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**DENTIST NEED NOT BE PRESENT FOR  
REGISTERED DENTAL HYGIENIST TO TREAT PATIENT**

Under a new law effective 10/7/12, a dentist need not be in the office when a registered dental hygienist is providing routine prophylaxis, provided certain simple conditions exist.

The key change in the law is in Definition 1(e) that defines "**direct supervision**" as requiring the dentist to be present and 1 (f) that defines "**supervision**" as saying the dentist is responsible "**whether or not he is physically present.**" Section 2(a), (b) and (c) then states a RDH who holds a current certification in Basic or Advanced Cardiac Life Support may treat "**subject to the supervision**" of a licensed dentist. As the word used in the law is "**supervision**" and not "**direct supervision,**" a dentist need not be present in the office.

The law states what a RDH cannot do. Read these requirements carefully. The patient must be a regular patient of the office and have been seen in the office within the prior 365 days. The actual law is attached. At the top it says "**Chapter 29 (Corrected Copy).**"

An explanation of the law was prepared by the State Commerce Committee. See the attached explanation dated 2/9/12. The explanation is a helpful summary but is not the law. Please read the law itself for the circumstances under which a RDH may perform prophylaxis, without a dentist being present.

**NON-LEGAL CONSIDERATIONS**

The custom in most offices is for the dentist to examine the patient after the hygienist. Suspending this policy without giving the patient a valid reason probably would affect the long-term relationship. If the dentist is on vacation, sick, at a conference or missed a flight home, a patient will understand, but should be told in advance, if possible.

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If a dentist wishes to take a regular day off and allow the hygienist to work on patients who qualify under this law, will patients grow resentful of not seeing the dentist each time the patient is there? Will patients feel that they are paying for a second opinion by the dentist and not receiving it? Perhaps if the dentist knows in advance he or she will not be in the office, the patient should be told when making the appointment that the doctor will not be in that day. The patient can then choose to come in that day for the patient's convenience or reschedule, if the patient feels he or she has something to discuss with the doctor or feels more comfortable having the doctor check the hygienist's work.

Prepared By: David Lustbader

**CHAPTER 29  
(CORRECTED COPY)**

AN ACT concerning the practice of dentistry, amending and supplementing P.L.1979, c.46, and supplementing chapter 6 of Title 45 of the Revised Statutes.

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

1. Section 2 of P.L.1979, c.46 (C.45:6-49) is amended to read as follows:

C.45:6-49 Definitions.

2. For the purposes of this act:

- a. "Board" means the New Jersey State Board of Dentistry.
- b. "Registered dental assistant" means any person who has fulfilled the requirements for registration established by this act and who has been registered by the board. A registered dental assistant shall work under the direct supervision of a licensed dentist.
- c. "Dental assistant" means any person who is trained by formal education or office internship to perform, under the direct supervision of a dentist, any routine office procedure, not including an intra-oral procedure, in the office of a dentist.
- d. "Dental hygienist" means any person who performs in the office of any licensed dentist or in any appropriately equipped school, dental clinic, or institution under the supervision of a licensed dentist, those educational, preventive and therapeutic services and procedures which licensed dental hygienists are trained to perform, and which are specifically permitted by regulation of the board, and such intra-oral clinical services which are primarily concerned with preventive dental procedures, including, but not limited to, during the course of a complete prophylaxis, removing all hard and soft deposits and stains from the surfaces of the human teeth to the depth of the gingival sulcus, polishing natural and restored surfaces of teeth, applying indicated topical agents, surveying intra- and extra-oral structures, noting deformities, defects and abnormalities thereof, performing a complete oral prophylaxis and providing clinical instruction to promote the maintenance of dental health.
- e. "Direct supervision" means acts performed in the office of a licensed dentist wherein he is physically present at all times during the performance of such acts and such acts are performed pursuant to his order, control and full professional responsibility.
- f. "Supervision" means acts performed pursuant to a dentist's written order, control and full professional responsibility, whether or not he is physically present.
- g. "Limited registered dental assistant" means any person who has fulfilled the requirements for registration established by this amendatory and supplementary act and who has been registered by the board. A limited registered dental assistant shall be limited to working under the direct supervision of a dentist who conducts a limited dental practice in the dental specialty for which the assistant has been trained and registered, and in performing those intra-oral procedures as defined by the board which are involved in that specialty.
- h. "Dental clinic" means dental clinic as defined in section 1 of P.L.1951, c.199 (C.45:6-15.1).
- i. "Institution" means any nursing home, veterans' home, hospital or prison, or any State or county facility providing inpatient care, supervision and treatment for persons with developmental disabilities.

2. Section 15 of P.L.1979, c.46 (C.45:6-62) is amended to read as follows:

**C.45:6-62 Practice of dental hygiene.**

15. a. Any person who has graduated from a school or college of dental hygiene approved by the Commission on Dental Accreditation of the American Dental Association and has been licensed to practice dental hygiene in this State and holds a current certification in Basic or Advanced Cardiac Life Support by an association approved by the board may, subject to the supervision of a New Jersey licensed dentist, practice dental hygiene in an office in which general dentistry or any special area of dentistry recognized by the board is regularly practiced, or in any appropriately equipped school, dental clinic, or institution, except that a New Jersey licensed dentist may, in his sole discretion, require direct supervision in his dental office.

b. A dental hygienist acting under supervision in a dental office or dental clinic may treat only patients who are existing patients of record.

c. Each licensed dentist may provide supervision to no more than three licensed dental hygienists at one time.

d. A dental hygienist may practice dental hygiene under direct supervision or supervision only in a facility having readily available emergency equipment as may be designated by the board, by regulation.

3. Section 17 of P.L.1979, c.46 (C.45:6-64) is amended to read as follows:

**C.45:6-64 Establishment of independent office, practice, of dental hygienist; prohibition.**

17. Nothing in this act shall be construed as permitting a licensed dental hygienist to establish an independent office or engage in independent practice in connection with the performance of traditional hygienist services whether or not there is supervision or direct supervision of a licensed dentist.

**C.45:6-69.1 Direct supervision required for certain procedures.**

4. The administration of local anesthesia, the monitoring of a patient administered nitrous oxide, and any other anesthetic procedures that may be designated by the New Jersey State Board of Dentistry, by regulation, shall be performed by a licensed dental hygienist only under direct supervision.

**C.45:6-69.2 Restrictions relative to dental hygienists.**

5. A licensed dental hygienist shall not perform any intra-oral service, other than administering preventive measures such as the application of fluorides, pit and fissure sealants as well as other recognized topical agents for the prevention of oral disease or associated discomfort and the detection of caries in a school setting, upon any living person who the dental hygienist reasonably believes has not received an examination by a duly licensed dentist within the immediately preceding 365-day period. After performing an assessment, a dental hygienist acting under supervision who reasonably believes that a person has either dental caries or some other medical or dental condition requiring diagnosis or treatment by a dentist shall so inform in writing, within seven days, the dentist who is providing the supervision, except if it appears that emergent care is indicated, the dental hygienist shall immediately notify the supervising dentist.

**C.45:6-73 License to practice dentistry required under certain circumstances.**

6. Except as otherwise provided in P.L.1964, c.186 (C.45:6-16.1 et seq.), R.S.45:6-19 and R.S.45:6-20, no person other than a person duly licensed to practice dentistry in this State shall:

a. make any diagnosis or develop any treatment plan with respect to the dental condition or treatment of any living person in this State;

b. perform any surgical or irreversible procedure, including, but not limited to, the cutting of hard or soft tissue or the extraction of any tooth on any living person in this State;

c. either bill or submit a claim for any service rendered involving the practice of dentistry or dental hygiene in this State; or

d. receive payment for the performance of dental or dental hygienist services from any source other than an employer authorized by law to practice dentistry in this State or any dental clinic, institution, or employment agency, as defined pursuant to section 1 of P.L.1989, c.331 (C.34:8-43), that employs licensed dental hygienists to provide temporary dental hygiene services.

7. This act shall take effect on the 60th day next following enactment.

Approved August 7, 2012.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 298

**STATE OF NEW JERSEY**

DATED: FEBRUARY 9, 2012

The Senate Commerce Committee reports favorably Senate Bill No. 298.

This bill, which, in part, amends "The Dental Auxiliaries Act," P.L.1979, c.46 (C.45:6-48 et seq.), provides that any person who has graduated from a school or college of dental hygiene approved by the Commission on Dental Accreditation of the American Dental Association and holds a current certification in Basic or Advanced Cardiac Life Support by an association approved by the New Jersey State Board of Dentistry may, subject to the supervision of a New Jersey licensed dentist, practice dental hygiene in an office in which general dentistry or any special area of dentistry recognized by the board is regularly practiced, or in any appropriately equipped school, dental clinic, or institution, except that a New Jersey licensed dentist may, in his sole discretion, require direct supervision in his dental office.

As already currently defined in section 2 of P.L.1979, c.46 (C.45:6-49): "supervision" means acts performed pursuant to a dentist's written order, control and full professional responsibility, whether or not he is physically present; "direct supervision" means acts performed in the office of a licensed dentist wherein he is physically present at all times during the performance of those acts and those acts are performed pursuant to his order, control and full professional responsibility. The bill specifies that a dental hygienist may practice dental hygiene under direct supervision or supervision only in a facility having readily available emergency equipment as may be designated by the New Jersey State Board of Dentistry, by regulation.

Also, the bill mandates that each licensed dentist may provide supervision to no more than three licensed dental hygienists at one time. Furthermore, the bill provides that a dental hygienist acting under supervision in a dental office or dental clinic may treat only patients who are existing patients of record.

As provided in the bill, the administration of local anesthesia, the monitoring of a patient administered nitrous oxide, and any other anesthetic procedures that may be designated by the New Jersey State Board of Dentistry, by regulation, shall be performed by a licensed dental hygienist only under direct supervision.

The bill stipulates that a licensed dental hygienist shall not perform any intra-oral service, other than administering preventive measures such as the application of fluorides, pit and fissure sealants as well as other recognized topical agents for the prevention of oral disease or associated discomfort and the detection of caries in a school setting, upon any living person who the dental hygienist reasonably believes has not received an examination by a duly licensed dentist within the immediately preceding 365-day period. After performing an assessment, a dental hygienist acting under supervision who reasonably believes that a person has either dental caries or some other medical or dental condition requiring diagnosis or treatment by a dentist shall so inform in writing, within seven days, the dentist who is providing the supervision, except if it appears that emergent care is indicated, the dental hygienist shall immediately notify the supervising dentist.

In addition, the bill states that, except as otherwise provided in various provisions of current law specified in the bill, no person other than a person duly authorized to practice dentistry in this State shall: (1) make any diagnosis or develop any treatment plan with respect to the dental condition or treatment of any living person in this State; (2) perform any surgical or irreversible procedure, including, but not limited to, the cutting of hard or soft tissue or the extraction of any tooth on any living person in this State; (3) either bill or submit a claim for any service rendered involving the practice of dentistry or dental hygiene in this State; or (4) receive payment for the performance of dental or dental hygienist services from any source other than an employer authorized by law to practice dentistry in this State or any dental clinic, institution, or employment agency, as defined pursuant to section 1 of P.L.1989, c.331 (C.34:8-43), that employs licensed dental hygienists to provide temporary dental hygiene services.

This bill was pre-filed for introduction in the 2012-2013 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.