



SUPERVISION OF DENTAL HYGIENISTS

Can the Dentist Ever Really Leave the Office?

While broadening the scope of duties performed by auxiliary personnel,
the Education Law limits movement by their supervising dentists.

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THE QUESTION OF WHEN, if ever, it may be appropriate for a dental hygienist to perform duties when a dentist is not physically present in the dental office has generated much confusion and uncertainty among DSSNY members. The simple and short answer under the current law is "almost never." And even the "almost" part is very narrow and provides little real opportunity for a dentist to be away from the dental office. We will explore this in more detail below.

The scope of practice of a dental hygienist is defined in Section 6606 of the New York State Education Law. It states:

"The practice of the profession of dental hygiene is defined as the performance of dental services which shall include removing calcareous deposits, accretions and stains from the exposed surfaces of the teeth which begin at the epithelial attachment and applying topical agents indicated for a complete dental prophylaxis, removing cement, placing or removing rubber dam, removing sutures, placing matrix band, providing patient education, applying topical medication, placing and exposing X-ray films, performing topical fluoride applications and topical anesthetic applications, polishing teeth, taking medical history, charting caries, taking impressions for study casts, placing and removing temporary restorations, and any other function in the definition of the practice of dentistry as may be delegated by a licensed dentist in accordance with regulations promulgated by the commissioner. The practice of dental hygiene may be conducted in

the office of any licensed dentist or in any appropriately equipped school or public institution but must be done under the supervision of a licensed dentist. The commissioner shall promulgate regulations defining the functions a dental hygienist may perform that are consistent with the training and qualifications for a license as a dental hygienist."

Clear and Unambiguous

The statute makes it clear that anything constituting the practice of dental hygiene must be done under the supervision of a licensed dentist.

The practice of dental hygiene is further explained, including the rules for supervision by a dentist, in Section 61.9 of Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York (8 NYCRR 61.9). These are the regulations promulgated by the Commissioner of Education pursuant to the statute. They state:

"The practice of dental hygiene, in accordance with section 6606 of the Education Law, shall be performed under the supervision of a licensed dentist.

A. The degrees of supervision by the dentist are defined as follows:

General supervision shall mean that a supervising dentist is available for consultation, diagnosis and evaluation, has authorized the dental hygienist to perform the services,



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and exercises that degree of supervision appropriate to the circumstances.

Personal supervision shall mean that the dentist in the dental office or facility personally diagnoses the condition to be treated, personally authorizes the procedure and, before dismissal of the patient, personally examines the condition after treatment is completed.

B. The following services may be performed under the general supervision of a licensed dentist:

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

C. The following services may be performed only under the personal supervision of a licensed dentist:

- 1 placing or removing rubber dam;
- 2 removing sutures;
- 3 taking impressions for study casts. Study casts shall mean only

such casts as will be used for purposes of diagnosis and treatment planning by the dentist and for the purposes of patient education;

- 4 placing or removing matrix bands;
- 5 applying a topical medication not related to a complete dental prophylaxis;
- 6 placing and removing temporary restorations. Temporary restorations shall include only nonmetallic substances generally used for temporary intracoronal filling materials. Placing and removing temporary restorations shall not include cutting or excising hard or soft tissue or the use of mechanical instrumentation; and placing and removing periodontal dressings."

Close at Hand

8 NYCRR 61.9(a)(1) and 8 NYCRR 61.9(a)(2) define two different types of supervision: general supervision and personal supervision. At the outset, it should be noted that personal supervision always requires the presence of the supervising dentist in the office. Consequently, all activities that require personal supervision cannot be performed by a dental hygienist when the supervising dentist is out of the office.

With respect to activities that require general supervision, it is only required that the supervising dentist "is available for consultation, diagnosis and evaluation, has authorized the dental hygienist to perform the services, and exercises that degree of supervision appropriate to the circumstances."

Because general supervision does not expressly mandate that the supervising dentist be in the office, a dental hygienist may perform activities requiring only general supervision when the supervising dentist is not in the office. However, this technical legal ability conferred on a dental hygienist to perform the activities listed in

8 NYCRR 61.9(b) when the supervising dentist is not in the office is still very strictly circumscribed. Put simply, the regulation, as interpreted by the New York State Education Department, still requires that the dentist be readily physically available to the dental office. An explanation of the rationale for this interpretation follows.

Where general supervision is required, there are three legal elements that must still be fulfilled by the supervising dentist.

The first element is that the dentist be available for consultation, diagnosis and evaluation. Obviously, this element can only be fulfilled if the dentist is physically readily accessible to the office. This means he or she is available in case an emergency or other unusual occurrence develops at the office with a particular patient.

The second element is that the dentist must authorize the dental hygienist to perform the services. This second element can be met through established office protocols or through authorization over the telephone. However, the second element is in addition to the first element discussed above, and is not a substitute for the dentist being physically readily available.

The third element is that the dentist exercise a degree of supervision appropriate to the circumstances. This means that the dentist will have to use professional judgment to determine what degree of

supervision is necessary based on the nature of the procedure being performed, the relative condition of the patient and the skill level of the dental hygienist performing the procedure. It would not be a valid exercise of professional judgment to provide no supervision at all.

Practically Speaking

Given the three legal elements that are necessary to general supervision, it can be seen that, despite the fact that it is technically legally permissible for the dental hygienist to perform certain services while the supervising dentist is out of the office, it is very difficult from a practical legal standpoint for the dentist or dental hygienist to exercise that right. Nevertheless, if the supervising dentist can successfully adhere to the three legal elements of general supervision described above, then the dental hygienist can perform the services listed in 8 NYCRR 61.9(b) while the dentist is out of the office.

It would appear to be rarely, if ever, possible for the supervising dentist to satisfy these criteria. The Education Department simply does not accept that genuine, professionally acceptable consultation, diagnosis and evaluation of a patient can be maintained for the benefit of the public where a dentist is not readily physically available to a dental office. And because there is no time limit or mileage limit

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Direct personal supervision is the only type of supervision permitted for certified dental assistants.

that defines what constitutes being readily physically available to the dental office, common sense must prevail. A good guide is that the dentist needs to be able to physically appear in the office in time to respond to a life-threatening emergency situation with a patient. Anything that fails to meet that standard is likely to fail to satisfy the Office of Professional Discipline or a jury in a malpractice case.

Naturally, a dentist may always ask another dentist to cover his or her office if the first dentist must be away. The second dentist would be held to the same standards of supervision as the first dentist.

A dentist who agrees to cover the office for another dentist should not take that responsibility lightly. The coverage arrangement should guarantee that a dentist will be readily physically available to the dental office or it will not pass legal muster. Once again, the definition of what constitutes being readily physically available is going to be fairly strict. If the dentist is too far away to physically get to the office in the event an emergency should occur, then the arrangement will not meet the readily physically available test. Moreover, it should be noted that it is not the actual occurrence of any emergency, or even the likelihood that an emergency will occur, that defines the legal test—it is simply a test of whether you would be deemed to be too far removed to physically get to the office in time if any potential emergency, no matter how unlikely, were to occur.

No Way Out

Finally, it should be noted that where certified dental assistants are concerned, the dentist must always be on the premises to supervise the certified dental assistant. Pursuant to Section 6608 of the Education Law, there is only one type of supervision permitted for certified dental assistants: direct personal supervision. This is supervision of dental procedures based on instructions given by a licensed dentist in the course of a procedure who remains in the dental office where the supportive services are being performed, personally diagnoses the condition to be treated, personally authorizes the procedures, and before dismissal of the patient, evaluates the services performed by the dental assistant.

Issues of appropriate supervision are always sensitive matters because they raise a tension between freeing a dentist's time for more advanced dental practice versus opening the door to independent practice by dental hygienists or certified dental assistants, all within the framework of providing optimal protection and service to the public. The balance to be struck is a weighty public policy matter. Right now the law reflects a particular set of public policies, but all dentists need to be aware that public policies can change. Dentistry needs to be constantly alert in this area, as even minor shifts in public policy can bring about dramatic adjustments to the law.



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