CHAPTER 316
SB 377-FN - FINAL VERSION

2May2018... 1402h
05/23/2018 2096EBA

2018 SESSION

18-2727
10/04

SENATE BILL ***377-FN***

AN ACT **relative to the regulation of dentists and dental hygienists by the board of dental examiners.**

SPONSORS: **Sen. Soucy, Dist 18; Sen. Carson, Dist 14; Rep. Hansen, Hills. 22; Rep. Cilley, Straf. 4**

COMMITTEE: **Health and Human Services**

ANALYSIS

This bill makes various changes to the regulation of dentists and dental hygienists, including requiring criminal history records checks for new applicants and establishing a professionals' health program for impaired dentists.

This bill is a request of the board of dental examiners.

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Explanation: **Matter added to current law appears in *bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eighteen

AN ACT **relative to the regulation of dentists and dental hygienists by the board of dental examiners.**

Be it Enacted by the Senate and House of Representatives in General Court convened:

316:1 Dental Hygienists Committee. Amend RSA 317-A:2-a, I(c) to read as follows:

(c) The additional non-board dental hygienist members shall serve terms of 3 years, with initial terms staggered to provide for annual appointments. *No member of the dental hygienists committee shall serve more than 2 consecutive full terms.* The New Hampshire Dental Hygienists' Association, the New Hampshire Dental Society, and the dental hygiene education community shall each nominate one dental hygienist for appointment as additional members of the committee. Subsequent appointments shall be made from the same nominating authority as the committee member whose term expires.

316:2 Applications; Online. Amend RSA 317-A:8, I to read as follows:

I. Applications for licensure shall be made to the board in writing *or online* and shall be accompanied by a fee established in rules adopted under RSA 541-A by the board and by satisfactory proof that the applicant is a graduate of a school that is recognized by the Commission on Dental Accreditation (CODA). The applicant shall be of good professional character and 18 years of age or older.

316:3 New Paragraph; Application Procedure. Amend RSA 317-A:8 by inserting after paragraph IV the following new paragraph:

V. No application shall be granted unless the board finds that the applicant possesses the necessary educational, character, and other professional qualifications to practice dentistry or dental hygiene, and that no circumstances exist which would be grounds for disciplinary action against a licensed dentist or hygienist pursuant to RSA 317-A:17, II.

316:4 New Section; Criminal History Records Checks. Amend RSA 317-A by inserting after section 8 the following new section:

317-A:8-a Criminal History Record Checks.

I. Every applicant for initial permanent licensure or reinstatement shall submit to the board of dental examiners a notarized criminal history record release form, as provided by the New Hampshire division of state police, which authorizes the release of his or her criminal history record, if any, to the board.

II. The applicant shall submit with the release form a complete set of fingerprints taken by a qualified law enforcement agency or an authorized employee of the department of safety. In the event that the first set of fingerprints is invalid due to insufficient pattern, a second set of fingerprints shall be necessary in order to complete the criminal history records check. If, after 2 attempts, a set of fingerprints is invalid due to insufficient pattern, the board may, in lieu of the criminal history records check, accept police clearances from every city, town, or county where the person has lived during the past 5 years.

III. The board shall submit the criminal history records release form and fingerprint form to the division of state police which shall conduct a criminal history records check through its records and through the Federal Bureau of Investigation. Upon completion of the records check, the division of state police shall release copies of the criminal history records to the board.

IV. The board shall review the criminal record information prior to making a licensing decision and shall maintain the confidentiality of all criminal history records received pursuant to this section.

V. The applicant shall bear the cost of a criminal history record check.

316:5 New Paragraph; Rulemaking; Expanded Function Dental Auxiliaries. Amend RSA 317-A:12 by inserting after paragraph XII-c the following new paragraph:

XII-d. The requirements for a dental assistant or dental hygienist to be permitted to provide services as an expanded function dental auxiliary as provided in RSA 317-A:21-g;

316:6 License Renewal; Notice. Amend RSA 317-A:13 to read as follows:

317-A:13 License Renewal.

I.(a) By February 15 in each even-numbered year, the board shall mail *or email* to each person licensed to practice dentistry a notice [~~of registration and~~] *that* license renewal [~~form~~] *is coming due*.

(b) By February 15 in each odd-numbered year, the board shall mail *or email* to each person licensed to practice dental hygiene a notice [~~of registration and~~] *that* license renewal [~~form~~] *is coming due*.

(c) A failure of the licensee to receive the license renewal form shall not relieve the licensee of the obligation to comply with this section and the rules of the board.

II. Except as provided in RSA 317-A:16, before April 1 in the year of renewal under paragraph I a person licensed to practice dentistry or dental hygiene in this state shall register with the board, apply for license renewal, and pay the fee established in rules adopted by the board. The timelines of submission of renewal applications shall be

evidenced by date stamp made at the time of receipt at the board's office if hand delivered, or by postmark if mailed.

III. All persons licensed to practice dentistry or dental hygiene in this state shall notify the board in writing within [~~10~~] ***30*** days of any change of business or residential address which may occur during the period between biennial registrations. ***Failure to do so may result in the board issuing a non-disciplinary letter of concern to the licensee.***

316:7 Inactive List. Amend RSA 317-A:16 to read as follows:

317-A:16 Inactive List. A dentist or dental hygienist licensed under this chapter who does not actively engage in such practice in New Hampshire within 2 years of his or her previous biennial registration shall have the licensee's name transferred to an inactive list and shall be required to register biennially and pay the inactive registration fee as long as the licensee remains inactive. Any dentist or dental hygienist holding an inactive license shall be restored to active status by the board upon the filing of a written request with the board and the furnishing of evidence of continuing professional character and [~~competence~~] ***continuing education*** and upon payment of the full registration fee established in rules adopted by the board. ***A licensee on inactive status who has been practicing in another state shall provide a letter of good standing from that state.*** A person's right to maintain a license with active status shall not be affected by any absence from active practice in New Hampshire while serving on active duty in the armed forces of the United States.

316:8 New Section; Professionals' Health Program. Amend RSA 317-A by inserting after section 16 the following new section:

317-A:16-a Professionals' Health Program.

I. Any peer review committee may report relevant facts to the board relating to the acts of any dentist in this state if it has knowledge relating to the dentist which, in the opinion of the peer review committee, might provide grounds for disciplinary action as specified in RSA 317-A:17, II.

II. Any committee of a professional society comprised primarily of dentists, its staff, or any district or local intervenor participating in a program established to aid dentists impaired or potentially impaired by mental or physical illness including substance abuse or disruptive behavior may report in writing to the board the name of a dentist whose ability to practice dentistry safely is impaired or could reasonably be expected to become impaired if the condition is allowed to progress together with the pertinent information relating to the dentist's impairment. The board may report to any committee of such professional society or the society's designated staff information which it may receive with regard to any dentist who may be impaired by a mental or physical illness including substance abuse or disruptive behavior. In this chapter,

"disruptive behavior" means any abusive conduct, including sexual or other forms of harassment, or other forms of verbal or non-verbal conduct that harms or intimidates others to the extent that quality of care of patient safety could be compromised.

III. Notwithstanding the provisions of RSA 91-A, the records and proceedings of the board, compiled in conjunction with a peer review committee, shall be confidential and shall not be considered open records unless the affected dentist so requests; provided, however, the board may disclose this confidential information only:

(a) In a disciplinary hearing before the board or in a subsequent trial or appeal of a board action or order;

(b) To the dentist licensing or disciplinary authorities of other jurisdictions; or

(c) Pursuant to an order of a court of competent jurisdiction.

IV.(a) No employee or member of the board, peer review committee member, dental organization committee member, dental organization district, or local intervenor furnishing in good faith information, data, reports, or records for the purpose of aiding the impaired dentist shall by reason of furnishing such information be liable for damages to any person.

(b) No employee or member of the board or such committee, staff, or intervenor program shall be liable for damages to any person for any action taken or recommendations made by such board, committee, or staff unless the person is found to have acted recklessly or wantonly.

V. The board may contract with other organizations to operate the professionals' health program for dentists who are impaired or potentially impaired because of mental or physical illness including substance abuse or disruptive behavior. This program shall be available to all dentists licensed in this state and all dentists seeking licensure in this state, and shall include, but shall not be limited to, education, intervention, ongoing care or treatment, and post-treatment monitoring.

VI. Upon a determination by the board that a report submitted by a peer review committee or professional society committee is without merit, the report shall be expunged from the dentist's individual record in the board's office. A dentist or authorized representative shall be entitled on request to examine the peer review or the organization committee report submitted to the board and to place into the record a statement of reasonable length of the dentist's view with respect to any information existing in the report.

316:9 Professional Misconduct. Amend the introductory paragraph of RSA 317-A:17, II to read as follows:

II. The board, after notice and the opportunity to be heard, may refuse to issue ***or***

renew a license or impose sanctions against a licensee, when it has evidence that the licensee or applicant has engaged in professional misconduct. Misconduct sufficient to support adverse action shall include:

316:10 Professional Misconduct; Guidelines. Amend RSA 317-A:17, II(g) to read as follows:

(g) Failure to follow the current guidelines of***:***

(1) The American Dental Association, as adopted, in whole or in part, by the board, as published in:

[~~(1) Infection Control Recommendations~~] ***(A) Dental Radiographic Examinations: Recommendations for Patient Selection and Limiting Radiation Exposure***; and

[~~(2)~~] ***(B)*** Recommendations in Radiographic Practices.

(2) The Centers for Disease Control and Prevention as published in Infection Control Recommendations.

316:11 References Changed; Accreditation; Notice. Amend RSA 317-A:20, III to read as follows:

III. Nothing in this section shall prevent:

(a) Physicians or surgeons licensed under RSA 329 from practicing dentistry incidental to their practice of medicine.

(b) Students from [~~American Dental Association~~] ***Commission on Dental Accreditation*** accredited schools from practicing in hospitals or other institutions under the supervision of a faculty member of an [~~American Dental Association~~] ***Commission on Dental Accreditation*** accredited school who is also licensed under this chapter.

(c) A health care charitable trust, as defined under RSA 7:32-d, V, from owning, leasing, maintaining, or operating a dental clinic where dental operations are performed, provided:

(1) The health care charitable trust is a not-for-profit corporation under RSA 292 and section 501(c)(3) of the Internal Revenue Code;

(2) The health care charitable trust complies with the provisions of RSA 7:19 through RSA 7:32-l; and

(3) The practice of dentistry conducted under the authority of the health care charitable trust shall be under the supervision of a dentist licensed by the board. The health care charitable trust shall notify the board in writing of the name and location of the dental clinic and the name of the supervising dentist, and shall notify the board within [~~10~~] ***30*** days of any change of the supervising dentist.

(d) Graduates from [~~an American Dental Association~~] ***a Commission on Dental Accreditation*** accredited school from practicing in [~~an American Dental Association~~] ***a***

Commission on Dental Accreditation **accredited residency program under the supervision of a dentist holding an active license issued by the board for the duration of the residency program.**

(e) A consultant, who does not have a license issued by the board or by the New Hampshire board of medicine, from providing a consulting or expert opinion to a New Hampshire licensed dentist regarding a patient, if the consultant is a legally licensed physician or dentist in another state or Canada and has no contact with the patient. The New Hampshire licensed dentist shall bear responsibility for patient diagnosis and treatment.

316:12 Reference Changed; Accreditation. Amend RSA 317-A:21, II to read as follows:

II. Applications for licensure as a dental hygienist shall be made to the board in writing and shall be accompanied by a fee established by the board and by satisfactory proof that the applicant is a graduate of a school of dentistry or a school of dental hygiene with a minimum of a 2-year program in an institution of higher education, the program of which is accredited by a national accrediting agency recognized by the United States Department of Education and the [~~American Dental Association~~] *Commission on Dental Accreditation*.

316:13 New Subparagraph; Dental Hygiene Services. Amend RSA 317-A:21-c, II by inserting after subparagraph (f) the following new subparagraph:

(g) The administration, prescription and dispensing of a fluoride supplement, topically applied fluoride and chlorhexidine gluconate oral rinse.

316:14 New Section; Expanded Function Dental Auxiliary. Amend RSA 317-A by inserting after section 21-f the following new section:

317-A:21-g Expanded Function Dental Auxiliary.

I. A dental hygienist licensed under this chapter or a dental assistant may obtain a permit from the board to practice as an expanded function dental auxiliary by submitting an application to the board in writing and completing additional educational and training requirements as required in rules adopted by the board.

II. An expanded function dental auxiliary shall work under the supervision of an actively licensed dentist.

III. The board shall adopt rules under RSA 317-A:12, XII-d regarding application and permit requirements, educational requirements, level of supervision requirements, and scope of practice requirements relating to expanded function dental auxiliaries.

316:15 Dental Records. Amend RSA 317-A:27-a to read as follows:

317-A:27-a Dental Records. Dentists and dental hygienists shall make a record of all examinations and treatments performed or recommended. The record shall be in such a manner and in sufficient detail that it may be used for identification purposes. A dentist

shall maintain patients' paper[,] *or* electronic, and radiographic records*,* for at least 7 years from the time the dentist or dental hygienist last treated the patient. In the case of a minor patient, a dentist shall maintain a patient's paper[,] *or* electronic, and radiographic dental records for at least 7 years past the age of majority.

316:16 New Paragraph; Rulemaking; Expanded Function Dental Auxiliaries. Amend RSA 317-A:12 by inserting after paragraph XII-d the following new paragraph:

XII-e. The requirements for a dental assistant or dental hygienist to be permitted to provide services as an expanded function dental auxiliary as provided in RSA 317-A:21-g;

316:17 Contingency. If HB 1577 of the 2018 regular legislative session becomes law, section 5 of this act shall not take effect and section 16 of this act shall take effect 60 days after its passage. If HB 1577 of the regular legislative session does not become law, section 5 of this bill shall take effect 60 days after its passage and section 16 of this act shall not take effect.

316:18 Effective Date.

I. Sections 5 and 16 of this act shall take effect as provided in section 17 of this act.

II. The remainder of this act shall take effect 60 days after its passage.

Approved: June 25, 2018
Effective Date:
I. Sections 5 and 16 shall take effect as provided in section 17.
II. Remainder shall take effect August 24, 2018.