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SENATE BILL 562

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

William H. Payne

AN ACT

**RELATING TO DENTAL HEALTH CARE; PROVIDING FOR LICENSURE OF
NON-DENTIST OWNERS; ESTABLISHING FEES; PROVIDING PENALTIES;
AMENDING AND ENACTING SECTIONS OF THE NMSA 1978; MAKING AN
APPROPRIATION.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. A new section of the Dental Health Care Act,
Section 61-5A-13.1 NMSA 1978, is enacted to read:**

**"61-5A-13.1. [NEW MATERIAL] NON-DENTIST OWNER--EMPLOYING
AND CONTRACTING FOR DENTAL SERVICES.--**

**A. A person that desires to act as a non-dentist
owner shall apply to the board for a non-dentist owner license
and shall adhere to the licensure requirements and pay the
applicable fees as set forth by rule of the board.**

B. A person licensed as a non-dentist owner

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1 pursuant to this section may:

2 (1) employ or contract with a dentist to
3 provide services in the practice of dentistry;

4 (2) employ or contract with a dental
5 hygienist to provide services in the practice of dental
6 hygiene or in the collaborative practice of dental hygiene; or

7 (3) enter into a managed care or other
8 agreement to provide services in the practice of dentistry or
9 dental hygiene or in the collaborative practice of dental
10 hygiene. "

11 Section 2. Section 61-5A-1 NMSA 1978 (being Laws 1994,
12 Chapter 55, Section 1) is amended to read:

13 "61-5A-1. SHORT TITLE. -- [~~Sections 1 through 29 of this~~
14 ~~act~~] Chapter 61, Article 5A NMSA 1978 may be cited as the
15 "Dental Health Care Act". "

16 Section 3. Section 61-5A-2 NMSA 1978 (being Laws 1994,
17 Chapter 55, Section 2) is amended to read:

18 "61-5A-2. PURPOSE. --

19 A. In the interest of the public health, safety
20 and welfare and to protect the public from the improper,
21 unprofessional, incompetent and unlawful practice of dentistry
22 and dental hygiene, it is necessary to provide laws and
23 regulations controlling the granting and use of the privilege
24 to practice dentistry and dental hygiene and to establish a
25 board of dental health care and a dental hygienists committee

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1 to implement and enforce those laws and regulations.

2 B. The primary duties of the board [~~of dental~~
3 ~~health care~~] are to issue licenses to qualified dentists, to
4 certify qualified dental assistants, to issue licenses to non-
5 dentist owners, to issue licenses to dental hygienists through
6 the dental hygienists committee, to discipline incompetent or
7 unprofessional dentists, dental assistants, non-dentist owners
8 and, through the dental hygienists committee, dental
9 hygienists and to aid in the rehabilitation of impaired
10 dentists and dental hygienists for the purpose of protecting
11 the public. "

12 Section 4. Section 61-5A-3 NMSA 1978 (being Laws 1994,
13 Chapter 55, Section 3) is amended to read:

14 "61-5A-3. DEFINITIONS. --As used in the Dental Health
15 Care Act:

16 A. "board" means the New Mexico board of dental
17 health care;

18 B. "certified dental assistant" means an
19 individual certified by the dental assistant national board;

20 C. "committee" means the New Mexico dental
21 hygienists committee;

22 D. "dental assistant certified in expanded
23 functions" means a dental assistant who meets specific
24 qualifications set forth by rule of the board;

25 E. "dental hygienist" means an individual who has

1 graduated and received a diploma from an accredited dental
2 hygiene educational program, which provides a minimum of two
3 academic years of dental hygiene curriculum and is an
4 institution of higher education accredited by the American
5 dental association commission on dental accreditation, and,
6 except as the context otherwise requires, who holds a license
7 to practice dental hygiene in New Mexico;

8 F. "dental laboratory" means any place where
9 bridges, crowns, dentures or other prosthetic or orthodontic
10 appliances are fabricated, altered or repaired by one or more
11 persons;

12 G. "dental technician" means an individual, other
13 than a licensed dentist, who fabricates, alters, repairs or
14 assists in the fabrication, alteration or repair of bridges,
15 crowns, dentures or other prosthetic or orthodontic
16 appliances;

17 H. "dentist" means an individual who has graduated
18 and received a diploma from a dental college or school of
19 dentistry of a university that is accredited by the American
20 dental association commission on dental accreditation and,
21 except as the context otherwise requires, who holds a license
22 to practice dentistry in New Mexico;

23 I. "general supervision" means the authorization
24 by a dentist of the procedures to be used by a dental
25 hygienist, dental assistant or dental student and the

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1 execution of the procedures in accordance with a dentist's
2 diagnosis and treatment plan and in facilities as designated
3 by rule of the board; ~~and~~

4 J. "indirect supervision" means that a dentist is
5 present in the treatment facility while authorized treatments
6 are being performed by a dental hygienist, dental assistant or
7 dental student; and

8 K. "non-dentist owner" means a person, not
9 licensed in the practice of dentistry, that employs or
10 contracts with a dentist to provide services in the practice
11 of dentistry or with a dental hygienist to provide services in
12 the practice of dental hygiene or the collaborative practice
13 of dental hygiene."

14 Section 5. Section 61-5A-5 NMSA 1978 (being Laws 1994,
15 Chapter 55, Section 5) is amended to read:

16 "61-5A-5. LICENSE REQUIRED--EXEMPTIONS.--

17 A. Unless licensed to practice as a dentist under
18 the Dental Health Care Act, no person shall:

19 (1) practice dentistry;

20 (2) use the title "dentist", "dental
21 surgeon", "oral surgeon" or any other title, abbreviation,
22 letters, figures, signs or devices that indicate the person is
23 a licensed dentist; or

24 (3) perform any of the acts enumerated under
25 the definition of the practice of dentistry as defined in the

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1 Dental Health Care Act.

2 B. The following, under the stipulations
3 described, may practice dentistry or an area of dentistry
4 without a New Mexico dental license:

5 (1) regularly licensed physicians or surgeons
6 are not prohibited from extracting teeth or treating any
7 disease coming within the province of the practice of
8 medicine;

9 (2) New Mexico licensed dental hygienists may
10 provide those services within their scope of practice that are
11 also within the scope of the practice of dentistry;

12 (3) any dental student duly enrolled in an
13 accredited school of dentistry recognized by the board, while
14 engaged in educational programs offered by the school in
15 private offices, public clinics or educational institutions
16 within the state of New Mexico under the indirect supervision
17 of a licensed dentist;

18 (4) any dental hygiene student duly enrolled
19 in an accredited school of dental hygiene engaged in
20 procedures outside the scope of dental hygiene that are part
21 of the curriculum of that program under the indirect
22 supervision of a licensed dentist faculty member of the
23 accredited program and in the school setting;

24 (5) unlicensed persons performing for a
25 licensed dentist merely mechanical work upon inert matter in

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1 the construction, making, alteration or repairing of any
2 artificial dental substitute, dental restorative or corrective
3 appliance, when the casts or impressions for the work have
4 been furnished by a licensed dentist and where the work is
5 prescribed by a dentist pursuant to a written authorization by
6 that dentist; and

7 (6) commissioned dental officers of the
8 uniformed forces of the United States and dentists providing
9 services to the United States public health service, the
10 veterans' administration of the United States or within
11 federally controlled facilities in the discharge of their
12 official duties provided that such persons who hold dental
13 licenses in New Mexico shall be subject to the provisions of
14 the Dental Health Care Act.

15 C. Unless licensed to practice as a dental
16 hygienist under the Dental Health Care Act, no person shall:

17 (1) practice as a dental hygienist;
18 (2) use the title "dental hygienist" or
19 abbreviation "R. D. H. " or any other title, abbreviation,
20 letters, figures, signs or devices that indicate the person is
21 a licensed dental hygienist; or

22 (3) perform any of the acts enumerated under
23 the definition of [~~the practice of~~] dental hygiene as defined
24 in the Dental Health Care Act.

25 D. The following, under the stipulations

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1 described, may practice dental hygiene or the area of dental
2 hygiene outlined without a New Mexico dental hygienist
3 license:

4 (1) students enrolled in an accredited dental
5 hygiene program engaged in procedures that are part of the
6 curriculum of that program and under the indirect supervision
7 of a licensed faculty member of the accredited program; and

8 (2) dental assistants working under general
9 supervision who:

10 (a) expose dental radiographs after
11 being certified in expanded functions by the board;

12 (b) perform rubber cup coronal
13 polishing, which is not represented as a prophylaxis, having
14 satisfied the educational requirements as established by rules
15 of the board;

16 (c) apply fluorides as established by
17 rules of the board; and

18 (d) perform those other dental
19 hygienist functions as recommended to the board by the
20 committee and set forth by rule of the board.

21 E. Except as provided in Subsection F of this
22 section, unless licensed as a dentist or non-dentist owner, a
23 person shall not:

24 (1) employ or contract with a dentist to
25 provide services in the practice of dentistry;

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1 (2) employ or contract with a dental
2 hygienist to provide services in the practice of dental
3 hygiene or the collaborative practice of dental hygiene; or

4 (3) enter into a managed care or other
5 agreement to provide services in the practice of dentistry or
6 dental hygiene or the collaborative practice of dental
7 hygiene.

8 F. The following persons, under stipulations
9 described, are exempt and shall not be required to obtain a
10 non-dentist owner license:

11 (1) a government agency providing dental
12 services within a federally controlled facility;

13 (2) a government agency engaged solely in
14 providing public health measures to prevent dental disease;

15 (3) the spouse of a deceased licensed
16 dentist; provided the spouse shall not operate as a non-
17 dentist owner without a license for longer than a period of
18 one year following the death of the licensee;

19 (4) an accredited school of dentistry, dental
20 hygiene or dental assisting; provided that the dental services
21 provided by the school are in an education setting only; or

22 (5) a dental hygienist that employs or
23 contracts with another dental hygienist to provide services in
24 the practice of dental hygiene or the collaborative practice
25 of dental hygiene. "

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1 Section 6. Section 61-5A-10 NMSA 1978 (being Laws 1994,
2 Chapter 55, Section 10) is amended to read:

3 "61-5A-10. POWERS AND DUTIES OF THE BOARD AND
4 COMMITTEE. -- In addition to any other authority provided by
5 law, the board or the committee shall have the power to:

6 A. enforce and administer the provisions of the
7 Dental Health Care Act;

8 B. adopt, publish, [~~and~~] file and revise, in
9 accordance with the Uniform Licensing Act and the State Rules
10 Act, all rules and regulations as may be necessary to:

11 (1) regulate the examination and licensure of
12 dentists and, through the committee, regulate the examination
13 and licensure of dental hygienists;

14 (2) regulate and license non-dentist owners;

15 [~~(2)~~] (3) provide for the examination and
16 certification of dental assistants by the board;

17 [~~(3)~~] (4) provide for the regulation of
18 dental technicians by the board; and

19 [~~(4)~~] (5) regulate the practice of dentistry,
20 dental assisting and, through the committee, regulate the
21 practice of dental hygiene;

22 C. adopt and use a seal;

23 D. administer oaths to all applicants, witnesses
24 and others appearing before the board or the committee, as
25 appropriate;

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1 E. keep an accurate record of all meetings,
2 receipts and disbursements;

3 F. grant, deny, review, suspend and revoke
4 licenses and certificates to practice dentistry, dental
5 assisting and, through the committee, dental hygiene and
6 censure, reprimand, fine and place on probation and
7 stipulation dentists, dental assistants and, through the
8 committee, dental hygienists, in accordance with the Uniform
9 Licensing Act for any cause stated in the Dental Health Care
10 Act;

11 G. grant, deny, review, suspend and revoke
12 licenses of non-dentist owners;

13 [~~G.~~] H. maintain records in which the name,
14 address and license number of all licensees shall be recorded,
15 together with a record of all license renewals, suspensions,
16 revocations, probations, stipulations, censures, reprimands
17 and fines;

18 [~~H.~~] I. hire staff and administrators as necessary
19 to carry out the provisions of the Dental Health Care Act;

20 [~~I.~~] J. establish ad hoc committees whose members
21 shall be appointed by the chairman with the advice and consent
22 of the board or committee, as it deems necessary for carrying
23 on its business;

24 [~~J.~~] K. have the authority to pay per diem and
25 mileage to individuals who are appointed by the board or the

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1 committee to serve on ad hoc committees;

2 [K-] L. have the authority to hire or contract
3 with investigators to investigate possible violations of the
4 Dental Health Care Act;

5 [L-] M. have the authority to hire an attorney to
6 give advice and counsel in regard to any matter connected with
7 the duties of the board [~~and~~] or the committee, to represent
8 the board or the committee in any legal proceedings and to aid
9 in the enforcement of the laws in relation to the Dental
10 Health Care Act and to fix the compensation to be paid to such
11 attorney; provided, however, such attorney shall be
12 compensated from the funds of the board;

13 [M-] N. have the authority to issue investigative
14 subpoenas prior to the issuance of a notice of contemplated
15 action for the purpose of investigating complaints against
16 dentists, dental assistants and, through the committee, dental
17 hygienists licensed under the Dental Health Care Act; and

18 [N-] O. establish continuing education or
19 continued competency requirements for dentists, certified
20 dental assistants in expanded functions, dental technicians
21 and, through the committee, dental hygienists."

22 Section 7. Section 61-5A-16 NMSA 1978 (being Laws 1994,
23 Chapter 55, Section 16) is amended to read:

24 "61-5A-16. [~~LICENSES~~] LICENSE AND CERTIFICATE
25 RENEWALS. --

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1 A. Except as provided in Subsection I of this
2 section, all licensees shall be required to renew their
3 licenses triennially as established in rules and regulations
4 of the board or committee.

5 B. All dental assistants certified in expanded
6 functions shall be required to renew their certificates
7 triennially as established in rules and regulations of the
8 board or committee.

9 C. The board or committee ~~may~~ establish a ~~method~~
10 to provide for staggered triennial terms and ~~may~~ prorate
11 triennial renewal fees and ~~impaired dentist and dental~~
12 ~~hygienist fees until staggered triennial renewal is~~
13 established. The fact that a practitioner has not received a
14 renewal form from the board or committee shall not relieve the
15 practitioner of the duty to renew the license or certificate
16 nor shall such omission on the part of the board or committee
17 operate to exempt the practitioner from the penalties for
18 failure to renew the practitioner's license or certificate.

19 D. All licensed practitioners shall pay a
20 triennial renewal fee and an ~~impaired dentist and dental~~
21 ~~hygienist fee~~, and all practitioners shall return a completed
22 renewal application form that includes proof of continuing
23 education or continued competency.

24 E. Each application for triennial renewal of
25 license shall state the practitioner's full name, business

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1 address, the date and number of the license and all other
2 information requested by the board or committee.

3 F. Any practitioner who fails to submit an
4 application for triennial renewal on or before July 1 but who
5 submits an application for triennial renewal within thirty
6 days thereafter shall be assessed a late fee.

7 G. Any practitioner who fails to submit
8 application for triennial renewal between thirty and sixty
9 days of the July 1 deadline may have [~~their~~] his license or
10 certificate suspended. If the practitioner renews by that
11 time, the licensee shall be assessed a cumulative late fee.

12 H. The board or committee may summarily revoke,
13 for nonpayment of fees or failure to comply with continuing
14 education or continued competency requirements, the license or
15 certificate of any practitioner who has failed to renew his
16 license or certificate on or before August 31.

17 I. A license for a non-dentist owner shall be
18 renewed annually as established by rule of the board. An
19 application for renewal of a non-dentist owner license shall
20 state the name, business address, date and number of the
21 license and all other information as required by rule of the
22 board. If a non-owner dentist fails to submit the application
23 for renewal of the license by July 1, the board may assess a
24 late fee. If the non-dentist owner fails to submit the
25 application for a renewal license within sixty days of the

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1 July 1 renewal deadline, the board may suspend the license.
2 The license of a non-dentist owner may be summarily revoked by
3 the board for nonpayment of fees."

4 Section 8. Section 61-5A-18 NMSA 1978 (being Laws 1994,
5 Chapter 55, Section 18) is amended to read:

6 "61-5A-18. PRACTICING WITHOUT A LICENSE--PENALTY. --

7 A. Any person who practices dentistry or who
8 attempts to practice dentistry without first complying with
9 the provisions of the Dental Health Care Act and without being
10 the holder of a license entitling the practitioner to practice
11 dentistry in New Mexico is guilty of a fourth degree felony
12 and upon conviction shall be sentenced [~~under the~~] pursuant to
13 provisions of the Criminal Sentencing Act to imprisonment for
14 a definite period not to exceed eighteen months and, in the
15 discretion of the sentencing court, to a fine not to exceed
16 five thousand dollars (\$5,000), or both. Each occurrence of
17 practicing dentistry or attempting to practice dentistry
18 without complying with the Dental Health Care Act shall be a
19 separate violation.

20 B. Any person who practices as a dental hygienist
21 or who attempts to practice as a dental hygienist without
22 first complying with the provisions of the Dental Health Care
23 Act and without being the holder of a license entitling the
24 practitioner to practice as a dental hygienist in New Mexico
25 is guilty of a [~~misdeemeanor~~] fourth degree felony and upon

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1 conviction shall be sentenced [~~under the~~] in accordance with
2 the provisions of [the Criminal Sentencing Act to imprisonment
3 for a definite period not to exceed one year and, in the
4 discretion of the sentencing court, to a fine not to exceed
5 one thousand dollars (\$1,000), or both] Section 31-18-15 NMSA
6 1978. Each occurrence of practicing as a dental hygienist or
7 attempting to practice as a dental hygienist without complying
8 with the Dental Health Care Act shall be a separate violation.

9 C. A person acting or attempting to act as a non-
10 dentist owner or an officer of a corporate entity that acts or
11 attempts to act as a non-dentist owner, that is not licensed
12 as a non-dentist owner, is in violation of the Dental Health
13 Care Act and is guilty of a fourth degree felony and shall be
14 sentenced in accordance with the provisions of Section
15 31-18-15 NMSA 1978. Each occurrence of a person violating the
16 provisions of the Dental Health Care Act as prescribed in this
17 subsection shall constitute a separate violation.

18 [~~C.~~] D. The attorney general or district attorney
19 shall prosecute all violations of the Dental Health Care Act.

20 [~~D.~~] E. Upon conviction of any person for
21 violation of any provision of the Dental Health Care Act, the
22 convicting court may, in addition to the penalty provided in
23 this section, enjoin [~~him~~] the person from any further or
24 continued violations of the Dental Health Care Act and enforce
25 the order of contempt proceedings. "

1 Section 9. Section 61-5A-20 NMSA 1978 (being Laws 1994,
2 Chapter 55, Section 20) is amended to read:

3 "61-5A-20. FEES. --

4 A. The board and committee shall establish a
5 schedule of reasonable fees not to exceed the following:

	<u>Dentists</u>	<u>Dental</u> <u>Hygienists</u>
8 [A.] (1) licensure by examination	\$1,500	\$1,000
9 [B.] (2) licensure by credential	\$3,000	\$1,500
10 [C.] (3) specialty license by		
11 examination	\$1,500	
12 [D.] (4) specialty license by		
13 credential	\$3,000	
14 [E.] (5) temporary license		
15 48 [hour] <u>hours</u>	\$ 50	\$ 50
16 six months	\$ 300	\$ 200
17 12 months	\$ 450	\$ 300
18 [F.] (6) application for		
19 certification in local		
20 anesthesia		\$ 40
21 [G.] (7) examination in local		
22 anesthesia		\$ 150
23 [H.] (8) triennial license renewal	\$ 450	\$ 300
24 [I.] (9) late renewal	\$ 100	\$ 100
25 [J.] (10) reinstatement of license	\$ 450	\$ 300

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