

2015 SENATE HUMAN SERVICES

SB 2066


2015 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

SB 2066
1/20/2015
22200

☐ Subcommittee
☐ Conference Committee

Donald Mueller



Explanation or reason for introduction of bill/resolution:

A BILL relating to the ownership of a dental office or clinic; and relating to the practice and licensing of dental assistants and hygienists and dentists.

Minutes:

Attach #1: Testimony by Rita Sommers

Rita Sommers, Executive Director of the North Dakota State Board of Dental Examiners, introduced to the committee and testified IN FAVOR of SB 2066. (attach #1). Ends oral testimony (12:30)

Senator Warner asked who owns records? Are they owned by the patient? They were bought and sold at that dentist office. Some thoughts?

Ms. Sommers answered the dentist owns the dental records. You may receive copies of those records. There is statute that dictates that if you requested the records and transfer to another dentist for continuance of care, that transfer would be free.

Senator Warner asked if practice a dental office is sold, the records associated with that practice are a part of the value of that practice.

Ms. Sommers indicated that is correct.

V. Chairman Oley Larsen stated that in medical profession, when you put in a claim and you access the records, it is common knowledge that you have to pay for records.

Ms. Sommers indicated that medical records are under the same statute, but there are provisions that they can charge nominal fee. One part is for continuance of care, which is free. If copying records just for yourself or attorney, there is a charge.

Chairman Judy Lee asked if dental records covered by HIPAA?

Ms. Sommers said yes.

Senator Dever asked if there are other dental practices in North Dakota owned by non-residents dentists?

Ms. Sommers indicated the current the statute precludes that. A dentist must own 51% or more of a dental practice.

Senator Dever wanted to know how it occurred in Fargo then.

Ms. Sommers indicated a dentist owns the practice but he owned 15 other practices on the east coast.

Senator Dever asked dentists who doesn't live in North Dakota, are there other dental clinics in North Dakota own by non-residents?

Ms. Sommers couldn't answer.

Senator Dever asked Page 2, Line 11, it struck him as odd that they have to submit a recent autographed picture to the board. Is this common?

Ms. Sommers when they do initial exam, their signature is on the picture, so if you want to ask if you are really that person, you would have picture, autograph, and it is notarized. This has been the process for taking a licensure exam, which is the same process as applying for an initial license.

Senator Dever so it is common with other professions as well.

Chairman Judy Lee when someone applies for licensure to board of pharmacy, do you require autographed picture.

Senator Howard Anderson, Jr. requires a picture that must be submitted with their application, but not necessarily autographed. Senator Anderson could see the point of it being autographed.

Senator Howard Anderson, Jr. stated thee different categories of dental assistants gets complicated. When you are licensing somebody by portfolio review, they actually have to practice in another state for 3, now 5 years before you license a hygienist. What if they graduate hygienist school from another state? How does it differ when someone graduates from school and comes here to get licensed versus someone who has been practicing in another state?

Ms. Sommers stated that a licensed by credential and they are coming in from another state, we don't know what their past experience is. With a new graduate, because they have to apply within so many months of taking a national board, we know what they have been practicing.

Senator Howard Anderson, Jr. asked if it is because other states have different credentials and standards, and don't they have to pass the same national test.

Ms. Sommers said they all have to pass the same national board and clinical exam. North Dakota accepts three clinical exams for dental hygienists; there are more but North Dakota just requires the three. The issue is if you haven't been working in another state, your previous license has lapsed for 5 years, or perhaps you are still licensed but not working, we want to check that out.

Chairman Judy Lee stated you can't just ask for the fact that you would license someone coming in from another state who has passed the exams and has worked in the previous three years in another state where they were licensed?

Ms. Sommers indicated yes, if they have previous work experience, and the laws where they are coming from are substantially equivalent to the requirements of the North Dakota board, then yes.

Chairman Judy Lee asked about states that have reciprocity?

Ms. Sommers indicated no reciprocity. We license by credentials, that means that you need to show us that you have a diploma, graduated from an accredited program. This work issue is something the board is concerned about and it is a patient safety issue.

Chairman Judy Lee talked about the different rules. Why 5 years for hygienist? Three years seems pretty strong when they are limited to what they can do independently anyways.

Ms. Sommers believes the board has the confidence in the hygienist ability that within 5 years they haven't lost everything they learned or practicing.

Chairman Judy Lee said you misunderstood the question, or perhaps Chairman Judy Lee misunderstood the law change. The 3 years prior when they are applying is inadequate and need 5 years?

Ms. Sommers indicated that the amount of techniques and more invasive and surgical things that a dentist does, you could argue that 5 years may seem a lot for a dentist.

Chairman Judy Lee indicated maybe they should, but they are in an independent practice. The hygienist is not. The dentists are very quick to point out that they are not at the same level of education and professional capability.

Ms. Sommers indicated that the board it should be the same; that there isn't difference in their intellectual ability to keep up with their practice. When they do come back into practice, they are still under supervision of dentist.

Senator Howard Anderson, Jr. discussed the person who practiced in another state for two after graduation, and the rule looks like they are not eligible to come to North Dakota because they have only practiced for two years. Now it appears they have to be in the other state for 5 years before they can practice here. I believe that is not your intention.

V. Chairman Oley Larsen asked if this dental hygienist comes to North Dakota and start working, the time they start working and one year goes by, do they require continuing credits?

Ms. Sommers indicated yes, all hygienists and dentists and dental assistants, have continuing education requirements, which include infection control, jurisdiction and ethics component, CPR, and the CE they do obtain must pertain to the clinical practice of dentistry.

Chairman Judy Lee stated however dental assistance doesn't require any academic training at all. You can train in chair side.

Ms. Sommers indicates they do need CE.

Chairman Judy Lee indicated that a CE is different than having a year at State College of Science to learn to be a dental assistant before they go out to practice in somebody's office. Chairman Judy Lee has a problem with a profession that is highly oriented toward education, that the dental assistant can practice with no academic background.

Ms. Sommers said she wasn't sure when that was instituted. It may not be ideal, but it worked when there were no dental assistants. When the dental assistant is sitting chair side with the dentist for 3,500 hours before they can take a national board, they are sitting beside a teacher every day.

Chairman Judy Lee responded that they are sitting beside a dentist every day, and not all dentists are good teachers. Dental assistants have no academic requirements.

Ms. Sommers indicated the board has talked about this. Ms. Sommers has asked about office trained dental assistants. The dentist would never give up their dental assistants.

Chairman Judy Lee indicated they should go to school before they start.

Ms. Sommers indicated that fact speaks to their competency.

Chairman Judy Lee talks about Section 7. Why an heir should be exempted.

Ms. Sommers stated the reason the language is there is in the event of a death, the heir has a designated amount of time to unload the practice to a licensed dentist. This is something that would take time, so not going to hold the widow(er) that you have to have someone in there. In the event of death, we need provisions for some time frame where the practice is sold or handed to someone else.

Chairman Judy Lee if there are other people in that practice and the dentist has passed away, if there isn't another dentist in that practice, there is very little that can be done because there isn't somebody to indirectly supervise. If there is another dentist in the practice, then why wouldn't the provision say that temporary authority would go to another dentist in the existing practice. How do you say the heir, if there is no dentist, how do you

deal with the other accountability that there is someone else to provide treatment to the patients?

Ms. Sommers indicated the hygienist couldn't be responsible for the overall care of dental care.

Chairman Judy Lee answered she understands this, but nobody is. You can't say that the heir is. Chairman Judy Lee provided an example. Let's say the dentist dies, and there is an heir, and there is no other dentist in the practice, the heir is not responsible for the dental care in that office. Is there no requirement in statute that if dentist dies and no other dentist in practice to taking responsibility for providing oral health care, what happens then?

Senator Howard Anderson, Jr. stated what we do in pharmacy; they have to name a pharmacist in charge before they can open the pharmacy. In this case, the heir, also known as the surviving spouse, needs time to sell the practice. From public perspective, the treatment still needs to be done and dental records transferred to the next dentist. How does that take place when the heir is in charge but there is no dentist?

Ms. Sommers indicated she didn't know. What happens in the past, another dentist steps in until the practice is sold. It seems to work out. Same thing happens if a practitioner becomes ill, other dentists step in. Orthodontists have a pact within their group to help if they need to.

Chairman Judy Lee asked do you think it should be in statute, a more formal provision. It is important that there is some structure, which can be simple, that their responsibility is passed to someone. We would like your input from you and your colleagues, about whether or not to stipulate in statute where the responsibility falls if there is a death or other reason that they cannot fulfill the duties of the practice - it could be illness.

Ms. Sommers thanked Chairman Judy Lee for the suggestion and will provide input back to the committee.

Chairman Judy Lee other question in section 7, it sounds similar to pharmacy deal, a tad turpury. If you are talking about who can own the practice (51% ownership), do you see this as prohibiting storefront clinics? Do you see a national threat that you are trying to avoid in North Dakota?

Ms. Sommers doesn't believe this will prevent any practices from opening or practices where there are multiple practitioners.

Chairman Judy Lee said they can't be owned by a corporation, it would have to be owned by the dentist. Same argument stands here as pharmacy. If Target wanted a walk in clinic and dental office for those things on the weekend or evenings that are hard to address, they could have a clinic but couldn't have dentist unless the practice was owned by the dentist. They aren't an employee of Target. If there ever was an effort to have corporate ownership of those kinds of rapid service, was there any discussion on the part of the dental association to accomplish this? What potential challenge is there to these services

being opened if they were staffed by people who are licensed by your board. Do you really care who owns it?

Ms. Sommers not prepared to talk about the ownership; Ms. Sommers indicated this doesn't address ownership.

Chairman Judy Lee disagreed, that the ownership is addressed in Section 7.

Ms. Sommers indicated ownership is addressed in another section where it specifically says how much can be owned. If you own or operate a dental office or clinic, you must have a dental director on your site and what they are responsible for. The ownership provision is in another statute. That hasn't come to haunt us, even though we see it in other professions, but hope it doesn't come their way. What this addresses if you own a dental practice, you must have a dentist for what is happening, not a manager who has no dental background. This has been the source of opposition to the larger dental clinics. They are being managed by people who are not looking out for the consumer as much as they are making sure each dentist does 45 fillings a day, they meet their quotas, and those type of things.

Chairman Judy Lee asked are there any dental practices in North Dakota right now that have even 49% ownership by a non-dentist?

Ms. Sommers believe they are all 100% owned by dentists.

End of Ms. Sommers testimony.

No other testimony IN FAVOR of SB 2066.

OPPOSITION TO SB 2066

No opposing testimony

NEUTRAL TO SB 2066

No neutral testimony

Closed public hearing.

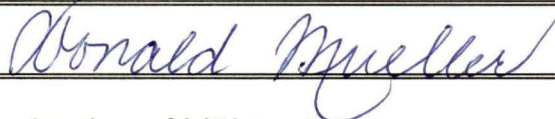
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Attach #1: Proposed Amendments

Chairman Judy Lee recapped SB 2066. There were suggested amendments from Jack McDonald that were previously discussed. (attach #1).

Senator Howard Anderson, Jr. moved do pass.

The committee discussed the proposed amendments before taking action on Senator Howard Anderson, Jr. motion. Motion was withdrawn.

(8:50)

Chairman Judy Lee doesn't recall any testimony about "documented dental assistants." It has now been added as a new level of dental assistant category, and no testimony has been previously provided on this.

Rod St. Aubyn stated it was in Rita Sommers original testimony. As part of her testimony, she had attached proposed amendments.

Chairman Judy Lee returned to Ms. Sommer's testimony, and read through her initial proposed amendment, which requested the term "documented dental assistants". The committee voiced their concern about the term "documented" and the confusion that brings to the committee.

Senator Dever recommended looking at 20.03.01 in the administrative code and see what we are talking about. It appears there are a dental assistant, a qualified dental assistant, and a registered dental assistant, and now we would be adding a documented dental assistant. And each of them has different duties. There are a total of 32 duties of level of care.

(14:51)

Rod St. Aubyn provided insight to the committee. Currently, there are three levels of dental assistants: There is a dental assistant, no training required and very limited scope (numbers 1 through 6 under direct supervision of a dentist per that administrative code). This is the one they are proposing to call a "Documented" dental assistant. The second level is a qualified dental assistant, and they must complete 650 hours of on-the-job training, must pass the North Dakota exam, must be CPR certified, must pass infection control and radiation sections, and dental assisting national board (DANB) within one year of application, and pass infection control and radiation sections of the DANB and 16 hours of approved continuing education in the past two years and able to perform 1 through 7 on that code. The last one is the Registered Dental Assistant who must pass the North Dakota exam in the past year and hold current CPR certification, successfully completed CODA approved dental assisting course in the past year, certified by DANB in the past year, successfully completed CODA approved dental assistance course, and completed 16 continuing education hours in the past 2 years. They can do 1 through 24 categories of the administrative rule. The board met and indicated there should be a way to track the dental assistants. The term "documented" came from the board, where it would provide a list of non-registered or non-licensed dental assistants. The board agreed to establish a \$10.00 fee per biennium; since that is not in the bill, perhaps they will do this through administrative rule. In their proposed administrative rules, they are proposing a fourth type of dental assistant, which is a registered dental assistant in a public health setting, but this is not finalized.

Chairman Judy Lee asked why would we want a different category for dental assistant in public health setting.

Mr. St. Aubyn stated they also came up with the same question, as they came up with less stringent rules for a public health setting. The rules have not been finalized.

Chairman Judy Lee asked how many levels of dental hygienists?

Mr. St. Aubyn only one.

Senator Howard Anderson, Jr. if we look on the bill, page 2, line 24, it seems to say that this is the original language. Looking at Ms. Sommers proposed amendment, it seems to say that they are changing from 3 to 5, when it looks like the original bill was 5.

St. Aubyn stated he thinks what they referring to there, they aren't changing that as that's the current requirements, not dealing with dental hygienist or dental assistant, but may be dealing with the dentist.

Senator Howard Anderson, Jr. the amendment actually is addressing 43.20.01.03. Femi indicated that 43.28.15 through 20 is specific to dentists.

(23:36)

Chairman Judy Lee and committee continued to look through the amendments and the bill. **Rod St. Aubyn** provided clarification where Ms. Sommers was proposing to amend section 43.20-01.3, and that is the licensure by credential review for the dental hygienist.

That is where they are proposing to change that from 3 to 5 years. Mr. St. Aubyn indicated they continue to not support this, but mentioned that in Minnesota, an applicant for licensure is a dental hygienist must have been in an active practice in another state or jurisdiction for at least 2,000 hours within the 36 months of the Board receiving completed application.

Senator Dever wondered if Dr. Holman would have any additional information. He referenced 20.03.01.01.

Chairman Judy Lee continued about the documented dental assistants. She cannot support 4th category of dental assistants, unless those under 2 years would reach that first level of qualification.

Chairman Judy Lee invited **Dr. Brent Holman**, Executive Director of the North Dakota Dental Association, to the podium. He stated that he does not represent the board of dental examiners. They were trying to standardize for credentialing. The part of the word "documenting assistants", he had not heard that term until today, but whatever you call it, the complete genesis is that in the rules change that expands duties of assistants and hygienists to do expanded function dental assisting, that is a another set of duties. That is in the rules change and it was thought the this change was necessary because if assistants take that additional training, you need to document all of them and make sure you know who is there. The third thing, public health dental assistant, his understanding was that was specific response if we go to case management route, they will be able to go to community settings and do what they already can do, that is fluoride, varnish, and sealants. The idea was with case management, they should be able to do oral health assessments and case management, with the idea that that rules didn't spell that out in terms of what they can do in that environment. Hygienists can do sealants and dental assistants can assist, but they can't do the sealant. The oral health assessment and the case management navigation pieces, it was felt based on the level of training that they have, those things are essentially being done by primary care folks. The navigation is many times done by school teachers, where this is a similar type of duty for assistants and hygienists where this could happen. There is movement nationally for a code for reimbursement for oral health assessment, so if the case management concept was a reality, it was necessary for that to happen.

Chairman Judy Lee if we are moving them out to other settings, why wouldn't we want them more qualified than less? She is concerned that the board doesn't know who the undocumented dental assistants are. We have this big access issue, we already have a level dental hygienists who are restricted, and now we are talking about dental assistants who will do more with less training and education.

Dr. Holman in his perception, the reason why it is specifically mentioned and described is to get to outreach settings. Dr. Holman stressed that if the committee is serious about getting care and access to people who don't go to the dentist, there should be a match to the skill level of the people you want to do these services to what the duty is.

Chairman Judy Lee expressed that she is not convinced that if they sign their name on a list and then can do this. In the interdisciplinary training that is taking place in the school of

medicine and health sciences, they are now working with nurses and others who are seeing patients to recognize that medical profession can refer to dentist. Our goal is provide appropriate care. Chairman Judy Lee again reiterated her frustration that dental assistants are chair trained and there are no academic requirements.

Dr. Holman would agree with what Chairman Judy Lee said, but we have to have a pool of folks who will assist the dentist, and we don't have that pool. Problem with mandating that is we don't have the pool.

Chairman Judy Lee what is the dental association doing to work with higher board of education to move this forward - grow the academic side.

Dr. Holman indicated that this has been going on for 2 years. When looking at case management concept, they worked with Wahpeton and would provide online training to do the case management part, and they would use the case management feature in the ADA program, and specifically in detail trains case management. If we do expansion of duties for dental assistants and hygienists, then Wahpeton needs to be out in front so how do we have someone who is already working in western North Dakota so they can get that training without going to physical Wahpeton. That was originally resisted because specific to Wahpeton. Now they appear to be very excited about doing that. The rules haven't been passed yet. We need to address to get more resources in western North Dakota.

Chairman Judy Lee stated the funding formula for higher education is being looked and is getting nasty cuts.

Chairman Judy Lee asked What does the national council of dental accreditation say about dental assistants? **Dr. Holman** answered that he doesn't know. **Chairman Judy Lee** if they are creating credentials for dentist and dental hygienists, wouldn't they have criteria for dental assistants? **Dr. Holman** doesn't know.

Senator Howard Anderson, Jr. mentioned that the increase from 3 to 5 years for hygienist was an effort to make that uniform with that for dentists. Do you know if there has been any history of bringing dentists or hygienists to North Dakota for this issue? **Dr. Holman** can't speak to that, even background for dentist 5 year. His understanding is that it is to standardize with the dentists.

Senator Howard Anderson, Jr. the dental profession indicated they feel this would be a step in the right direction for the dental assistants. He stated that he is comfortable with the proposed amendment.

Chairman Judy Lee stated procedurally, the committee would step through each of the areas of the proposed amendments to come up with a comprehensive amendment document.

Senator Dever concerned about the word "documented" versus "undocumented", and the same term that is used with immigration issues.

Senator Dever what is the difference between dental assistant who may perform the duties listed in subsection 1 through 6 under direct supervision of a dentist, and a documented dental assistant who provides dental assisting duties as set forth in subsection 1 through 6. Aren't we being redundant? The committee agreed that it sounds redundant and the reference could be removed.

Chairman Judy Lee they could certainly gather the list of people who don't have certification without it being in statute. She supports that effort so she knows who isn't trained. **Senator Dever** indicated this should be the procedures to regulate the industry.

Chairman Judy Lee continued discussing the potential amendment. The next one is the licensure by credential review for dental hygienist. The change was from 3-to-5 years. She stated her concern with this proposed language and would encourage removing the 3-to-5 change, meaning back to the original bill. We wouldn't accept the amendment in section 2 because it was changing it from 3-to-5 years. The next one refers to Section 4, on the amendment sheet bottom of page 2, a "documented dental assistant" which we just eliminated. The State Board of Dental Examiners terms of three or more board members expire in the same year, the Governor may elect to extend the term of one or more board members whose term is expiring for one year. The committee discussion was in reference if this occurs with other boards and if it is for planning ahead. **Senator Howard Anderson, Jr.** indicated that typically they are appointed for the remaining term and would have to be reappointed for the next term. **Chairman Judy Lee** stated that if there is a term limit of two terms, that is the case here. **Senator Howard Anderson, Jr.** suggested leaving that in. The question dealt with president remaining if 2 years versus less.

(51:45)

Rod St. Aubyn provided some background. Part of the problem with the board is they have additional requirements, if you serve as president you must have two years remaining in their term. They did have someone who left the board, so someone was reappointed but they weren't for the remaining part of term but given the full five year term. And then they were given another full five year term. The requirement is that they can serve two-five year terms, but no more than 10 years. It is a self-imposed problem. They should have had appointment for the remaining time of that term, or taken the requirement of president out. Mr. St. Aubyn doesn't know if this can be corrected because they are now staggered. You may face the same question with other boards if you change this.

Chairman Judy Lee sees there are no dental assistants on the board. There are currently 7 board members: 5 dentists, 1 hygienists, and 1 consumer. **St. Aubyn** confirmed correct. Dental assistants are asking for seat at the table. The Board took no action and it was taken under advisement. The Board is regulating the dentists, hygienists and dental assistants. **Chairman Judy Lee** voiced her interest in adding dental assistant to board. The Senate Human Services Committee agreed.

The next subject area the Senate Human Services Committee discussed was the heir's portion of the amendment. **Senator Howard Anderson, Jr.** certainly thinks that transition of practice that they appoint a dentist who is responsible for what is going on there. This is a good consumer protection here. He would support "dentist appointed by".

Senator Warner asked if there is any distinction between in "may" versus "shall".
After the first "or" on line 29 page 5, have dentist in charge and not somebody else.

Senator Howard Anderson, Jr. indicated that language is repeated on the last page of the amendment.

The Intern, Femi, had a question regarding Section 7 on the amendment. **Chairman Judy Lee** confirmed Section 7 is acceptable with the addition of possibly adding a dental assistant to the board.

Recess.

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Attach #1: Draft Amendment by Jack McDonald

NOTE: In this recording, the Senate Human Services Committee discusses SB 2354 and SB 2066, as they are related bills. The recording specific for SB 2066 is at (6:24-33:00) on this recording.

Chairman Judy Lee invited Mr. Jack McDonald to the podium.

Chairman Judy Lee questioned if the Commission on Dental Accreditation (CODA) has any criteria for dental assistants as they do for dental hygienists.

Jack McDonald, a lobbyist for North Dakota Board of Dental Examiners, introduced Rita Sommers, Executive Director of the North Dakota State Board of Dental Examiners. **Rita Sommers** stated that CODA also accredits dental assisting programs similar to how they accredit dental hygiene programs.

Chairman Judy Lee questioned if they think it is fine for chair side training only.

Rita Sommers answered that they do not address chair side dental assisting.

Chairman Judy Lee followed-up by asking aren't the dentists in North Dakota bothered that they have dental assistants that are not recognized through the CODA.

Ms. Sommers answered as long as they are registered through the board and have obtained the testing through the dental assisting national board, then the board accepts them as registered, and the Board does not have a problem with that. Further, she is not sure that CODA recognizes any on-the-job trained dental assistant.

Jack McDonald explained that in the original hearing, the Senate Human Services Committee recommended further amendment language on who operates a dental office when the dentist dies. We added that to the amendments already submitted by the Board of Dental Examiners. Mr. McDonald provided a copy of draft proposed amendments with the draft bill (attach #1).

The Senate Human Services Committee then reviewed the draft amendments with the original bill. There was confusion in how the proposed amendments synched with the original bill. **Senator Dever** provided some clarifications that definitions are now in Section 1 of the bill. To reduce the confusion, **Chairman Judy Lee** proceeded to go through the bill and proposed amendments. Highlights from this discussion were:

- Removing redundant language for the definition of a documented dental assistant and a dental assistant, as recommended by **Senator Dever**.
- Discussed the "documented" dental assistant, and the preference of not creating another level of dental assistants.
- Discussed the three-to-five year requested amendment. The committee prefers to stay with the three-year requirement.
- Discussed the length of term with the Board, which was self-induced by the Board. The Governor's office could resolve this issue.
- Discussed considering the addition of a dental assistant to the Board.

Chairman Judy Lee stated her continued concern about chair-trained dental assistants, and stated that they would like to see a way to have a log of those people.

Rod St. Aubyn stated his confusion with the amendments and asked for further clarification. He understands there are new amendments which are adding new sections to the bill for definitions. Mr. St. Aubyn stated with the addition of a dental assistant to the Board, the Board will have to address a fiscal impact because the Board members are paid members.

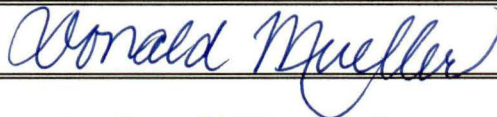
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Attach #1: Proposed Amendments of Dental Examiners
Attach #2: Dental Powers of Board

These are minutes from the Senate Human Services Committee on February 17, 2015 morning session.

Jack McDonald, representing the Board of Dental Examiners, distributed copies of proposed amendments of the Dental Examiners (attach #1). Mr. McDonald discussed the revisions to the earlier proposed amendments.

The first area of discussion was in regards to adding a dental assistant to the Board of Dental Examiners (Page 1, Section 4).

The second area of discussion was in regards to the length of time served on the board. **Senator Warner** asked if the term "ten years" contradicts when the Governor appoints someone for a remaining term, which could result in eleven years. The committee discussed this. **Rita Sommers**, the Executive Director of the North Dakota Board of Dental Examiners, stated the intent was that in the event if they need one more year, the Governor could appoint that additional year. If someone is appointed and they have served seven years total, it is defined not to go over 11 years. It is only in the situation when someone is leaving the Board.

Mr. McDonald reviewed the third area of discussion was in regards to an heir or personal representative appointing a dentist to operate an office under the name of the deceased dentist.

Mr. McDonald called to attention potential problems with the addition of the Dental Assistant to the Board to section 43-28-03. In Section 43-28-04, it states the qualifications and appointments, and the roles and duties for each member of the Board of Examiners. Mr. McDonald believes this section will also require amendments for the inclusion of the

dental assistant. There is no clarity of what level of dental assistant will serve on the Board since there are several different levels of dental assistants, such as registered or qualified. The Board is not in favor of adding the dental assistant, but does think it would eventually occur.

Mr. McDonald addressed further concerns regarding changing the 3-to-5 year provision. The Board had requested a change to 5 years and the committee had requested that it stay at 3 years. Mr. McDonald would like reconsideration on the 3 year restriction as there is a dental hygienist who will not qualify with the change.

The Senate Human Services Committee had a lengthy discussion with **Ms. Sommers** in the understanding of the 3 year versus 5 year provision. There was confusion from the committee where they felt five years was too long. Ms. Sommers requested that it be consistent with the five year provision for the dentist, and that it was less restrictive. The committee requested clarification in the language for the five year requirement. **Senator Warner** recommended language such as "the applicant within the previous five years" rather than "at least five years".

Chairman Judy Lee also indicated that she appreciated Mr. McDonald bringing section 43-28-04.

Senator Axness preferred that the highest level of the dental assistant be added to the board.

Mr. McDonald indicated the highest level is the Registered dental assistant.

Rod St. Aubyn provided a copy of the Powers of the Board (43-28-06) (attach #2). Mr. St. Aubyn agreed with Mr. McDonald that the Dental Assistant being assigned to the Board needs clarification.

Mr. St. Aubyn voiced his concern that the length of time served on the Board does not resolve all issues - a different scenario may require the language to be changed again.

Mr. St. Aubyn also voiced his concern about the ownership amendment. They do not support the ownership provision. Looking at the actual bill, Page 5, Section 7, lines 5 through 29, this amendment is clarifying things at the end for the heir or personal representative when a dentist dies. The last paragraph states, "the provision of this section do not apply to a Board approved medical clinic or hospital, or public health setting." So what are the standards for the Board approved? He continued, "or a Board approved non-profit organization", again the concern why the Board needs to approve this or the standards to which they will approve to. He continued, "to serve the dental needs of the underserved population or the heir or the personal representative of the deceased dentist." So this states that all those provisions don't apply to all of those people. So with a sole-provider dentist, this section says they need to determine a dental director. The dental director will be themselves in a sole-provider dentist office. Letters "a" through "e" is called for somewhere in the statute or administrative rules. Mr. St. Aubyn then went through the example of retention of records scenario. He distributed the Powers of the Board and

Retention of Records rules (attach #2). He pointed out contradictions with the law and the proposed amendments.

(35:22)

The Senate Human Services Committee then discussed the retention of the records requirements.

Senator Warner asked a question regarding Page 5, line 20 and 21, item "d", "to insure each patient receiving services in the clinic has a dentist of record." He understands this to establishing a dental home. Are there circumstances with the underserved population or a public health clinic or not-for-profit organization where there would not be a dentist of record, such as a rotating dentist?

Chairman Judy Lee further asked if there should be an exception just for the dentist home for the underserved. She continued to provide the scenario where dentists who are from Wyoming are in a revolving practice in western North Dakota, where they provide services for two weeks and then the next dentist comes for two weeks and so on. They really won't have a dentist of record; they may have a dental clinic of record. We don't want to deprive someone of dental services for a dentist who is licensed in the state.

Senator Howard Anderson, Jr. stated that as he reads number 1 of section 7 of amendment, all of those things could stand alone without subsection 2. Everyone has to have a dentist of record who is responsible for all these things. Even the person who is the heir still needs to appoint a dentist who is going to be in charge of the clinic. It appears that we could eliminate subsection 2.

Chairman Judy Lee then provided an example of the mobile dental services, such as the Ronald McDonald care mobile and Bridging the Dental Gap. We don't want to deny services or restrict.

Mr. St. Aubyn when he was researching this before, he thought everyone was covered under current rules except dentist of record. Not sure what the need is for that provision (section 1). The dentists are licensed dentists even in mobile units, so they have to abide by the rules.

Mr. Jack McDonald reintroduced **Ms. Rita Sommers** to respond.

Ms. Sommers explained that the intent of this section is to protect consumers against the scenario that occurred in Fargo with the All Care Practice, where one dentist held the keys to the facility, left, and then the patient couldn't get the records for continuum of care. The intent of this section is that the facility have a medical director, who can be the owner, but someone who is on the premises. The dental director must be a dentist. In the All Care situation, the manager was not a dentist.

Ms. Sommers continued that there could be some duplication with the amendment. The dentist who is the director will be responsible for letters a through e.

Chairman Judy Lee asked what if that person dies?

Ms. Sommers responded that in section 2, the provisions do not apply to a Board approved medical clinic, hospital, etc. That language was taken from the section in statute for any person except a North Dakota practicing dentist own or operate. This is specific to one office one practice, we took the language that the provision does not apply and applied it to a corporate office as well. The attorney general's office thought this was good language to have in here.

Chairman Judy Lee trying to understand, why if you already have it in statute, why wouldn't you want these provisions to apply? Also Board approved non-profit, why do you get to approve them?

Ms. Sommers answered that it's not that we don't want the records released, but in a public health setting, there wouldn't be a specific dentist to prohibit that from happening. In mobile dentist, there won't be one dentist.

Chairman Judy Lee so rotating dentists in mobile areas, they will not be individually responsible.

Ms. Sommers answered correct - the provision on this section for exemption would allow rotating dentists and this is not their responsibility. It is about public health setting that is not being shut down.

Chairman Judy Lee asked if there is some way for clarifying the language to help people understand the specific intent. The assignment was made to Mr. Jack McDonald and Ms. Sommers, and work with the intern, Femi, on bringing a draft bill with the proposed amendments.

The Senate Human Services Committee further discussed the confusion regarding the ownership provision.

The Senate Human Services Committee then returned to the discussion regarding retention of records and mobile clinics. **Mr. McDonald** stated they provide a dentist for the Bridging the Gap dental practice. With the Ronald McDonald mobile dental services, they provide the equipment and vehicle, and Bridging the Dental Gap provides the dentists.

Senator Warner stated they have a non-medical professional as the executive director who is accepting the volunteer services of a dentist, who has the responsibility for the records?

Mr. McDonald stated the patient ultimately owns the records, and they have the right to get them at all times. He is not sure about the records in the care mobile. They are maintained by the care mobile people themselves he believes, but not sure.

Senator Warner is there some specific person who could be sanctioned by removal of their license for not doing the exceptions stated?

Mr. McDonald if practicing dentist, they will put their license in jeopardy. Regarding operation of the clinic, a person who is not a dentist and is a clinic manager.

Senator Warner this comes back to **Ms. Sommers** testimony.

Chairman Judy Lee what happens with mission project on reservations. Do the dentists who provide services have the records or the mission? These are one-time separate projects.

Dr. Brent Holman, North Dakota Dental Association, answered there was a screening form, and that form was provided to the State Oral Health Program, and a copy given to Indian Health Services.

Chairman Judy Lee so those would have gone to Indian Health Services rather than retained by the volunteered dentist. Does the practicing dentist keep any records or are they retained by the oral health coalition and Indian Health Services.

Dr. Brent Holman that is what happened in this case. In other projects, they are held at charitable foundation at the state. If follow-up with individual event, it is with Indian Health Services clinic. That should be intent of law so we know where to get the records.

Senator Dever noted the Board of Dental Examiners regulate dentists, but don't regulate clinics. So the ownership when a dentist is deceased, their heirs can operate with a dentist for 2 years. The Board action would be against that dentist after 2 years and not the clinic.

Mr. McDonald the dentist is going to be a corporation of some kind, and it is an asset passed to the heir - they will sell the practice to someone else or go out of business. The provisions of law now says the dentist who steps in will supervise the practice and then they will close it down or help get it sold. If dentist steps in, they are subjecting themselves to the rules of dental practice.

Chairman Judy Lee would they be liable for the actions to the dentist prior to death.

Mr. McDonald stated that would be a claim against the estate. The new supervising dentist is simply administering the estate, the practice.

Senator Dever the estate would be guilty of a Class A misdemeanor if they continued to operate and not following the rules.

Marcia Olson provided further answers and information. In regards to Bridging the Dental Gap, the records are held in common with all the dentists. They are the property of the Board, so the information is there and is ongoing. The care mobile is considered clinical provider. So they are the responsible party of the records.

Chairman Judy Lee we were talking about question that arose in the final paragraph regarding records, and the exemptions. Why wouldn't those same criteria apply to records in an organization like yours?

Ms. Olson explained that from their view, the criteria and rules do apply. Because they are rotating dentists, their organization holds the records rather than the revolving dentist.

Chairman Judy Lee restated, why wouldn't we want the not-for-profits to have the same criteria as others? Is it that we want something slightly different from the dentist owner?

Senator Warner thinks that because the person has to be a dentist to be dental director, provisions in number 2 don't have to be a dentist.

V. Chairman Oley Larsen from what Ms. Olson just said, they take on the role. They hold the records. Even though they are exempt, they still do it. They are not a dentist, so in lieu of a license.

Chairman Judy Lee can't we then state what Ms. Olson's requirements are, especially since they are doing it already anyways. Is there any of those listed in subsection 2 that we wouldn't want record keeping covered in some way other than a dentist.

V. Chairman Oley Larsen on line 26, page 5, if you struck the "not", they do apply, does that fix that?

Senator Warner stated the difference is they need a dentist on top but not on the bottom one.

Senator Howard Anderson, Jr. we asked Mr. McDonald and Ms. Sommers to come back with more language.

Senator Dever one of points raised earlier is dentist of record, would that be the case of Ronald McDonald.

Mr. McDonald not sure because of rotating dentists of who the dentist of record are - have one for the day but different one for another period.

Marcia Olson they do list Kristi Peterson as the dentist of record. The primary dentist would be the identified dentist. Chairman Judy Lee asked if there was any issue for dentist of record for Ms. Olson. Ms. Olson indicated that she will chat with Mr. McDonald, and will also discuss with the other mobile rotating dentist locations.

Rod St. Aubyn wonders if the dentists that are helping at the mobile units, it appears they are still obligated to records in current law. If the mobile units are maintaining them, do they need to be exempt from the other requirements as well. We don't want duplicate records.

Ms. Olson not all dentists are volunteered dentists, some are paid so they would fit under the Bridging the Dental Gap. Even volunteer dentists are under the Bridging the Dental Gap for liability issues.

Recess.

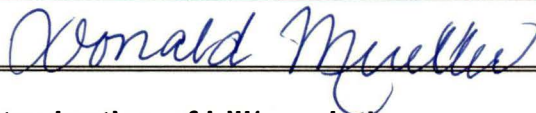
2015 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

SB 2066
2/18/2015
24091

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL relating to the ownership of a dental office or clinic; and relating to the practice and licensing of dental assistants and hygienists and dentists.

Minutes:

Attach #1: Draft SB 2066 with proposed amendments
Attach #2: Proposed amendments

Mr. Jack McDonald, representing the North Dakota Board of Dental Examiners, distributed copies of the draft SB 2066 bill with the proposed amendments (attach #1), and also the proposed amendments (attach #2). Mr. McDonald stated there was an error on the front page of the draft bill, Section 1, subsection 1, where it states, "The applicant for within the...", the "for" should be struck out. Mr. McDonald proceeded to highlight the changes.

- The language was changed back to 3-to-5 year, and clarified the language to be "within the 5 year period."
- On page 9 of the draft bill, the bottom of the page, they removed the part that was confusing, and it was redundant with another part of the bill. This provision now states the provisions above section do not apply to Board approved medical clinics or public health settings. They are not run by dentists themselves.
- On the top of that section, it accommodates when there is more than one dentist, so they added "dentist or dentist(s)."
- They also made a change to the dentist provision for 5 years for the language to be consistent with the change made for the dental hygienist.

Chairman Judy Lee asked if they have a length of time they need to practice during that 5 year period.

Mr. McDonald stated there is no set time.

Chairman Judy Lee continued that they do have the ability to evaluate their work experience.

Senator Warner is there certain number of hours they have to practice during that period prior to renewing a license. We want them engaged in dentistry, and not just education, but actual hours of practicing to maintain their license.

Mr. McDonald stated he was not aware of any profession. Chairman Judy Lee corrected that nursing and teaching require this. The Board does not recognize the difference between practicing versus licensed.

Mr. McDonald also stated that in regards to the dental assistant on the Board, it now states "registered dental assistant" which will be appointed to the board. Also added the provisions in 43.28.04 the bottom of page 3 to include the dental assistant qualifications.

Chairman Judy Lee the terms of the board is with the Governor's office.

V. Chairman Oley Larsen moved to ADOPT AMENDMENT provided by Mr. McDonald. The motion was seconded by **Senator Axness**. No Discussion.

Roll Call Vote to AMEND

6 Yes, 0 No, 0 Absent. Motion passes.

V. Chairman Oley Larsen moved the Senate Human Services Committee recommend a DO PASS SB 2066 AS AMENDED. The motion was seconded by **Senator Warner**. No Discussion.

Roll Call Vote to DO PASS AS AMENDED

6 Yes, 0 No, 0 Absent. Motion passes.

Senator Howard Anderson, Jr. will carry SB 2066 to the floor.

2015 SENATE STANDING COMMITTEE MINUTES

Human Services Committee Red River Room, State Capitol

SB 2066
2/24/2015
24275

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Donald Mueller

Explanation or reason for introduction of bill/resolution:

A BILL relating to the ownership of a dental office or clinic; and relating to the practice and licensing of dental assistants and hygienists and dentists.

Minutes:

Attach #1: Adopted Amendment 15.8053.01001 Title .02000
Attach #2: ND State Board of Dental Examiners Board Members and Terms
Attach #3: Proposed Amendment

Chairman Judy Lee asked that the Senate Human Services Committee review the latest amendment to SB 2066 - 15.8053.01001, Title .02000 (attach #1). In addition, the intern, Femi, distributed a copy of the North Dakota State Board of Dental Examiners board members and the duration of their terms. The language for the amendment was confirmed with **Ms. Rita Sommers**.

Rita Sommers, Executive Director for the North Dakota Board of Dental Examiners, stated the language in regards to term expiration is satisfactory, especially if it is the perfect world and no one resigns part way through their term. The concern is that it is so specific, it can become problematic. It would be better if the language was simplified to state ten years and you are done, unless the Governor chooses one additional year. As this is written, it works today.

Chairman Judy Lee invited the simpler language for future legislative session. We did not want to radically alter the language. Chairman Judy Lee read from the amendment in regards to this section. Chairman Judy Lee continued, reading through the amendments in regards to the dental assistant being added to the Board, and when the dentist passes away to fill the vacancy.

Chairman Judy Lee distributed a proposed amendment for Senate Human Services Committee consideration (attach #3) that takes the tribal component from SB 2354, which was defeated on the floor yesterday. This would enable the tribal sovereign nations to be able to have reimbursement for those who are practicing on the reservation. She understands it will take reconsideration of SB 2066.

Senator Dever moved to RECONSIDER SB 2066. The motion was seconded by **V. Chairman Oley Larsen**. No discussion.

Roll Call Vote

Voice Vote ALL IN FAVOR. Motion carries.

Senator Dever moved the Senate Human Services Committee ADOPT AMENDMENT to include the proposed amendment regarding tribal sovereignty. The motion was seconded by **V. Chairman Oley Larsen**.

Discussion

Senator Howard Anderson, Jr. asked if Medicaid can pay them just because we add this section to the bill.

Chairman Judy Lee indicated that this was discussion in the original testimony and prior committee meetings.

V. Chairman Oley Larsen stated that he thought that was why that section had so much involvement during SB 2354 where they needed to get the Medicaid expansion with the follow through so the Indian Health Services would be the primary payer and Medicaid expansion would be secondary.

Chairman Judy Lee stated it is subject all 100% federal reimbursement being available for the tribal community health representatives.

Senator Howard Anderson, Jr. stated that Dr. Warne wrote that section, and he understood it to make the Native American's feel good. His recollection from Department of Human Services Medical Services was that unless the people were licensed in the State of North Dakota, they couldn't pay them. He voiced his interest in checking with Department of Human Services to make sure they can pay them, or we are accomplishing nothing.

Chairman Judy Lee recalled that they could be paid if it is licensed in another state, but cannot be paid under North Dakota law if they are not licensed in this state and we don't license them in this state. We are not looking for any additional appropriation at this point because it is subject to the 100% federal funding, but the barrier to the reimbursement is that they have to be licensed in North Dakota. Because the Tribes are sovereign, they can hire whoever they want. If they feel these people are professionally competent whoever they happen to be, and there is 100% federal reimbursement for those Indian Health Services, then that is what the proposed amendment means.

Roll Call Vote to Amend

6 Yes, 0 No, 0 Absent. Motion passes

V. Chairman Oley Larsen moved the Senate Human Services Committee recommend a DO PASS for SB 2066 AS AMENDED. The motion was seconded by **Senator Axness**. There was no discussion.

Senate Human Services Committee

SB 2066

02/24/2015

Page 3

Roll Call Vote

6 Yes, 0 No, 0 Absent. Motion passes.

Senator Howard Anderson, Jr. will carry SB 2066 to the floor.

Meeting adjourned.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2066

Page 1, line 3, before "43-20-03" insert "43-20-01.3,"

Page 1, line 3, after "43-20-13.2," insert "43-28-03, 43-28-04"

Page 1, line 3, delete "and"

Page 1, line 3, after "43-28-18.2" insert "and 43-28-15"

Page 1, after line 6, insert:

SECTION 1. AMENDMENT. Section 43-20-01.3 of the North Dakota Century Code is amended and reenacted as follows:

43-20-01.3. Licensure by credential review.

Applications for licensure to practice dental hygiene by credential review must be made on forms provided by the board and submitted thirty days before the examination administered by the board. The board may issue a license and certificate of registration to practice dental hygiene to an applicant who meets all of the following requirements:

1. The applicant, ~~for at least~~ within the ~~three~~five years immediately preceding application, has been licensed in good standing and has been actively practicing dental hygiene in another jurisdiction where the requirements are at least substantially equivalent to those of this state.
2. Grounds for denial of the application under section 43-20-05 do not exist.
3. The applicant has paid to the board the fee established by the board by rule.
4. The applicant has delivered to the board a certificate from the examining or licensing board of every jurisdiction in which the individual is licensed to practice, certifying that the individual is a licensed and registered dental hygienist in good standing in that jurisdiction.
5. The applicant has passed a written examination on the laws and rules governing the practice of dentistry in this state administered by the board at a meeting.

6. The applicant has met any requirement for licensure established by the board by rule."

Page 1, line 7, change "1" to "2"

Page 1, line 20, change "2" to "3"

Page 2, line 4, change "3" to "4"

Page 2, delete line 18

Page 2, after line 18, insert:

"SECTION 5. AMENDMENT. Section 43-28-03 of the North Dakota Century Code is amended and reenacted as follows:

43-28-03. State board of dental examiners – Members – Appointment – Terms of office – Oath – Vacancies. The state board of dental examiners consists of ~~seven~~ eight members appointed by the governor. The membership of the board must include five dentist members, one dental hygienist member, one registered dental assistant and one consumer member. Appointment to the board is for a term of five years, with terms of office arranged so that one term expires on March sixteenth of each year, except that each fifth year there must be two new board members appointed, one of whom is a dentist and the other a dental hygienist and two years later two new board members must be appointed, one of whom is a dentist, and one of whom is a consumer member. ~~The first five-year term of the consumer member commences on July 1, 1993, and continues through March 15, 1998.~~ Each member of the board shall hold office until a successor is appointed and qualified. Persons appointed to the board shall qualify by taking the oath required of civil officers. No member may serve more than ten years or two 5-year terms of office. If the terms of three or more board members expire in the same year, the governor may elect to extend the term of one or more board member whose term is expiring for one year. If a member of the board is absent from two consecutive regular meetings, the board may declare a vacancy to exist. All vacancies on the board must be filled by the governor by appointment."

SECTION 6. AMENDMENT. Section 43-28-04 of the North Dakota Century Code is amended and reenacted as follows:

43-28-04. Qualifications and appointment of members of the board - Limited vote.

1. An individual may not be appointed as a dentist member of the board unless that individual:

- a. Is a dentist licensed and registered under this chapter; and
- b. Is actively engaged in the practice of dentistry and has been so engaged in this state for at least five years immediately preceding the appointment.

2. An individual may not be appointed as the dental hygienist member of the board unless that individual:

- a. Is a licensed and registered dental hygienist in accordance with chapter 43-20; and
- b. Is actively engaged in the practice of dental hygiene and has been so engaged in this state for at least five years immediately preceding the dental hygienist's appointment.

3. An individual may not be appointed as the consumer member of the board unless that individual:

- a. Has been a resident of North Dakota for five years immediately preceding appointment;
- b. Has no personal or family financial relationship with the dental profession; and
- c. Is not a dentist, a dental hygienist, a dental assistant, a physician, a nurse, or the spouse of an individual engaged in any of those occupations.

4. An individual may not be appointed as the registered dental assistant member of the board unless that individual :

- a. Is a registered dental assistant in accordance with chapter 43-20; and
- b. Is actively engaged in the practice of dental assistant and has been so engaged in this state for at least five years immediately preceding the dental assistant's appointment.

5. The dental hygienist , the registered dental assistant and consumer member of the board shall exercise full voting privileges in all areas except that the dental hygienist may not participate in the clinical examination of dentists for licensure and the consumer member and the registered dental assistant may not participate in the clinical examination of dentists or hygienists for licensure.

Page 2, line 19, change “4” to “7”

Page 2, line 24, delete “for at least” and insert immediately thereafter “within the”

Page 3, line 6, change “5” to “8”

Page 3, line 29, change “6” to “9”

Page 5, after line 4, insert:

“SECTION 10. AMENDMENT. Section 43-28-25 of the North Dakota Century Code is amended and reenacted as follows:

43-28-25. Unlawful acts - Penalty. It is a class A misdemeanor:

1. For any unlicensed person to construct, alter, repair, or duplicate any denture, partial denture, bridge, splint, or orthodontic or prosthetic appliance, except as provided by rule adopted by the board.
2. For any person:
 - a. To falsely claim or pretend to be a graduate from any dental college or the holder of any diploma or degree from such college;
 - b. To practice any fraud and deceit either in obtaining a license or a certificate of registration;
 - c. To falsely claim or pretend to have or hold a license or certificate of registration from the board to practice dentistry; or
 - d. To practice dentistry in this state without a license and certificate of registration.
3. For any person, except a dentist, to own more than forty-nine percent of an office practice or business at which the practice of dentistry is performed. This provision does not apply to a board-approved medical clinic, hospital, or public health setting with which a dentist is associated; a board-approved nonprofit organization created to serve the dental needs of an underserved population; or the heir or personal representative of a deceased dentist. The

board may inspect and approve a medical clinic, hospital, public health setting, or nonprofit organization at which the practice of dentistry is performed. The heir or personal representative ~~may~~shall appoint a dentist to operate an office under the name of the deceased dentist for a period of not longer than two years from the date of the dentist's death.

The board may institute a civil action for an injunction prohibiting violations of this section without proof that anyone suffered actual damages."

Page 5, line 5, change "7" to "11"

Page 5, line 9, after "dentist" insert "or dentists"

Page 5, line 9, after "director" insert "or directors"

Page 5, line 28, delete the semicolon and insert a period.

Page 5, delete line 29

Renumber accordingly

SB 2066 Amendment

Section 43-28-02.1 of the North Dakota Century Code is created and enacted as follows:

43-28-02.1. Tribal sovereignty.

This section reaffirms the sovereignty of native American tribes in the state. The legislative assembly recognizes that in accordance with federal law, a native American tribe in this state may authorize a dental provider, who is licensed, certified, or otherwise sanctioned by another jurisdiction to provide dental services, to provide dental services on that Indian reservation.

February 24, 2015

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PROPOSED AMENDMENTS TO SENATE BILL NO. 2066

Page 1, line 1, replace "section" with "sections 43-28-02.1 and"

Page 1, line 2, after the first "to" insert "tribal sovereignty and"

Page 1, line 2, remove the first "and"

Page 1, line 2, after "sections" insert "43-20-01.3,"

Page 1, line 3, after the third comma insert "43-28-03, 43-28-04,"

Page 1, line 3, remove "and"

Page 1, line 3, after "43-28-18.2" insert ", and 43-28-25"

Page 1, line 5, after "dentists" insert "; and to provide a penalty"

Page 1, after line 6, insert:

"SECTION 1. AMENDMENT. Section 43-20-01.3 of the North Dakota Century Code is amended and reenacted as follows:

43-20-01.3. Licensure by credential review.

Applications for licensure to practice dental hygiene by credential review must be made on forms provided by the board and submitted thirty days before the examination administered by the board. The board may issue a license and certificate of registration to practice dental hygiene to an applicant who meets all of the following requirements:

1. The applicant, ~~for at least three~~ within the five years immediately preceding application, has been licensed in good standing and has been actively practicing dental hygiene in another jurisdiction where the requirements are at least substantially equivalent to those of this state.
2. Grounds for denial of the application under section 43-20-05 do not exist.
3. The applicant has paid to the board the fee established by the board by rule.
4. The applicant has delivered to the board a certificate from the examining or licensing board of every jurisdiction in which the individual is licensed to practice, certifying that the individual is a licensed and registered dental hygienist in good standing in that jurisdiction.
5. The applicant has passed a written examination on the laws and rules governing the practice of dentistry in this state administered by the board at a meeting.
6. The applicant has met any requirement for licensure established by the board by rule."

Page 2, line 17, remove the underscored period

Page 2, line 18, remove "4. The applicant met any requirement for registration established by the board by rule"

Page 2, after line 18 insert:

"**SECTION 5.** Section 43-28-02.1 of the North Dakota Century Code is created and enacted as follows:

43-28-02.1. Tribal sovereignty.

This section reaffirms the sovereignty of native American tribes in the state. The legislative assembly recognizes that in accordance with federal law, a native American tribe in this state may authorize a dental provider, who is licensed, certified, or otherwise sanctioned by another jurisdiction to provide dental services, to provide dental services on that Indian reservation.

SECTION 6. AMENDMENT. Section 43-28-03 of the North Dakota Century Code is amended and reenacted as follows:

43-28-03. State board of dental examiners - Members - Appointment - Terms of office - Oath - Vacancies.

The state board of dental examiners consists of ~~seven~~eight members appointed by the governor. The membership of the board must include five dentist members, one dental hygienist member, one registered dental assistant member, and one consumer member. Appointment to the board is for a term of five years, with terms of office arranged so that one term expires on March sixteenth of each year, except that each fifth year there must be two new board members appointed, one of whom is a dentist and the other a dental hygienist ~~and~~, two years later two new board members must be appointed, one of whom is a dentist, and one of whom is a consumer member, and two years later two new board members must be appointed, one of whom is a dentist and one of whom is a registered dental assistant. ~~The first five-year term of the consumer member commences on July 1, 1993, and continues through March 15, 1998.~~ Each member of the board shall hold office until a successor is appointed and qualified. Persons appointed to the board shall qualify by taking the oath required of civil officers. No member may serve more than ten years or two 5-year terms of office. If the terms of more than two board members expire in the same year, the governor may extend for no more than two years the terms of one or more of those board members in order to comply with this section. If a member of the board is absent from two consecutive regular meetings, the board may declare a vacancy to exist. All vacancies on the board must be filled by the governor by appointment.

SECTION 7. AMENDMENT. Section 43-28-04 of the North Dakota Century Code is amended and reenacted as follows:

43-28-04. Qualifications and appointment of members of the board - Limited vote.

1. An individual may not be appointed as a dentist member of the board unless that individual:
 - a. Is a dentist licensed and registered under this chapter; and

- b. Is actively engaged in the practice of dentistry and has been so engaged in this state for at least five years immediately preceding the appointment.
- 2. An individual may not be appointed as the dental hygienist member of the board unless that individual:
 - a. Is a licensed and registered dental hygienist in accordance with chapter 43-20; and
 - b. Is actively engaged in the practice of dental hygiene and has been so engaged in this state for at least five years immediately preceding the dental hygienist's appointment.
- 3. An individual may not be appointed as the consumer member of the board unless that individual:
 - a. Has been a resident of North Dakota for five years immediately preceding appointment;
 - b. Has no personal or family financial relationship with the dental profession; and
 - c. Is not a dentist, a dental hygienist, a dental assistant, a physician, a nurse, or the spouse of an individual engaged in any of those occupations.
- 4. An individual may not be appointed as the registered dental assistant member of the board unless the individual:
 - a. Is a registered dental assistant under chapter 43-20; and
 - b. Is actively engaged in the practice of dental assistance in this state for at least five years immediately preceding the dental assistant's appointment.
- 5. The dental hygienist, the registered dental assistant, and consumer member of the board shall exercise full voting privileges in all areas except that the dental hygienist may not participate in the clinical examination of dentists for licensure and the registered dental assistant and the consumer member may not participate in the clinical examination of dentists or hygienists for licensure."

Page 2, line 24, overstrike "for at least" and insert immediately thereafter "within the"

Page 5, after line 4, insert:

"SECTION 11. AMENDMENT. Section 43-28-25 of the North Dakota Century Code is amended and reenacted as follows:

43-28-25. Unlawful acts - Penalty.

It is a class A misdemeanor:

- 1. For any unlicensed person to construct, alter, repair, or duplicate any denture, partial denture, bridge, splint, or orthodontic or prosthetic appliance, except as provided by rule adopted by the board.

2. For any person:
 - a. To falsely claim or pretend to be a graduate from any dental college or the holder of any diploma or degree from such college;
 - b. To practice any fraud and deceit either in obtaining a license or a certificate of registration;
 - c. To falsely claim or pretend to have or hold a license or certificate of registration from the board to practice dentistry; or
 - d. To practice dentistry in this state without a license and certificate of registration.
3. For any person, except a dentist, to own more than forty-nine percent of an office practice or business at which the practice of dentistry is performed. This provision does not apply to a board-approved medical clinic, hospital, or public health setting with which a dentist is associated; a board-approved nonprofit organization created to serve the dental needs of an underserved population; or the heir or personal representative of a deceased dentist. The board may inspect and approve a medical clinic, hospital, public health setting, or nonprofit organization at which the practice of dentistry is performed. The heir or personal representative may ~~shall~~ appoint a dentist to operate an office under the name of the deceased dentist for a period of not longer than two years from the date of the dentist's death.

The board may institute a civil action for an injunction prohibiting violations of this section without proof that anyone suffered actual damages."

Page 5, line 9, after "dentist" insert "or dentists"

Page 5, line 9, after "director" insert "or directors"

Page 5, line 27, after the underscored semicolon insert "or"

Page 5, line 28, remove the first semicolon

Page 5, line 29, remove "or the heir or personal representative of a deceased dentist"

Renumber accordingly

Date: 03/18 2015
Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB2066

Senate Human Services Committee

☐ Subcommittee

Amendment LC# or Description: Attach #1/#2 15.8053.01001 Title .02000

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Larsen Seconded By Axness

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee (Chairman)	✓		Senator Tyler Axness	✓	
Senator Oley Larsen (V-Chair)	✓		Senator John M. Warner	✓	
Senator Howard C. Anderson, Jr.	✓				
Senator Dick Dever	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 02/18 2015
Roll Call Vote #: 2

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB2066

Senate Human Services Committee

☐ Subcommittee

Amendment LC# or Description: 15.8053.01001 Title .02000

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Larsen Seconded By Warner

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee (Chairman)	✓		Senator Tyler Axness	✓	
Senator Oley Larson (V-Chair)	✓		Senator John M. Warner	✓	
Senator Howard C. Anderson, Jr.	✓				
Senator Dick Dever	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Anderson

If the vote is on an amendment, briefly indicate intent:

Date: 02/24 2015

Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE ROLL CALL VOTES

Senate	Human Services	Committee
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☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☒ Reconsider ☐

Motion Made By Oliver Seconded By Larsen

[illegible]

Total	(Yes)	No
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Absent

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Date: 02/24 2015
Roll Call Vote #: 2

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB2066

Senate Human Services Committee

☐ Subcommittee

Amendment LC# or Description: Tribal Sovereignty (Attach#3)

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Dever Seconded By Larsen

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee (Chairman)	✓		Senator Tyler Axness	✓	
Senator Oley Larsen (V-Chair)	✓		Senator John M. Warner	✓	
Senator Howard C. Anderson, Jr.	✓				
Senator Dick Dever	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 02/24 2015
Roll Call Vote #: 3

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2066

Senate Human Services Committee

☐ Subcommittee

Amendment LC# or Description: 15.8053.01002 Title . 03000

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Larsen Seconded By Axness

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee (Chairman)	✓		Senator Tyler Axness	✓	
Senator Oley Larsen (V-Chair)	✓		Senator John M. Warner	✓	
Senator Howard C. Anderson, Jr.	✓				
Senator Dick Dever	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Anderson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2066: Human Services Committee (Sen. J. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2066 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "section" with "sections 43-28-02.1 and"

Page 1, line 2, after the first "to" insert "tribal sovereignty and"

Page 1, line 2, remove the first "and"

Page 1, line 2, after "sections" insert "43-20-01.3,"

Page 1, line 3, after the third comma insert "43-28-03, 43-28-04,"

Page 1, line 3, remove "and"

Page 1, line 3, after "43-28-18.2" insert ", and 43-28-25"

Page 1, line 5, after "dentists" insert "; and to provide a penalty"

Page 1, after line 6, insert:

"SECTION 1. AMENDMENT. Section 43-20-01.3 of the North Dakota Century Code is amended and reenacted as follows:

43-20-01.3. Licensure by credential review.

Applications for licensure to practice dental hygiene by credential review must be made on forms provided by the board and submitted thirty days before the examination administered by the board. The board may issue a license and certificate of registration to practice dental hygiene to an applicant who meets all of the following requirements:

1. The applicant, ~~for at least three~~within the five years immediately preceding application, has been licensed in good standing and has been actively practicing dental hygiene in another jurisdiction where the requirements are at least substantially equivalent to those of this state.
2. Grounds for denial of the application under section 43-20-05 do not exist.
3. The applicant has paid to the board the fee established by the board by rule.
4. The applicant has delivered to the board a certificate from the examining or licensing board of every jurisdiction in which the individual is licensed to practice, certifying that the individual is a licensed and registered dental hygienist in good standing in that jurisdiction.
5. The applicant has passed a written examination on the laws and rules governing the practice of dentistry in this state administered by the board at a meeting.
6. The applicant has met any requirement for licensure established by the board by rule."

Page 2, line 17, remove the underscored period

Page 2, line 18, remove "4. The applicant met any requirement for registration established by the board by rule"

Page 2, after line 18 insert:

"**SECTION 5.** Section 43-28-02.1 of the North Dakota Century Code is created and enacted as follows:

43-28-02.1. Tribal sovereignty.

This section reaffirms the sovereignty of native American tribes in the state. The legislative assembly recognizes that in accordance with federal law, a native American tribe in this state may authorize a dental provider, who is licensed, certified, or otherwise sanctioned by another jurisdiction to provide dental services, to provide dental services on that Indian reservation.

SECTION 6. AMENDMENT. Section 43-28-03 of the North Dakota Century Code is amended and reenacted as follows:

43-28-03. State board of dental examiners - Members - Appointment - Terms of office - Oath - Vacancies.

The state board of dental examiners consists of ~~seven~~eight members appointed by the governor. The membership of the board must include five dentist members, one dental hygienist member, one registered dental assistant member, and one consumer member. Appointment to the board is for a term of five years, with terms of office arranged so that one term expires on March sixteenth of each year, except that each fifth year there must be two new board members appointed, one of whom is a dentist and the other a dental hygienist ~~and~~, two years later two new board members must be appointed, one of whom is a dentist, and one of whom is a consumer member, and two years later two new board members must be appointed, one of whom is a dentist and one of whom is a registered dental assistant. ~~The first five-year term of the consumer member commences on July 1, 1993, and continues through March 15, 1998.~~ Each member of the board shall hold office until a successor is appointed and qualified. Persons appointed to the board shall qualify by taking the oath required of civil officers. No member may serve more than ten years or two 5-year terms of office. If the terms of more than two board members expire in the same year, the governor may extend for no more than two years the terms of one or more of those board members in order to comply with this section. If a member of the board is absent from two consecutive regular meetings, the board may declare a vacancy to exist. All vacancies on the board must be filled by the governor by appointment.

SECTION 7. AMENDMENT. Section 43-28-04 of the North Dakota Century Code is amended and reenacted as follows:

43-28-04. Qualifications and appointment of members of the board - Limited vote.

1. An individual may not be appointed as a dentist member of the board unless that individual:
 - a. Is a dentist licensed and registered under this chapter; and
 - b. Is actively engaged in the practice of dentistry and has been so engaged in this state for at least five years immediately preceding the appointment.
2. An individual may not be appointed as the dental hygienist member of the board unless that individual:
 - a. Is a licensed and registered dental hygienist in accordance with chapter 43-20; and

- b. Is actively engaged in the practice of dental hygiene and has been so engaged in this state for at least five years immediately preceding the dental hygienist's appointment.
- 3. An individual may not be appointed as the consumer member of the board unless that individual:
 - a. Has been a resident of North Dakota for five years immediately preceding appointment;
 - b. Has no personal or family financial relationship with the dental profession; and
 - c. Is not a dentist, a dental hygienist, a dental assistant, a physician, a nurse, or the spouse of an individual engaged in any of those occupations.
- 4. An individual may not be appointed as the registered dental assistant member of the board unless the individual:
 - a. Is a registered dental assistant under chapter 43-20; and
 - b. Is actively engaged in the practice of dental assistance in this state for at least five years immediately preceding the dental assistant's appointment.
- 5. The dental hygienist, the registered dental assistant, and consumer member of the board shall exercise full voting privileges in all areas except that the dental hygienist may not participate in the clinical examination of dentists for licensure and the registered dental assistant and the consumer member may not participate in the clinical examination of dentists or hygienists for licensure."

Page 2, line 24, overstrike "for at least" and insert immediately thereafter "within the"

Page 5, after line 4, insert:

"SECTION 11. AMENDMENT. Section 43-28-25 of the North Dakota Century Code is amended and reenacted as follows:

43-28-25. Unlawful acts - Penalty.

It is a class A misdemeanor:

- 1. For any unlicensed person to construct, alter, repair, or duplicate any denture, partial denture, bridge, splint, or orthodontic or prosthetic appliance, except as provided by rule adopted by the board.
- 2. For any person:
 - a. To falsely claim or pretend to be a graduate from any dental college or the holder of any diploma or degree from such college;
 - b. To practice any fraud and deceit either in obtaining a license or a certificate of registration;
 - c. To falsely claim or pretend to have or hold a license or certificate of registration from the board to practice dentistry; or
 - d. To practice dentistry in this state without a license and certificate of registration.

3. For any person, except a dentist, to own more than forty-nine percent of an office practice or business at which the practice of dentistry is performed. This provision does not apply to a board-approved medical clinic, hospital, or public health setting with which a dentist is associated; a board-approved nonprofit organization created to serve the dental needs of an underserved population; or the heir or personal representative of a deceased dentist. The board may inspect and approve a medical clinic, hospital, public health setting, or nonprofit organization at which the practice of dentistry is performed. The heir or personal representative ~~may~~shall appoint a dentist to operate an office under the name of the deceased dentist for a period of not longer than two years from the date of the dentist's death.

The board may institute a civil action for an injunction prohibiting violations of this section without proof that anyone suffered actual damages."

Page 5, line 9, after "dentist" insert "or dentists"

Page 5, line 9, after "director" insert "or directors"

Page 5, line 27, after the underscored semicolon insert "or"

Page 5, line 28, remove the first semicolon

Page 5, line 29, remove "or the heir or personal representative of a deceased dentist"

Renumber accordingly

2015 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2066

2015 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Peace Garden Room, State Capitol

SB 2066
3/11/2015
24671

- ☐ Subcommittee
☐ Conference Committee



Explanation or reason for introduction of bill/resolution:

The practice & licensing of dental assistants & hygienists & dentists and provide a penalty.

Minutes:

Attachment 1, 2, 3, 4, 5, 6, 7, 8, 9

Chairman Keiser: Opens the hearing SB 2066.

Jack McDonald~On behalf of the Board of Dental Examiners: I would like to introduce the executive director of the board of North Dakota Examiners, Rita Sommers. This bill was introduced by the state board of dental examiners so she will go through this bill and explain it more fully.

Rita Sommers~Executive Director of the North Dakota Examiners: (Attachment 1).

Representative Becker: In section 1, you refer that you don't want a greater burden, it previously stated for at least three years so that would be a duration as far as I understand it. Now it's changing to within five years. Does that not remove the duration and simply say at any point in time five years previous you need to have been licensed, even if it was just for a tiny fraction of those five years?

Sommers: Yes, it can be for any amount of time within those five years, hence the requirement for the continuing education that has to be within two years of that application. It has to be two years preceding your application. So the requirement then is the same or equivalent as the dentist requirement.

Representative Becker: But previous it was for a full duration of three years?

Sommers: Yes.

Chairman Keiser: In section 2, is there a definition of indirect?

Sommers: Yes, it's in the rules. Indirect supervision means that a dentist is in the dental office of a treatment facility, has personally diagnosed the condition to be treated,

authorizes the procedure and remains in the dental office or treatment office while the procedures are being performed by the dental hygienist or dental assistant.

Chairman Keiser: Several years ago, I thought we corrected this section that said the arrival of the dentist was imminent, that the hygienist could begin to practice. I thought we would put in some language that said indirect also would include imminent arrival of the dentist for supervision.

Sommers: That was probably defeated. Continues with section 4, 5 of her testimony.

Chairman Keiser: Would you mind if Senator Dever reported on this section?

Senator Dick Dever: (Attachment 2) Passes out testimony from Dr. Don Warne. We believe it's important part of dental care. The issue is this; If a dental or medical provider is licensed to do business through IHS(Indian Health Services) they are licensed in every state, they can do that. Without the clarification there is a question to their ability to collect reimbursement through Medicaid.

Chairman Keiser: Is my understanding correct that IHS, if they certify or license, any provider anywhere can provide services through HIS then those people are licensed on all tribal regions throughout the country, but the reimbursement for Medicaid there was a requirement in the federal legislation that states would have to improve them for their state to get access to the reimbursement. Is that the current status?

Senator Dever: That is my understanding. As far as mid-level dental providers I believe there are three other states that provide for that right now; Maine, Minnesota and Alaska.

Representative Ruby: The mid-level was discussed on the floor and defeated. So your body decided that that wasn't the way to go. Do you think it was appropriate to put this on a bill that basically was originated from the very group that didn't support that provision and then put back on after it had been defeated on the floor?

Senator Dever: The defeating of the bill was the concept in general. I think this provision allows for something that exists anyway on a federal basis. Senator Bekkedahl is a dentist and debated against SB 2354 but in support SB 2066. I think that says more than what I can say. This allows an opportunity to provide access on the reservation and I think its undeniable that there is a lack of access.

Representative Ruby: I have had natives working for me before and generally they would go to the reservation for dental care because it was free and I was just wondering our stated policy as a state we don't necessarily want the mid-level practitioners to take on that other level which then would be at the state wide level would be reimbursed by Medicaid and the cases of people that qualified. Why would we allow them then to be reimbursed on the reservations when basically the tribes could allow it? What this is just basically going to do is make sure that Medicaid pays for it. The state has decided that we don't want to go there.

Senator Dever: One of the arguments that Senator Bekkedahl made against SB 2354 is that those decisions are made on a national level not a state level. This provision is to acknowledge that. It is an underserved population, that's one of the reasons for the Ronald McDonald Dental Mobile. The defeated SB 2354 was a direct result of the opposition of the dental professional.

Representative Kasper: You are talking about a number of issues that the bill maybe is trying to do more than what the issues are and he points out in his testimony that IHS funding is at 50 percent of the need across the nation. That's true, so there for it is difficult to get dentist or doctors to work at an IHS facility. That is a problem that is probably caused by something beyond the control of State of North Dakota or any of us in this room. That's an issue that probably will remain until the federal government gets their act together but you are talking about wanting Medicaid reimbursement for these services. Could we not get Medicaid reimbursement for services for dental care any other way than this bill?

Senator Dever: The question you may want to ask Maggie is what the level of Medicaid funding is, because I don't think it is a 50/50 match, 100 percent federal.

Representative Kasper: If a tribal member living on the reservation goes to IHS and there is no dentist there but a doctor gives them a referral to go see a dentist off the reservation, will that be reimbursed by IHS or will it not?

Senator Dever: I can't answer that.

Representative Ruby: If it's not adequate to attract dentist to work there, the problem isn't so much the treatment of the dental issues it's the ongoing maintenance. I don't know how this would fix that problem.

Senator Dever: You actually make the argument in favor of SB 2354 because a mid-level dentist would have more to do with prevention than with care following it. They would be more involved in the wellness part of it.

Representative Kasper: Line 11, on page 3, the amendment says this section reaffirms the sovereignty of Native American Tribes. I asked the intern to check about whether or not North Dakota even has the authority to reaffirm tribal sovereignty because its bestowed by the federal government. This bill came to us as an agency bill from the board of dental examiners, we didn't draft the language. I'm really not sure what the sentence adds to that section it seems rather meaningless but then I don't know what the boards motivation was. I don't really think it adds anything it isn't up to the state to reaffirm tribal sovereignty maybe it should say the state recognizes tribal sovereignty. Not saying I support that section at all but I do not like the word reaffirmed, do you have a problem with changing that to maybe more appropriate language for the state of North Dakota?

Senator Dever: I think the language was intentional. I was not a part of drafting that but I know others that were and I think Jennifer Clark may have been involved with that in legislative counsel. I agree with you.

Chairman Keiser: If the committee decides this an option to pursue, should we not amend it so it would only come into play if that funding we actually available?

Senator Dever: I wouldn't have a problem with that as we stand here.

Maggie Anderson ~ Department of Human Services: (Attachment 3).

Representative Becker: You can't selectively add a new category of provider and place them only on the reservations that would be counter to what the senate just voted down? It sounds like without this amendment it is already taken care of because if the midlevel is there and licensed in another state and is under the supervision of a dentist they don't need us to do anything they are already going to be covered under the IHS Medicaid contract, is that correct?

Anderson: The Indian Health Care Improvement Act authorized this to be part of the big picture but what we are being told is that the state would still need language to insure that the state could take advantage of that. That is the piece that they did not answer here and we just haven't had time this morning to circle back with them. I don't want to say no we don't need the language and then that language being the key for us to access the 100 percent funding.

Representative Becker: Do we need language? Do you feel that if we did need language that this is the language? It seems that it goes beyond or is parallel to somewhat different language that would be needed to accomplish what they are saying.

Anderson: Based on the conversation I don't think they weren't concerned about the language they were just concerned about how we were going to go about that as a state and whether we were asking for those advanced practice hygienist to practice independently and therefor have to be an in rolled Medicaid provider or have practice under a dentist. I don't think if you struck the like with sovereignty or reworded that I don't think it would impact the Medicaid piece of it.

Representative Ruby: I don't see the need for the additional language. I am assuming if IHS tribes utilize them under dentist and the services are reimbursable and hygienist work under dentist then the state would pay the same manor and not require local licensure for the dentist or the hygienist specified in Medicaid regulations and the Indian Health Care Improvement Act. The licensure provisions apply regardless of North Dakotas actions on the bill before them.

Anderson: I agree. This was cut and pasted from someone at CMS.

Representative Ruby: We need an affirmation more than we need the language.

Representative Kasper: The paragraph it specifically states when hygienist work under dentist and further up under a dentist, it appears to me that it's clear that IHS is saying that the hygienist must be under the supervision of the dentists. Would you interpret that so far that that is how you are receiving the information to do it that way.

Anderson: Yes, they would have to be under the dentist because it is a dentist that we currently recognize in the Medicaid state plan.

Representative Boschee: IHS dental reaches about 50 percent of the need throughout the country. Do you have an idea based on our population, our state and our specific reservations how many dentists are there serving that population?

Anderson: No, I am not. I wasn't sure about that comment if it was 50 percent if they are funded at 50 percent of what they need or if the capacity of the providers is 50 percent. I often hear the part about the funding. There was the question earlier about if someone is referred off the reservation, there is a program within IHS called contract health services, so if someone cannot receive a specific service at IHS services because they don't have it they can refer them through IHS through contract health and say ok we are giving you a voucher to go to Trinity Health Care in Minot for that service. Often what we hear is contract health of course is also limited in funding. The provider then has to accept that agreement with contract health. If this piece is still focusing on IHS the dentist that works at IHS and the hygienist they would have to be located at the IHS.

Representative Kasper: Can a medical doctor, not a dentist, who is located at IHS in Standing Rock or Belcourt are they able to refer someone to a dental practitioner if they are not a dentist?

Anderson: I would assume within that practitioners scope of practice if that is an appropriate referral for them to make, that they identify something as they are doing a physical examination of the body that they could make that referral just because they make the referral we would not receive 100 percent Medicaid funding for that. That would be our regular funding and then the scope of practice in the rules of the board would apply to that.

Representative Kasper: That would be that encounter rate that you discussed?

Anderson: No. The dentists out in the community do not receive that encounter rate that is only IHS. Once you refer outside of IHS you do not receive the encounter rate.

Representative Kasper: What do you receive?

Anderson: You receive the Medicaid fee schedule if that person is Medicaid eligible.

Brad Bekkedahl~District 1: Just to answer a couple of questions; one of them was the number of dentists; from my research the four North Dakota reservations have three IHS dental clinics. One contracted non IHS which we call a tribal 638 dental clinic which is three affiliated tribes in New Town and the one contracted clinic which is also tribal 638 at Trenton where I served. Out of the 14 dentist positions in the state 13 of those are filled. There is no six month waiting list at those clinics and emergencies are seen daily. They are more highly staffed right now than they have ever been in my experience with the IHS. A couple of points I would like to make just for your information IHS currently does not recognize any type of mid-level dental provider and has no funding for that in North Dakota to provide for any. Those decisions are made at a national level not at a state or even regional level. Minnesota where dental mid-levels are allowed has never had any dental

therapist at the reservation sites in the six years that they have been allowed by Minnesota law. The language that is in the bill, amendment number five, references some Indian Health Care Improvement Act at the federal level and specifically what I says is dental hygiene advanced therapist will be permitted in the community health aid program if requested by an Indian tribe or tribal organization located in the state in which the use of dental hygiene advanced therapist or mid-level provider services is authorized under state law to supply such services with the state law. So I think the language you see before you in reaffirming the tribal sovereignty and that deals with this specific program. The only thing that I would bring to the committees attention on that issue is when it talks about authorized under state law to provide such services, if requested by an Indian tribe or tribe organization located in that state what the community health aid program talks about is referenced here is allowing and out of state licensed person to come in to the state of North Dakota and provide that service. The issue that is a concern with me as a dentist from a quality of care stand point I don't think those issues have been answered completely yet and the one area that concerns me is in the state of Alaska their program which they license the participants to which could come here under this language, is essentially you get out of high school and take a two year program and you become a dental therapist. The program that was before the senate actually was a higher level of degree training as well as more hours of service so that offers more protections and that was turned down in the senate. I have concerns about who can come in here and provide service now. I also recognize that it is the tribe's right to do that and bring in what they think is best for their people. I would never stand in the way of that issue.

Representative Kasper: Under the current scope of dental practice for dental hygienist in North Dakota, are they required to be under the direct or indirect supervision of a dentist?

Bekkedahl: Under the current law, in my practice what I have always done as I have always been in clinic when they are servicing my patients. Under current law they can be servicing patients that have been seen within the last year by the dentist without the dentist being present in the clinic.

Representative Kasper: Is there a limit under current law to the scope of practice that a dental hygienist can participate in?

Bekkedahl: There are limits.

Representative Kasper: Are you comfortable.

Bekkedahl: Personally I am, because I have dealt with it for 31 years and it has worked well for me.

Representative Kasper: Under the amendment in this bill, does this in anyway limit or increase the scope of practice of a dental hygienist compared to current North Dakota law?

Bekkedahl: I do believe it increases the scope of practice.

Representative Kasper: Are you comfortable with that possibility?

Bekkedahl: I know there are states that have allowed those increases and are comfortable with them. I personally would not be at this stage.

Chairman Keiser: Anyone else to speak in support of section of the bill, opposition?

Dr. Brent Holman ~ Executive Director of the North Dakota Dental Association: (Attachment 4).

Dale Brewster ~ On the Board of Dental Exams: To me one of the most important things is happening next door on loan repayment for student. In North Dakota we are licensing more dentists than we ever have and I think just the free enterprise system will take care of some of that problem. I have travel the United States a lot going to dental schools doing board exams when graduates have to have patients based exams. I think from the stand point of dental manpower, I really truly don't think there is a problem as our numbers have gone up. Someone had asked if you don't have a dentist at a site and they are referred out will they be seen? If they are sent out with what is called a purchase order. This idea of not being reimbursed, I thought that the clinic had a state Medicaid number. I have one in my private practice but I think the clinic itself had a number that all the reimbursement went through. From the stand point IHS, from the federal system in the United States. IHS does not recognize advanced dental therapist. There is no position for it and what I have been told by calling two service units there are no plans in the future to have a slot for dental therapists. In the US military or the IHS all that a dentist or a hygienist needs is a valid license from any state in the United States and they can serve at any IHS in the United States.

Representative Kasper: Does section 5 expand the scope of practice of the dental hygienist under current North Dakota law to allow to work without the supervision of a dentist and do what they desire or does it limit them?

Brewster: The addition is the only part that I have a problem with because I think it is an end run to open up means that aren't even legal in North Dakota. What the board proposed, we had some expanded functions that are included in that where hygienist could do some additional duties.

Representative Kasper: This will allow them to do more?

Brewster: The one thing I would have on that is the tribal sovereignty has always been there, so I don't know why we have to address that. Where I work at New Town there has never been a question. As far as a board we have no control over the dentist and hygienists on the reservation. If there is a grievance and somehow we get wind of it, we have no control unless it is serious.

Representative M Nelson: Is the scope of practice of a dentist and a dental hygienist in IHS exactly the same as the scope of practice would be in North Dakota?

Brewster: I would say yes.

Representative M Nelson: If you were licensed in California would you be limited to the scope of practice of California?

Brewster: If you are practicing in North Dakota it should be relegated to what is legal here.

Representative M Nelson: What you are saying is you don't really know for sure but you can't remember any differences.

Brewster: We don't have control of it. I don't know.

Representative Ruby: Moves to strike section 5.

Representative Kasper: Seconded.

Representative Kasper: The testimony I think is pretty clear, is the IHS is the supervisor of the medical health services of the tribes, reservation and wherever they are located. We have no control over their scope of practice. This is potentially opening a loop whole that would allow unlimited practice by a dental hygienist without the supervision of a dentist and I don't think that is right. I don't think it's good for the consumers whether they are on the reservation or not. I don't think it's good to have it in North Dakota statute. So I think the senate spoke correctly the first time when they killed the bill on the floor.

Representative Devlin: I would oppose the motion. We don't always want to recognize the sovereignty of the tribes but they certainly have the rights under the sovereign issue to use IHS and use the medical providers that they want and its essentially to me is just to allow them to get the Medicaid reimbursement for somebody that IHS believes can meet the very definite needs on the tribe. I don't get very upset about the fact that someone added something that was defeated in one bill to another bill, but if we don't want to do that we can eliminate the last two weeks of the session.

Representative Hanson: In previous discussion we had talked about the word affirm and something queasiness with that, I just want to gage the committee's temperature I guess was the make of the motion deemed irrelevant? Does the whole section need to be struck or with that language being fixed would that alleviate the concerns of that section?

Representative Ruby: Whether we use reaffirm or acknowledge to me its patronizing language to begin with. This attempting to get IHS is established but basically I do think that the whole intent is to get this into North Dakota law to legitimize mid-level care.

Representative Kasper: Regardless to what we do with this bill and this section 5, has no influence whatsoever on the sovereignty of the tribes. It has no influence whatsoever on IHS we have no authority in either respect to do anything with it. This deals only from my perspective with an opportunity to expand the scope of practice that is not currently recognized as being in the scope of practice and with the language as it is written there is no definitions, no limitation which is a large concern for me.

Representative Hanson: There seems to be the contrast between what we can get for reimbursement verses the language here that allows the nose under the tent for mid-level

practitioners. I would agree that the language was condescending, affirms is just an inappropriate term to have in century code. We are something we aren't something we don't reassure something happening.

Chairman Keiser: This is clearly a mid-level practice concept and you have to be aware of that. The other side of the coin is they can do what they want but it is my understanding that the federal legislation and Senator Dorgan was responsible for putting the clause on the legislation that said the funding's available from IHS with the provision that the states authorize it. Yes they are sovereign they can do what they want but if you want them to have access to the funding the state has to approve it but if you don't want a mid-level program then you defeat this.

Representative Kasper: Under current IHS law now dentists are available, the dentist can practice, the hygienist can practice and the reimbursement is there from IHS. So under the current law what the dental people are doing, what the assistance are doing, what the hygienists are doing is what is considered proper scope for practicing in the state of North Dakota and I like it that way.

Representative Ruby: You are right, if we changed our rule we would have to do it across the state and then IHS would get reimbursed for that mid-level care separate from being under a dentist. I got a few emails from tribal members who said we don't want so a reduction of the type of professional care that we are receiving. We shouldn't be treated any less than anyone else. I think you are exactly right and that is the whole point of this. If all the sudden the state approves it for this area then all the sudden it comes back and says well we can't for just that area it would have to be a state wide approach then we are going to be caught again trying to fix our law to allow it state wide or make the decision not to have it. I think the whole discussion is about the mid-level care and it's there as long as it is under a dentist and I think that is the way it should stay.

Representative Devlin: I see it differently. I think what we are trying to do here is dictate to a sovereign nation what they can chose through their tribal counsel, IHS or whatever which type of dental practice they can use on sovereign tribal land to fit the needs that they have. It is entirely different than anywhere else in the state that you might try and regulate. We are trying to dictate to a sovereign nation that they cannot use something that they believe is needed for members of their tribe. That's the difference.

Representative Lefor: My concern about section 5 is if we put this in statute that we are kind of bound by what other states do as well. I am going to support the motion I think it's the right thing to do.

Representative Boschee: I'm going to oppose the motion after listening to Representative Devlin I changed my mind. We know that a lot of people don't go into a dentist office or doctor's office on a regular basis and that's the roll that we see expanding with our dental hygienist in this mid-level practice. I know we keep using Alaska as a threshold because they are the minimum with the two year experience but Minnesota has additional requirements for a mid-level and by authorizing this the individual tribes can decide for themselves if they accept the Alaska mid-level or the Minnesota mid-level or a future mid-level that is created somewhere else and so I think we need to provide resources today for

these tribes, because otherwise we are going to be here in two years again having this conversation and the reality is the members of these tribes don't just stay in their tribal land they come to college in our communities so preventative care is important because then that healthcare need is carried off and so if we expect people to have to go four hour back home just to receive dental care when it could have been prevented before they even left and then had better oral health, better physical health and so forth in our communities I think this is the way to do that if the tribes want to authorize it in their own sovereignty.

Representative Becker: I'm going to support the motion. I think the argument in favor of it have been expressed by two representative on the committee here but in my opinion Maggie's testimony seems to undermined that argument and it seems as though it is extremely likely that all of the concerns that would have thought to be alleviated with this section 5 are already potentially alleviated by IHS or whatever the reservations want to do section 5 doesn't actually give anymore capability of fulfilling needs than whats there without it.

Chairman Keiser: We can't resolve this issue within out state a little better than we do. We have an oral correlation that is extremely active and has been throughout the entire interim and remains together. When we get to this issue its one of those issues that we really have a separation in the collation isn't really affective with. I really think that we need to give the collation another shot at the entire concept. Mid-level I get really frustrated with all the fence building that we get. There is a place for expanding practice in every area of medicine. It is ridiculous when we start building walls and fences that really aren't defensible. I am going to support the motion but send a message if it carries that it's time for all of our health groups to say North Dakota can lead in the future and developing an appropriate reasonable practice acts for all levels of healthcare providers.

Motion to Adopt Amendment to strike out section 5 line 8 page 3.

Motion made by Representative Ruby.

Seconded by Representative Kasper.

Total yes 10. No 4. Absent 1.

Motion Carries.

Sommers: Reads section 6 & 7 of her testimony (Attachment 1).

Chairman Keiser: Normally board have odd numbers so we don't have tie votes and this moves it to eight, is there a member that is a non-voting member than can vote in case of ties? Otherwise we are stuck.

Sommers: The board wasn't consulted on this but our Board President will not vote unless required.

Representative Ruby: Did you get information why the dental assistant was added?

Sommers: The explanation that I was given was that since the board didn't have a representative from the dental assistant community there should be one on the board.

Chairman Keiser: Do you license dental assistants?

Sommers: No, we register them.

Representative Lefor: You currently have seven board members, what qualifications do you have to be for the board now?

Sommers: We have five dentist members, one consumer member and one hygienist member for a total of seven.

Representative Lefor: Based on a faulty argument, can you explain what your feelings are in that?

Sommers: The rational that was given was that this person would represent their profession and the board is not about representing your profession. When you come into the board you take off your dental hat your dental hygiene hat and you are representing the public. We stress that to our board members so that was the basis for instituting our new member for our board and while the board is not opposed to it they want to make it very clear that that would not be a rational.

Representative Amerman: If you add this new board member and then the president doesn't vote only when a tie but if you had all eight members there and the president didn't vote that leaves seven so you aren't going to have a tie. So when does the president get to vote?

Sommers: We don't always have every member at every meeting.

Representative Ruby: I'd like to make a motion on page 3 line 19 to strike the word eight and remove the overstrike on the word seven and remove the new language on line 21 and line 27 as well on page 4.

Representative Lefor: Seconded.

Representative Becker: Does that change the wording on line 26, because their concerns where how many people the governor would have to reappoint based on the idea that they had eight members. Does it change any of those two new board members to one new board member?

Sommer: It wouldn't make any difference. On section 7 that all pertains to the dental assistance qualifications as well so the two pieces are tied together.

Rod St. Aubyn ~ North Dakota Dental Hygienist: If your intent is to go back to what was originally in the bill then you would be changing that back to the seven and removing the dental assistant from that and you also as you indicated would have to remove that section 7, the new language there. Going to extending that board appointment Representative Becker is correct. The original language had only one year additional for the governor and what happened was when they added the new board member for the dental assistant then Jennifer Clark had come up with this deal for the staggered term and she recommended

that that should go to two years if you are going to add that dental assistant. The other thing I might say is you have to keep in mind that whether it is a licensed or registered or whatever these people are regulated by this board. Now you can say well they don't represent the dentist, I hate to disagree with you but this board is very much supportive of anything with the dentist if there is anything against anything with the dental assistants, they actually asked for this by the board of dental examiners. So for them to say well we don't represent dentists, well they are representing dentists.

Representative Ruby: My goal was to get back to the 7 members and get it back to the way it was and not change the structure of it and have this even numbered structure. If they want to bring that to a bill next session we will give that its consideration on its own merits. I don't like the idea of doing it this way.

Representative Kasper: That is taken care of on the bottom of page 3 and top of page 4 where it talks about two board members expire the same the governor may extend for no more than two years in terms of one of our board members in order to comply with this section. I think the amendment covers the stager.

Representative Laning: Is this removing all of the dental assistant references then?

Chairman Keiser: That is correct.

Motion to on page 3 line 19 to strike the word eight and remove the overstrike on the word seven and remove the new language on line 21 and line 27 as well on page 4.

Motion made by Representative Ruby.

Seconded by Representative Lefor.

Total Yes 9. No 4. Absent 2.

Motion Carries.

Sommers: Reads section 8, 9 and 10 of her testimony (Attachment 1).

Representative Amerman: Who is the complaint committee are they part of the board?

Sommers: The complaint committee is part of the board but to launch a complaint or begin an investigation we require the full board to vote unless the complaint comes from a consumer or another party.

Representative Ruby: If this is enacted do you for see anytime where the whole board would ever be called to initiate or would it always be just relying on the one?

Sommers: I don't think it would happen all the time it just gives us a little bit more leeway.

Chairman Keiser: Subsection 1 I don't have a problem because it does require a board motion but in subsection 2 the president may direct a complaint committee that give a lot of power. Giving the president the authority where the board doesn't have to affirm that direction this puts in the law that they have to investigate it. Not that it would ever happen but that you would ever have a president that didn't have a real positive relationship with one individual. They could start directing a lot of complaints that way. Sometimes it

happens to people who read things differently than others. So they start directing a bunch of complaints and with subsection two the president could do that and the board doesn't have to affirm it as they do in subsection 1. Do you see that as a little bit of a problem?

Sommers: I don't see it as a problem, because if the board president or anybody on the board wanted to launch these investigations they could. This just puts it in writing and allows us to do things a little more expeditiously. The other thing is this is so much more of a protection to the consumer measure than it is any kind of a threat for a member of our body or a president or anybody to start making these kinds of issues. I don't see it as a problem.

Representative Becker: In section 8 it seems to me this potentially a substantial change. It went from at least three years to within five years and how that changed in section 1 and you indicated that it would make sense to make the requirement the same for dentists. I naturally assume that what you meant is how it currently exists for dentists that you are aligning them but in fact you are changing the dentists to also be within five years rather than at least five years. Can you give more explanation on what the purpose or the intention is for changing from within rather than at least?

Sommers: The applicant within the five years immediately rather than for at least that language is in other places in our statute and off the top of my head I can't come up with that. The intent of the other section and this is to be consistent. We do require a dentist. It delineates the license for examination and the license by examination and the license by credential is the number of years that you have to have been out of school and been practicing. That is this again. Then the piece about engaged in the practice of dentistry that is just to make sure that they were practicing clinical dentistry.

Representative Becker: Am I wrong in believing that if a dentist ceases practice 59 months and three weeks ago they would fall within the new guidelines?

Sommers: Yes you are correct however they still have to appear before the board with their required continuing education within the previous two years of application.

Rod St. Aubyn: What happened in the original bill it was changing for the dental hygienist from the three years to the five years with the understanding they said that they wanted to keep it consistent with what the dentist have but there was a real discrepancy with the way it was worded we interpreted it totally different than what they were saying. The actual practice they allow anytime within that five years that someone has been practicing for the credentials and they were going to change this. If you look at it the applicant on page one, the applicant for at least three years immediately preceding application has been licensed in good standing that is not how they were interpreting or practicing it. So the new language that has been changed here and in section 8 was really to bring it back into the way the board was actually practicing it. Even though the actual language did not appear like that to us we thought that was the other way.

Representative Becker: You would like us to make it legal what you have been doing?

Rod St Aubyn: Yes. It was to make the act reflective of what they have actually been doing. Then what they did was change the dental hygienist from three year to five years to make it consistent.

Sommers: By making the language the same in this section it gives the ability to provide ammeans for the board. If they did not think somebody was qualified for whatever reason the language is identical in section 43.28.13 and that section is called when reexamination is required and it says any dentist who does not undertake the actual practice of dentistry within five years. So we are stream lining all this language to be the same so when you read when is a reexamination required. When can you be licensed by credential it is all the same

Sommers: Reads section 11, 12 of her testimony (Attachment 1).

Representative Kasper: Under current North Dakota law does it require that a dentist who is licensed in the state of North Dakota own at least 51 percent of the dental practice?

Sommers: That is correct.

Representative M Nelson: There was a recent Supreme Court decision that a dental board was in an illegal restrain of train when they didn't allow other companies to do teeth whitening. So it basically came down to, because the board was a majority of market participants and it didn't have active state supervision that it was an illegal strain of trade. Has the board had discussion on how to avoid that situation?

Sommers: They have not had an opportunity to discuss the North Caroline FTC issue which centered on bleaching kiosks. But I would note that the last place that the board has had regarding bleaching kiosks have been referred to the States Attorney's office because we cannot go after some body without a dental licenses and those people that hold those bleaching kiosks don't have dental licenses. The other point that I would bring up about that I think the Supreme Court was wrong by the way, it is going to be interesting to see what happens with boards because of this. The point we were making earlier about having the dental assistant and the dentist on the board and Mr. St. Aubyn was saying that maybe you should have this person maybe you should have that. When you are talking about this case, no you shouldn't have a dental assistant you should have half consumers and half dentists but we do need out dentist and our hygienist they do exams and they fulfill a role that the dental assistant cannot. In that respect that is very important. If you really wanted to make a case for what happened it would be the state board will now be looking seriously at how many consumers they have on their board so that it wouldn't be issued as a monopoly or a trade issue.

Chairman Keiser: Anyone else here to testify

Rod St Aubyn~Behalf of the Dental Hygienists: (Attachment 5). We would like to add this amendment.

Representative Kasper: This collaborative agreement were allowed, would the dental hygienist that signed the agreement with the dentist be considered an employee of the dentist?

St Aubyn: That's my understanding.

Representative Kasper: Top of page 5 item C, it appears they could be an employee of two places then?

St Aubyn: Yes.

Representative Kasper: Item H on the last page, It does not state that the referral would go to the dentist that has employed the hygienist. It says that they hygienist can make a referral to anyone as long as they can give a copy to the collaborating dentist.

St Aubyn: I can't imagine why a dentist would be hiring someone not collaborating with them.

Representative Kasper: Item H is open ending. The way it is written it could go to anybody.

St Aubyn: If this dental hygienist is working for that dentist that collaborating dentist they should be referring it to that collaborating dentist. Why would they be referring patients to dentist B over here?

Sommers: Without actually seeing the document I can't really comment on the specifics of it but I can give you a little history, some of the things that Mr. St. Aubyn may have forgotten. At our last meeting a few days ago bridging the dental gap Marcia Olson and Kim from the health department came before the board to ask us to clarify the section which is there scope of practice on behalf of the care mobile and anyone else who was unsure about what the parameters of what the scope of practice were for hygienist who might not be working in public health or for bridging the dental gap. There scope of practice states that general supervision may be used if the procedures are authorized in advanced by the supervising dentist except procedures which may only be used under direct supervision as an established by the board by rule. The only thing there is administrating local anesthesia you can't do that under general supervision. The reason that this language was crafted this way was so that dentists and hygienist could work together with their employers and come up with their agreement. The board did not want to get involved in micromanaging how many hours a hygienist would have to have been working before they could enter into this kind of agreement or any of those types of details. However at the meeting the board agreed to come forward and provide a statement that would maybe provide some clarification and in the meantime perhaps work with not just the dental hygiene association but with all the stake holders in trying to come up with what a collaborative practice would look like and when I mean other stake holders I mean bridging the dental gap not just the board.

Chairman Keiser: I do encourage that we have to give some authority to other people and the coalition to work on.

Marcia Olson~Executive Director of Bridging the Dental Gap & a clinical partner with the Ronad McDonald Caremobile: (Attachment 6). (Attachment 7)-Testimony handed out by Marcia Olson who is representing the Oral Health Coalition.

Rochelle Gustafson ~ President of the North Dakota Dental Hygienist Association: The dental hygienists in North Dakota have been trying hard to work with the dental groups in the state for multiple years. Every time we try to present something to them we just kind of get shut down and sent on our way. Back in 2008 the previous president of our board mentioned collaborative practice and asked for it and we still have not gotten anywhere. Granted they did change the rules to add general supervision under the standing orders of the dentist. That is great that has helped some it's just that is not really defined real clearly in our rules or statute so hygienist aren't daring to use it so to say. We have our license to protect as well so we are concerned with that. We would just really like to see something more definite more clearly wrote. We would love to be working together with the groups that Marcia has just mentioned, it is challenging though we are all volunteers.

Chairman Keiser: What areas are you most concerned about that you are afraid would affect your licenses because we don't have it in code?

Rochelle: I think that the hygienists going out collaboratively need to have some experience. I think it is important that they have some work experience behind them. If something were to go wrong when we were off site that there would be no contract stating that the dentists knew we were doing this so then they could turn around and say no I didn't give her permission to do that so that's on her not on me. That should be on us as well but we just need that clarification and support of our collaborating dentists.

Dr. Brent Holman ~ Executive Director of the North Dakota Dental Association: (Attachment 8). (Attachment 9) Testimony from Tyler Winter-President of the North Dakota Dental Assistants Association.

Rod St Aubyn: You have to understand that this all didn't just happened and now all the sudden when we bring this up they get together and have a meeting yesterday and they get all their groups together to oppose this or that. Where were all they since 2008? Where were they when they put this on the agenda in January? That was a public notice anyone could have gone to that meeting and it wasn't even discussed. I can't tell you how frustrating it is. It is wonderful that they are willing to work on this. Why don't we offer this amendment and put a delayed implementation that way it forces them to do something about this by the next legislative session. I am not comfortable that anything is going to happened. I have found so many violations, open record, open meeting violations other violations of state law of the state board of dental examiners. It will become very public I guarantee it, but it is not working. I have to stress that. Every option that has been made available to this has been no, no, no. We don't even want to consider the mid-level position. We don't even want to consider the deal about the tribal sovereignty which I find comical because they say they have plenty of dentist but check the UND center for rural health dental study to see if we have plenty of coverage in the reservations, if people are really getting the care that they need. This is been so frustrating. We worked with the dental association on some of this, we have talked to the board of dental examiners on this

several times but all the sudden it's give us enough time that we can work on this. How much time do we need? We are the dental hygienists that are willing to go out there to these nursing homes. Are we having the dentist going to the nursing homes? Now we have the sealant program that the state is paying money for. This is something that can be done without any state money and we can expand. The dental hygienists are nervous about going out to perform some of these duties because there isn't a clarification. Should there be liability insurance? We think there should be. They even had to ask for a clarification on that as Marcia indicated. Why? This should already have been done a long time ago but unfortunately it isn't. SO this is one means that awe can address this dental access issue in North Dakota. One suggestion as I said to make sure that this gets done put a delayed implementation on this then. That way you are guaranteed this will happen then tweak it the next session but you can be guaranteed that this isn't just an empty promise

Dale Brewster: I don't like being painted as a bad guy and that is what we are being painted as. Mr. St. Aubyn says access to care, I want him to on our reservation our failure rate is 50 percent. We have the providers we need to figure out some other way to get the people there. The biggest problem I have is none of us on the board and we are here, we are appointed by the Governor to protect the people of North Dakota and I think we work at it adequately. We have not ever seen this draft that is being presented in front of you to implement and I have a real problem with that.

Representative Devlin: I move the amendment without the delay. I know that this started in 2008. I know if we put it off two years from now this committee will be dealing with it again and another two years would have went by with people in nursing homes or whatever that could have had some services under the direct supervision or collaboration of the dentist. It could have been done. Well just put it off for another two years and you will deal with it next session again and to me that is absolutely ridiculous. That is going to take seven to ten years to do something that is good for the people in North Dakota.

Representative Boschee: Second.

Motion to move the amendment without the delay.

Motion made by Representative Devlin.

Seconded by Representative Boschee.

Total yes 6. No 7. Absent 2.

Motion Failed.

Representative Ruby: I move a Do Pass As Amended.

Representative Sukut: Second.

Roll call was taken on SB 2066, for a Do Pass as Amended with 11 yes, 2 no, 2 absent and Representative Devlin will carry the bill. The floor assignment will be reassigned to Representative Ruby.

March 11, 2015

82
3/11/15

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2066

Page 1, line 1, replace "sections 43-28-02.1 and" with "section"

Page 1, line 3, remove "43-28-04,"

Page 3, remove lines 8 through 14

Page 3, line 19, remove the overstrike over "seven"

Page 3, line 19, remove "eight"

Page 3, line 21, remove "one registered dental assistant member."

Page 3, line 24, remove the overstrike over "and"

Page 3, line 24, remove the second the comma

Page 3, line 25, remove the overstrike over the second comma

Page 3, line 26, remove ", and two years later two new board members must be appointed, one of"

Page 3, line 27, remove "whom is a dentist and one of whom is a registered dental assistant"

Page 4, line 1, after the underscored comma insert "notwithstanding term limitations."

Page 4, remove lines 5 through 31

Page 5, remove lines 1 through 5

Renumber accordingly

Date: Mar 11, 2015Roll Call Vote: 1

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2066**

House Industry, Business & Labor Committee☐ Subcommittee☐ Conference CommitteeAmendment LC# or Description: See below

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
 Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep Ruby Seconded By Rep Kasper

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	x		Representative Lefor	x	
Vice Chairman Sukut	x		Representative Louser	x	
Representative Beadle	x		Representative Ruby	x	
Representative Becker	x		Representative Amerman	x	
Representative Devlin		x	Representative Boschee		x
Representative Frantsovog	Ab		Representative Hanson		x
Representative Kasper	x		Representative M Nelson		x
Representative Laning	x				

Total (Yes) 10 No 4Absent 1

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Strike sec 5
line 8, pg 3
Motion carried

Date: Mar 11, 2015Roll Call Vote: 2

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2066**

House Industry, Business & Labor Committee☐ Subcommittee☐ Conference CommitteeAmendment LC# or Description: see belowRecommendation: ☒ Adopt Amendment☐ Do Pass☐ Do Not Pass☐ Without Committee Recommendation☐ As Amended☐ Rerefer to Appropriations

Other Actions:

☐ Reconsider☐Motion Made By Rep Ruby Seconded By Rep Lefor

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	x		Representative Lefor	x	
Vice Chairman Sukut	x		Representative Louser	x	
Representative Beadle	Ab		Representative Ruby	x	
Representative Becker	x		Representative Amerman		x
Representative Devlin		x	Representative Boschee	x	
Representative Frantsvog	Ab		Representative Hanson		x
Representative Kasper	x		Representative M Nelson		x
Representative Laning	x				

Total (Yes) 9 No 4Absent 2

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

VOT

motion
carried

pg 3 line 19, strike 8 to 7
& removing
also, line 27
also, pg 4, line 27 rem

Date: March 11-2015Roll Call Vote: 3

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2066**

House Industry, Business & Labor Committee☐ Subcommittee☐ Conference CommitteeAmendment LC# or Description: 15. 8053.03002

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
 Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep Devlin Seconded By Rep Boschee

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser		X	Representative Lefor	X	
Vice Chairman Sukut		X	Representative Louser		X
Representative Beadle		X	Representative Ruby		X
Representative Becker		X	Representative Amerman	AB	
Representative Devlin	X		Representative Boschee	X	
Representative Frantsovog	AB		Representative Hanson	X	
Representative Kasper		X	Representative M Nelson	X	
Representative Laning	X				

Total (Yes) 6 No 7Absent 2

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

move the amendment without the delay

Motion failed

Date: March 11, 2015Roll Call Vote: 4

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2066**

House Industry, Business & Labor Committee☐ Subcommittee☐ Conference CommitteeAmendment LC# or Description: 15. 8053. 03002Recommendation: ☐ Adopt Amendment☒ Do Pass☐ Do Not Pass☐ Without Committee Recommendation☒ As Amended☐ Rerefer to AppropriationsOther Actions: ☐ Reconsider☐Motion Made By Rep Ruby Seconded By Rep Sukut

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Representative Lefor	X	
Vice Chairman Sukut	X		Representative Louser	X	
Representative Beadle	X		Representative Ruby	X	
Representative Becker	X		Representative Amerman	Ab	
Representative Devlin		X	Representative Boschee	X	
Representative Frantsvog	Ab		Representative Hanson	X	
Representative Kasper	X		Representative M Nelson		X
Representative Laning	X				

Total (Yes) 11 No 2Absent 2Floor Assignment Rep Ruby

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2066, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 2 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2066 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "sections 43-28-02.1 and" with "section"

Page 1, line 3, remove "43-28-04,"

Page 3, remove lines 8 through 14

Page 3, line 19, remove the overstrike over "seven"

Page 3, line 19, remove "eight"

Page 3, line 21, remove "one registered dental assistant member."

Page 3, line 24, remove the overstrike over "and"

Page 3, line 24, remove the second the comma

Page 3, line 25, remove the overstrike over the second comma

Page 3, line 26, remove ", and two years later two new board members must be appointed, one of"

Page 3, line 27, remove "whom is a dentist and one of whom is a registered dental assistant"

Page 4, line 1, after the underscored comma insert "notwithstanding term limitations."

Page 4, remove lines 5 through 31

Page 5, remove lines 1 through 5

Renumber accordingly

2015 CONFERENCE COMMITTEE

SB 2066

2015 SENATE STANDING COMMITTEE MINUTES

Human Services Committee Red River Room, State Capitol

SB 2066
4/7/2015
25872

☐ Subcommittee
☒ Conference Committee

Committee Clerk Signature

Donald Mueller

Explanation or reason for introduction of bill/resolution:

A BILL relating to the ownership of a dental office or clinic; and relating to the practice and licensing of dental assistants and hygienists and dentists.

Minutes:

No attachment

The following conference committee members were present for SB 2066 on April 7, 2015, 11:30 a.m.

Senator Howard Anderson, Jr., Senator Dever, Senator Axness
Representative Ruby, Representative Rick Becker, Representative Hanson

Senator Howard Anderson, Jr. began by asking the House members what they did with the amendments.

Representative Ruby indicated two major changes: the tribal sovereignty issue, and also adding the dental assistant to the board. The language on page 4 that was struck was in relation to that provision. The motion to remove section 5 was a 10-4 vote out of their committee for that amendment. The other motion was 9-4 with 2 absent to remove section 6 and section 7. On section 5, it was an issue that had been talked about early in the session. He understands that the Senate had another bill that failed. This was a carve out for that. We had some testimony that stated if it is something that is going to be expanded, it should be across the state and not just a pocket area. There was a carve-out to add that mid-level provider, which is again something that failed. The idea was that the tribes could do this, they do it now, if they are under the oversight of a dentist. We wanted to take that out and not put this into this bill. The supporters of the bill didn't come in adamantly opposed to it, but you could tell it wasn't anything they supported and didn't like to see it in their bill, but they didn't make a strong case to pull it out. In Section 6, the issue was to have an even number board. There wasn't any heartburn to have the dental assistant on the board. Most boards are odd number so you don't have a tie.

Senator Howard Anderson, Jr. indicated Senator Axness is now present.

Senator Dever commented that first of all, he would agree that if we provide for Medicaid on the reservations that it should be statewide, but he doesn't believe there would be much success in amending SB 2354 back into this one. That amendment was discussed and approved by the whole Senate even though the other bill failed. Subsequent to that consideration, we found out from CMS that Medicaid can reimburse, so the language is not needed, so that is fine. In section 6, we seem to be removing a lot of language that is not new language, but existing language, or was it new?

Representative Ruby indicated that when they are removing a section, we are not changing existing language. We are not striking all of that from the code. We just aren't making any changes in that section. Existing language would still stay.

Representative Becker added that we are striking Section 6 amendment, so the whole amendment - existing, and then all the stricken language, as we are removing the amendment from the bill.

Senator Howard Anderson, Jr. suggested that on the first page, line 4, they struck the 48.28.04, which applies to that whole section. He asked the intern, Femi, if removing the amendment and not changing any current language by crossing out all of that language or if we are changing the current law by striking through that language.

Representative Ruby indicated their intent was to just strike that section out of the bill, not necessarily repeal the section. If it looks like we are repealing the section, then that was done wrong. It was striking from the bill, our intent was to leave the board makeup as it was.

Senator Dever suggested the House recede from their amendments and amend for section 5.

Representative Becker returned to Section 6, we would strike the language that's new, and we would leave Section 6 with nothing amended.

Senator Howard Anderson, Jr. indicated that Femi will confirm.

Representative Ruby stated if that's the way it is interpreted, he's not convinced that is necessary. In our view we weren't changing anything.

Senator Howard Anderson, Jr. stated the topic is whether we want a dental assistant on the board of dental examiners. When the hearing was held in the Senate, the board of dental examiners was here and didn't object to adding a dental assistant to their board. Certainly it wasn't done to their abolition, but they didn't seem to object to it here. Did you hear a different story in the House?

Representative Becker indicated as he recalled, they were not opposed to have dental assistant on the board so long as the number was increased by that one person.

Senator Howard Anderson, Jr. indicated that's what the bill did.

Senator Howard Anderson, Jr. the question remains, taking the tribal portion out that we have agreed to, it is not needed. Femi, the intern, clarified that removing would not affect the code.

Senator Howard Anderson, Jr. indicated going back to dental assistant on the board, do you have any objection to leaving the dental assistant on the board.

Representative Ruby asked if there was an issue with even number board. As a policy the chairman wouldn't vote unless there is a tie. Maybe there are other boards that have it.

Senator Howard Anderson, Jr. has not seen any concern about that on boards. Obviously if you get a 3-3 on a motion, it fails. Much like it is here in the Senate Human Services Committee, it can work. Did dental board make that concern?

Representative Ruby indicated they did not. Just more discussion to remove that section and it carried. He doesn't have any strong feelings - if they have problem with 8 person board they can come to future session and remedy it. Other option is to go to 4 dentists and they don't want to do that.

Senator Howard Anderson, Jr. indicated there is always an additional cost when adding one additional person to the board. It would make our life easier if we could agree to remove the tribal language and add dental assistant.

Representative Ruby moved the House recede from House amendments and amend to further remove Section 5. The motion was seconded by **Senator Dever**.

Discussion

Representative Ruby stated section 6 and section 7 would be back in the bill, regarding to more language for the dental assistant.

Roll Call Vote

Senators: 3 Yes, 0 No, 0 Absent.

Representatives: 3 Yes, 0 No, 0 Absent.

Motion carries.

Senator Howard Anderson, Jr. will carry SB 2066 to the Senate floor

Representative Ruby will carry SB 2066 to the House floor.

April 7, 2015

4/7/15

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2066

That the House recede from its amendments as printed on pages 830 and 831 of the Senate Journal and page 971 of the House Journal and that Engrossed Senate Bill No. 2066 be amended as follows:

Page 1, line 1, replace "sections 43-28-02.1 and" with "section"

Page 3, remove lines 8 through 14

Renumber accordingly

**2015 SENATE CONFERENCE COMMITTEE
ROLL CALL VOTES**

BILL/RESOLUTION NO. SB 2066 as engrossed

Senate "Enter committee name" Committee

- Action Taken ☐ SENATE accede to House Amendments
☐ SENATE accede to House Amendments and further amend
☐ HOUSE recede from House amendments
☒ HOUSE recede from House amendments and amend as follows

☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Rep. Ruby Seconded by: Sen. Dever

Senators	07			Yes	No		Representatives	07			Yes	No
Senator Anderson	X			X			Representative Ruby	X			X	
Senator Dever	X			X			Representative Rick Becker	X			X	
Senator Axness	X			X			Representative Ben Hanson	X			X	
Total Senate Vote				3	0		Total Rep. Vote				3	0

Vote Count Yes: 6 No: 0 Absent: 0

Senate Carrier Sen. Anderson House Carrier Rep. Ruby

LC Number 15.8053.03003 . Title .05000 of amendment

LC Number _____ . _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

SB 2066, as engrossed: Your conference committee (Sens. Anderson, Dever, Axness and Reps. Ruby, Rick C. Becker, Hanson) recommends that the **HOUSE RECEDE** from the House amendments as printed on SJ pages 830-831, adopt amendments as follows, and place SB 2066 on the Seventh order:

That the House recede from its amendments as printed on pages 830 and 831 of the Senate Journal and page 971 of the House Journal and that Engrossed Senate Bill No. 2066 be amended as follows:

Page 1, line 1, replace "sections 43-28-02.1 and" with "section"

Page 3, remove lines 8 through 14

Renumber accordingly

Engrossed SB 2066 was placed on the Seventh order of business on the calendar.

2015 TESTIMONY

SB 2066

Attach#1

SB 2066

01/20/15 J# 22200

TESTIMONY IN SUPPORT OF SB 2066
Before the Senate Human Services Committee, January 20, 2015
Rita Sommers, North Dakota State Board of Dental Examiners

Good morning Chairman Lee and members of the Committee, I am Rita Sommers, Executive Director of the North Dakota State Board of Dental Examiners.

SB 2066 is a bill that represents solutions to issues that the Board of Dental Examiners have encountered in their duty to protect the public.

SECTION 1 and SECTION 2., The bill broadens the scope of practice for dental hygienists. The first three amendments relax the language related to supervision levels for dental hygienists authorized to administer local anesthesia. Indirect supervision is far more practical yet no less safe in the duty of administering anesthetic. The dentist is still on the premises.

In **SECTION 3** the Board has chosen to reform the application process in a more secured application manner. The application process currently is not verifiable. New language exists for both dental hygienists and dentists. With the adoption of this law, the Board will include criminal background checks on all newly registered dental assistant or qualified dental assistant applicants. With broadening of the scope of practice for dental assistants through authorization of new duties, the importance of vetting each applicant is increasingly necessary. This section addresses this need. [*Strike no. 4. The clerical error is a duplicate of no. 3.*]

SECTION 4 replaces the word “practicing” with “engaged in the practice of [dentistry].”

Though the change may seem slight, it is important. The “practice of dentistry” is defined in 43-28-01. With this change of language, license-by-credential applicants will be required to be clinically practicing dentistry at the time of such application. Because there are alternative avenues of employment for dentists which do not require clinical performance, the Board seeks to assure that the clinical skills of applicants for licensure-by-credentials are not diminished.

SECTION 5 broadens the reporting requirements to include all practitioners holding clinical or hospital privileges.

SECTION 6 authorizes the board’s president to initiate an investigation. The measure will provide an expeditious and streamlined process for investigation of complaints. Currently the board must convene to direct its complaint committee to investigate. Larger boards have separate committees for investigations enabling such processes to begin in a more timely manner. This change will permit the Board to be more nimble and prompt in its investigative process.

SECTION 7 All Care Dental and Dentures, a Fargo dental clinic, closed its doors without any notice to patients or employees in 2009[?]. The on-sight manager of the clinic was not a dentist had no authorization from the dentist owner located in the state of Massachusetts to release or forward records as well as completed dental laboratory work (fabricated dentures, crowns bridges, etc. ready for delivery) that had been previously paid for by patients of All Care. As a result, such items, as well as written and radiographic records, were not transferred to other dentists for continuation of treatment in a timely manner, if at all.

Section 7 clarifies requirements that any dental patient of any licensed dentist working in North Dakota will be entitled to seek and receive transfer of records to a subsequent dentist of his/her choice for continuation of care. The language offered is also in line with the ADA's Principles of Ethics and Code of Professional Conduct which specifically addresses issues pertaining to patient records, furnishing copies of records and patient abandonment.

I would like to offer three additional amendments to Senate Bill 2066 for your consideration.

AMENDMENTS to SB 2066

SECTION 1, 4 and SECTION 5. Administrative rule authorizes untrained dental assistants to provide specific duties; therefore presently non-registered or undocumented dental assistants are in fact regulated by the NDSBDE. However the Board has no data base or means to account for this subset of dental assistants. The Board heretofore has been unable to communicate with non-registered dental assistants effectively. The Board recognizes the importance of knowing who is directly involved in patient care, infection control procedures and communicating directly with assistants that have knowledge of patient health information. Undocumented dental assistants are expected to have knowledge of law changes as well as requirements for education related to infection control, CPR and other matters. They also must be aware of what duties they can and cannot perform. With this amendment, documented dental assistants would continue eligibility to provide duties 1-6 in Administrative Rules Ch. 20-03-01 but would be required to register with the Board of Dental Examiners.

SECTION 2. The Board believes that the requirement for years of practice for a hygienist should be no different than the requirement of a dentist applying for license by credential.

SECTION 7. The NDSBDE currently faces a rather difficult dilemma in 2016. The board will experience a dramatic loss of institutional memory as the final term of three experienced members expire simultaneously. Repercussions also include loss of leadership and participation in regional clinical dental examining boards. In the past no more than two members have ever completed terms in the same year. The new language would provide for the Governor to reappoint a member whose term has or will be expiring for one additional year in order to maintain better continuity and effectiveness of the Board.

Thank you for your consideration and your service to the people of North Dakota.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2066

Page 1, line 2, after "sections" insert "43-20-01.1, 43-20-01.3,"

Page 1, line 3, after "43-20-03," insert "43-20-12.2, 43-20-13.1,"

Page 1, line 3, after "43-20-13.2," insert "43-28-03,"

Page 1, after line 6, insert:

"SECTION 1. AMENDMENT. Section 43-20-01.1 of the North Dakota Century Code is amended and reenacted as follows:

43-20-01.1. Definitions.

As used in this chapter and chapter 43-28, unless the context otherwise requires:

1. "Dental assistant" means an individual who provides dental assistance under the supervision of a dentist and within the scope of practice established by rule and section 43-20-13.
2. "Dental hygienist" means an individual licensed to practice dental hygiene.
3. "Documented dental assistant" means an individual who provides dental assisting duties as set forth in subsections 1 through 6 of North Dakota Administrative Code chapter 20-03-01 under the direct supervision of a dentist.
34. "Qualified dental assistant" means an individual registered as a qualified dental assistant to provide dental assistance as established by rule.
45. "Registered dental assistant" means an individual registered as a registered dental assistant to provide dental assistance as established by rule.

SECTION 2. AMENDMENT. Section 43-20-01.3 of the North Dakota Century Code is amended and reenacted as follows:

43-20-01.3. Licensure by credential review.

Applications for licensure to practice dental hygiene by credential review must be made on forms provided by the board and submitted thirty days before the examination administered by the board. The board may issue a license and certificate of registration to practice dental hygiene to an applicant who meets all of the following requirements:

1. The applicant, for at least ~~three~~five years immediately preceding application, has been licensed in good standing and has been actively practicing dental hygiene in another jurisdiction where the requirements are at least substantially equivalent to those of this state.
2. Grounds for denial of the application under section 43-20-05 do not exist.
3. The applicant has paid to the board the fee established by the board by rule.
4. The applicant has delivered to the board a certificate from the examining or licensing board of every jurisdiction in which the individual is licensed to practice, certifying that the individual is a licensed and registered dental hygienist in good standing in that jurisdiction.
5. The applicant has passed a written examination on the laws and rules governing the practice of dentistry in this state administered by the board at a meeting.
6. The applicant has met any requirement for licensure established by the board by rule."

Page 1, after line 19, insert:

"SECTION 4. AMENDMENT. Section 43-28-03 of the North Dakota Century Code is amended and reenacted as follows:

43-20-12.2. Notice to board of change of address.

A licensed dental hygienist, documented dental assistant, registered dental assistant, or qualified dental assistant shall notify the executive director of the board of dental examiners of any new address within thirty days of the address change. The notice required under this section must be given by certified mail, return receipt requested. A licensed dental hygienist, documented dental assistant, registered dental assistant, or qualified dental assistant may not practice in this state for more than thirty days after the change of address without complying with this section."

Page 2, after line 3, insert:

"SECTION 5. AMENDMENT. Section 43-20-13.1 of the North Dakota Century Code is amended and reenacted as follows:

43-20-13.1. Registration renewal.

1. All registrations of documented, registered₁ and qualified dental assistants expire on December thirty-first of every even-numbered year.
2. A registration may be renewed by submitting a renewal application, renewal fee established by the board by rule, and proof of completion of the continuing education requirements established by the board by rule, provided the registration is not revoked or grounds for denial under section 43-20-05 do not exist.
3. If the renewal application, renewal fee, and proof of completion of continuing education are not received by December thirty-first of the even-numbered year, the registration expires and the registered or qualified dental assistant may not practice as a registered or qualified dental assistant.
4. Within sixty days after December thirty-first of the even-numbered year, an expired registration may be renewed by submitting the renewal application, renewal fee, proof of completion of continuing education, and a late fee established by the board by rule.
5. If the renewal application, renewal fee, proof of completion of continuing education and late fee are not received within sixty days after December thirty-first of the even-numbered year, the registration may not be renewed, and the registered or qualified dental assistant must apply for and meet the requirements for registration to be granted registration.
6. The board may extend the renewal deadline for a documented, registered₁ or qualified dental assistant providing proof of medical or other hardship rendering the documented, registered₁ or qualified dental assistant unable to meet the deadline."

Page 2, line 6, replace "Registered" with "Documented, Rregistered₁,"

Page 2, line 7, replace "registered" with "documented, registered₁,"

Page 2, remove line 18.

Page 2, after line 18, insert:

"SECTION 7. AMENDMENT. Section 43-28-03 of the North Dakota Century Code is amended and reenacted as follows:

43-28-03. State board of dental examiners – Members – Appointment – Terms of office – Oath – Vacancies.

The state board of dental examiners consists of seven members appointed by the governor. The membership of the board must include five dentist members, one dental hygienist member, and one consumer member. Appointment to the board is for a term of five years, with terms of office arranged so that one term expires on March sixteenth of each year, except that each fifth year there must be two new board members appointed, one of whom is a dentist and the other a dental hygienist and two years later two new board members must be appointed, one of whom is a dentist, and one of whom is a consumer member. ~~The first five-year term of the consumer member commences on July 1, 1993, and continues through March 15, 1998.~~ Each member of the board shall hold office until a successor is appointed and qualified. Persons appointed to the board shall qualify by taking the oath required of civil officers. No member may serve more than ten years or two 5-year terms of office. If the terms of three or more board members expire in the same year, the governor may elect to extend the term of one or more board member whose term is expiring for one year. If a member of the board is absent from two consecutive regular meetings, the board may declare a vacancy to exist. All vacancies on the board must be filled by the governor by appointment."

Renumber accordingly.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2066

SB2066
02/16/2015
Attach#1
J#23913

Page 1, line 2, after "sections" insert "43-20-01.1, 43-20-01.3,"

Page 1, line 3, after "43-20-03," insert "43-20-12.2, 43-20-13.1,"

Page 1, line 3, after "43-20-13.2," insert "43-28-03,"

Page 1, line 3, after "43-28-18.1" remove "and"

Page 1, line 3, after "43-28-18.2" insert ", and 43-28-25"

Page 1, after line 6, insert:

"SECTION 1. AMENDMENT. Section 43-20-01.1 of the North Dakota Century Code is amended and reenacted as follows:

43-20-01.1. Definitions.

As used in this chapter and chapter 43-28, unless the context otherwise requires:

1. "Dental assistant" means an individual who provides dental assistance under the supervision of a dentist and within the scope of practice established by rule and section 43-20-13.
2. "Dental hygienist" means an individual licensed to practice dental hygiene.
3. "Documented dental assistant" means an individual who provides dental assisting duties as set forth in subsections 1 through 6 of North Dakota Administrative Code chapter 20-03-01 under the direct supervision of a dentist.
34. "Qualified dental assistant" means an individual registered as a qualified dental assistant to provide dental assistance as established by rule.
45. "Registered dental assistant" means an individual registered as a registered dental assistant to provide dental assistance as established by rule.

SECTION 2. AMENDMENT. Section 43-20-01.3 of the North Dakota Century Code is amended and reenacted as follows:

43-20-01.3. Licensure by credential review.

Applications for licensure to practice dental hygiene by credential review must be made on forms provided by the board and submitted thirty days before the examination

administered by the board. The board may issue a license and certificate of registration to practice dental hygiene to an applicant who meets all of the following requirements:

1. The applicant, for at least ~~three~~five years immediately preceding application, has been licensed in good standing and has been actively practicing dental hygiene in another jurisdiction where the requirements are at least substantially equivalent to those of this state.
2. Grounds for denial of the application under section 43-20-05 do not exist.
3. The applicant has paid to the board the fee established by the board by rule.
4. The applicant has delivered to the board a certificate from the examining or licensing board of every jurisdiction in which the individual is licensed to practice, certifying that the individual is a licensed and registered dental hygienist in good standing in that jurisdiction.
5. The applicant has passed a written examination on the laws and rules governing the practice of dentistry in this state administered by the board at a meeting.
6. The applicant has met any requirement for licensure established by the board by rule."

Page 1, after line 19, insert:

"SECTION 4. AMENDMENT. Section 43-28-03 of the North Dakota Century Code is amended and reenacted as follows:

43-20-12.2. Notice to board of change of address.

A licensed dental hygienist, documented dental assistant, registered dental assistant, or qualified dental assistant shall notify the executive director of the board of dental examiners of any new address within thirty days of the address change. The notice required under this section must be given by certified mail, return receipt requested. A licensed dental hygienist, documented dental assistant, registered dental assistant, or qualified dental assistant may not practice in this state for more than thirty days after the change of address without complying with this section."

Page 2, after line 3, insert:

“SECTION 5. AMENDMENT. Section 43-20-13.1 of the North Dakota Century Code is amended and reenacted as follows:

43-20-13.1. Registration renewal.

1. All registrations of documented, registered₁ and qualified dental assistants expire on December thirty-first of every even-numbered year.
2. A registration may be renewed by submitting a renewal application, renewal fee established by the board by rule, and proof of completion of the continuing education requirements established by the board by rule, provided the registration is not revoked or grounds for denial under section 43-20-05 do not exist.
3. If the renewal application, renewal fee, and proof of completion of continuing education are not received by December thirty-first of the even-numbered year, the registration expires and the registered or qualified dental assistant may not practice as a registered or qualified dental assistant.
4. Within sixty days after December thirty-first of the even-numbered year, an expired registration may be renewed by submitting the renewal application, renewal fee, proof of completion of continuing education, and a late fee established by the board by rule.
5. If the renewal application, renewal fee, proof of completion of continuing education and late fee are not received within sixty days after December thirty-first of the even-numbered year, the registration may not be renewed, and the registered or qualified dental assistant must apply for and meet the requirements for registration to be granted registration.
6. The board may extend the renewal deadline for a documented, registered₁ or qualified dental assistant providing proof of medical or other hardship rendering the documented, registered₁ or qualified dental assistant unable to meet the deadline.”

Page 2, line 6, replace “Registered” with “Documented, R~~egistered~~₁”

Page 2, line 7, replace “registered” with “documented, registered₁”

Page 2, remove line 18.

Page 2, after line 18, insert:

“SECTION 7. AMENDMENT. Section 43-28-03 of the North Dakota Century Code is amended and reenacted as follows:

43-28-03. State board of dental examiners – Members – Appointment – Terms of office – Oath – Vacancies.

The state board of dental examiners consists of seven members appointed by the governor. The membership of the board must include five dentist members, one dental hygienist member, and one consumer member. Appointment to the board is for a term of five years, with terms of office arranged so that one term expires on March sixteenth of each year, except that each fifth year there must be two new board members appointed, one of whom is a dentist and the other a dental hygienist and two years later two new board members must be appointed, one of whom is a dentist, and one of whom is a consumer member. ~~The first five-year term of the consumer member commences on July 1, 1993, and continues through March 15, 1998.~~ Each member of the board shall hold office until a successor is appointed and qualified. Persons appointed to the board shall qualify by taking the oath required of civil officers. No member may serve more than ten years or two 5-year terms of office. If the terms of three or more board members expire in the same year, the governor may elect to extend the term of one or more board member whose term is expiring for one year. If a member of the board is absent from two consecutive regular meetings, the board may declare a vacancy to exist. All vacancies on the board must be filled by the governor by appointment.”

Page 5, line 29, after “or” insert “a dentist appointed by”

Page 5, after line 29, insert:

“SECTION 12. AMENDMENT. Section 43-28-25 of the North Dakota Century Code is amended and reenacted as follows:

43-28-25. Unlawful acts - Penalty.

It is a class A misdemeanor:

1. For any unlicensed person to construct, alter, repair, or duplicate any denture, partial denture, bridge, splint, or orthodontic or prosthetic appliance, except as provided by rule adopted by the board.
2. For any person:
 - a. To falsely claim or pretend to be a graduate from any dental college or the holder of any diploma or degree from such college;
 - b. To practice any fraud and deceit either in obtaining a license or a certificate of registration;
 - c. To falsely claim or pretend to have or hold a license or certificate of registration from the board to practice dentistry; or
 - d. To practice dentistry in this state without a license and certificate of registration.
3. For any person, except a dentist, to own more than forty-nine percent of an office practice or business at which the practice of dentistry is performed. This provision does not apply to a board-approved medical clinic, hospital, or public health setting with which a dentist is associated; a board-approved nonprofit organization created to serve the dental needs of an underserved population; or the heir or personal representative of a deceased dentist. The board may inspect and approve a medical clinic, hospital, public health setting, or nonprofit organization at which the practice of dentistry is performed. The heir or personal representative may shall appoint a dentist to operate an office under the name of the deceased dentist for a period of not longer than two years from the date of the dentist's death.

The board may institute a civil action for an injunction prohibiting violations of this section without proof that anyone suffered actual damages.”

Renumber accordingly

from Jack
McDonald

SB2066
Attach #1
02/16/15
J# 23930

DRAFT AMENDMENT 2066

A BILL for an Act to create and enact section 43-28-25.1 of the North Dakota Century Code, relating to the ownership of a dental office or clinic; and to amend and reenact sections 43-20-01.1, 43-20-01.3, 43-20-03, 43-20-12.2, 43-20-12.3, 43-20-13.1, 43-20-13.2, 43-28-03, 43-28-15, 43-28-18.1, and 43-28-18.2, and 43-28-25 of the North Dakota Century Code, relating to the practice and licensing of dental assistants and hygienists and dentists.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

"SECTION 1. AMENDMENT. Section 43-20-01.1 of the North Dakota Century Code is amended and reenacted as follows:

43-20-01.1. Definitions.

As used in this chapter and chapter 43-28, unless the context otherwise requires:

1. "Dental assistant" means an individual who provides dental assistance under the supervision of a dentist and within the scope of practice established by rule and section 43-20-13.
2. "Dental hygienist" means an individual licensed to practice dental hygiene.
3. "Qualified dental assistant" means an individual registered as a qualified dental assistant to provide dental assistance as established by rule.
4. "Registered dental assistant" means an individual registered as a registered dental assistant to provide dental assistance as established by rule.

SECTION 2. AMENDMENT. Section 43-20-01.3 of the North Dakota Century Code is amended and reenacted as follows:

43-20-01.3. Licensure by credential review.

Applications for licensure to practice dental hygiene by credential review must be made on forms provided by the board and submitted thirty days before the examination administered by the board. The board may issue a license and certificate of registration to practice dental hygiene to an applicant who meets all of the following requirements:

1. The applicant, for at least ~~three~~ years immediately preceding application, has been licensed in good standing and has been actively practicing dental

hygiene in another jurisdiction where the requirements are at least substantially equivalent to those of this state.

2. Grounds for denial of the application under section 43-20-05 do not exist.
3. The applicant has paid to the board the fee established by the board by rule.
4. The applicant has delivered to the board a certificate from the examining or licensing board of every jurisdiction in which the individual is licensed to practice, certifying that the individual is a licensed and registered dental hygienist in good standing in that jurisdiction.
5. The applicant has passed a written examination on the laws and rules governing the practice of dentistry in this state administered by the board at a meeting.
6. The applicant has met any requirement for licensure established by the board by rule."

~~SECTION 4~~SECTION 3. AMENDMENT. Section 43-20-03 of the North Dakota Century Code is amended and reenacted as follows:

43-20-03. Dental hygienists - Practice by.

As used in this chapter, "dental hygiene" and the practice thereof means the removal of accumulated matter from the natural and restored surfaces of teeth and from restorations in the human mouth, the polishing of such surfaces, and the topical application of drugs to the surface tissues of the mouth and to the surface of teeth if such acts are performed under the direct, indirect, or general supervision of a licensed dentist. General supervision may be used if the procedures are authorized in advance by the supervising dentist, except procedures which may only be used under indirect or direct supervision as established by the board by rule. Only a person licensed as a dental hygienist may be referred to as a dental hygienist. Additional tasks permitted to be performed by licensed dental hygienists may be outlined by the board of dental examiners by appropriate rules.

"SECTION 4. AMENDMENT. Section 43-28-03 of the North Dakota Century Code is amended and reenacted as follows:

43-20-12.2. Notice to board of change of address.

A licensed dental hygienist, registered dental assistant, or qualified dental assistant shall notify the executive director of the board of dental examiners of any new address within thirty days of the address change. The notice required under this section must be given by certified mail, return receipt requested. A licensed dental hygienist, registered dental assistant, or qualified dental assistant may not practice in this state for more than thirty days after the change of address without complying with this section."

~~SECTION 2~~**SECTION 5. AMENDMENT.** Section 43-20-12.3 of the North Dakota Century Code is amended and reenacted as follows:

43-20-12.3. Supervised administration of anesthesia -Board rules.

A licensed dentist may delegate to a dental hygienist licensed by the board the administration of block and infiltration anesthesia ~~to a patient who is at least eighteen years old.~~

The dental hygienist must be under the ~~direct~~ indirect supervision of a dentist and the dental hygienist must complete the educational requirements as required by the commission on dental accreditation and approved by the board. The board shall adopt rules to implement this section.

"SECTION 6. AMENDMENT. Section 43-20-13.1 of the North Dakota Century Code is amended and reenacted as follows:

43-20-13.1. Registration renewal.

1. All registrations of registered, and qualified dental assistants expire on December thirty-first of every even-numbered year.
2. A registration may be renewed by submitting a renewal application, renewal fee established by the board by rule, and proof of completion of the continuing education requirements established by the board by rule, provided the registration is not revoked or grounds for denial under section 43-20-05 do not exist.
3. If the renewal application, renewal fee, and proof of completion of continuing education are not received by December thirty-first of the even-numbered year, the registration expires and the registered or qualified

dental assistant may not practice as a registered or qualified dental assistant.

4. Within sixty days after December thirty-first of the even-numbered year, an expired registration may be renewed by submitting the renewal application, renewal fee, proof of completion of continuing education, and a late fee established by the board by rule.
5. If the renewal application, renewal fee, proof of completion of continuing education and late fee are not received within sixty days after December thirty-first of the even-numbered year, the registration may not be renewed, and the registered or qualified dental assistant must apply for and meet the requirements for registration to be granted registration.
6. The board may extend the renewal deadline for a registered, or qualified dental assistant providing proof of medical or other hardship rendering the registered, or qualified dental assistant unable to meet the deadline."

SECTION 37.AMENDMENT.Section 43-20-13.2 of the North Dakota Century Code is amended and reenacted as follows:

43-20-13.2. Registered and qualified dental assistant registration.

To be registered as a registered or qualified dental assistant, an individual shall apply ~~and meet the~~ requirements established by the board by rule to the executive director of the board on forms prescribed by the board. The application must be verified under oath to the effect that all of the statements contained in the application are true of the applicant's own knowledge. The applicant shall enclose with the application a recent autographed picture of the applicant and an application fee as determined by the board by rule. The board may grant a registration to an applicant who has met all of the following requirements:

1. The applicant passed, within one year of making application, a written examination on the laws and rules governing the practice of dentistry in this state.
2. Grounds for denial of the application under section 43-20-05 do not exist.

3. The applicant met any requirement for registration established by the board by rule.

4. The applicant met any requirement for registration established by the board by rule.

SECTION 8. AMENDMENT. Section 43-28-03 of the North Dakota Century Code is amended and reenacted as follows:

43-28-03. State board of dental examiners – Members – Appointment – Terms of office – Oath – Vacancies.

The state board of dental examiners consists of **eight** members appointed by the governor. The membership of the board must include five dentist members, one dental hygienist member, **one dental assistant** and one consumer member. Appointment to the board is for a term of five years, with terms of office arranged so that one term expires on March sixteenth of each year, except that each fifth year there must be two new board members appointed, one of whom is a dentist and the other a dental hygienist and two years later two new board members must be appointed, one of whom is a dentist, and one of whom is a consumer member. **The first five-year term of the consumer member commences on July 1, 1993, and continues through March 15, 1998.** Each member of the board shall hold office until a successor is appointed and qualified. Persons appointed to the board shall qualify by taking the oath required of civil officers. No member may serve more than ten years or two 5-year terms of office. **If the terms of three or more board members expire in the same year, the governor may elect to extend the term of one or more board member whose term is expiring for one year.** If a member of the board is absent from two consecutive regular meetings, the board may declare a vacancy to exist. All vacancies on the board must be filled by the governor by appointment."

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SECTION 49. AMENDMENT. Section 43-28-15 of the North Dakota Century Code is amended and reenacted as follows:

43-28-15. Licensure by credential review.

The board may issue a license and certificate of registration to practice dentistry in this state to an applicant who meets all of the following requirements:

1. The applicant, for at least five years immediately preceding application, has been licensed in good standing and has been actively ~~practicing~~ engaged in the practice of dentistry in another jurisdiction where the requirements are at least substantially equivalent to those of this state.
2. Grounds for denial of the application under section 43-28-18 do not exist.
3. The applicant pays to the board the fee determined by the board by rule.
4. The applicant delivers to the board a certificate from the examining or licensing board of every jurisdiction in which the individual is practicing or is licensed to practice, certifying that the individual is a licensed and registered dentist in good standing in that jurisdiction.
5. The applicant passes a written examination on the laws and rules governing the practice of dentistry in this state administered by the board at a meeting.
6. The applicant meets any requirement for licensure established by the board by rule.

~~SECTION 5~~ SECTION 10. **AMENDMENT.** Section 43-28-18.1 of the North Dakota Century Code is amended and reenacted as follows:

43-28-18.1. Duty to report.

1. A dentist shall report to the board in writing within sixty days of the event any illegal, unethical, or errant behavior or conduct of the dentist, including the following events, proceedings, or formal or informal actions:
 - a. A dental malpractice judgment or malpractice settlement or a final judgment by a court in favor of any party and against the licensee.
 - b. A final disposition regarding the surrender of a license, or adverse action taken against a license by a licensing agency in another state, territory, or country; a governmental agency; a law enforcement agency; or a court for an act or conduct that would constitute grounds for discipline under this chapter.
 - c. A mortality or other incident occurring in an outpatient facility of the dentist which results in temporary or permanent physical or mental injury requiring hospitalization of the patient during or as a direct result of a dental procedure or related use of general anesthesia, deep sedation, conscious sedation with a parenteral drug, or enteral sedation.

d. Actions based on professional conduct or competence resulting in the revocation, suspension, temporary suspension, restriction, reduction, or voluntary surrender or withdrawal of clinical or hospital privileges.

2. A dentist shall advise the board in a timely manner if the dentist reasonably believes another dentist has committed an illegal or immoral act or has otherwise failed to make a report as required under subsection 1.

SECTION 6.11.AMENDMENT.Section 43-28-18.2 of the North Dakota Century Code is amended and reenacted as follows:

43-28-18.2. Disciplinary procedure.

1. A person may file a written and signed complaint with the board alleging a dentist engaged in conduct identified as grounds for disciplinary action under section 43-28-18. The board or board president may also initiate a complaint and investigation on the board's motion.

2. The board or board president may direct a complaint committee to investigate a complaint and recommend whether the board should initiate a disciplinary action against the dentist.

3. The board or complaint committee shall notify the dentist of the complaint, and require a written response from the dentist. The board or complaint committee may examine and copy records, including patient records, examine witnesses, obtain expert opinions, require the dentist to be physically or mentally examined, or both, by qualified professionals selected by the board, and take any other action necessary to investigate the complaint. A request by the board or complaint committee is authorized to disclose patient information and records to the board or complaint committee. Patient information and records disclosed to the board or complaint committee are confidential. The dentist shall cooperate with the board or the complaint committee in the investigation, including responding promptly and completely to a request or requirement.

4. The complaint, response, and any record received by the board in investigating the complaint are exempt records, as defined in section 44-04-

17.1, until the board determines to proceed with a disciplinary action.

5. The board shall determine if there is a reasonable basis to believe the dentist engaged in conduct identified as grounds for disciplinary action under section 43-28-18. If the board determines there is not a reasonable basis to believe, the board shall notify the complainant and the dentist. If the board determines there is a reasonable basis to believe, the board shall proceed with a disciplinary action in accordance with chapter 28-32.

6. The board, at any time, may offer or accept a proposal for informal resolution of the complaint or disciplinary action.

7. The board may impose a fee on the dentist for all or part of the costs of an action resulting in discipline, including administrative costs, investigation costs, attorney's fees, witness fees, the cost of the office of administrative hearings' services, and court costs.

"SECTION 12. AMENDMENT. Section 43-28-25 of the North Dakota Century Code is amended and reenacted as follows:

43-28-25. Unlawful acts - Penalty.

It is a class A misdemeanor:

1. For any unlicensed person to construct, alter, repair, or duplicate any denture, partial denture, bridge, splint, or orthodontic or prosthetic appliance, except as provided by rule adopted by the board.
2. For any person:
 - a. To falsely claim or pretend to be a graduate from any dental college or the holder of any diploma or degree from such college;
 - b. To practice any fraud and deceit either in obtaining a license or a certificate of registration;
 - c. To falsely claim or pretend to have or hold a license or certificate of registration from the board to practice dentistry; or
 - d. To practice dentistry in this state without a license and certificate of registration.
3. For any person, except a dentist, to own more than forty-nine percent of an office practice or business at which the practice of dentistry is performed. This provision does not apply to a board-approved medical

clinic, hospital, or public health setting with which a dentist is associated; a board-approved nonprofit organization created to serve the dental needs of an underserved population; or the heir or personal representative of a deceased dentist. The board may inspect and approve a medical clinic, hospital, public health setting, or nonprofit organization at which the practice of dentistry is performed. The heir or personal representative may shall appoint a dentist to operate an office under the name of the deceased dentist for a period of not longer than two years from the date of the dentist's death.

The board may institute a civil action for an injunction prohibiting violations of this section without proof that anyone suffered actual damages."

SECTION 7.13. Section 43-28-25.1 of the North Dakota Century Code is created and enacted as follows:

43-28-25.1. Ownership and operation of a dental office or clinic.

1. Any individual or organization that owns or operates a dental office or clinic at which the practice of dentistry takes place shall designate a dentist as the dental director of the dental office or clinic. The dental director is responsible for the clinical practice of dentistry at the dental office or clinic, including:

- a. The overall quality of patient care rendered or performed in the clinical practice of dentistry;
- b. The supervision of dental hygienists, dental assistants, and other personnel involved in direct patient care and the authorization of procedures performed by the dental hygienists, dental assistants, and other personnel in accordance with the standards of supervision established by law or rule;
- c. The retention of patient dental records as required by law and the rules adopted by the board;
- d. To ensure each patient receiving services from the dental office or clinic has a dentist of record; and
- e. The maintenance of current records of the names of the dentists who supervise the clinical activities of dental hygienists, dental assistants, or other personnel involved in direct patient care. The records must be available to the board upon written request.

2. The provisions of this section do not apply to a board-approved medical clinic, hospital, or public health setting with which a dentist is associated; a board-approved nonprofit organization created to serve the dental needs of an underserved population; or a dentist appointed by the heir or personal representative of a deceased dentist.

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Prepared by Board of Dental Examiners
September 17, 2015

SB2066
02/17/15
Attach #1
J# 23985

PROPOSED AMENDMENTS TO SENATE BILL NO. 2066

Page 1, line 3, after "43-20-13.2," insert "43-28-03,"

Page 1, line 3, delete "and"

Page 1, line 3, after "43-28-18.2" insert "and 43-28-15"

Page 2, delete line 18

Page 2, after line 18, insert:

"SECTION 4. AMENDMENT. Section 43-28-03 of the North Dakota Century Code is amended and reenacted as follows:

43-28-03. State board of dental examiners – Members – Appointment – Terms of office – Oath – Vacancies. The state board of dental examiners consists of ~~seven~~ eight members appointed by the governor. The membership of the board must include five dentist members, one dental hygienist member, one dental assistant and one consumer member. Appointment to the board is for a term of five years, with terms of office arranged so that one term expires on March sixteenth of each year, except that each fifth year there must be two new board members appointed, one of whom is a dentist and the other a dental hygienist and two years later two new board members must be appointed, one of whom is a dentist, and one of whom is a consumer member. ~~The first five-year term of the consumer member commences on July 1, 1993, and continues through March 15, 1998.~~ Each member of the board shall hold office until a successor is appointed and qualified. Persons appointed to the board shall qualify by taking the oath required of civil officers. No member may serve more than ten years or two 5-year terms of office. If the terms of three or more board members expire in the same

year, the governor may elect to extend the term of one or more board member whose term is expiring for one year. If a member of the board is absent from two consecutive regular meetings, the board may declare a vacancy to exist. All vacancies on the board must be filled by the governor by appointment."

Page 2, line 19, change "4" to "5"

Page 3, line 6, change "5" to "6"

Page 3, line 29, change "6" to "7"

Page 5, after line 4, insert:

"SECTION 8. AMENDMENT. Section 43-28-25 of the North Dakota Century Code is amended and reenacted as follows:

43-28-25. Unlawful acts - Penalty. It is a class A misdemeanor:

1. For any unlicensed person to construct, alter, repair, or duplicate any denture, partial denture, bridge, splint, or orthodontic or prosthetic appliance, except as provided by rule adopted by the board.
2. For any person:
 - a. To falsely claim or pretend to be a graduate from any dental college or the holder of any diploma or degree from such college;
 - b. To practice any fraud and deceit either in obtaining a license or a certificate of registration;
 - c. To falsely claim or pretend to have or hold a license or certificate of registration from the board to practice dentistry; or
 - d. To practice dentistry in this state without a license and certificate of registration.
3. For any person, except a dentist, to own more than forty-nine percent of an office practice or business at which the practice of dentistry is performed. This provision does not apply to a board-approved medical clinic, hospital, or public health setting with which a dentist is associated; a board-approved nonprofit organization created to serve the dental needs of an underserved population; or the heir or personal representative of a deceased dentist. The board may inspect and approve a medical clinic, hospital, public health setting, or nonprofit organization at which the practice of dentistry is

performed. The heir or personal representative ~~may~~shall appoint a dentist to operate an office under the name of the deceased dentist for a period of not longer than two years from the date of the dentist's death.

The board may institute a civil action for an injunction prohibiting violations of this section without proof that anyone suffered actual damages."

Page 5, line 5, change "7" to "9"

Page 5, line 29, after the word "or" insert "a dentist appointed by"

Renumber accordingly

43-28-04. Qualifications and appointment of members of the board - Limited vote.

1. An individual may not be appointed as a dentist member of the board unless that individual:

- a. Is a dentist licensed and registered under this chapter; and
- b. Is actively engaged in the practice of dentistry and has been so engaged in this state for at least five years immediately preceding the appointment.

2. An individual may not be appointed as the dental hygienist member of the board unless that individual:

- a. Is a licensed and registered dental hygienist in accordance with chapter 43-20; and
- b. Is actively engaged in the practice of dental hygiene and has been so engaged in this state for at least five years immediately preceding the dental hygienist's appointment.

3. An individual may not be appointed as the consumer member of the board unless that individual:

- a. Has been a resident of North Dakota for five years immediately preceding appointment;
- b. Has no personal or family financial relationship with the dental profession; and
- c. Is not a dentist, a dental hygienist, a dental assistant, a physician, a nurse, or the spouse of an individual engaged in any of those occupations.

4. The dental hygienist and consumer member of the board shall exercise full voting privileges in all areas except that the dental hygienist may not participate in the clinical examination of dentists for licensure and the consumer member may not participate in the clinical examination of dentists or hygienists for licensure.

Attach #2
02/17/15
~~SB 2066~~
J# 23985

43-28-06. Powers of board.

The board may:

1. Adopt and enforce reasonable rules to govern its proceedings and to carry out this chapter.
2. Examine applicants for licenses or registration to practice dentistry, dental hygiene, or dental assisting in this state, either by direct examination or by accepting the results of national or regional dental testing services in which the board participates or which the board recognizes.
3. Issue, suspend, revoke, limit, cancel, restrict, and reinstate licenses to practice dentistry or dental hygiene and the biennial certificates of registration upon any grounds authorized by this chapter or rules adopted by the board.
4. Issue subpoenas to require the attendance of witnesses and the production of documentary evidence and may administer oaths. Any member or executive officer of the board may administer oaths to witnesses, or issue subpoenas, but all subpoenas so issued must be attested by the secretary who shall affix the seal of the board thereto.
5. Employ and compensate an executive director, attorneys, investigative staff, and clerical assistants and may perform any other duties imposed upon the board by this chapter.

6. Establish minimum continuing professional education requirements for dentists, dental hygienists, and dental assistants.
7. Enter an agreement with the same professional organization with which the state board of medical examiners has entered an agreement under subsection 6 of section 43-17-07.1.

20-02-01-09. Retention of records. A dentist shall retain a patient's dental record for a minimum of six years after the patient's last examination, prescription, or treatment. Records for minors shall be retained for a minimum of either one year after the patient reaches the age of eighteen or six years after the patient's last examination, prescription, or treatment, whichever is longer. Proper safeguards shall be maintained to ensure safety of records from destructive elements. The requirements of this rule apply to electronic records as well as to records kept by any other means.

History: Effective April 1, 2006; amended effective January 1, 2011. **General Authority:** NDCC 43-28-06 **Law Implemented:** NDCC 43-28-06

15.8053.01000

Sixty-fourth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2066

Attach #1
SB2066
02/18/15
J#24091

Introduced by
Industry, Business and Labor Committee

(At the request of the State Board of Dental Examiners)

A BILL for an Act to create and enact section 43-28-25.1 of the North Dakota Century Code, relating to the ownership of a dental office or clinic; and to amend and reenact sections 43-20-01.3, **43-20-03**, 43-20-12.3, 43-20-13.2, **43-28-03**, **43-28-04**, 43-28-15, 43-28-18.1, ~~and~~ 43-28-18.2 **and 43-28-15** of the North Dakota Century Code, relating to the practice and licensing of dental assistants and hygienists and dentists.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-20-01.3 of the North Dakota Century Code is amended and reenacted as follows:

43-20-01.3. Licensure by credential review.

Applications for licensure to practice dental hygiene by credential review must be made on forms provided by the board and submitted thirty days before the examination administered by the board. The board may issue a license and certificate of registration to practice dental hygiene to an applicant who meets all of the following requirements:

1. The applicant for at least within the three five years immediately preceding application, has been licensed in good standing and has been actively practicing dental hygiene in another jurisdiction where the requirements are at least substantially equivalent to those of this state.
2. Grounds for denial of the application under section 43-20-05 do not exist.
3. The applicant has paid to the board the fee established by the board by rule.
4. The applicant has delivered to the board a certificate from the examining or licensing board of every jurisdiction in which the individual is licensed to

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practice, certifying that the individual is a licensed and registered dental hygienist in good standing in that jurisdiction.

5. The applicant has passed a written examination on the laws and rules governing the practice of dentistry in this state administered by the board at a meeting.
6. The applicant has met any requirement for licensure established by the board by rule."

SECTION 2. AMENDMENT. Section 43-20-03 of the North Dakota Century Code is amended and reenacted as follows:

43-20-03. Dental hygienists - Practice by.

As used in this chapter, "dental hygiene" and the practice thereof means the removal of accumulated matter from the natural and restored surfaces of teeth and from restorations in the human mouth, the polishing of such surfaces, and the topical application of drugs to the surface tissues of the mouth and to the surface of teeth if such acts are performed under the direct, indirect, or general supervision of a licensed dentist. General supervision may be used if the procedures are authorized in advance by the supervising dentist, except procedures which may only be used under indirect or direct supervision as established by the board by rule.

Only a person licensed as a dental hygienist may be referred to as a dental hygienist. Additional tasks permitted to be performed by licensed dental hygienists may be outlined by the board of dental examiners by appropriate rules.

SECTION 3. AMENDMENT. Section 43-20-12.3 of the North Dakota Century Code is amended and reenacted as follows:

43-20-12.3. Supervised administration of anesthesia - Board rules.

A licensed dentist may delegate to a dental hygienist licensed by the board the administration of block and infiltration anesthesia ~~to a patient who is at least eighteen years old.~~ The dental hygienist must be under the ~~direct~~ indirect supervision of a dentist and the dental hygienist must complete the educational requirements as required by the commission on dental accreditation and approved by the board. The board shall adopt rules to implement this section.

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SECTION 4. AMENDMENT. Section 43-20-13.2 of the North Dakota Century Code is amended and reenacted as follows:

43-20-13.2. Registered and qualified dental assistant registration.

To be registered as a registered or qualified dental assistant, an individual shall apply and meet the requirements established by the board by rule to the executive director of the board on forms prescribed by the board. The application must be verified under oath to the effect that all of the statements contained in the application are true of the applicant's own knowledge. The applicant shall enclose with the application a recent autographed picture of the applicant and an application fee as determined by the board by rule. The board may grant a registration to an applicant who has met all of the following requirements:

1. The applicant passed, within one year of making application, a written examination on the laws and rules governing the practice of dentistry in this state.
2. Grounds for denial of the application under section 43 - 20 - 05 do not exist .
3. The applicant met any requirement for registration established by the board by rule.
4. The applicant met any requirement for registration established by the board by rule.

SECTION 5. AMENDMENT. Section 43-28-03 of the North Dakota Century Cod is amended and reenacted as follows:

43-28-03. State board of dental examiners – Members – Appointment – Terms of office – Oath – Vacancies. The state board of dental examiners consists of ~~seven~~ eight members appointed by the governor. The membership of the board must include five dentist members, one dental hygienist member, one registered dental assistant and one consumer member. Appointment to the board is for a term of five years, with terms

of office arranged so that one term expires on March sixteenth of each year, except that each fifth year there must be two new board members appointed, one of whom is a dentist and the other a dental hygienist and two years later two new board members must be appointed, one of whom is a dentist, and one of whom is a consumer member. ~~The first five year term of the consumer member commences on July 1, 1993, and continues through March 15, 1998.~~ Each member of the board shall hold office until a successor is appointed and qualified. Persons appointed to the board shall qualify by taking the oath required of civil officers. No member may serve more than ten years or two 5-year terms of office. If the terms of three or more board members expire in the same year, the governor may elect to extend the term of one or more board member whose term is expiring for one year. If a member of the board is absent from two consecutive regular meetings, the board may declare a vacancy to exist. All vacancies on the board must be filled by the governor by appointment."

SECTION 6. AMENDMENT. Section 43-28-04 of the North Dakota Century Code is amended and reenacted as follows:

43-28-04. Qualifications and appointment of members of the board - Limited vote.

1. An individual may not be appointed as a dentist member of the board unless that individual:

- a. Is a dentist licensed and registered under this chapter; and
- b. Is actively engaged in the practice of dentistry and has been so engaged in this state for at least five years immediately preceding the appointment.

2. An individual may not be appointed as the dental hygienist member of the board unless that individual:

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- a. Is a licensed and registered dental hygienist in accordance with chapter 43-20; and
 - b. Is actively engaged in the practice of dental hygiene and has been so engaged in this state for at least five years immediately preceding the dental hygienist's appointment.
- 3. An individual may not be appointed as the consumer member of the board unless that individual:
 - a. Has been a resident of North Dakota for five years immediately preceding appointment;
 - b. Has no personal or family financial relationship with the dental profession; and
 - c. Is not a dentist, a dental hygienist, a dental assistant, a physician, a nurse, or the spouse of an individual engaged in any of those occupations.
- 4. An individual may not be appointed as the registered dental assistant member of the board unless that individual :
 - a. Is a registered dental assistant in accordance with chapter 43-20;
and
 - b. Is actively engaged in the practice of dental assistant and has been so engaged in this state for at least five years immediately preceding the dental assistant's appointment.
- 5. The dental hygienist , the registered dental assistant and consumer member of the board shall exercise full voting privileges in all areas except that the dental hygienist may not participate in the clinical examination of dentists for licensure and the consumer member and the registered dental assistant may not participate in the clinical examination of dentists or hygienists for licensure.

SECTION 7. AMENDMENT. Section 43-28-15 of the North Dakota Century Code is amended and reenacted as follows:

43-28-15. Licensure by credential review.

The board may issue a license and certificate of registration to practice dentistry in this state to an applicant who meets all of the following requirements:

1. The applicant, ~~for at least~~ within the five years immediately preceding application, has been licensed in good standing and has been actively practicing engaged in the practice of dentistry in another jurisdiction where the requirements are at least substantially equivalent to those of this state.
2. Grounds for denial of the application under section 43-28-18 do not exist.
3. The applicant pays to the board the fee determined by the board by rule.
4. The applicant delivers to the board a certificate from the examining or licensing board of every jurisdiction in which the individual is practicing or is licensed to practice, certifying that the individual is a licensed and registered dentist in good standing in that jurisdiction.
5. The applicant passes a written examination on the laws and rules governing the practice of dentistry in this state administered by the board at a meeting.
6. The applicant meets any requirement for licensure established by the board by rule.

SECTION 8. AMENDMENT. Section 43-28-18.1 of the North Dakota Century Code is amended and reenacted as follows:

43-28-18.1. Duty to report.

1. A dentist shall report to the board in writing within sixty days of the event any illegal, unethical, or errant behavior or conduct of the dentist, including the following events, proceedings, or formal or informal actions:
 - a. A dental malpractice judgment or malpractice settlement or a final judgment by a court in favor of any party and against the licensee.

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b. A final disposition regarding the surrender of a license, or adverse action taken against a license by a licensing agency in another state, territory, or country; a governmental agency; a law enforcement agency; or a court for an act or conduct that would constitute grounds for discipline under this chapter.

c. A mortality or other incident occurring in an outpatient facility of the dentist which results in temporary or permanent physical or mental injury requiring hospitalization of the patient during or as a direct result of a dental procedure or related use of general anesthesia, deep sedation, conscious sedation with a parenteral drug, or enteral sedation.

d. Actions based on professional conduct or competence resulting in the revocation, suspension, temporary suspension, restriction, reduction, or voluntary surrender or withdrawal of clinical or hospital privileges.

2. A dentist shall advise the board in a timely manner if the dentist reasonably believes another dentist has committed an illegal or immoral act or has otherwise failed to make a report as required under subsection 1.

SECTION 9. AMENDMENT. Section 43-28-18.2 of the North Dakota Century Code is amended and reenacted as follows:

43-28-18.2. Disciplinary procedure.

1. A person may file a written and signed complaint with the board alleging a dentist engaged in conduct identified as grounds for disciplinary action under section 43-28-18. The board or board president may also initiate a complaint and investigation on the board's motion.

2. The board or board president may direct a complaint committee to investigate a complaint and recommend whether the board should initiate a disciplinary action against the dentist.

3. The board or complaint committee shall notify the dentist of the complaint, and require a written response from the dentist. The board or complaint committee may examine and copy records, including patient records, examine witnesses, obtain expert opinions, require the dentist to be physically or mentally examined, or both, by qualified professionals selected by the board, and take any other action necessary to investigate the complaint. A request by the board or complaint committee is authorized to disclose patient information and records to the board or complaint committee. Patient information and records disclosed to the board or complaint committee are confidential. The dentist shall cooperate with the board or the complaint committee in the investigation, including responding promptly and completely to a request or requirement.
4. The complaint, response, and any record received by the board in investigating the complaint are exempt records, as defined in section 44-04-17.1, until the board determines to proceed with a disciplinary action.
5. The board shall determine if there is a reasonable basis to believe the dentist engaged in conduct identified as grounds for disciplinary action under section 43-28-18. If the board determines there is not a reasonable basis to believe, the board shall notify the complainant and the dentist. If the board determines there is a reasonable basis to believe, the board shall proceed with a disciplinary action in accordance with chapter 28-32.
6. The board, at any time, may offer or accept a proposal for informal resolution of the complaint or disciplinary action.
7. The board may impose a fee on the dentist for all or part of the costs of an action resulting in discipline, including administrative costs, investigation costs, attorney's fees, witness fees, the cost of the office of administrative hearings' services, and court costs.

SECTION 10 . Section 43-28-25.1 of the North Dakota Century Code is created and enacted as follows:

43 - 28 - 25.1. Ownership and operation of a dental office or clinic .

1. Any individual or organization that owns or operates a dental office or clinic at which the practice of dentistry takes place shall designate a dentist ~~or dentists~~ as the dental director ~~or directors~~ of the dental office or clinic. The dental director is responsible for the clinical practice of dentistry at the dental office or clinic, including:

a. The overall quality of patient care rendered or performed in the clinical practice of dentistry;

b. The supervision of dental hygienists, dental assistants, and other personnel involved in direct patient care and the authorization of procedures performed by the dental hygienists, dental assistants, and other personnel in accordance with the standards of supervision established by law or rule;

c. The retention of patient dental records as required by law and the rules adopted by the board;

d. To ensure each patient receiving services from the dental office or clinic has a dentist of record; and e. The maintenance of current records of the names of the dentists who supervise the clinical activities of dental hygienists, dental assistants, or other personnel involved in direct patient care. The records must be available to the board upon written request.

2. The provisions of this section do not apply to a board-approved medical clinic, hospital, or public health setting with which a dentist is associated; a board-approved nonprofit organization created to serve the dental needs of an underserved population; ~~or the heir or personal representative of a deceased dentist.~~

Attach #2
SB2066
02/18/15
J# 24091

PROPOSED AMENDMENTS TO SENATE BILL NO. 2066

Page 1, line 3, before "43-20-03" insert "43-20-01.3,"

Page 1, line 3, after "43-20-13.2," insert "43-28-03, 43-28-04"

Page 1, line 3, delete "and"

Page 1, line 3, after "43-28-18.2" insert "and 43-28-15"

Page 1, after line 6, insert:

SECTION 1. AMENDMENT. Section 43-20-01.3 of the North Dakota Century Code is amended and reenacted as follows:

43-20-01.3. Licensure by credential review.

Applications for licensure to practice dental hygiene by credential review must be made on forms provided by the board and submitted thirty days before the examination administered by the board. The board may issue a license and certificate of registration to practice dental hygiene to an applicant who meets all of the following requirements:

1. The applicant, ~~for at least~~ within the ~~three~~five years immediately preceding application, has been licensed in good standing and has been actively practicing dental hygiene in another jurisdiction where the requirements are at least substantially equivalent to those of this state.
2. Grounds for denial of the application under section 43-20-05 do not exist.
3. The applicant has paid to the board the fee established by the board by rule.
4. The applicant has delivered to the board a certificate from the examining or licensing board of every jurisdiction in which the individual is licensed to practice, certifying that the individual is a licensed and registered dental hygienist in good standing in that jurisdiction.
5. The applicant has passed a written examination on the laws and rules governing the practice of dentistry in this state administered by the board at a meeting.

6. The applicant has met any requirement for licensure established by the board by rule."

Page 1, line 7, change "1" to "2"

Page 1, line 20, change "2" to "3"

Page 2, line 4, change "3" to "4"

Page 2, delete line 18

Page 2, after line 18, insert:

"SECTION 5. AMENDMENT. Section 43-28-03 of the North Dakota Century Code is amended and reenacted as follows:

43-28-03. State board of dental examiners – Members – Appointment – Terms of office – Oath – Vacancies. The state board of dental examiners consists of ~~seven~~ eight members appointed by the governor. The membership of the board must include five dentist members, one dental hygienist member, one registered dental assistant and one consumer member. Appointment to the board is for a term of five years, with terms of office arranged so that one term expires on March sixteenth of each year, except that each fifth year there must be two new board members appointed, one of whom is a dentist and the other a dental hygienist and two years later two new board members must be appointed, one of whom is a dentist, and one of whom is a consumer member. ~~The first five-year term of the consumer member commences on July 1, 1993, and continues through March 15, 1998.~~ Each member of the board shall hold office until a successor is appointed and qualified. Persons appointed to the board shall qualify by taking the oath required of civil officers. No member may serve more than ten years or two 5-year terms of office. If the terms of three or more board members expire in the same year, the governor may elect to extend the term of one or more board member whose term is expiring for one year. If a member of the board is absent from two consecutive regular meetings, the board may declare a vacancy to exist. All vacancies on the board must be filled by the governor by appointment."

SECTION 6. AMENDMENT. Section 43-28-04 of the North Dakota Century Code is amended and reenacted as follows:

43-28-04. Qualifications and appointment of members of the board - Limited vote.

1. An individual may not be appointed as a dentist member of the board unless that individual:

- a. Is a dentist licensed and registered under this chapter; and
- b. Is actively engaged in the practice of dentistry and has been so engaged in this state for at least five years immediately preceding the appointment.

2. An individual may not be appointed as the dental hygienist member of the board unless that individual:

- a. Is a licensed and registered dental hygienist in accordance with chapter 43-20; and
- b. Is actively engaged in the practice of dental hygiene and has been so engaged in this state for at least five years immediately preceding the dental hygienist's appointment.

3. An individual may not be appointed as the consumer member of the board unless that individual:

- a. Has been a resident of North Dakota for five years immediately preceding appointment;
- b. Has no personal or family financial relationship with the dental profession; and
- c. Is not a dentist, a dental hygienist, a dental assistant, a physician, a nurse, or the spouse of an individual engaged in any of those occupations.

4. An individual may not be appointed as the registered dental assistant member of the board unless that individual :

- a. Is a registered dental assistant in accordance with chapter 43-20;
and
- b. Is actively engaged in the practice of dental assistant and has been so engaged in this state for at least five years immediately preceding the dental assistant's appointment.

5. The dental hygienist , the registered dental assistant and consumer member of the board shall exercise full voting privileges in all areas except that the dental hygienist may not participate in the clinical examination of dentists for licensure and the consumer member and the registered dental assistant may not participate in the clinical examination of dentists or hygienists for licensure.

Page 2, line 19, change "4" to "7"

Page 2, line 24, delete "for at least" and insert immediately thereafter "within the"

Page 3, line 6, change "5" to "8"

Page 3, line 29, change "6" to "9"

Page 5, after line 4, insert:

"SECTION 10. AMENDMENT. Section 43-28-25 of the North Dakota Century Code is amended and reenacted as follows:

43-28-25. Unlawful acts - Penalty. It is a class A misdemeanor:

1. For any unlicensed person to construct, alter, repair, or duplicate any denture, partial denture, bridge, splint, or orthodontic or prosthetic appliance, except as provided by rule adopted by the board.
2. For any person:
 - a. To falsely claim or pretend to be a graduate from any dental college or the holder of any diploma or degree from such college;
 - b. To practice any fraud and deceit either in obtaining a license or a certificate of registration;
 - c. To falsely claim or pretend to have or hold a license or certificate of registration from the board to practice dentistry; or
 - d. To practice dentistry in this state without a license and certificate of registration.
3. For any person, except a dentist, to own more than forty-nine percent of an office practice or business at which the practice of dentistry is performed. This provision does not apply to a board-approved medical clinic, hospital, or public health setting with which a dentist is associated; a board-approved nonprofit organization created to serve the dental needs of an underserved population; or the heir or personal representative of a deceased dentist. The

board may inspect and approve a medical clinic, hospital, public health setting, or nonprofit organization at which the practice of dentistry is performed. The heir or personal representative may shall appoint a dentist to operate an office under the name of the deceased dentist for a period of not longer than two years from the date of the dentist's death.

The board may institute a civil action for an injunction prohibiting violations of this section without proof that anyone suffered actual damages."

Page 5, line 5, change "7" to "11"

Page 5, line 9, after "dentist" insert "or dentists"

Page 5, line 9, after "director" insert "or directors"

Page 5, line 28, delete the semicolon and insert a period.

Page 5, delete line 29

Renumber accordingly

February 19, 2015

one
2/20/15

PROPOSED AMENDMENTS TO SENATE BILL NO. 2066

Page 1, line 2, remove the first "and"

Page 1, line 2, after "sections" insert "43-20-01.3,"

Page 1, line 3, after the third comma insert "43-28-03, 43-28-04,"

Page 1, line 3, remove "and"

Page 1, line 3, after "43-28-18.2" insert ", and 43-28-25"

Page 1, line 5, after "dentists" insert "; and to provide a penalty"

Page 1, after line 6, insert:

"SECTION 1. AMENDMENT. Section 43-20-01.3 of the North Dakota Century Code is amended and reenacted as follows:

43-20-01.3. Licensure by credential review.

Applications for licensure to practice dental hygiene by credential review must be made on forms provided by the board and submitted thirty days before the examination administered by the board. The board may issue a license and certificate of registration to practice dental hygiene to an applicant who meets all of the following requirements:

1. The applicant, ~~for at least three~~within the five years immediately preceding application, has been licensed in good standing and has been actively practicing dental hygiene in another jurisdiction where the requirements are at least substantially equivalent to those of this state.
2. Grounds for denial of the application under section 43-20-05 do not exist.
3. The applicant has paid to the board the fee established by the board by rule.
4. The applicant has delivered to the board a certificate from the examining or licensing board of every jurisdiction in which the individual is licensed to practice, certifying that the individual is a licensed and registered dental hygienist in good standing in that jurisdiction.
5. The applicant has passed a written examination on the laws and rules governing the practice of dentistry in this state administered by the board at a meeting.
6. The applicant has met any requirement for licensure established by the board by rule."

Page 2, line 17, remove the second underscored period

Page 2, line 18, remove "4. The applicant met any requirement for registration established by the board by rule"

SB2066
Attach #1
02/24/15
24275

Page 2, after line 18, insert:

"SECTION 5. AMENDMENT. Section 43-28-03 of the North Dakota Century Code is amended and reenacted as follows:

43-28-03. State board of dental examiners - Members - Appointment - Terms of office - Oath - Vacancies.

The state board of dental examiners consists of ~~seven~~eight members appointed by the governor. The membership of the board must include five dentist members, one dental hygienist member, one registered dental assistant member, and one consumer member. Appointment to the board is for a term of five years, with terms of office arranged so that one term expires on March sixteenth of each year, except that each fifth year there must be two new board members appointed, one of whom is a dentist and the other a dental hygienist and, two years later two new board members must be appointed, one of whom is a dentist, and one of whom is a consumer member, and two years later two new board members must be appointed, one of whom is a dentist and one of whom is a registered dental assistant. ~~The first five-year term of the consumer member commences on July 1, 1993, and continues through March 15, 1998.~~ Each member of the board shall hold office until a successor is appointed and qualified. Persons appointed to the board shall qualify by taking the oath required of civil officers. No member may serve more than ten years or two 5-year terms of office. If the terms of more than two board members expire in the same year, the governor may extend for no more than two years the terms of one or more of those board members in order to comply with this section. If a member of the board is absent from two consecutive regular meetings, the board may declare a vacancy to exist. All vacancies on the board must be filled by the governor by appointment.

SECTION 6. AMENDMENT. Section 43-28-04 of the North Dakota Century Code is amended and reenacted as follows:

43-28-04. Qualifications and appointment of members of the board - Limited vote.

1. An individual may not be appointed as a dentist member of the board unless that individual:
 - a. Is a dentist licensed and registered under this chapter; and
 - b. Is actively engaged in the practice of dentistry and has been so engaged in this state for at least five years immediately preceding the appointment.
2. An individual may not be appointed as the dental hygienist member of the board unless that individual:
 - a. Is a licensed and registered dental hygienist in accordance with chapter 43-20; and
 - b. Is actively engaged in the practice of dental hygiene and has been so engaged in this state for at least five years immediately preceding the dental hygienist's appointment.
3. An individual may not be appointed as the consumer member of the board unless that individual:

- 1.3
- a. Has been a resident of North Dakota for five years immediately preceding appointment;
 - b. Has no personal or family financial relationship with the dental profession; and
 - c. Is not a dentist, a dental hygienist, a dental assistant, a physician, a nurse, or the spouse of an individual engaged in any of those occupations.
4. An individual may not be appointed as the registered dental assistant member of the board unless the individual:
- a. Is a registered dental assistant under chapter 43-20; and
 - b. Is actively engaged in the practice of dental assistance in this state for at least five years immediately preceding the dental assistant's appointment.
5. The dental hygienist, the registered dental assistant, and consumer member of the board shall exercise full voting privileges in all areas except that the dental hygienist may not participate in the clinical examination of dentists for licensure and the registered dental assistant and the consumer member may not participate in the clinical examination of dentists or hygienists for licensure."

Page 2, line 24, overstrike "for at least" and insert immediately thereafter "within the"

Page 5, after line 4, insert:

"SECTION 10. AMENDMENT. Section 43-28-25 of the North Dakota Century Code is amended and reenacted as follows:

43-28-25. Unlawful acts - Penalty.

It is a class A misdemeanor:

1. For any unlicensed person to construct, alter, repair, or duplicate any denture, partial denture, bridge, splint, or orthodontic or prosthetic appliance, except as provided by rule adopted by the board.
2. For any person:
 - a. To falsely claim or pretend to be a graduate from any dental college or the holder of any diploma or degree from such college;
 - b. To practice any fraud and deceit either in obtaining a license or a certificate of registration;
 - c. To falsely claim or pretend to have or hold a license or certificate of registration from the board to practice dentistry; or
 - d. To practice dentistry in this state without a license and certificate of registration.
3. For any person, except a dentist, to own more than forty-nine percent of an office practice or business at which the practice of dentistry is performed. This provision does not apply to a board-approved medical clinic, hospital,

or public health setting with which a dentist is associated; a board-approved nonprofit organization created to serve the dental needs of an underserved population; or the heir or personal representative of a deceased dentist. The board may inspect and approve a medical clinic, hospital, public health setting, or nonprofit organization at which the practice of dentistry is performed. The heir or personal representative ~~may~~shall appoint a dentist to operate an office under the name of the deceased dentist for a period of not longer than two years from the date of the dentist's death.

The board may institute a civil action for an injunction prohibiting violations of this section without proof that anyone suffered actual damages."

Page 5, line 9, after "dentist" insert "or dentists"

Page 5, line 9, after "director" insert "or directors"

Page 5, line 27, after the underscored semicolon insert "or"

Page 5, line 28, remove the underscored semicolon

Page 5, line 29, remove "or the heir or personal representative of a deceased dentist"

Renumber accordingly

Attch #2
SB2066
Date 02/24/15
24275
02/24/15

North Dakota

Office of the Governor

Governor Jack Dalrymple

Lt. Governor Drew Wrigley

Boards and Commissions

Dental Examiners, State Board of

Type of Board:	Regulatory/Licensing	Pay/Benefits:	State Rate, \$200.00 a day per diem
Voting Members:	7	Other Members:	1
Non-Voting Members:	0	Created by:	NDCC § 43-28-03
Length of Terms:	5 years, limited 2 complete terms		
Frequency of Meetings:	4 times a year, January, April, July, September		
Address:	Box 7246 Bismarck, ND 58507-7246		
Phone:	701-258-8600		
Fax:	701-224-9824		
Website:	www.nddentalboard.org		
Email:	ndsbd@aptnd.com		

The Board's duties include: examining, registering, and licensing of dentists in North Dakota. In case of complaints, the Board has the power to investigate, subpoena witnesses, and with due cause revoke or suspend a license and certificate of registration. The membership includes: five dentists, one dental hygienist, and one public member.

Member Name	Position	Work	County	Appt. Date	Term Ends
Brewster, Dale, D.D.S.	Dentist	(701) 628-2138	Mountrail	3/15/2006	3/15/2016
Cornell, Catherine, R.D.H.	Dental Hygienist	(701) 293-0577	Cass	3/15/2011	3/15/2016
Dohm, Otto	Dentist	701-222-8760	Burleigh	3/16/2015	3/15/2020
Evanoff, Gregory, D.M.D.	Dentist		Ward	3/15/2012	3/15/2017
Lauf, Rob, D.D.S.	Dentist	(701) 788-4064	Traill	4/5/2006	3/15/2016
Mehlhoff, Timothy	Consumer Member	(701) 775-4685	Grand Forks	6/2/2014	3/15/2018
Petersen, Troy D.M.D., M.D.	Dentist	(701) 772-7379	Grand Forks	3/15/2009	3/15/2019
Sommers, Rita, R.D.H., M.B.A.	Executive Director	(701) 391-7174	Burleigh		

SB 2066 Amendment

Section 43-28-02.1 of the North Dakota Century Code is created and enacted as follows:

43-28-02.1. Tribal sovereignty.

This section reaffirms the sovereignty of native American tribes in the state. The legislative assembly recognizes that in accordance with federal law, a native American tribe in this state may authorize a dental provider, who is licensed, certified, or otherwise sanctioned by another jurisdiction to provide dental services, to provide dental services on that Indian reservation.

Attach #3
SB2066
~~SB2066~~
J# 24275
02/24/15

TESTIMONY IN SUPPORT OF SB 2066
Before the IBL Committee, March 11, 2015
Rita Sommers, North Dakota State Board of Dental Examiners

Good morning Chairman Kaiser and members of the Committee, I am Rita Sommers, Executive Director of the North Dakota State Board of Dental Examiners.

SB 2066 is a bill that represents resolutions to issues that the Board of Dental Examiners have encountered in their duty to protect the public.

SECTION 1. The Board believes that the requirement for years of practice for a hygienist should be no different than the requirement of a dentist applying for license by credential. The proposed change from "for at least three years" to "within five years" corrects the discrepancy. Application for license by credential requires proof of continuing education for the two years preceding application.

SECTION 2 and SECTION 3. The bill broadens the scope of practice for dental hygienists by relaxing language related to supervision levels for dental hygienists authorized them to administer local anesthesia and alters the patient age restriction. Indirect supervision is far more practical yet no less safe in the duty of administering anesthetic. The dentist is still on the premises.

In **SECTION 4** the Board has chosen to reform the application process to verify that answers to various application questions related to violations of laws are verifiable by means of criminal background checks. Equivalent language exists for both dental hygienists and dentists. With the adoption of this law, the Board will include criminal background checks on all newly registered dental assistant or qualified dental assistant applicants as well. With broadening of the scope of

practice for dental assistants through authorization of new duties, the importance of vetting each applicant is increasingly necessary. This section addresses this need. *[Strike no. 4. The clerical error is a duplicate of no. 3.]*

SECTION 5. Tribal sovereignty. This section was initially seen in SB 2354 which was defeated on the Senate floor by a vote of 40 – 6. The Tribal sovereignty section of SB 2354 was subsequently added by amendment into SB 2066 by the Senate Human Services Committee. Some may view the issue as a minor detail. However, the Board views the addition on a conceptual basis and is in opposition to the amendment. The Board is fully cognizant of the sovereignty of Native American tribes in ND. The Board's concern relates to the language stating that a Native American tribe in this state may authorize a "dental provider" rather than "dentist". The Board believes the measure as proposed supports a two-tiered level of dentistry. The disparity in educational training between dentists and mid-level providers raises the potential for significantly higher treatment complications. The ND Board of Dental Examiners believes this is not in the best interest of any citizen of ND, including our most vulnerable populations such as Native American tribes.

SECTION 6 and SECTION 7. The Senate Human Services Committee further amended 2066 to add a new member to the Board. The Committee indicated that the profession of dental assisting should be represented on the Board. Although the measure was based on a faulty argument, the Board is not necessarily opposed to the measure. It should be noted, however, that those selected for appointment to the Board are not appointed to represent their profession. Rather, they are

appointed to protect and represent the public. Section 6 also addresses a rather difficult dilemma the Board may otherwise be facing in 2016.

The board will experience a dramatic loss of institutional memory as the final term of three experienced members expire simultaneously. Repercussions also include loss of leadership and participation in regional clinical dental examining boards – an important aspect of serving as a Board member. In the past no more than two members have ever completed terms in the same year. The new language would provide the Governor the option to reappoint a member whose term has or will be expiring for one additional year in order to maintain better continuity and effectiveness of the Board.

SECTION 8. replaces the word “practicing” with “engaged in the practice of [dentistry].”

Though the change may seem slight, it is important. The “practice of dentistry” is defined in 43-28-01. With this change of language, license-by-credential applicants will be required to be clinically practicing dentistry at the time of such application. Because there are alternative avenues of employment for dentists which do not require clinical performance, the Board seeks to assure that the clinical skills of applicants for licensure-by-credentials are not diminished.

SECTION 9. broadens the reporting requirements to include all practitioners holding clinical or hospital privileges.

SECTION 10. authorizes the Board’s president to initiate an investigation. The measure will provide an expeditious and streamlined process for investigation of complaints. Currently the board must convene to direct its complaint committee

to investigate a complaint. Larger boards have separate committees for investigations enabling such processes to begin in a timelier manner. This change will permit the Board to be more nimble and prompt in its investigative process.

SECTION 11. assures that a dentist will oversee continuity of patient care including security and transfer of dental records and other office functions that a non-dentist representative may not be unaware of.

SECTION 12. AllCare Dental and Dentures, a New York-owned dental chain with a Fargo branch, closed its doors without any notice to patients or employees in 2011. The on-sight manager of the clinic was not a dentist and had no authorization to release or forward records as well as completed dental laboratory work (fabricated dentures, crowns bridges, etc. ready for delivery) that had been previously paid for by patients of AllCare. The dentist owner was located out of the state. As a result, such items, as well as written and radiographic records, were not transferred to other dentists for continuation of treatment in a timely manner, if at all. Many patients who had paid in full were left holding an empty bag. Section 7 clarifies requirements that any dental patient of any licensed dentist working in North Dakota will be entitled to seek and receive transfer of records to a subsequent dentist of his/her choice for continuation of care. The language offered is also in line with the ADA's Principles of Ethics and Code of Professional Conduct that specifically address issues pertaining to patient records, furnishing copies of records and patient abandonment. (Attachment provided)

Non-dentists in North Dakota may own up to 49% of a dental practice While NDCC § 43-28-25(3) provides that “any person” without a dental license may acquire such ownership, the allowance presumably also extends to corporations. Nevertheless, the practice of dentistry requires licensure, and since only licensed individuals may provide patient care, non-dentist interference with or control over clinical decision-making would constitute unlicensed practice. Eligibility for dental licensure requires personal characteristics not possessed by corporations. In Section 12, an organization that owns or operates a dental clinic must designate a dentist. The new language does not provide relief for a dentist/employee who violates statute or rule. [NDCC § 43-28-01(5) “Dentist” means an individual who has a license to practice in this state and who holds a valid biennial certificate of registration.

**Thank you for your consideration and your service to the people of North Dakota.
Questions?**

#2

SB 2066

3-11-15

Testimony in Support of SB 2066

Donald Warne, MD, MPH

Director of the Master of Public Health Program, NDSU

House Industry, Business & Labor Committee, Rep. George Keiser, Chairman

March 11, 2015

Chairman Keiser and members of the committee, thank you for the opportunity to offer testimony in support of SB 2066. My name is Dr. Don Warne and I'm the director of the Master of Public Health program at North Dakota State University. I also spent several years serving patients as a general practice doctor.

As you deal with a number of dental bills this session, I want to step back for a moment to focus on the need. Unfortunately, North Dakota does not have enough access to affordable, routine dental care. It's a decades-old problem in our state that affects the general health and quality of life of thousands of North Dakota's residents.

Those most affected are rural residents and those who live on reservations. That's because two-thirds of North Dakota's dentists are located in Cass, Burleigh, Grand Forks and Ward counties. That leaves a lot of North Dakota residents struggling to access dental care.

On reservations specifically, according to a 2014 [UND study](#):

While both rural and tribal communities face challenges with recruitment and retention, tribal communities have heightened turnover of dentists. Additionally, it was shared that it is very difficult to be certified in North Dakota which serves as a barrier to bringing new dentists to the various tribes. Indian Health Services (IHS) funding is at 50% of the need across the nation. Because of this, and the aforementioned barriers, there are very few dentists in the IHS system. Some patients may wait six months to see a dentist and over a year for orthodontic care.

This affects not only children, but adults and elders, too. Lack of dental access is more than just an oral health issue – as a general practice physician, I can tell you it's also a general well-being issue. Poor oral health increases the risk of other diseases, including diabetes, which disproportionately affects Native Americans.

SB 2066 makes a number of technical revisions to North Dakota's dental laws, but the part I want to focus on is Section 5. It is a common sense provision that gives tribes in our state more flexibility in dealing with oral health issues. It clarifies that dentists and other dental personnel who are licensed in other states, and who provide services on one of our state's reservations, could be reimbursed through North Dakota's Medicaid system.

This bill is an important step in expanding oral health services in reservation communities, and by improving access to affordable, routine dental care, we can improve both oral and general health on our state's reservations. I urge support for SB 2066.

#3
SB 2066
3-11-15

Department of Human Services
House Industry, Business and Labor Committee

SB 2066

March 11, 2013

The Department sent the following language to the Centers for Medicare and Medicaid Services and asked for their input as it relates to Medicaid funding.

43-28-02.1. Tribal sovereignty.

This section reaffirms the sovereignty of native American tribes in the state. The legislative assembly recognizes that in accordance with federal law, a native American tribe in this state may authorize a dental provider, who is licensed, certified, or otherwise sanctioned by another jurisdiction to provide dental services, to provide dental services on that Indian reservation.

The Department received the following response this morning from the Centers for Medicare and Medicaid Services:

Without the authorizing legislation to allow DHAPs to practice in ND along with a Medicaid State Plan amendment to add the provider type, the program cannot reimburse this provider type. I'm assuming if the IHS/tribes utilize them under a dentist and the services are reimbursable when hygienists work under Dentists, then the State would pay in the same manner and not require local licensure for either the Dentists or the hygienists as specified in Medicaid regulations and the Indian Health Care Improvement Act. The licensure provisions apply regardless of ND's action on the bill before them.

Mar 11, 2015

4
SB 2066

House Industry, Business, and Labor Committee SB 2066

North Dakota Dental Association

Brent L Holman DDS, Executive Director

Chairman Keiser and members of the committee, my name is Dr Brent Holman and I am Executive Director of the North Dakota Dental Association (NDDA). The NDDA supports SB 2066 as well as the amendments related to the statute changes associated with the North Dakota State Board of Dental Examiners' input and approval. We, however, oppose the specific amendment that was additionally added by the Senate Human Service Committee as follows:

43-28-02.1. Tribal sovereignty.

*This section reaffirms the sovereignty of Native American tribes in the state. The legislative assembly recognizes that in accordance with federal law, a Native American tribe in **this state may authorize a dental provider**, who is licensed, certified, or otherwise sanctioned by another jurisdiction to provide dental services, to provide dental services on that Indian reservation.*

This amendment was taken directly out of SB 2354, a bill that defined a new type of midlevel dental provider in North Dakota that would have

allowed dental hygienists with less training and an unprecedented reduction in dentist supervision to do irreversible dental surgical procedures. SB 2354 would have made North Dakota only the 4th state to experiment with this new type of provider. The Senate sent a clear message and defeated this SB 2354 6-40 the day before this same clause was then added to SB 2066 by the Senate Human Services Committee. The Senate recognized that solutions to barriers to care should be collaborative. Alternatively, the North Dakota Dental Association has 10 broad-based solutions (see attachment) to reduce barriers to care that address the many reasons why patients do not go to the dentist. With North Dakota's growth in the number of new dentist licenses yearly outpacing our population growth in the past 5 years, workforce shortage in our state is not a singular reason to try the one-size-fits-all approach offered by this new type of lesser-trained provider model with limited evidence base.

While on the surface this "tribal sovereignty" clause appears to be of little consequence, **it in effect gives the required state authorization for tribes in North Dakota to utilize midlevel dental providers that are licensed "in any jurisdiction"**. This state authorization was

required in the language of the 2009 ACA/Indian Health Care Improvement (IHCIA) changes. The Affordable Care Act (ACA), by reference, includes the Indian Health Care Improvement Act (IHCIA) as reported by the Senate Committee on Indian Affairs in December 2009 (S. 1790). This bill also contained a number of key amendments to the IHCIA. The Senate IHCIA includes the 2007 ADA and the Alaska Native Tribal Health Consortium (ANTHC)-agreed language that limits the scope of practice of a Dental Health Aide Therapist (**DHAT-Midlevel providers**) and contains the general prohibition that precludes DHATs from being part of the Community Health Aide Program (CHAP) beyond Alaska if the Secretary nationalizes the program.

However, there was an exception to the general prohibition of DHATs practicing outside of Alaska under the CHAP program. **Specifically, DHATs will be permitted in the CHAP program if requested by an Indian tribe or tribal organization located in a state in which the use of DHAT or midlevel provider services is authorized under state law to supply such services in accordance with the state law.**

The stark reality of this authorization is that a North Dakota tribe could employ Dental Health Aide Therapists (DHAT's) from Alaska that have 2 years of training out of high school to do irreversible dental surgical procedures. We feel this provider model has no place in North Dakota. North Dakota is not Alaska.

Recognizing that our Native American communities have significantly greater oral health problems, as well as barriers to care, the NDDA will continue to use its resources to improve oral health. With the majority of dental care being provided by Indian Health Service, a federal program, there are limits as to what state resources can bring to the problems. Solutions to oral health problems in North Dakota Tribal communities should be directed to culturally relevant community prevention, efforts to improve dental delivery efficiency and IHS reform, and engagement with local dentists for specialty referral and targeted treatment initiatives.

Unfortunately, the primary purpose of this "tribal sovereignty" clause amended to SB 2066 was not mentioned on the Senate floor prior to the vote on the bill. While tribal sovereignty issues are important, our national sources tell us that Congressional requirements as they apply

to the IHCIA and this issue are grounded in legal precedent. **The net effect of this amendment is to ask you, as a legislator, to approve a different level of care for our Native American citizens: a 2-tier system of care. The North Dakota Dental Association strongly feels that Native Americans deserve a dentist, as do all North Dakotans. Please vote to strike the amendment from SB 2066 adding Section 43-28-02.1. Thank you for your consideration.**

Reducing Barriers to Dental Care

North Dakota Solutions

North Dakota Dental Association

1. Expand and simplify dental loan repayment programs to target those starting practice in rural communities, serving Medicaid patients, or working in dental safety-net clinics. (SB 2205)
2. Expand the Seal! ND school sealant program through the State Department of Health to serve more low-income children and add Medicaid-supported case management to direct high-risk patients into dental homes to save treatment costs. (SB 2197)
3. Expand the non-profit dental safety-net clinics through public-private partnerships and innovative outreach to high-need areas and populations in the state.
4. Utilize the North Dakota Dental Foundation through grants to reduce barriers coinciding with the mission of the Foundation:
 - Reduce barriers to care
 - Prevention of dental disease
 - Improve education of the dental workforce
5. Improve Dental Medicaid and maintain adequate dentist participation through adequate reimbursement, reduction of program paperwork, and dentist recruitment programs
6. Utilize dental hygienists and dental assistants to their maximum level of education through outreach collaborative practice and training of expanded restorative functions
7. Engage with tribal communities to improve Indian Health Service dentistry, maximize prevention, reduce credentialing barriers and facilitate contracting with the local dental communities.
8. Establish outreach programs in long-term care facilities in partnership with the Oral Health Program, State Department of Health.
9. Support and strengthen the Oral Health Coalition (<http://www.ndohc.org>) to collaboratively identify problems and solutions to reduce barriers to care.
10. Coordinate and facilitate the development of dental assisting training programs in western North Dakota to address severe shortages of dental assistants in that part of the state.



NDActionForDentalHealth.org

HB 2066

Mar 11, 2015

5

North Dakota

nd.gov Official Portal for
North Dakota State Government**North Dakota Public Meeting Notices****View Meeting****Meeting Location**

Inquire at front desk at the
Hilton Garden Inn
4301 James Ray Drive
Grand Forks, ND 58203

Contact Information

Rita Sommers, RDH, MBA
ritamichel@aol.com
701-391-7174

Meeting Details

Entity: ND State Board of Dental Examiners
Governing Body: Board of Dental Examiners
Meeting Title: January 9 - 10, 2015 Meeting
Meeting Date and Time: 1/10/2015 8:03 AM
Meeting Type: Regular

Agenda**AGENDA**

Meeting of the North Dakota State Board of Dental Examiners

Hilton Garden Inn UND, Grand Forks, ND

Friday, January 9, 2015, 7 - 9 PM Speaker, Board CE Re: Drug Testing

Speaker Introduction (Tim Mehlhoff)

Saturday, January 10, 2015, 8:03 AM

1. Call to order Dr. Lauf
2. Review and approve minutes; September 18, 2014, October 21, 2014,
3. Additions to agenda:

Collaborative practice - Direct Access

4. Treasurer's report and review of payables (Ms. Sommers).

A. 1099 Misc

5. Review candidate's credentials; issue Oath of Office and licenses.

(JP exam/Interviews - 11:30 a.m.)

Unable to attend, reschedule interview; Dr. Eaton

6. Committee Reports

A. Complaint Committee/ Legal issues (Dr. Brewster, Mr. Martindale)

J. Bauer, DDS; NPDB report

B. Anesthesia Committee (Dr. Petersen)

C. Continuing Education Committee (Ms. Cornell)

D. Application Review Committee (Dr. Lauf)

E. Nominating Committee (Dr. Lauf | appoint committee)

1) Election of officers-Term of office begins March 15, 2015

F. Legislative Committee (Sommers; Martindale)

1) Jack McDonald, Esq.

7. Old Business:

A. Policy Manual review for updates (clarification honorarium)

B. Executive Director Annual Review

C. Robert's Rules (Dr. Lauf)

8. New Business:

A. Election of officers (Nominating Committee)

B. Nathaniel Tipton WREB "Tip"

C. Prescription Drug Monitoring Legislation; Mark Hardy, Exec. Director

ND Board of Pharmacy

D.

9. AADB and CRDTS, WREB

10. Newsletter feedback

11. Remuneration

12. Date time next meeting

13. Adjournment

*Committee meetings will be held post-board meeting

Attachments

File Name	Description
2014_Minutes_TC_SM-Oct212014.pdf	Oct21 Special Meeting TC
2014Minutes-Sept182014.pdf	

This meeting was posted on: 9/25/2014 1:26 PM

This meeting was last edited on: 1/3/2015 12:09 PM

[Back](#)

Proposed amendments for SB 2066

Page 9, after line 12 insert "Section 13. A new section to chapter 43-28 of the North Dakota Century Code is created and enacted as follows:

Collaborative practice agreements.

1. As used in this section,
 - a. "Collaborative practice agreement" means a written agreement between a licensed dentist and a qualified dental hygienist under which the dentist authorizes and accepts responsibility for the dental hygiene services performed by the qualified dental hygienist and under which the authorized scope of practice is established.
 - b. "Dental hygiene services" means providing oral health education, caries risk assessment, prophylaxis, application of topical preventive and prophylactic agent, application of sealants and fluoride varnishes, coronal polishing, preliminary charting, x-rays, and scaling and root planing.
 - c. "Qualified dental hygienist" means an individual licensed as a dental hygienist under chapter 43-20 who:
 - (1) During the previous two years attended continuing education in infection control and medical emergencies;
 - (2) During the previous two years received cardiopulmonary resuscitation certification for professional rescuers and health care providers;
 - (3) Has a minimum of:
 - (a) Two thousand four hundred hours of active practice of clinical dental hygiene in the past twenty four months; or
 - (b) A career total of three thousand hours of active practice of clinical dental hygiene, with a minimum of two hundred hours of active practice of clinical dental hygiene in two of the past three years.
 - d. "Health care facility, program, or nonprofit organization" means a hospital; nursing home; home health agency; group home serving the elderly, disabled, or juveniles; state-operated facility licensed by the department of human services or the department of corrections and rehabilitation; federal, state or local public health facility, community clinic, tribal clinic, school authority, or head start program; or nonprofit organization that serves individuals who are uninsured or who are medical assistance recipients.
2. A licensed dentist may enter a collaborative practice agreement with a qualified dental hygienist. Under a collaborative practice agreement:
 - a. The qualified dental hygienist may provide dental hygiene services without a dentist's diagnosis and treatment plan.
 - b. The qualified dental hygienist may provide dental hygiene services without the patient first being examined by a licensed dentist and without the collaborating dentist being present.

- c. The qualified dental hygienist may be employed or retained by a health care facility, program, or nonprofit organization.
 - d. The qualified dental hygienist may provide dental hygiene services at a location other than the usual place of practice of the collaborative dentist or the qualified dental hygienist.
 - e. If a qualified dental hygienist's patient is considered medically compromised, the collaborating dentist shall review the patient record, including the medical history, before the qualified dental hygienist provides dental hygiene services.
 - f. The qualified dental hygienist shall maintain professional liability insurance.
 - g. The qualified dental hygienist shall provide a patient with a consent to treatment form, which must include a statement advising the patient the dental hygiene services provided are not a substitute for a dental examination by a dentist.
 - h. If the qualified dental hygienist makes any referrals to the patient for further dental procedures, the qualified dental hygienist shall complete a referral form and shall provide a copy of the form to the collaborating dentist.
3. The scope of practice established in the collaborative practice agreement may be more restrictive than the scope of practice authorized under this section.
4. For a collaborative practice agreement to remain valid, the collaborating dentist and qualified dental hygienist shall update the collaborative practice agreement every two years and shall amend the collaborative practice agreement when the scope of practice or any other terms of the agreement are modified. The collaborative practice agreement or amendment is effective when filed with the board.
5. The board may adopt rules under this section."

#6
SB 2066
3-11-15

House Industry Business and Labor

March 11, 2015

Senate Bill 2066

Collaborative Agreement Amendment

My name is Marcia Olson. I am the Executive Director of Bridging the Dental Gap and a clinical partner with the Ronald McDonald Caremobile. We also work extensively with the ND Oral Health Department on sealant projects within the schools.

Bridging the Dental Gap currently uses hygienists to provide oral health care in long term care facilities in Bismarck-Mandan. The Ronald McDonald Caremobile will be using hygienists to provide sealants in school based programs. Additionally the Caremobile also has a long range plan to have hygienists provide screenings prior to visits by the Caremobile in order to improve efficiency. The Oral Health Department has public health hygienists who provide sealants in school settings. All of these hygienists are working under the current practice act using a "standing order" from a dentist much the same as a medical doctor does for patients admitted to hospitals or for general nursing care in long term care facilities. The hygienists work within their scope of practice allowing them to provide services under what is described as "general supervision". This is allowed under the current practice act.

There has been some concern about a need to clarify and perhaps spell this practice out further. We would certainly be supportive of that, however the various entities that are currently providing all these services should be included in any discussion or decision about what should or should not be included. To date we have not been approached to participate in putting together any language that would explain these arrangements.

In fact, last Friday myself and the ND Oral Health Director met with the State Board of Dental Examiners to discuss further clarification. There was willingness by the Board to move forward with this as part of future meetings. It was discussed that this was late in the legislative session to bring any new additions forward. The Board of Dental Examiners did offer a letter of intent that would substantiate the practices that were currently in place.

Many have defined this type of arrangement as a form of "collaborative practice" without specifically using that terminology. There are throughout the United States many forms of collaborative practice

agreements within the dental realm. Some very restrictive and some very open. I have seen 30 different examples from 30 states.

I would encourage this legislative body to NOT quickly add a collaborative practice piece to this bill. All of the "players" have not been at the table to discuss what would be the most beneficial and actually lay out what a North Dakota agreement should contain and who would be eligible to use these. We would not want to inadvertently cut out an existing program or practice that is already serving to provide access to care for the underserved.

I would encourage all the parties to come together and discuss and lay out something that would be workable for all. Even with a deadline of submission at the next legislative session. The ND Oral Health Coalition could be a means to facilitate that discussion.

Thank you for your time and I would ask that this amendment not be adopted.



#7
SB 2066
3-11-15

Senate Bill 2066
House Industry Business and Labor
March 11, 2015

I am Marcia Olson and I am currently the President of the ND Oral Health Coalition.

Last Fall prior to legislative sessions, the Oral Health Coalition discussed Collaborative Practice Agreements, the current arrangement of "standing orders" and general supervision as well as establishing a basis for discussion of need for further clarification.

Yesterday at the quarterly meeting of the Oral Health Coalition this was again discussed in light of the Dental Board meeting last Friday and possible legislation being brought forward. Concerns were discussed about the content and how well researched anything would be and how it would fit with North Dakota current practices.

It was the consensus of those participating that the ND Oral Health Coalition would be willing to work to bring all of the interested parties together, research the various types of agreements plus any of the restrictions from other states, and assist the Board of Dental Examiners and ND Dental Hygiene Association in bringing forth legislation at the next session that would specifically address all of the issues and spell out the details needed to establish a Collaborative Practice Agreement.

We believe that having all interested parties involved in the discussion and cumulative decision to be the best course of action. We do not believe that a hasty decision without all relevant facts and participating entities would serve the best interests of our state and our patients.

#8
SB 2066
3-11-15

House Industry, Business, and Labor Committee

Brent L Holman DDS, Executive Director

North Dakota Dental Association

SB 2066

Chairman Keiser and Members of the Committee,

My name is Dr Brent L Holman and I am the Executive Director of the North Dakota Dental Association. We would like to express our opposition to the amendment presented on behalf of the North Dakota Dental Hygienists Association that defines a collaborative practice arrangement to allow dental hygienists to work under general supervision of a dentist. Hygienists can already do this type of outreach practice with current rules, most likely with less supervision than would be described in a collaborative practice agreement. Although we see a benefit and a need to better define this type of practice, we feel the lack of time to evaluate this particular definition as well as the format of a legislative hearing precludes achieving the best result for patients. This is a complex discussion that requires input and expertise from the larger dental communities of interest with consensus to produce the best definition that benefits patients. To illustrate the many permutations of this discussion, attached is a summary of the definitions of collaborative practice used around the country.

We support a task force of interested parties with expertise led by the Oral Health

Coalition to develop a consensus-based model for collaborative practice in North Dakota over the next interim period. The goal of this task force would be to develop a definition that would serve the underserved with maximum participation of dental providers in the state. This model would be presented to the ND State Board of Dental Examiners for their regulatory approval and submission to the 2017 Legislature.

LIMITED UNSUPERVISED PRACTICE OF DENTAL HYGIENISTS

“Limited Unsupervised Practice of Dental Hygiene” is a descriptive term used as a convenience in this document and is not found in state law nor does it represent ADA policy. The term is used to distinguish between limitations on the practice of dental hygiene without supervision and the unlimited practice as is authorized in **Colorado** and **Maine**. The information in this document is advisory only and not intended to be relied upon as a definitive statement of the law. Anyone seeking the exact nature of any particular statute should consult that statute directly.

Please note that it is required by law that a dentist is involved with the treatment of the patient in virtually every state. There are exceptions in Colorado and Maine, but most states have understood that in the interest of providing comprehensive, coordinated care the dentist must ultimately provide a complete examination and develop the appropriate treatment plan based on the needs of each individual patient.”

Currently, **17** states allow dental hygienists to perform specified dental hygiene services with a limited degree of dental supervision. These states’ laws restrict the setting, the hygiene services, or the duration of time over which the hygiene care may be provided. Another type of limited dental supervision is what is called the “collaborative practice agreement.” There are **10** states that currently have some form of collaborative practice. There are **2** states, Colorado and Maine that have no limitations on the ability of dental hygienists to practice without supervision.

Some of the terminology used by the states listed below to describe these arrangements are: Alaska (“collaborative agreements”); Arizona (“Affiliated Practice Relationships”); California (Registered Dental Hygienist in Alternative Practice); Connecticut, Kansas and Idaho (Extended Care Permit); and, Montana (Limited Access Permit Dental Hygienist) Oregon (Expanded Practice Dental Hygienist).

The information in this document is limited to what is found in state dental practice acts and dental board regulations. Information about a particular state was added as that state’s law was enacted and rules adopted. It is possible that this document does not reflect subsequent amendments to the initial law or rule or any interpretation of these provision by a court of law or state administrative agency.

Dental board policies, not considered here, may impact how the laws and rules are administered. Interested persons should contact the individual state dental boards for the most accurate and up-to-date information.

If you believe any of the information contained herein needs updating please contact the ADA Department of State Government Affairs.

List of abbreviations: DHs = dental hygienists; H = House Bill; A = Assembly Bill; S = Senate Bill;

COLLABORATIVE PRACTICE AGREEMENTS

Alaska Section 8.32.115 allows qualified dental hygienists to enter into collaborative agreements with dentists. The agreement could authorize the hygienist to perform many

functions without the dentist's previous diagnosis and treatment plan including the administration of local anesthesia. Hygienists with 4000 hours of clinical experience within the previous 5 years qualify to enter into collaborative agreements.

The law also authorizes the dental board to issue a "restorative function license endorsement" allowing properly trained dental hygienists, under direct supervision, to place and carve restorations in a tooth prepared by the dentist. **(H 319 enacted 2008.)**

Arizona H 2194 enacted 2004. Allows dental hygienists to enter into "Affiliated Practice Relationships" (a limited form of collaborative practice) with dentists that allows hygienists to practice in listed institutional settings and with defined populations - those under 18 (age restriction removed in 2009 see below) who are in "affiliated practice settings." Hygienists are legally liable for all the services they provide under this arrangement. Allows DHs to apply topical fluorides prescribed by a dentist and use newly developed technologies in their practices. (Sec 32-1289). 2006 H 2214 allows hygienists to screen patients and apply fluorides without a prior dental examination and without entering into an affiliated practice relationship. 2009 S 1400 A compromise bill expands to the general population to whom affiliated practice dental hygienists can provide care by removing the age restriction of 18 years of age or younger. The law also tightens up the relationship between the dentist and AP Dental Hygienist by requiring that follow-up care can only be provided by the hygienist after the patient is referred to and examined by a dentist and a treatment plan developed. The patient must also be informed that the affiliated practice dental hygienist is not performing a "dental exam" and that the procedure cannot be billed or reimbursed as a dental exam.

A new law in **Arkansas** creates a "collaborative dental hygienist." The Arkansas Dental Association worked with communities of interest including the Arkansas Dental Hygienist Association to craft this program to expand certain preventive oral health services to high-risk children in response to the poor grade the state received in the PEW oral health report card. The program is to be administered by the Arkansas Dept. of Health to insure that underserved populations receive the benefits designed to be offered by the bill.

Collaborating Dentists must apply for a permit from the state dental board to initiate an outreach of this type or be employed by the Arkansas Department of Health. Dental hygienists can apply for a Collaborative Care Permit I or II from the Board of Dental Examiners and would work pursuant to a collaborative agreement with a dentist in defined "public settings."

Holders of a Collaborative Care Permit I must have completed 1,200 clinical hours of dental hygiene practice or have taught dental hygiene for 2 of the previous 3 years. They would be authorized to provide prophylaxis, fluoride treatments, sealants, dental hygiene instruction, assessment of the patients' need for further treatment by a dentist, and other services provided by law if delegated by the consulting dentist. They could provide this care to children outside the dental office without the consulting dentist having first examined the child.

Holders of Collaborative Care Permit II must have completed 1,800 clinical hours of practice or fulfilled the teaching requirement in addition to completing a 6 hours of continuing education. These Dental Hygienists would be able to provide the same

services as a Permit I to children and also to adults in nursing homes or developmental disability facilities. All holders of Collaborative Care Permits must have a malpractice liability policy.

Any applicable insurance or Medicaid reimbursement for care rendered must be remitted to the office of the collaborating dentist. 2011 SB 42 - Arkansas Code Title 17, Chapter 82, subchapter 7 (17-82-701 et seq)

Maine had adopted a rule in 2001 that expands the existing “public health supervision” category of dental hygienist to what is supposed to be a collaborative practice arrangement in limited settings. (Rule 02 313 Chap. 1 Sec 4). In 2005, a new law, 32 MRSA sec. 1098-E, was enacted that allows hygienists, with public health supervision status, to place temporary restorations without a dentist being present. In 2008 Maine enacted a law allowing for the independent practice of dental hygienists. See that category below for more detail.

Massachusetts S 2819 enacted in 2008. Massachusetts’ new oral health law, supported by the Massachusetts Dental Society, creates a “public health dental hygienist” (PHDH) who may work pursuant to a collaborative agreement with a dentist in public health settings. Public health dental hygienists shall be directly reimbursed for services administered in a public health setting by MassHealth or the Commonwealth Care health insurance program (Medicaid), but shall not seek reimbursement from any other insurance or third party payer. A public health dental hygienist shall not operate independently of a dentist, except for a dental hygienist working for a local or state government agency or institution or practicing in a mobile or portable prevention program licensed or certified by the department of public health. In such cases, the local or state government agency or institution, or mobile or portable prevention program licensed or certified by the department of public health may seek reimbursement from any other insurance or third party payer. Regulations were adopted in Aug. 2010 concerning the PHDH in section 5.07-08. No special license or permit is required, only completion of 10 hours of continuing education in specific subjects. The definition of what qualifies as a “public health setting” was changed by law in early 2011.

Minnesota S 4a enacted 2001. Dental hygienists may perform hygiene care as specified in the law at defined “health care facilities” without the presence of a dentist and without a dentist’s diagnosis and treatment plan. The requirements to providing such care are: 2 years of prior clinical experience and a written collaborative practice agreement with a license dentist who authorizes and accepts responsibility for the services performed by the hygienist. (Sec 150A. 10, subd. 1a)

New Mexico Allows qualified hygienists to enter into “collaborative practice” arrangements with dentists. The arrangement may allow DHs to provide some services without supervision. The new law is one of several proposals designed to improve access to care in the state. Regulations adopted by Board of Dental Health Care provide that qualified hygienists may own and manage a hygiene practice and may advise a patient of suspected pathology and periodontal status, though they may not diagnose dental disease. They may also supervise dental assistants. These hygienists may enroll as Medicaid dental providers and obtain reimbursement for care rendered. (Rule 8.310.7.10(1)). Hygienists administering local anesthesia must do so with a dentist’s supervision. (H 265 was enacted in 1999 and codified in Statutes 1978 Sec 61-5A-4D &

E, Rule 16.5.17 et.seq.)

The **New York** State Dental Association (NYSDA) supported a new law (2013 SB 4604, AB 7866) that allows registered dental hygienists working in certain facilities to work under collaborative agreements with dentists who have a formal relationship, such as hospital privileges, with the same facility. The facilities are primarily hospitals but also include nursing homes and school-based health clinics.

The law authorizes a qualified dentist to enter into a collaborative practice agreement arrangement that will allow the dentist and the dental hygienist to work out the supervision protocol most effective for that particular setting.

Previously in New York, the practice of dental hygiene may have only been conducted in the office of any licensed dentist or in an appropriately equipped school or public institution with the supervision of a licensed dentist.

Oregon in 2011 enacted a law allowing expanded practice dental hygienists to enter into collaborative practice agreements with dentists. These hygienists were previously known as Limited Access Practice Dental Hygienists. They are more fully described under the Limited Unsupervised Practice section of this document.

South Dakota enacted a law in 2011 that allows dental hygienists to provide dental hygiene services with "collaborative supervision" pursuant to a collaborative agreement with a dentist in defined public institutional settings.

In order to work pursuant to "collaborative supervision" a hygienist would need to have actively engaged in the practice of clinical dental hygiene in 2 of the previous 3 years; work pursuant to a collaborative agreement with a dentist; and demonstrate knowledge in medical and dental emergency management, management of early childhood caries and of special needs populations, infection control, pharmacology and disease transmission.

The law provides that a dental hygienist may perform preventive and therapeutic services to a patient with "collaborative supervision" for no more than thirteen months before the patient must have a complete oral health evaluation by the supervising dentist.

The dental board promulgated rules in 2012 specifying the minimum requirements for collaborative agreements. The rules require agreements to specify a time period of no more than 13 months, in which an examination by a dentist must occur prior to providing further hygiene services and the settings where the hygienists may work pursuant to an agreement.

A rule adopted by **Vermont** Board of Dental Examiners effective July 1, 2008, authorizes dental hygienists, with three years of clinical practice experience, to provide services pursuant to the terms of a one-year written "general supervision agreement" with a dentist. Hygiene services may be delivered in public or private schools and institutional settings. The hygienist must first obtain written consent of patients on a "consent form" included in the rules with a disclosure that care from the hygienist is limited in scope and does not take the place of a regular exam or treatment by a dentist.

The hygienist shall practice according to the parameters of the "general supervision agreement" which may include taking x-rays; applying fluoride varnish, sealants and desensitizing agents; adult and child prophylaxis; periodontal scaling and root planing and maintenance. Hygienists must advise patients to obtain dental care if the dental condition is beyond what the hygienist can treat. Dentists entering into these agreements must review records of the patients at least once every 6 months. These rules create in essence what could be referred to as collaborative agreements.

West Virginia - in 2008 a rule was adopted and amended by the legislature in 2009 by H 2819 that provides that a hygienist may provide certain care including a complete prophylaxis under what is called a "collaborative agreement" of a dentist (not defined) and if such an agreement is not reached then the hygienist shall have a written order from a licensed dentist prescribing such treatment. In 2009 rules were further developed that addresses the contents of the agreements and the parameters within which the collaborative relationship between the dentist and hygienist may work.

LIMITED UNSUPERVISED PRACTICE

California A 560 enacted 1997. Provides for independent practice of Registered Dental Hygienists in Alternative practice (RDHAP). They must have a bachelor degree and complete continuing education courses. There is a grandfather provision, i.e. this bill provides that those persons licensed as registered dental hygienists who completed prescribed classes through the Health Manpower Pilot Project and, who have established an independent practice, as described, are deemed to have satisfied the licensing requirements under these provisions so long as they follow the requirements for prescription and functions, and continue to personally practice and operate their business.

Originally, RDHAPs could only perform dental care services pursuant to a prescription written by a dentist or physician. However, 2005 A 1334 enacted in September 2006 removed the requirement for a prescription and instead requires only that once 18 months has elapsed from initial treatment by a hygienist then prior to performing any further treatment the dental hygienist must show written verification that the patient has been to a dentist who has written a prescription for continued care. They may perform root planing and oral prophylaxis without supervision, may supervise dental assistants, and may obtain reimbursement for services from third-party payers, including Denti-Cal. They may work in specified institutions, in underserved areas, or if licensed through the grandfather provision, wherever they have had and continued their hygiene practice. (Sec 1774, 1775) Also, any dental hygienist may provide screening, apply fluorides and sealants without supervision in government administered public health programs. (Sec 1763 (a), 2002)

Connecticut S 627 enacted 1997. Established a pilot program made permanent by 1999 S 942 allowing dental hygienists to practice, without dental supervision, in public health settings such as community health centers, group homes, or schools. (Sec 20-1261)

Idaho S 1288 enacted 2004. Allows the Board of Dentistry to issue an "extended access dental hygiene endorsement" to a dental hygiene license which will authorize the hygienist to provide dental hygiene services under a dentist's general supervision in

public or private entities through an "extended access oral health care program", i.e. a charitable care program recognized under section 501(c) (3) of the federal Internal Revenue Code.

The law amends the current provisions of the dental practice act and dispenses with the need for a dentist to provide a written prescription to the hygienist prior to the rendering of hygiene services. However, this dentist will need to either perform a diagnosis or determine the treatment to be provided and authorize the hygiene care prior to treatment. The hygienist does not need to be in the employment of the dentist; the institution may employ the hygienist. See also Rule 29 (2004).

In 2007, the rule 51 - Continuing Education for Dental Hygienists - was amended to provide that in addition to any other continuing education requirements for renewal of a dental hygiene license, a person granted an extended access dental hygiene license endorsement shall complete twelve (12) credits of continuing education in each biennial renewal period in the specific practice areas of medical emergencies, local anesthesia, oral pathology, care and treatment of geriatric, medically compromised or disabled patients and treatment of children.

Rule 29 was also amended to create an "extended access dental hygiene restorative endorsement." This hygienist, after additional education and training, may perform specified restorative functions under the direct supervision of a dentist in an extended access oral health care program. Permissible restorative functions under this endorsement shall be limited to the placement of a restoration into a tooth prepared by a dentist and the carving, contouring and adjustment of the contacts and occlusion of the restoration.

Iowa A dentist may enter into a written agreement authorizing a dental hygienist to provide dental care to a patient without a prior exam by the dentist. Care must be delivered to the patient within a public health setting. The agreement shall provide, that the dentist be available for communication and consultation and be filed with the Department of Public Health's Oral Health Bureau and be provided, upon request, to the Board of Dental Examiners.

A dental hygienist, providing services under public health supervision, may make assessments; perform screenings; and provide educational, therapeutic, preventive, and diagnostic services. The hygienist may not administer local anesthesia or nitrous oxide. Each patient must sign a consent that acknowledges that the care received does not take the place of regular dental checkups. The hygienist must provide the patient a written plan for referral to a dentist for assessment of the need for further dental care. Public health settings, where such care may be delivered, include schools; Head Start programs; federally qualified health centers; public health dental vans; free clinics; nonprofit community health centers; nursing facilities and federal, state, and local public health programs. (Rule 650-10.5 (153) 2004. Nursing facilities added in 2007).

Kansas H 2161 enacted 2003. Allows qualified dental hygienists with "extended care permits," (ECPs) issued by the dental board, to provide hygiene services to primarily children in listed institutional settings and schools, as well as those at home who qualify for a federal home and community based service (HCBS) waiver. The hygienist may perform tasks specified in the law or those assigned by a "sponsoring dentist." The

hygienist and sponsoring dentist must have a signed agreement which states that the dentist shall monitor the hygienist's activities.

H 2214, enacted in 2007, amends and expands the provisions of the practice act section 65-1456 regarding "extended care permits" issued to dental hygienists. Adds to the list of children and institutional settings where these ECPs I & II hygienists can provide hygiene services. The amendment also allows hygiene services be performed on persons with developmental disabilities and persons 65 or older in listed institutional settings by ECP II hygienists.

The 2007 law reduces the number of hours of experience required to qualify for the Extended Care Permit I Hygienist from 1,800 of dental hygiene care to 1,200 hours within the past 3 years or having taught dental hygiene for two academic years of schooling. ECPs II must complete the 1,800 hours of dental hygiene care and six hours care on special needs patients. The amended law allows for the application of topical anesthetics upon completion of a course approved by the dental board.

Requires DHs to carry malpractice insurance; to advise patients and parents of children that care is preventive and does not constitute comprehensive dental diagnosis or care; to report the nature of the treatment provided and any findings to the supervising medical personnel at the institution or to the sponsoring dentist. The hygienist is paid for the services by the institution or the sponsoring dentist (Sec 65-1456).

Michigan Dental hygienists may provide care when practicing in defined programs for dentally underserved populations. The patient need not be a patient of record of a dentist and the care to be rendered does not need to be "assigned" by a dentist if care is provided according to a list of predetermined procedures and a dentist is available for communication by phone or otherwise or is available on a regularly scheduled basis to provide consultation or review records., P.A. 161 program (Section 333.16625, 1991)

Missouri H 567 enacted 2001. Dental hygienists with three years of clinical experience are allowed to provide sealants, prophys and fluoride treatments to Medicaid eligible children in public health settings (settings established by the Missouri Dental Board and Dept. of Health) without the supervision of a licensed dentist. Missouri law provides that all "eligible providers" will be reimbursed at the rate established by the Division of Medical Services but the Missouri Dental Association reports that under Missouri law, hygienists are not "eligible providers" and therefore are not entitled to direct reimbursement. (Statute 332.311.2)

Montana S 190 enacted 2003. This law creates public health supervision for dental hygienists who may practice in defined public institutions without prior authorization or presence of a dentist. However, the hygienist must provide a referral of the patient to a dentist in cases where needed. Hygienists practicing under this type of supervision shall obtain a "limited access permit" from the dental board. Prophys are allowed but administration of local anesthesia or placements of restorations are not permitted under this level of supervision. (Sec 37-4-405)

Nebraska

Amends Section 71-193.15 of the dental practice act. Permits the Department of Health and Human Services to authorize a dental hygienist, with the appropriate training and

experience, to perform oral prophylaxis on healthy children and in 2013, adults, who do not require antibiotic premedication, as well as other preventive measures such as applying fluorides and sealants, in defined public health settings or in health care related facilities. The hygienist must report to the department the functions performed and advise the patient that services are preventive in nature and do not constitute a comprehensive dental diagnosis and care. There is no mention of any need for a prior assessment or written orders or supervision by a dentist. Nebraska regulators and NDA consider this a type of "public health supervision". (2007 LB 247 and 2013 LB 484). Hygienists may apply for direct reimbursement from Medicaid.

Nevada The board of dental examiners may authorize a "public health dental hygienist" to perform certain services without dental supervision at health care facilities, schools, or places in the state approved by the board. (Rule 631.210.5 adopted 1998) 2001 law allows dental hygienists to obtain approval from the board to work as public health dental hygienists in schools, community centers, hospitals, nursing homes and such other locations as the state dental health officer deems appropriate. (Statue 631.287)

New Hampshire – enacted a law defining the parameters of public health hygiene. The "certified public health dental hygienist" may provide care pursuant to written orders of a dentist without the dentist first having seen the patient. 2011 S 284 - RSA Section 317-A:21.

'Public health supervision' means a licensed dentist authorizes procedures to be carried out by a dental hygienist, without the dentist being present, in a school, hospital, or institution. The dentist must review the hygienist's treatment records once every 2-month period. (Rule Den. 101.15, 1995)

Oklahoma H 1443 enacted 2003. Allows hygienists, with 2 years of experience, to provide care in a treatment facility, outside the dental office pursuant to a dentist's written work orders, without the dentist having seen the patient first. Patients must be referred back to the authorizing dentist, by the hygienist, after initial hygiene treatment and must be seen and accepted as a patient of record by the authorizing dentist prior to subsequent hygiene treatment. The law expressly prohibits hygienists from owning or operating independent hygiene practices. (Sec 328.34 C)

Oregon in 1997 enacted H 2827 that creates a category of unsupervised dental hygienist known as "limited access permit dental hygienist" (LAPDH) to practice within defined institutions. These hygienists are required to have professional liability insurance. OAR 818-035-0025(1) amended in 2005 provides that a dental hygienist, after being authorized by a supervising dentist, may diagnose and treatment plan the need for dental hygiene services for a patient, review these with a supervising dentist, and then if authorized by the dentist, proceed with treatment of that patient. In 2009, the law was again amended (H 3204) the training and education requirements were changed so that a person could qualify for a permit as a limited access permit dental hygienists upon fulfilling all requirements including the completion of either 2,500 hours of supervised dental hygiene practice plus 40 hours of courses in a CODA accredited dental hygiene program or by completing an approved course of study that includes at least 500 hours of dental hygiene practice with limited access patients under direct supervision of faculty of CODA accredited dental or dental hygiene program. Practice hours before & after graduation may be combined to meet this requirement.

In 2011 a law was enacted SB 738 that renames these hygienists in Oregon as Expanded Practice Dental Hygienists, expands the settings and populations these hygienists can practice on and allows them to practice pursuant to collaborative agreements. Rules were adopted in 2011 allowing them to take x-rays with the indirect supervision of a dentist, i.e. in accordance with the collaborative agreement.

Pennsylvania S 455 enacted in 2007 and rule Sec. 33.116 effective 2010. The law creates the "Public Health Dental Hygiene Practitioner." The law allows hygienists to provide care to patients in specified public health settings, without supervision and without a prior exam of a dentist. They must carry malpractice insurance. Public health hygienists may take x-rays without supervision however, rules adopted effective in 2010 require the x-rays be given to patients along with a referral to a dentist since hygienists cannot diagnose dental disease. As part of the 20 hours CE required of all dental hygienists for relicensure, the public health hygienist must complete 5 hours of CE credit in public health.

Texas A dentist may delegate one-time dental hygiene services to be performed, in limited settings, on a patient by a hygienist with 2 years experience. The settings are community health centers, nursing homes or school based health centers. The dentist does not need to first see and diagnose the patient's dental condition. The law limits to six months the period of time during which a hygienist is authorized to perform a delegated procedure with respect to a patient unless the patient has been examined by a dentist. (Statute 262.1515, 2001)

Washington Dental hygienists, with two years practical clinical experience supervised by a dentist, may practice without supervision in defined "health care facilities" (hospitals, nursing homes, etc.) and can bill Medicaid and private health carriers. The patient in such a facility is, by definition, under the medical supervision of their primary health care provider typically a physician. (Sec 18.29.056, 1984)

In 2009, the pilot program allowing hygienists to practice in senior centers and school settings became permanent.

Dental hygienists who are "school sealant endorsed" under RCW 43.70.650 may assess for, remove stains and deposits from teeth and apply sealants and fluoride varnishes in community-based sealant programs carried out in schools. RCW 18.29.220. Written notice must be given to these patients (or their parents) that this treatment is not comprehensive oral health care, but is only preventive. The hygienist must recommend that patient be examined by a licensed dentist for comprehensive dental care and must assist the patient in obtaining a referral to a dentist.

Hygienists can provide limited treatment (cleanings, preventive agents, root planning and soft-tissue curettage) in senior centers (defined as non-profit or government facilities that provide health, social, nutritional, educational and recreational services to persons 60 years and older). Prior to doing so the hygienist must enter in a written practice arrangement plan with a dentist who will provide off-site supervision.

Wisconsin – The legislature's Joint Committee on Review of Administrative Rules (JCRAR) in 2006 approved amendments to rules HFS 105 and 107 Relating to Dental

Services. The rules provide a mechanism for dental hygienists to become Medicaid Certified thus allowing for payment from the state's dental Medicaid program directly to the dental hygienist or to the entity that employs them. The covered services for which reimbursement will be paid are: oral screening, prophylaxis, topical application of fluoride, pit and fissure sealants, scaling and root planning, full mouth debridement and periodontal maintenance. Dental hygienists may provide these services without prior examination, prescription or authorization by a dentist. The Dental Practice Act (Chapter 447 of the Wisconsin Statutes) lists eight settings in which a dental hygienist can "practice dental hygiene or perform remediable procedures". In five of those settings, it is clear that the procedures/practice must be authorized by a dentist. In 1989 the statutes were changed to remove three of the listed eight settings from the requirement of a dentist's authorization. The three settings which have had no mention of dentist's authorization include: (1) public and private K-12 schools/school boards; (2) schools of dentistry and dental hygiene; and (3) city and county public health departments. The Dentistry Examining Board (DEB) has argued since 1991 that removal of a dentist's authorization does not mean that an examination and diagnosis should not first be expected in order to uphold the standard of dental care. The Department of Justice issued an opinion in 2005 which countered the DEB position. Since that 2005 opinion, dental hygienists have been practicing in those three settings without authorization or prescription from dentists.

PUBLIC HEALTH SUPERVISION

Several states reference "public health supervision" of dental hygienists in their laws and rules. This is basically general supervision where the public health institution, either a public or private school, hospital, clinic or other specified institution (e.g. prison), generally employs the hygienist. These states include: **Delaware, Hawaii, Indiana, Kentucky, Maryland, North Carolina, Ohio, South Carolina, Tennessee and West Virginia.**

Some states make reference to "public health supervision" but allow for a greater degree of autonomy that we call "Limited Unsupervised Practice." Those states include **Maine, Massachusetts, Iowa, Montana, Nebraska, Nevada, New Hampshire and Pennsylvania.** See the summary for each of these states above for details.

The American Dental Association definition: - *Public Health Supervision.* That oversight where a licensed dental hygienist may provide dental hygiene services, as specified by state law or regulations, when such services are provided as part of an organized community program in various public health settings, as designated by state law, and with general oversight of such programs by a licensed dentist designated by the state.

UNSUPERVISED PRACTICE – No limitations within authorized scope of practice

Colorado does not restrict DHs practicing without supervision nor does the state restrict the settings. (Sec 12-35-122.5)

Maine

32 MRSA c. 16, sub-c. 3-B (2008 H.P. 1643, L.D. 2277) was enacted April 15, 2008. creating the new license category of independent practice dental hygienist. In 2011 a bill allowing independent practice hygienists to take x-rays was enacted. It is a two year

pilot project in federally designated underserved areas. The bill also requires a dentist read the x-ray within 21 days. Also in 2011 a law was signed authorizing MaineCare (Medicaid) to reimburse independent practice dental hygienists directly for services provided. There is also a form of collaborative practice in Maine, see that category above.

Unlike Colorado, Maine hygienists must apply for a special independent practice license.

#9
SB 2066
3-11-15

Tyler J. Winter, CDA, RDA, LDA
President
North Dakota Dental Assistants Association
1248 7th Street North
Moorhead, 56560-1570

March 11, 2015

Re: Senate Bill No. 2066

Dear Chairman Keiser and Members of the Committee:

My name is Tyler Winter and I am President of the North Dakota Dental Assistants Association (NDDAA). We ask you to oppose the amendments that were presented by the North Dakota Dental Hygienists Association (NDDHA) that defines a collaborative practice agreement to allow a dental hygienist to work under general supervision. Under the current laws, a dental hygienist may already perform this kind of collaborative practice. We oppose this amendment because we believe that more time is needed to properly develop the right model.

To benefit all parties involved (most importantly that of the dental patient), the NDDAA does support a task force led by the Oral Health Coalition to develop a model of the appropriate collaborative practice that fits the citizens of North Dakota. This would be completed over the next interim period.

Respectfully,

Tyler J. Winter, CDA, RDA, LDA
President, North Dakota Dental Assistants Association