has not satisfied the mandatory continuing education requirements shall not be issued a triennial registration certificate by the department and shall not practice unless and until a conditional registration certificate is issued as provided in subdivision three of this section. The individual licensee shall determine the selection of courses or programs of study pursuant to subdivision four of this section.
3. The department, in its discretion, may issue a conditional registration to a licensee who fails to meet the continuing education requirements established in subdivision two of this section but who agrees to make up any deficiencies and take any additional education which the department may require. The fee for such a conditional registration shall be the same as, and in addition to, the fee for the triennial registration. The duration of such conditional registration shall be determined by the department. Any licensee who is notified of the denial of registration for failure to submit evidence, satisfactory to the department, of completion of required continuing education and who practices dental hygiene

without such registration, may be subject to disciplinary proceedings pursuant to section sixty-five hundred ten of this title.

4. As used in this section, "acceptable formal continuing education" shall mean formal programs of learning which contribute to professional practice and which meet the standards prescribed by regulations of the commissioner. To fulfill the mandatory continuing education requirement, programs must be taken from sponsors approved by the department, pursuant to the regulations of the commissioner.
5. The mandatory continuing education fee of thirty dollars shall be payable on or before the first day of each triennial registration period, and shall be paid in addition to the triennial registration fee required by section sixty-six hundred nine of this article.

The mandatory continuing education law for dental hygienists took effect January 1, 1997, and is virtually identical to the mandatory continuing education law for dentists. The only real differences are the number of required hours of continuing education, the fact that there is no tobacco education requirement, and the fact that there is no one-time mandatory jurisprudence and ethics requirement for dental hygienists. Dental hygienists need only take twenty-four hours of continuing education over a three-year period, whereas dentists must take sixty such hours.

§660g-b. Limited permit to practice dental hygiene

1. A limited permit to practice dental hygiene may be granted to an individual who has, to the satisfaction of the department, met all the requirements of section six thousand six hundred nine of this article, but has not yet passed the examination required by subdivision four of such section.
2. A limited permit shall authorize the holder to practice dental hygiene as defined in section sixty-six hundred six of this article, but only under the personal supervision of a licensed dentist, as defined in regulations promulgated by the commissioner.
3. Limited permits shall be issued for a period of one year and may be renewed at the discretion of the department for one additional year.
4. The fee for a limited permit and for each renewal shall be fifty dollars.

Limited permits for dental hygienists were added to the law in 2010. Dental hygiene was one of the very few licensed profession not to have limited permits. Even certified dental assistants had limited permits before dental hygienists got them. There was no real rationale for this; it was just an oversight when the dental hygiene portions of the law were first enacted. Limited permits may not be all that useful for dental hygienists because a dentist still has to be willing to hire someone who always needs personal supervision and can never work with just general supervision, not a very attractive option for the employing dentist. Plus, the limited permits have a limited duration and will expire if the dental hygienist

does not pass the licensing examination within a two year period. However, the limited permit option at least now exists for dental hygienists just as it does for most other professions.

§6610. Exempt persons

Nothing in this article shall be construed to affect or prevent:

1. An unlicensed person from performing solely mechanical work upon inert matter in a dental office or on a dental laboratory prescription of a dentist holding a license or limited permit;
2. A student from engaging in clinical practice as part of a registered program operated by a school of dentistry under supervision of a dentist holding a license or limited permit for instructing in dentistry in a school of dentistry;
3. A student from engaging in any procedure authorized under section sixty-six hundred six of this article in clinical practice as part of a registered program in dental hygiene under supervision of a dentist holding a license or a limited permit for instructing in dentistry in a school of dental hygiene;
4. An employee of a federal agency from using the title of and practicing as a dentist or dental hygienist insofar as such activities are required by his salaried position;
5. A dentist or a dental hygienist licensed in some other state or country from making a teaching clinical demonstration before a regularly organized dental or medical society or group, or from meeting licensed dentists in this state for consultation, provided such activities are limited to such demonstration or consultation.
6. A dentist licensed in another state or country who is employed on a full-time basis by a registered dental school as a faculty member with the rank of assistant professor or higher from conducting research and clinical demonstrations as a part of such employment, under the supervision of a licensed dentist and on the premises of the school. No fee may be charged for the practice of dentistry authorized by this subdivision.
7. A dentist licensed in another state or country who is visiting an approved dental school or any other entity operating a residency program that has been accredited by a national accrediting body approved by the department to receive dental instruction for a period not to exceed ninety days from engaging in clinical practice, provided such practice is limited to such instruction and is under the direct supervision of a licensed dentist.
8. Any student matriculated in an accredited dental school located outside New York state from engaging in appropriately supervised clinical practice as part of the school's dental program in a teaching hospital which has a teaching affiliation agreement with the student's dental school.

All professional practice acts in New York State contain sections dealing with "exempt persons" – individuals who do not hold a license to practice a profession but are allowed to do so primarily for the purpose of fostering education (see subdivisions 2, 3, 5, 6, 7, and 8 above). Subdivision 1 of Section 6610 clarifies the right of unlicensed individuals to perform solely mechanical work in a dental office or upon the dental laboratory prescription of a dentist.

Subdivision 2 is the basic student exemption allowing dental students to engage in clinical study while in the official course of their studies. Subdivision 3 does the same for dental hygiene students.

Subdivision 4 grants an exemption to employees of federal agencies. This reflects the fact that federal law preempts state law with respect to the practice of dentistry on federal property, and is an effort to shield military personnel who may practice as dentists or dental hygienists from the vagaries of state laws.

Subdivision 5 allows for out-of-state dentists to do clinical teaching at dental society meetings and other similar gatherings of dentists, and also allows for an out-of-state dentist to come into New York State to consult with a New York dentist. The purposes of these exemptions are practical ones. New York State did not want to shut off access to expertise that might lie in the hands of dentists who happen not to be licensed in New York.

Subdivisions 6, 7, and 8 are all intended to address some aspect of out-of-state dentists or dental students having easier access to enter New York State to either receive or give dental education. Subdivision 7 was amended in 2010 to include residency programs as well as courses taught at dental schools.

Although not part of the Dental Practice Act itself, it is interesting to note that dentists are exempt from needing a veterinary license under the Veterinary Medical Practice Act pursuant to Section 6705 of the Education Law. The exemption only applies if the dentist provides dental care to an animal *at the request of and under the immediate personal supervision of* a licensed veterinarian.

Finally, dentists or dental school graduates eligible for licensure in New York State are exempt from needing a medical license under the Medical Practice Act pursuant to Section 6526 of the Education Law when they are administering anesthesia as part of a hospital residency program established for the purpose of training dentists in anesthesiology.

§6611. Special provisions

1. Except upon the written dental laboratory prescription of a licensed dentist and except by the use of impressions or casts made by a licensed dentist, no dental laboratory shall furnish, supply, construct, reproduce, place, adjust, or repair any dental prosthesis, device, or appliance. A

dental laboratory prescription shall be made out in duplicate. It shall contain such data as may be prescribed by the commissioner's regulations. One copy shall be retained by the practitioner of dentistry for a period of one year. The other copy shall be issued to the person, firm or corporation engaged in filling dental laboratory prescriptions, who or which shall each retain and file in their respective offices or places of business their respective copies for a period of one year.

2. The department is empowered to inspect and to have access to all places, including the office or offices of a licensed dentist, where copies of dental laboratory prescriptions issued by him are retained as required by this section, and to all places where dental laboratory prescriptions are filled or to any workroom or workrooms in which prosthetic restorations, prosthetic dentures, bridges, orthodontic or other appliances or structures to be used as substitutes for natural teeth or tissue or for the correction of malocclusion or deformities are made, repaired or altered, with power to subpoena and examine records of dental laboratory prescriptions. A person who fails to grant access to such places or who fails to maintain prescriptions as required by this section shall be guilty of a class A misdemeanor.
3. The department may arrange for the conduct of clinical examinations in the clinic of any school of dentistry or dental hygiene within or outside the state for dental or dental hygiene candidates.
4. A not-for-profit dental or medical expense indemnity corporation or hospital service corporation organized under the insurance law or pursuant to special legislation may enter into contracts with dentists or partnerships of dentists to provide dental care on its behalf for persons insured under its contracts or policies.
5. Legally incorporated dental corporations existing and in operation prior to January first, nineteen hundred sixteen, may continue to operate through licensed dentists while conforming to the provisions of this title. Any such corporation which shall be dissolved or cease to exist or operate for any reason whatsoever shall not be permitted to resume operations. No such corporation shall change its name or sell its franchise or transfer its corporate rights directly or indirectly, by transfer of capital stock control or otherwise, to any person or to another corporation without permission from the department, and any corporation so changing its name or so transferring its franchise or corporate rights without such permission shall be deemed to have forfeited its rights to exist and may be dissolved by an action brought by the attorney general.
6. Notwithstanding any inconsistent provision of any general, special or local law, any licensed dentist who voluntarily and without the expectation of monetary compensation renders first aid or emergency treatment at the scene of an accident or other emergency, outside of a hospital or any other place having proper and necessary medical equipment, to a person who is unconscious, ill or injured shall not be liable for

damages for injuries alleged to have been sustained by such person or for damages for the death of such person alleged to have occurred by reason of an act or omission in the rendering of such first aid or emergency treatment unless it is established that such injuries were or such death was caused by gross negligence on the part of such dentist. Nothing in this subdivision shall be deemed or construed to relieve a licensed dentist from liability for damages for injuries or death caused by an act or omission on the part of a dentist while rendering professional services in the normal and ordinary course of practice.

7. Any dentist or dental hygienist, who in the performance of dental services, x-rays the mouth or teeth of a patient shall during the performance of such x-rays shield the torso and thyroid area of such patient including but not limited to the gonads and other reproductive organs with a lead apron thyroid collar, or other similar protective garment or device. Notwithstanding the provisions of this subdivision, if in the dentist's professional judgment the use of a thyroid collar would be inappropriate under the circumstances, because of the nature of the patient, the type of x-ray being taken, or other factors, the dentist or dental hygienist need not shield the thyroid area.
8. An unlicensed person may provide supportive services to a dentist incidental to and concurrent with such dentist personally performing a service or procedure. Nothing in this subdivision shall be construed to allow an unlicensed person to provide any service which constitutes the practice of dentistry or dental hygiene as defined in this article.
9. There shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any person, partnership, corporation, firm, society, or other entity on account of the communication of information in the possession of such person or entity, or on account of any recommendation or evaluation, regarding the qualifications, fitness, or professional conduct or practices of a dentist, to any governmental agency, dental or specialists society, or hospital as defined in article twenty-eight of the public health law. The foregoing shall not apply to information which is untrue and communicated with malicious intent.
10. Beginning January first, two thousand nine, each dentist shall become certified in cardiopulmonary resuscitation (CPR) from an approved provider and thereafter maintain current certification, which shall be included in the mandatory hours of continuing education acceptable for dentists to the extent provided in the commissioner's regulations. In the event the dentist cannot physically perform CPR, the commissioner's regulations shall allow the dentist to make arrangements for another individual in the office to administer CPR. All dental facilities shall have an automatic external defibrillator or other defibrillator at the facility.

Although grouped under one heading, the subdivisions of this section of the Dental Practice Act are almost entirely separate laws. Each subdivision deals with a unique topic.

Subdivisions 1 and 2 of Section 6611 set out the provisions specific to dental laboratory prescriptions. It is important to know these provisions because they add additional requirements to other more common recordkeeping rules and can have even more drastic consequences if violated. The provisions also illustrate that dental laboratories are dependent upon dentists' prescriptions for their work, and reinforce the fact that dental laboratories cannot engage in any aspect of the practice of dentistry other than to fill these prescriptions. Section 61.5 of 8 NYCRR creates regulations to implement this section of law that state: "A dental prescription for furnishing, constructing, reproducing or repairing prosthetic dentures or bridges to be used and worn as substitutes for natural teeth, or orthodontic or other appliance used for the correction of malocclusion or deformities of other structures, shall comply with the provision of subdivision (a) of section 6611 of the Education Law, and shall contain the following information: (a) the name of the laboratory to which the prescription is addressed; (b) the date on which it is written; (c) a clear description of the work to be done, with appropriate diagrams if necessary; (d) a clear specification of the character of materials to be used; and (e) the signature and license number of the dentist."

Subdivision 2 of Section 6611 gives the Education Department the power to inspect and have access to all dentists' offices and all dental laboratories where copies of dental laboratory prescriptions are retained. This general inspection right for dental laboratory prescriptions is much broader than the typical authority granted to the Education Department's Office of Professional Discipline. In fact, the statute makes it a criminal offense (Class A misdemeanor) to fail to grant access to the Education Department or to fail to retain copies of the dental laboratory prescriptions as required.

Subdivision 3 permits the Education Department to use dental schools either in or out of New York State to conduct the clinical portion of the dental and dental hygiene licensing examinations. The provision is otherwise unremarkable and has little use for dentistry now that a clinical examination in dentistry is no longer needed for licensure.

Subdivision 4 was intended to cover insurance entities created under Article 43 of the New York State Insurance Law and permits such insurance companies to directly contract with dentists or groups of dentists to provide dental care to persons the companies insure. Article 43 insurers are not-for-profit entities. What this subdivision essentially does is to immunize such insurance companies from the reach of Section 6512 of the Education Law – the law prohibiting unlicensed corporations from practicing or offering to practice dentistry.

Subdivision 5 is a "grandfather clause" that allows a professionally unlicensed corporation, not owned by dentists, to offer dental services to the public through employed dentists if such corporation existed prior to 1916. There are no longer

any such "grandfathered" entities in existence in New York State, so this subdivision is only of historical significance. Except for this extremely limited exception, regular business corporations are not allowed to practice dentistry.

It is important to note that management service organizations try to structure their arrangements to avoid being accused of corporate practice of dentistry. Unlike the ancient "grandfathered" corporations that actually owned dental practices, the new management service organizations purchase only selected "safe" assets from a dentist and then lease those assets back to the dentist. How successful the management service organization will be in structuring a deal that passes legal muster will vary from case to case. However, most sophisticated management service organizations have teams of attorneys poring over various state laws to determine what deals are doable and how to do them. Dentists confronted with such management service organization offerings should obtain their own expert legal advice from a knowledgeable attorney before proceeding with any such venture.

Subdivision 6 is referred to as the "Good Samaritan law," in that it protects the dentist who altruistically offers his/her professional expertise to aid an accident victim. Consequently, a dentist who offers roadside first aid to a person injured in an automobile accident is not liable for damages unless guilty of *gross negligence*. In passing the Good Samaritan law, the state sought to encourage dentists to render potentially lifesaving services to the public even if such services were not within the traditional scope of dental practice. Some features to note about the law are that the shield from liability cannot apply to anyone who offers services within a hospital or any other place that is properly medically equipped, and cannot apply to someone who offers assistance in return for monetary compensation. Also, although the gross negligence standard is a difficult one to establish in court, no dentist should feel that the Good Samaritan law is an invitation to throw all caution to the wind. It is not an absolute shield from a lawsuit when gross negligence can be established. Nevertheless, except in unusual circumstances of truly egregiously poor emergency care, courts have been very unkind to plaintiffs who try to sue in spite of the Good Samaritan law.

Subdivision 7, requiring the use of a lead apron thyroid collar or similar device in the use of dental X-rays, was enacted to allay the fears of many patients who become nervous, sometimes irrationally, whenever asked to submit to even the most routine dental x-ray. NYSDA strongly believed that for the patient's peace of mind and in order to avoid any possible risk, no matter how remote, the use of such an apron should be required. While taking the foregoing into account, the Legislature also allowed for a "balancing of interests" and created a discretionary exception, up to the dentist, with respect to thyroid shielding. This permits the dentist to determine when and if, in certain circumstances, shielding the thyroid area would be inappropriate due to the nature of the patient (e.g., a small child) or the type of x-ray being taken (e.g., panoramic x-ray).

Subdivision 8, enacted at the request of NYSDA, is intended to provide clarification of the role played by unlicensed dental assistants throughout the state. As noted in the commentary to both Sections 6608 and 6610, this section has led the Education Department to develop policies resulting in a list of approved duties for unlicensed dental assistants. That list is set forth as part of the commentary to Section 6608. The list is not completely exhaustive, but it gives a good indication of where the Education Department has drawn the lines around the general ability of unlicensed persons to assist in a dental office. It should be noted that dentistry is really the only licensed profession where there seems to be a need for such a provision of law. Most other professional practice acts make no mention of unlicensed persons or their role in a professional office. Determining how far an unlicensed person can go in a dental office is an issue that any dentist should approach with caution. In cases of genuine concern or doubt, it is always best to check with the Education Department before establishing an office policy with respect to an unlicensed person. It should be noted that all dental assistants, whether they are licensed as certified dental assistants or not, are allowed to take x-rays pursuant to Section 3515 of the New York State Public Health Law. Only routine oral radiography can be performed by all such dental assistants, using conventional dental x-ray equipment, in which the diameter of the x-ray beam at the patient's face is limited to not more than three inches. Panoramic dental x-ray equipment of the laminographic extraoral tube and film type can also be operated by dental assistants, provided the gonads and other radiosensitive tissues of the patient will not be subjected to an integral absorbed dose of radiation any greater than that which would be received from conventional dental radiographic equipment used for a full-mouth series of routine oral radiographs.

Subdivision 9 provides a liability shield to persons or entities that report professional misconduct or unethical practices to any government agency (such as the Education Department's Office of Professional Discipline), any dental society (such as an ethics committee of any local component dental society), or hospital (broadly defined in Article 28 of the New York State Public Health Law to include nursing homes, clinics, and other such settings, as well as traditional hospitals). The liability shield will not apply if the information reported is untrue and was reported with a malicious intent. This shield from liability was enacted to encourage the reporting of unethical or illegal practices to appropriate authorities.

Subdivision 10 was enacted, effective December 30, 2007, and adds a new paragraph requiring each dentist, in realization of his or her status as a health care provider, to maintain current certification in cardiopulmonary resuscitation (CPR). The Legislature took into account that a majority of states require CPR or Basic Life Support (BLS) as a prerequisite for licensure and/or relicensure. Also taken into account was the fact that there are dentists who may not be physically capable to perform CPR and that in contemplation of this, such dentists may make appropriate arrangements for someone else in the office to administer CPR under the dentist's supervision in the event it is indicated. This subdivision

was amended in 2011 to require that all dental facilities have an automated external defibrillator (AED) or other defibrillator. The requirement takes effect January 1, 2012. It basically means that all dental offices must have a defibrillator of some kind on site at all times as of January 1, 2012. There are no exceptions built into the law.

Part 61 of the regulations was also amended by adding a new section 61.19, which requires every licensed and registered dentist, beginning January 1, 2009, to become certified--and remain current in certification -- in CPR by a provider approved by the Department. Dentists who are physically incapable of providing CPR are exempt and the incapacity must be established via a physician's written statement describing the physical incapacity. Approved providers include the American Heart Association, the American Red Cross, the National Safety Council and the American Safety and Health Institute. For each triennial registration period, a dentist may count towards the 60 hour continuing education requirement up to a maximum of twelve hours of coursework in CPR, including coursework in Advanced Cardiac Life Support (ACLS) and/or Pediatric Advanced Life Support (PALS). Each dentist must maintain for review by the Education Department records demonstrating compliance, including the CPR certification card.

§6612. Identification of removable full or partial prosthetic devices

1. Except as provided herein, every dentist licensed in this state making or directing to be made a removable prosthetic denture, bridge, appliance or other structure to be used and worn as a substitute for natural teeth, shall offer to the patient for whom the prosthesis is intended the opportunity to have such prosthesis marked with the patient's name or initials. Such markings shall be accomplished at the time the prosthesis is made and the location and methods used to apply or implant them shall be determined by the dentist or the person acting on behalf of the dentist. Such marking shall be permanent, legible and cosmetically acceptable.
2. Notwithstanding the foregoing, if in the judgment of the dentist or the person making the prosthesis, such identification is not practicable or clinically safe, the identification marks may be omitted entirely.
3. The commissioner shall adopt rules and regulations and provide standards necessary to carry out the provisions of this section.

Adopted in 1985, the intent of the section was to benefit senior citizens. It should be noted that the law leaves much discretion in the hands of the dentist as to whether identifying the prosthetic device is clinically practicable. And even so, the dentist need only offer the option to the patient who is still free to decline the identification service. The Education Department has never adopted regulations pursuant to this section, but they hardly seem necessary for a provision of law that is simple and self-executing in nature.

§6613. Nitrous oxide equipment

Any machine used in a dental office for the administration of nitrous oxide to a patient shall be equipped with a scavenging system that appropriately minimizes leakage of nitrous oxide.

This provision is fairly straightforward and requires appropriate scavenging systems on all nitrous oxide machines. It was adopted to protect dental hygienists from exposure to nitrous oxide as a result of other changes in the law that permitted dental hygienists to administer nitrous oxide.

Finally, for information on the professional discipline system, dentists should consult NYSDA's publication "When OPD Knocks." For information on the laws governing professional conduct, dentists may contact NYSDA for copies of those laws and the Regents Rules defining unprofessional conduct.

NOTES:

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A GUIDE TO NEW YORK'S DENTAL PRACTICE ACT

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