



INDEPENDENT PRACTICE OF DENTAL HYGIENISTS IN NORTH CAROLINA
Issue Brief

Introduction

Many Americans suffer from poor oral health, which can have profound negative consequences on overall health and quality of life.¹ The burden of oral disease is unequally distributed, with minorities and low-income people significantly more likely to report oral health problems and trouble accessing oral health care.² Many of these disparities are exacerbated by lack of access to dental providers, including non-dentist medical professionals.³

Dental provider shortages are severe in North Carolina, which ranks 46th in the number of dentists per capita.⁴ Only 16 percent of North Carolina dentists participate in Medicaid – one of the lowest rates in the country.⁵ According to the North Carolina Institute of Medicine, four North Carolina counties have no dentists at all, and 36 have no dentists who accept Medicaid.⁶ Approximately 25 percent of children entering kindergarten each year in North Carolina have untreated dental decay.⁷

Dental hygienists are licensed, certified health professionals, trained and qualified to provide many oral health services.⁸ Although not a replacement for dentists, they are an important component of the dental health care team.⁹ There is reason to believe that increased utilization of dental hygienists can help improve access to care, particularly among underserved populations.¹⁰

Regulation of dental hygienists varies across states.¹¹ Although some states permit hygienists to practice only in the same physical location as dentists, many have taken steps to improve access to care for low-income people by relaxing this restrictive rule.¹² North Carolina is one of these states. This brief fact sheet provides answers to frequently asked questions regarding the ability of dental hygienists to practice outside the presence of a dentist in certain circumstances in North Carolina. However, the legal provisions addressed in this document likely have similar counterparts in other states. Lawyers in other states may have developed, or could develop, comparable guidance relating to the laws governing dental hygienists in their states. You may wish to talk with your attorney or visit the [State Public Health Lawyer Directory](#) to find contact information for a public health attorney in your state.



Does North Carolina law require that dental hygienists always practice in the physical presence of a licensed dentist?

No.¹³ It is true that, in general, hygienists may practice only “under the supervision” of one or more licensed dentists.¹⁴ However, “supervision” is defined to mean practice in a locale where a licensed dentist is physically present *except* where the hygienist practices “under direction and in compliance with N.C. Gen. Stat. § 90-233(a) or N.C. Gen. Stat. § 90-233(a1).”¹⁵ In other words, the requirement that a licensed dentist be present when the hygienist performs functions which he or she is otherwise licensed and qualified to perform is waived when the circumstances set forth in N.C. Gen. Stat. § 90-233(a) or N.C. Gen. Stat. § 90-233(a1) are met.

N.C. Gen. Stat. § 90-233(a) deems the “supervision” requirement to be met where dental hygienists are employed by or under contract with certain governmental agencies and programs, are working in that capacity under the direction of a licensed dentist who is also employed by an enumerated agency or program, and have been trained as public health hygienists.¹⁶ The purpose of this section appears to be to permit such hygienists to practice outside the physical presence of a licensed dentist while practicing on behalf of a governmental entity such as a local health department.

N.C. Gen. Stat. § 90-233(a1) permits dental hygienists who meet certain criteria to practice without a licensed dentist being physically present so long as:¹⁷ 1) a licensed dentist directs in writing that the hygienist perform the functions; 2) the licensed dentist has examined the patient according to the requirements specified in the statute; 3) this examination occurred within 120 days prior to the time the dental hygiene functions are carried out; and 4) the services are performed at certain locations, including “rural and community clinics operated by Board-approved nonprofits; rural and community clinics operated by federal, State, county, or local governments; and any other facilities identified by the Office of Rural Health and approved by the Board as serving dental access shortage areas.”¹⁸

The Board’s rules, closely tracking the statute, permit a hygienist to work within his or her scope of practice without the direct supervision of a dentist under conditions similar to those described in N.C. Gen. Stat. § 90-233(a1).¹⁹ The purpose of this section appears to be to permit hygienists who are not employed by governmental entities but practice in high-need areas to practice outside the physical presence of a dentist if they meet the training and experience requirements set out in § 90-233(a1).

Does the exception in N.C. Gen. Stat. § 90-233(a1) apply only to hygienists who are “on loan” from a private practice?

No. No such stipulation appears in the statute, and a search of North Carolina caselaw revealed no such judicial interpretation. Neither the statute nor caselaw appear to grant the Board the authority to create or enforce conditions more stringent than those contained in the statute, and none are present in the Board’s rules.²⁰ N.C. Gen. Stat. § 90-233(a1) applies to any hygienist who meets its requirements.

Do the supervision requirements of N.C. Gen. Stat. § 90-233(a) apply even where the requirements of N.C. Gen. Stat. § 90-233(a1) are met?

No. In the American legal system, “every part of a statute [is] presumed to have some effect, and not be treated as meaningless unless absolutely necessary.”²¹ N.C. Gen. Stat. § 90-233(a1) is clearly intended as an adjunct to, and not a subset of, N.C. Gen. Stat. § 90-233(a). Both § 90-233(a) and § 90-233(a1) lay out circumstances in which certain hygienists may practice outside of the physical presence of a licensed dentist. Section 90-233(a) applies to certain hygienists practicing as part of their employment with a governmental agency, while section 90-233(a1) applies to certain hygienists who are not employed by the government but who are practicing in one or more of the settings set out in the statute. Any other interpretation would render section 90-233(a1) nonsensical and meaningless.

SUPPORTERS



Robert Wood Johnson Foundation

The Network for Public Health Law is a national initiative of the Robert Wood Johnson Foundation with direction and technical assistance by the Public Health Law Center at William Mitchell College of Law.

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- ¹ See generally Institute of Medicine, *Improving Access to Oral Health Care for Vulnerable and Underserved Populations* (2011) (citing sources), available at <http://www.iom.edu/Reports/2011/Improving-Access-to-Oral-Health-Care-for-Vulnerable-and-Underserved-Populations.aspx> (hereinafter IOM, *Improving Access*).
- ² See Glenn Flores & Sandra Tomany-Korman, *Racial and Ethnic Disparities in Medical and Dental Health, Access to Care, and Use of Services in US Children*, 121 PEDIATRICS e286 (2008), available at <http://pediatrics.aappublications.org/content/121/2/e286.full>; Burton Edelstein, *Disparities in Oral Health and Access to Care: Findings of National Surveys*, 2 PEDIATRICS 141 (2002).
- ³ See generally Leonard Cohen, *The Role of Non-Dental Health Professionals in Providing Access to Dental Care for Low-Income and Minority Patients*, 53 DENT. CLIN. NORTH AM. 451 (2009); Nancy Nielsen-Thompson & Pauline Brine, *Expanding the Physician-Substitute Concept to Oral Health Care Practitioners*, 18 J. PUB. HEALTH POL. 80, 82 (1997); IOM, *Improving Access* at 3-16. See also *Dental Hygiene: Focus on Advancing the Profession*, Am. Dental Hygienists' Association 4 (June 2005), available at http://www.adha.org/downloads/ADHA_Focus_Report.pdf.
- ⁴ Centers for Disease Control and Prevention, Health, United States, 2010 at Table 109 (2010), available at <http://www.cdc.gov/nchs/data/hs/hs10.pdf>.
- ⁵ North Carolina Institute of Medicine, *Report to the North Carolina General Assembly and to the Secretary of the North Carolina Department of Health and Human Services* (1999), at 19.
- ⁶ *Id.* at 3.
- ⁷ *Id.* at 21.
- ⁸ IOM, *Improving Access* at 3-16 – 3-17. See also *Dental Hygiene: Focus on Advancing the Profession*, Am. Dental Hygienists' Association 4 (June 2005), available at http://www.adha.org/downloads/ADHA_Focus_Report.pdf.
- ⁹ See generally David Nash, *Adding Dental Therapists to the Health Care Team to Improve Access to Oral Health Care for Children*, 9 ACAD. PEDIATRICS 446 (2009).
- ¹⁰ See Ann Battrell et al., *A Qualitative Study of Limited Access Permit Dental Hygienists in Oregon*, 72 J. DENTAL EDUC. 329, 340 (2008).
- ¹¹ See also Lea Nolan, et al., *The Effects of State Dental Practice Laws Allowing Alternative Models of Preventive Oral Health Care Delivery to Low-Income Children*, Center for Health Services Research and Policy, The George Washington University Medical Center (January 17, 2003), available at http://www.gwumc.edu/sphhs/departments/healthpolicy/CHPR/downloads/oral_health_exec%20summ.pdf.
- ¹² See *Id.*, IOM, *Improving access* at 3-29.
- ¹³ Note that this answer appears to differ from that offered by the North Carolina Dental Board on its website, which states: “Current laws require that the dentist be present IN THE OFFICE whenever anyone sees patients (emphasis in original).” See <http://www.ncdentalboard.org/FAQ1.htm>. The website does not cite any statutory authority in support of this contention.
- ¹⁴ N.C. Gen. Stat. § 90-233(a) (requiring that a hygienist practice “only under the supervision of one or more licensed dentists”); 21 N.C.A.C. 16G .0101 (listing functions that may be performed by a dental hygienist “under the direct control and supervision of a dentist”).
- ¹⁵ N.C. Gen. Stat. § 90-221(f).
- ¹⁶ N.C. Gen. Stat. § 90-233(a).
- ¹⁷ To qualify under this provision, the hygienist must have three years of experience in clinical dental hygiene or a minimum of 2,000 hours performing primarily prophylaxis or periodontal debridement under the supervision of a licensed dentist, complete annual CPR certification and six hours each



year of Board-approved continuing education in medical emergencies in addition to other required training and be designated by the employing dentist as being capable of performing clinical hygiene procedures without the direct supervision of the dentist. N.C. Gen. Stat. § 90-233(a1).

¹⁸ N.C. Gen. Stat. § 90-233(a1). Neither the statute nor the North Carolina Administrative Code (N.C.A.C.) specify any procedure for a nonprofit or other facility to seek and receive Board approval, and no such information appears to be found on the Board's website. "Board" here and throughout this document refers to the North Carolina State Board of Dental Examiners.

¹⁹ Interestingly, the rules do not place any limitation on the places such functions may be provided. See 21 N.C.A.C. § 16Z .0101 (Eligibility to Practice Hygiene Outside Direct Supervision).

²⁰ See 21 N.C.A.C. §16A-16Z (governing the Board and the practice of dentistry). The Board, of course, may not adopt rules that are in direct conflict with the statute.

²¹ *Raven Coal Corp. v. Absher*, 149 S.E. 541, 542 (Va. 1929).