

# Senate Executive Departments and Administration Committee

*Kevin Condict 271-7875*

**HB 470**, relative to the use of general anesthesia, deep sedation, and moderate sedation in dental treatment.

**Hearing Date:** April 23, 2025

**Time Opened:** 9:01 a.m.

**Time Closed:** 9:17 a.m.

**Members of the Committee Present:** Senators Pearl, McGough, Gannon and Reardon

**Members of the Committee Absent :** Senator Altschiller

**Bill Analysis:** This bill modifies the rulemaking authority of the board of dental examiners, including to allow dentists to administer moderate sedation to patients under the age of 13 without a second anesthesia provider, provided that they meet certain standards for doing so.

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**Sponsors:**

Rep. Kofalt

Rep. Layon

Rep. Nagel

Rep. Grote

Sen. Avard

Sen. Murphy

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**Who supports the bill:** Rep. Carol McGuire (Merr. 27), Rep. Erica Layon (Rock. 13), Tommy Burke (NHSOMS), and Danielle Doughty.

**Who opposes the bill:** None.

**Who is neutral on the bill:** Laurie Rosato (NHDS), and Nik Frye (OPLC).

**Summary of testimony presented:**

**Representative Erica Layon, Rockingham 13**

- Rep. Layon introduced House Bill 470.
- Rep. Layon said this bill was filed to address serious concerns about access to care, healthcare costs, and patient safety. She said this came to her attention last year when the Board of Dental Examiners (BODE) proposed rule changes aimed at restricting qualified dental professionals from administering sedation and anesthesia under certain circumstances.

- She said the change was due to a law change which was a reaction to an unfortunate death of a child in California. She explained that it was later reviewed and found to not be a system issue, but instead it was a problem with the individual who did not provide appropriate care for that child.
- Rep. Layon stated that the rule changes would have had significant negative consequences for New Hampshire residents. She said the rule changes would put New Hampshire drastically out of sync with nationally accepted standards.
- The proposed rules treated minimal sedation the same as moderate sedation. They would have increased the cost of care by requiring a second person and anesthesia for certain children. It would have sent procedures into hospitals that are not set up for the operating rooms.
- Rep. Layon said the proposed rule changes would have disproportionately impacted those with developmental disabilities, who may need sedation to be able to deal with these procedures.
- Rep. Layon explained that there was an objection response in December to the proposed rules. She said that last week the BODE passed rules that are acceptable to everybody.
- Rep. Layon explained that one of the several challenges during rulemaking was the position taken by those who were writing the rules. They took the phrase that said the Board may exempt the dentist from this requirement if they are Board eligible or Board certified in either dental anesthesiology or oral and maxillofacial surgery. That was interpreted to mean they would be held to the same standard as everybody else regardless of their training.
- Rep. Layon said another challenge was the number of cases to be considered active. There are guidelines from three different professional dental societies that have model rules. Those model rules use the number fifty but clearly state they need to be adapted based on the states. Some states like New Hampshire do not have the patient volume to require somebody to treat fifty kids under the age of eight every two years to be able to do sedation.
- Rep. Layon explained that they decided on twenty cases per two years for New Hampshire. She said that is a good number for the state.
- Rep. Layon said the rules would be consistent if this law was passed. She said it is important to pass this and say that New Hampshire is now in line with good protective standards with the understanding that it also harms a child to not have dental surgery when it is needed.
- Rep. Layon said this bill would help avoid another year long rulemaking process when the rules come up for review.
- Sen. Pearl said that his thought was to re-refer this bill to the Committee and see how the rules are implemented.
  - o Rep. Layon said this could be an active vehicle for further changes next year.

**Rep. Carol McGuire, Merrimack 27**

- Rep. McGuire said this bill is a detailed position, largely from the oral surgeons but supported by the other dental societies, on how to handle anesthesia. She said it is in consonance with the rules that were just adopted.
- Rep. McGuire said it makes sense to put it into statute to make sure the rules do not drift off into uncharted territory.

### **Laurie Rosato, New Hampshire Dental Society**

- Ms. Rosato said that oral and maxillofacial surgeons and other anesthesia providers in the New Hampshire currently safely provide deep sedation and general anesthesia to patients of all ages.
- Ms. Rosato said this bill would require the BODE to keep the current anesthesia guidelines, which is in accordance with the national standards established by the American Association of Oral and Maxillofacial Surgeons, the American Society of Dental Anesthesiologists, the American Dental Association, and the American Association of Pediatric Dentists.
- Ms. Rosato stated that passing this bill will require the New Hampshire BODE to establish sedation and anesthesia guidelines to be in line with national standards of delivery. The requirement will support both access to care and patient safety. It will require providers to demonstrate proficiency and maintain the highest standards of safety and care. She said this bill will create parameters for Den 304 to be within national standards.
- Ms. Rosato said there is no documented need to upend the current delivery model. She said the Board's solution was in search of a problem with unintended consequences for patients and families.
- Ms. Rosato said that general dentists use oral surgeons as a backstop. When a patient comes in who is severely infected, they refer people to an oral surgeon. She said that sending people to the emergency room would incur unnecessary costs and unnecessary pain. She said there is already a model in place that has been safely done in New Hampshire for forty or fifty years.

### **Tommy Burke, New Hampshire Society of Oral and Maxillofacial Surgery**

- Mr. Burke explained that he has been involved with the anesthesia rules and regulation proposals made by the BODE for the last three years.
- Mr. Burke said this bill was introduced as a response to the BODE's proposed rules. He explained that since this bill was introduced, the BODE worked to make changes proposed by the Joint Legislative Committee on Administrative Rules (JLCAR) that are more consistent with national standards.
- Mr. Burke said that while they support this bill, they understand that if a refer motion is necessary then that is favorable while they work through the rules.
- Sen. McGough asked how they know twenty cases is sufficient when other states have different numbers.

- Mr. Burke said the guidelines that were proposed were a joint statement with the American Student Dental Association, the American Society of Anesthesiology, the Society of Oral and Maxillofacial Surgery, and the American Academy of Periodontology. Fifty cases over two years is what was settled on in the model regulations. However, that is meant to be adjusted state-by-state. He said states like Ohio and Mississippi have done the twenty cases as well because they are trying to strike a balance between patient safety and standard of care. He said twenty cases is a high volume.
- Sen. McGough said his confusion is that fifty cases need to be done to maintain proficiency. He asked why it is safe to drop to twenty cases.
  - Mr. Burke said the model regulations were settled on. He noted that the organizations had different opinions, which led them to ultimately defer to the states. He said it is hard to say whether fifty or twenty cases is an acceptable number.
- Sen. McGough asked if a fifty-case requirement would be effectively a ban. He noted the proposed requirement is really ten cases per year.
  - Mr. Burke said that is correct.
- Sen. McGough asked Mr. Burke if he was confident that people would be safe.
  - Mr. Burke said that they understand children are not little adults and must be treated accordingly. He said that operating rooms are backstops but if they can do this safely in their offices then that is what should be done.

### **Nik Frye, Office of Professional Licensure and Certification**

- Mr. Frye said the Office of Professional Licensure and Certification (OPLC) has no position. He said he was available for questions and that the OPLC will operationalize whatever is decided upon.

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Date Hearing Report completed: April 25, 2025