



South Carolina Department of
Labor, Licensing and Regulation

South Carolina Board of Dentistry

NEWSLETTER

Fall 2008

Thomas A. Dixon, DMD, Editor

Issue No. 49

Mission Statement

To protect the public health, safety and welfare in the State of South Carolina by the licensure and regulation of dentists, dental hygienists and dental technicians.

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www.llr.state.sc.us

2009 License Renewal

On or about Oct. 15, 2008, you will receive written notice to renew your license for 2009. This notice will include your user ID and password in order for you to complete the online renewal of your license. Payment options include 1) personal check, 2) VISA or 3) Mastercard credit card. **Be sure to renew your license on or before Dec. 31, 2008 in order to avoid late fees and penalties.**

Online Services

The following services are available online 24 hours a day, seven days per week at www.llr.state.sc.us/pol/Dentistry:

- Change of Address
- License Verification Request
- Check Status of Application
- Licensee Lookup

Board Officers

Effective 7/1/08 – 6/30/09, the officers of the Board are as follows:

PRESIDENT	-	C. Timothy Assey, DMD
VICE PRESIDENT	-	Charles E. Millwood, Jr., DMD
SECRETARY	-	Thomas A. Dixon, DMD

New Board Administrator

Effective July 1, 2008, Veronica Reynolds assumed the role of administrator for the Board of Dentistry. She also serves as administrator for the Board of Physical Therapy and the Board of Examiners in Speech-language Pathology and Audiology. Rion Alvey, former Board of Dentistry administrator, is serving as Assistant Deputy Director for LLR's health and medically related boards, including dentistry. Alvey also is overseeing LLR's Office of Investigations and Enforcement.

New Board Member

Dr. John M. Whittington of Marion has been declared the new Board member from the Sixth Congressional District. He was unopposed in the March 2008 election. Dr. Whittington's name has been submitted to the Governor for appointment to the Board, effective Jan. 1, 2009.

Procedures that can be Delegated to Dental Hygienists and Dental Assistants

I. PRIVATE DENTAL OFFICE under DIRECT SUPERVISION

Procedure	Dental Hygienist	Expanded Duty Dental Assistant	Dental Assistant
Assist in basic supportive chairside procedures	√	√	√
Chart existing restorations, clinically missing teeth, and appliances within the oral cavity	√	√	√
Apply topical drugs as prescribed by the Board	√	√	√
Place and remove rubber dam	√	√	√
Place and remove matrix	√	√	√
Place and remove orthodontic ligatures	√	√	√
Take and record vital signs (blood pressure, pulse, etc.)	√	√	√
Expose radiographs upon completion of Board-approved radiation safety course	√	√	√
Place and remove periodontal packs	√	√	√
Remove sutures	√	√	√
Take impressions for study models	√	√	
Place and remove socket dressing	√	√	
Place gingival retraction cord	√	√	
Place temporary restorations	√	√	
Cement temporary crowns or bridges	√	√	
Remove excess cement from restorations and/or appliances	√	√	
Polish restorations and supragingival tooth structure	√	√	
Application of pit and fissure sealant	√	√	
Monitor nitrous oxide conscious sedation upon certification by the Board	√	√	
Administration of local infiltration anesthesia upon certification by the Board	√		
Complete prophylaxis to include scaling, root planning, performing clinical examination	√		
Oral hygiene and instruction	√	√	√

“Direct Supervision” – The dentist is in the dental office, personally authorizes the condition to be treated, personally authorizes the procedure and before dismissal of the patient, evaluates the performance of the dental auxiliary. Such a requirement does not mandate that the dentist be present at all times but he must be on the premises actually involved in supervision and control. 40-15-85.

“Oral Prophylaxis” means the removal of any and all hard and soft deposits, accretions, toxins, and stain from any natural or restored surfaces of teeth or prosthetic devices by scaling and polishing as a preventive measure for the control of local irritational factors. 40-15-85.

“Monitor” [Nitrous Oxide Conscious Sedation] – carrying out orders of the dentist, including initiation of flow of nitrous oxide component. Auxiliary may then maintain that flow or decrease the level of nitrous oxide when oxygenating patient, without specific direction of dentist. The dentist must determine need and level of nitrous oxide sedation regarding a particular patient. (Board policy)

“Dental Hygienist” – one who engages in those clinical procedures primarily concerned with performance of preventive dental services not constituting the practice of dentistry, including removing all hard and soft deposits and stains from surfaces of human teeth, root planning, performing clinical examination of teeth and surrounding tissues, and charting of oral conditions for diagnosis by dentist, and performing such other procedures as may be delegated by regulations. 40-15-80(A)

“Dental Assistant” – no formal academic dental training is required for dental assistants. Reg. 39-12.

“Expanded Duty Dental Assistant” – a dental assistant who is a graduate of an ADA accredited dental assisting program, or one who has completed two (2) years of continuous full-time employment as a chairside dental assistant. Reg. 39-13.

II. PRIVATE DENTAL OFFICE under GENERAL SUPERVISION and authorization by supervising dentist. 40-15-80(B).

NOTE: The following restrictions apply: 1) A new patient of record must be clinically examined by the authorizing dentist during the initial visit; 2) An appointed patient must be examined by the authorizing dentist at a minimum of twelve (12) month intervals; and 3) An appointed patient must be notified in advance of the appointment that he/she will be treated by the dental hygienist under general supervision without the authorizing dentist being present or being examined by the authorizing dentist. 40-15-102(C)

Procedure	Dental Hygienist	Expanded Duty Dental Assistant	Dental Assistant
Oral prophylaxis and assessment	√		
Fluoride treatment	√		
Exposure and process of radiographs as directed by standard office protocol	√		
Oral hygiene instruction and education, perform oral screenings, and provide nutrition and dietary counseling <i>without prior authorization</i>	√		

“General Supervision” – means that a licensed dentist or the SC Department of Health and Environmental Control’s public health dentist has authorized the procedures to be performed but does not require that a dentist be present when the procedures are performed. 40-15-85.

"Authorized" – means the supervising dentist in a private office setting has personally approved the procedures to be performed and is responsible for the care provided to the patient. 40-15-102.

III. SCHOOL SETTINGS [unless the dentist or dental hygienist is working in a public health setting with DHEC] under GENERAL SUPERVISION and written permission of the student's parent or guardian. 40-15-80(B).

NOTE: The following restrictions apply: 1) A new patient of record must be clinically examined by the authorizing dentist during the initial visit; 2) An appointed patient must be examined by the authorizing dentist at a minimum of twelve (12) month intervals; and 3) An appointed patient must be notified in advance of the appointment that he/she will be treated by the dental hygienist under general supervision without the authorizing dentist being present or being examined by the authorizing dentist. 40-15-102(D)

Procedure	Dental Hygienist	Expanded Duty Dental Assistant	Dental Assistant
Apply topical fluoride	√		
Perform application of sealants	√		
Oral prophylaxis	√		
Exposure and process of radiographs as directed by standard office protocol.	√		

IV. HOSPITALS, NURSING HOMES, LONG TERM CARE FACILITIES [unless the dentist or dental hygienist is working in a public health setting with DHEC] under GENERAL SUPERVISION and provided medical emergency care is available within the facility. 40-15-80(C).

NOTE: The following restrictions apply: 1) A new patient of record must be clinically examined by the authorizing dentist during the initial visit; 2) An appointed patient must be examined by the authorizing dentist at a minimum of twelve (12) month intervals; and 3) An appointed patient must be notified in advance of the appointment that he/she will be treated by the dental hygienist under general supervision without the authorizing dentist being present or being examined by the authorizing dentist. 40-15-102(D)

Procedure	Dental Hygienist	Expanded Duty Dental Assistant	Dental Assistant
Apply topical fluoride	√		
Perform application of sealants	√		
Oral prophylaxis	√		
Exposure and process of radiographs as directed by standard office protocol.	√		

V. PUBLIC HEALTH SETTINGS WORKING WITH DHEC – Examination of patient is not required. Services are to be performed under the direction of DHEC State Dental Coordinator or the Department's designee but do not require the coordinator be present when the services are performed. 40-15-110(G)

Procedure	Dental Hygienist	Expanded Duty Dental Assistant	Dental Assistant
Oral prophylaxis and assessment.	√		
Application of topical fluoride including varnish.	√	√	√
Exposure and process of radiographs as directed by standard office protocol.	√		
Application of dental sealants	√		
Oral screenings using DHEC approved screening system.	√	√	√
Assist in the delivery of public health dental program services as defined in 40-15-110(E): oral screenings using DHEC approved screening system, oral prophylaxis, application of topical fluoride including varnish, and application of dental sealants. 40-15-110(G)	√	√	√
Perform other duties authorized by regulations of the State Board of Dentistry.	√	√	√

"Public Health Setting" – hospital, nursing home, long term care facility, rural or community health clinic, health facility operated by federal, state, county or local governments, hospice, an educational institution, a bona fide charitable institution, or mobile delivery program operated in one of these settings under direction of DHEC. 40-15-110(E)

"Public Health Dental Program Services" – include oral screenings using a DHEC approved screening system, oral prophylaxis, application of topical fluoride including varnish, and the application of dental sealants. 40-15-110(10)

"Mobile Delivery Programs" – those that are not confined to a single building and can be transported from place to place. 40-15-110(E)

"Primary Preventive Care and Education" – promotion and protection of health to avoid the occurrence of disease through community, school, and individual measures or improvements in lifestyle. 40-15-110(10)

2008-2009 State Board Examinations

<u>EXAMINATION</u>	<u>EXAM DATE</u>	<u>APPLICATION DEADLINE</u>	<u>LOCATION</u>
State Board Infiltration Anesthesia Exam	10/17/08	10/03/08	Board Office
State Board Specialty Examinations	01/10/09	12/10/08	Board Office

2008 Legislative Update

DENTAL INSTRUCTOR LICENSE

Effective May 13, 2008, Section 40-15-175 of the SC Code of Laws (1976), regarding the issuance of a Dental Instructor Licenses, was amended and now reads as follows:

"Section 40-15-175.

- (A) The State Board of Dentistry may issue a restricted instructor's license to a dentist who:
- (1) holds a valid license in another state;
 - (2) has not been refused a license or had a license revoked in this State, another state or territory of the United States, or the District of Columbia;
 - (3) passes an examination on jurisprudence as prescribed by the board; and
 - (4) is teaching dental medicine in South Carolina full-time at the Medical University of South Carolina College of Dental Medicine, an American Dental Association accredited dental auxiliary program at a technical college in this State, or at a board-recognized hospital based residency program situated in this State.
- (B) A dentist with a restricted instructor's license is authorized to practice at or on behalf of the Medical University of South Carolina College of Dental Medicine, an American Dental Association accredited technical college, or at a board-recognized hospital based residency program situated in this State. The holder of a restricted instructor's license may practice general dentistry or in his or her area of specialty, but only in a clinic or office affiliated with the dental school, with a dental auxiliary program of a technical college, or with a hospital-based residency program. A restricted instructor's license issued to a faculty member under this section terminates immediately and automatically, without any further action by the board, if the holder ceases to be a faculty member at the dental school, at a dental auxiliary program of a technical college, or at a board-recognized hospital based residency program in this State.
- (C) A restricted instructor's license must be renewed annually in accordance with procedures and fees as established by the Board in regulation.
- (D) A dentist holding a restricted instructor's license issued pursuant to this section is subject to the provisions of this chapter and regulations promulgated under this chapter unless otherwise provided for in this section. The board may revoke a restricted instructor's license for a violation of this chapter or regulations promulgated under this chapter or if the holder fails to supply the board, within ten days of its request, with information as to his or her current status and activities in the teaching program."

DENTAL TECHNICIAN REGISTRATION AND PRESCRIPTIONS FOR DENTAL TECHNOLOGICAL WORK

Act No. 295, effective June 4, 2008, applies to dental technicians and prescriptions for dental technological work issued by a dentist licensed in this State beginning six months after the act's effective date. **Therefore, the addition of Section 40-15-125 and the amendments to Section 40-15-280 of the 1976 Code become law beginning December 4, 2008.**

Section 40-15-125 was added to the SC Code of Laws (1976) so as to require a dental laboratory that performs dental technological work outside of this State to employ a person who is registered by the State Board of Dentistry to authorize such work based on the prescription of a dentist licensed in this state.

"Section 40-15-125. A dental laboratory is considered to perform dental technological work in this State if the work product is prepared pursuant to a written prescription originating in this State, and in order for a dental laboratory to perform dental technological work that originated in this State:

- (1) the laboratory work must be authorized by a person employed in that laboratory who is registered with the State Board of Dentistry pursuant to Sections 40-15-120, 40-15-240, and 40-15-170;
- (2) the dental technological work must be based on a prescription issued by a dentist licensed and practicing in this State; and
- (3) the laboratory shall return to the dentist who issued the prescription certification of:
 - (a) the country of origin where the dental technological work was performed, in whole or in part;

- (b) a list of all materials, including the percentage of each ingredient used in the fabrication of the dental device; and
- (c) the name, address, and certificate number of the person or organization authorized to manufacture the dental device."

Effective this same date, Section 40-15-280, relating to work authorizations for dental technological work, was amended so as to require the invoice for a prescription to include the certificate number of the person employed by the laboratory which is to perform the work. Section 40-15-280 now reads as follows:

"Section 40-15-280. 'Prescription' means a written order for dental technological work which has been issued by a licensed dentist. A prescription must be in a form prescribed by the board in regulation and must contain:

- (1) the name, address, and certificate number of the individual or organization to do the work;
- (2) identification of the patient by name or number;
- (3) the date on which the authorization was written;
- (4) a description of the work to be done, with diagrams, if necessary;
- (5) a specification of the type and quality of materials to be used;
- (6) the dentist's signature, complete address, and state license number."

PENDING LEGISLATION REGARDING MOBILE DENTISTRY

Document No. 3201 is a proposal to add Board Regulation 39-18 regarding requirements of mobile dental facilities and portable dental operations by defining terms and providing for the issuance and renewal of registration. This proposed regulation to implement Section 40-15-172 of the 1976 Code was withdrawn and resubmitted on May 22, 2008; the 120-day review expiration date for automatic approval is scheduled March 4, 2009.

COMPLIANCE WITH FEDERAL TRADE COMMISSION (FTC) ORDER

For three (3) years following the date of the FTC's Decision and Order regarding the delivery of preventive dental services in public settings, the Board is required to publish, in its Newsletter, the Notice, Complaint and Order of the FTC dated Sept. 6, 2007.

NOTICE

The South Carolina State Board of Dentistry has entered into a consent agreement with the Federal Trade Commission. In connection with the Commission's order issued pursuant to that agreement, which became final on Sept. 6, 2007, the Board is publishing this notice concerning the delivery of preventive dental services in public health settings:

The 2003 amendments to the Dental Practice Act (Act No. 45 of 2003) provide that the Board may not, directly or indirectly, require that a dentist conduct an examination of a patient as a condition of a dental hygienist who is working in a public health setting pursuant to S.C. Code Ann. § 40-15-110(A)(10), which pertains to licensed dental hygienists employed within or contracted through the public health system, or any recodification thereof, performing oral prophylaxis or applying sealants or topical fluoride to that patient.

The Board is in full agreement with the legislative policy set forth in the 2003 amendments as recited above.

J. Douglas Snowden, D.M.D., President
South Carolina State Board of Dentistry

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**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION
COMMISSIONERS: Timothy J. Muris, Chairman
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary
Pamela Jones Harbour**

In the Matter of

SOUTH CAROLINA STATE BOARD OF DENTISTRY.

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) **Docket No. 9311**
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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. § 41, *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the South Carolina State Board of Dentistry violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint stating its charges in that respect as follows:

STATEMENT OF THE CASE

1. Respondent South Carolina State Board of Dentistry ("the Board"), which consists almost entirely of practicing dentists, restrained competition in the provision of preventive dental care services by unreasonably restricting the delivery of dental cleanings, sealants, and topical fluoride treatments in school settings by licensed dental hygienists. Although the South Carolina General Assembly passed legislation in 2000 eliminating a statutory requirement that a dentist examine each child before a hygienist may perform cleanings or apply sealants in school settings, the Board in 2001 re-imposed the very examination requirement that the legislature had eliminated, and extended it to the application of topical fluoride in school settings as well. The effect of the Board's action was to deprive thousands of school children—particularly economically disadvantaged children—of the benefits of preventive oral health care services. The Board's anticompetitive action, undertaken by self-interested industry participants with economic interests at stake, was contrary to state policy and was not reasonably related to any countervailing efficiencies or other benefits sufficient to justify its harmful effects on competition and consumers.

RESPONDENT

2. The Board is organized, exists, and transacts business under and by virtue of the laws of South Carolina, with its principal office at Synergy Business Park, Kingstree Building, 110 Centerview Dr., Columbia, South Carolina 29210.
3. The Board was created by the South Carolina legislature to supervise the practice of dentistry and dental hygiene.
4. By virtue of the Board's make-up, the licensed dentists of South Carolina regulate both themselves and dental hygienists.
5. The Board is composed of seven dentists, one dental hygienist, and one public member. The licensed dentists in South Carolina elect six of the dentist members for approval by the governor, and the dental-hygienist member is elected by licensed dental hygienists in South Carolina for approval by the governor. The governor of South Carolina appoints one of the dentist members and the public member.
6. While serving their membership terms, dentist members of the Board may, and do, continue to engage in the business of providing dental services for a fee. Except to the extent that competition has been restrained as alleged below, and depending on their geographic location, licensed dentists in South Carolina compete with each other and with dentist members of the Board.
7. The Board is the sole licensing authority for dentists and dental hygienists in South Carolina. It is generally unlawful for an individual to practice or to offer to practice dentistry or dental hygiene in South Carolina unless he or she holds a current license to practice.
8. The Board is authorized by South Carolina law to take disciplinary action against any licensee who violates any rule or regulation promulgated by the Board. Disciplinary action by the Board may include the suspension or revocation of a license, or other limitations or restrictions on a licensee.

JURISDICTION

9. The Board is a state regulatory body and is a "person" within the meaning of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.
10. Substantial sums of money flow into South Carolina from the federal government and other out-of-state payers for the purchase of preventive dental care services. The acts and practices of the Board, including the acts and practices alleged herein, have been or are in or affecting "commerce" within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

PREVENTIVE DENTAL SERVICES IN SOUTH CAROLINA

11. Dental hygienists are licensed health care professionals who specialize in providing preventive oral health services. Such services include cleaning teeth, taking x-rays, providing nutrition and dietary counseling, providing fluoride treatments, and applying dental sealants. Dental hygienists are also trained to detect signs of oral disease and to educate patients on maintaining optimal oral health.
12. There are over 2,200 dental hygienists licensed to practice in South Carolina. Dental hygienists in South Carolina practice in collaboration with a supervising dentist or under the direction of the South Carolina Department of Health and Environmental Control's public health dentist.
13. Firms owned by dental hygienists working in collaboration with a dentist (either supervised by a private dentist or working at the direction of South Carolina's public health dentist) can compete with dentists for the provision of preventive dental care services.

14. Many children in South Carolina suffer from oral health problems because they do not receive preventive dental care, particularly children in low-income families. Over 400,000 children – more than 40 percent of children in South Carolina – are Medicaid-eligible. In the early 1990s, only 12 percent of Medicaid-eligible children received preventive dental care services.

15. In 1988, the South Carolina General Assembly enacted a law specifically authorizing dental hygienists to provide preventive services in schools. That law, however, required that hygienists could provide cleanings and apply dental sealants only if a dentist had examined the child's teeth within the previous 45 days. The 1988 law did not significantly increase the delivery of dental hygienists' services in school settings.

16. In 2000, South Carolina substantially increased Medicaid reimbursement for dental services. With federal matching funds, about \$79 million became available annually for Medicaid-eligible dental services.

17. After Medicaid payment levels for dental care services increased, the number of South Carolina dentists participating in South Carolina's Medicaid-Dental program increased about one-third. More than 900 of the over 1,500 licensed dentists licensed in South Carolina now participate in the state's Medicaid-Dental program.

SOUTH CAROLINA GENERAL ASSEMBLY REMOVES A BARRIER TO THE PROVISION OF PREVENTIVE DENTAL CARE IN SCHOOLS

18. In 2000, the South Carolina General Assembly amended its statutes to make it easier for dental hygienists to deliver preventive dental care services in school settings. Prior to the 2000 amendments, South Carolina statutes provided that a dental hygienist could provide cleanings and sealants in a school setting only if:

- (1) a supervising dentist examined the patient no more than 45 days before the treatment;
- (2) a supervising dentist provided written authorization for the procedures;
- (3) the patient was not an active patient of another dentist; and
- (4) the patient's parents provided written permission for the treatment.

19. The 2000 amendments removed these requirements, except the requirement for parental consent. The 2000 amendments provided instead that a dental hygienist could apply topical fluoride and perform the application of sealants and oral prophylaxis "under general supervision." S.C. Acts § 40-15-80(B) (2000). General supervision "means that a licensed dentist or the South Carolina Department of Health and Environmental Control's public health dentist has authorized the procedures to be performed but does not require that a dentist be present when the procedures are performed." S.C. Acts § 40-15-85 (2000). By virtue of the 2000 amendments, the Board could not require a dentist examination as a condition of a dental hygienist's providing preventive services in a school setting.

20. Upon signing the 2000 amendments, South Carolina's governor announced: "This new law removes a regulation that hindered access to dental care."

21. The 2000 amendments embodied a policy to remove artificial barriers to the provision of oral preventive health care by dental hygienists to school children.

22. Health Promotion Specialists ("HPS") is a firm owned by a dental hygienist that provides preventive dental services to South Carolina children. HPS employs dental hygienists to provide those services and contracts with dentists to supervise the hygienists.

23. In January 2001, HPS began providing cleanings, sealants, topical fluoride treatments, and other preventive dental services on-site to children in South Carolina schools. By July 2001, HPS had screened over 19,000 children, and provided preventive services (cleanings, sealants, and topical fluoride treatments) to over 4,000 children, including nearly 3,000 Medicaid-eligible children. Because HPS's services were provided in schools, they were more convenient for the families of the children served. Dentists in traditional office practices risked losing patients to HPS.

24. Because a tremendous unmet need for preventive dental care remained, HPS expected to treat more than twice as many students in the fall semester of 2001 as it had in the spring semester. Relying on this forecast, HPS more than doubled the number of hygienists it employed.

BOARD CONDUCT

25. The Board has restrained competition in the provision of preventive dental care services by combining or conspiring with its members or others, or by acting as a combination of its members or others, to restrict unreasonably the ability of dental hygienists to deliver preventive services in school settings. In particular, on July 12, 2001, the Board adopted an emergency regulation governing dental hygienist practice in school settings that re-imposed the same examination requirement that the General Assembly removed in 2000: that a supervising dentist had to examine the patient no more than 45 days prior to treatment.

26. For the regulation to become effective, it required the approval only of the Board, a majority of which consists of practicing dentists elected by the licensed dentists of South Carolina. No financially disinterested state actor approved the regulation before or while it was

in effect. Under state law, the regulation terminated after 180 days.

27. The emergency regulation conflicted directly with the policy articulated by the General Assembly, by re-imposing the precise barriers to dental hygienists' providing preventive services to school children that the legislature had just removed.

28. The effect of the emergency regulation was to reduce substantially the number of children (particularly economically disadvantaged children) who received preventive dental care. During the latter half of 2001, the period when the emergency regulation was in effect, HPS screened fewer than 6,000 children, about 13,000 fewer than it had screened during the first half of 2001. The emergency regulation also limited HPS's ability to provide preventive dental care; as a result, the regulation deprived thousands of South Carolina children of preventive dental care.

29. The Board's requirement that a dentist examine each child before a dental hygienist provides a cleaning, sealant, or fluoride treatment in school settings was not reasonably related to any efficiencies or other benefits sufficient to justify its harmful effect on competition and consumers.

STATE ADMINISTRATIVE REVIEW FINDS IMPOSITION OF THE DENTIST PREEXAMINATION REQUIREMENT IN SCHOOL SETTINGS CONTRARY TO THE 2000 AMENDMENTS

30. In August 2001, the Board published a proposed permanent regulation substantially identical to the emergency regulation, which by law would lapse in January 2002.

31. Pursuant to South Carolina law, an administrative law judge was required, after a public hearing, to determine whether the proposed permanent regulation was a reasonable exercise of the Board's authority. The administrative law judge's report, along with the proposed regulation, had to be forwarded to the General Assembly for review in order for the permanent regulation to become effective.

32. In February 2002, the presiding administrative law judge issued a report that concluded that the Board's proposed permanent regulation was unreasonable and contravened state policy to the extent it reinstated the dentist pre-examination requirement that the legislature had eliminated in 2000.

33. The administrative law judge found that deletion of the statutory pre-examination requirement reflected a state policy adopted by the South Carolina legislature during its 2000 session to increase access to preventive oral health care for low-income children. The administrative law judge recommended that the Board delete the pre-examination requirement from its proposal before forwarding it to the legislature.

34. After issuance of the administrative law judge's report, the Board did not submit its proposed permanent regulation to the General Assembly for review. As a result, the proposed regulation did not take effect.

THE CURRENT THREAT TO THE DELIVERY OF PREVENTIVE DENTAL SERVICES IN SOUTH CAROLINA

35. After the emergency regulation lapsed, at least three firms, including HPS, provided preventive dental care in schools pursuant to contracts with the Department of Health and Environmental Control. Under the contracts, these firms provided cleanings, fluoride treatments, and sealants, under standing orders, without a mandatory pre-examination by a dentist.

36. During the latter part of 2002, HPS provided preventive dental care treatments to nearly 10,700 school children, 6,000 more than during the same period in 2001, when the Board's emergency regulation was in effect.

37. In May 2003, the South Carolina General Assembly enacted legislation that expressly provides that dentist examination requirements applicable in some settings do not apply to dental hygienists' provision of preventive oral health care services, including cleanings, sealants and topical fluoride, when they are working in public health settings under the direction of the Department of Health and Environmental Control.

38. Nonetheless, when the Board in March 2003 considered the statutory revisions that the General Assembly later enacted, it maintained that in all settings where a dental hygienist provides treatment – whether public health or private practice – a licensed dentist has to see the patient and provide a treatment plan.

ANTICOMPETITIVE EFFECTS

39. The Board's acts and practices have had the effect of restraining competition unreasonably and injuring consumers in the following ways, among others:

A. hindering competition in the delivery of cleaning, sealant, topical fluoride, and other preventive dental services to school-aged children in South Carolina; and

B. depriving thousands of school children—particularly economically disadvantaged school children—of the benefits of preventive oral health care.

VIOLATION

40. The combination, conspiracy, acts and practices described above constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45. Such combination, conspiracy, acts, and practices, or the effects thereof, are continuing and will continue or recur in the absence of the relief herein requested.

NOTICE

Notice is hereby given to the Respondent that the fourteenth day of January, 2004, at 10:00 a.m., or such later date as determined by the Commission or by an Administrative Law Judge of the Commission, is hereby fixed as the time and Federal Trade Commission offices, 600 Pennsylvania Ave., N.W., Washington, D.C. 20580, as the place when and where a hearing will be had on the charges set forth in this Complaint, at which time and place you will have the right under the FTC Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in the Complaint.

Pending further order of the Commission, the Commission will retain adjudicative responsibility for this matter. *See* § 3.42(a) of the Commission's Rules of Practice for Adjudicative Proceedings. Pursuant to § 3.12 of those Rules, the Commission hereby allows you until 30 days from the date of service of this Complaint upon you to file either an answer or a dispositive motion. If you file a dispositive motion within that time, your time for filing an answer is extended until 10 days after service of the Commission's order on such motion. If you do not file a dispositive motion within that time, you must file an answer.

An answer in which the allegations of the Complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the Complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the Complaint not thus answered shall be deemed to have been admitted.

If you elect not to contest the allegations of fact set forth in the Complaint, the answer shall consist of a statement that you admit all of the material facts to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the Complaint and, together with the Complaint, will provide a record basis on which the Administrative Law Judge shall file an initial decision containing appropriate findings and conclusions and an appropriate order disposing of the proceeding. In such answer, you may, however, reserve the right to submit proposed findings and conclusions under § 3.46 of the Commission's Rules of Practice for Adjudicative Proceedings and the right to appeal the initial decision to the Commission under §3.52 of said Rules.

Failure to answer within the time above provided shall be deemed to constitute a waiver of your right to appear and contest the allegations of the Complaint and shall authorize the Administrative Law Judge, without further notice to you, to find the facts to be as alleged in the Complaint and to enter an initial decision containing such findings, appropriate conclusions, and order.

The Commission or the Administrative Law Judge will schedule an initial prehearing scheduling conference to be held not later than 14 days after an answer is filed by Respondent. Unless otherwise directed by the Commission or the Administrative Law Judge, the scheduling conference and further proceedings will take place at the Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Room 532, Washington, D.C. 20580. Rule 3.21(a) requires a meeting of the parties' counsel as early as practicable before the prehearing scheduling conference, and Rule 3.31(b) obligates counsel for each party, within 5 days of receiving a respondent's answer, to make certain initial disclosures without awaiting a formal discovery request.

NOTICE OF CONTEMPLATED RELIEF

Should the Commission conclude from the record developed in an adjudicative proceeding in this matter that the Board is in violation of Section 5 of the Federal Trade Commission Act, as alleged in the Complaint, the Commission may order such relief as is supported by the record and is necessary and appropriate, including, but not limited to, an order that requires the following:

1. The Board shall cease and desist from, either directly or indirectly, requiring that a dentist conduct an examination of a patient as a condition of a dental hygienist who is working in a public health setting pursuant to S.C. Code Ann. § 40-15-110(A)(10), or any recodification thereof, performing oral prophylaxis or applying sealants or topical fluoride to that patient, unless the examination requirement is adopted by the South Carolina General Assembly after the date that the order becomes final.
2. The Board shall mail a copy of the Complaint, order, and an explanatory notice to each Board member; each officer, director, representative, agent, and employee of the Board; each person licensed to practice dentistry or dental hygiene in South Carolina; and the superintendent of each school district in South Carolina.
3. The Board shall take such other measures that are appropriate to correct or remedy, or prevent the recurrence of, the anticompetitive practices in which it engaged.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twelfth day of September, 2003, issues its Complaint against Respondent South Carolina State Board of Dentistry.

By the Commission.
Donald S. Clark, Secretary

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS:

**Deborah Platt Majoras, Chairman
Pamela Jones Harbour
Jon Leibowitz
William E. Kovacic
J. Thomas Rosch**

In the Matter of

SOUTH CAROLINA STATE BOARD OF DENTISTRY

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Docket No. 9311

DECISION AND ORDER

The Federal Trade Commission ("Commission") having heretofore issued its Complaint charging South Carolina State Board of Dentistry ("the Board"), hereinafter sometimes referred to as "Respondent," with violating Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing an admission by Respondent of all the jurisdictional facts set forth in the Complaint, a statement that the signing of the Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(f) of the Commission's Rules, 16 C.F.R. § 3.25(f), and the Commission having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments filed thereafter by interested persons pursuant to Section 3.25 of its Rules, now in further conformity with the procedure described in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order"):

1. Respondent is organized, exists, and transacts business under and by virtue of the laws of South Carolina, with its principal office at Synergy Business Park, Kingstree Building, 110 Centerview Dr., Columbia, South Carolina 29210.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. "South Carolina State Board of Dentistry" or "the Board" means South Carolina State Board of Dentistry, its members, officers, directors, committees, representatives, agents, employees, and successors, including, but not limited to, its executive director and investigators; and
- B. "Dental hygienist" means a person who practices dental hygiene, as defined in S.C. Code of Laws § 40-15-80.

II.

IT IS FURTHER ORDERED that Respondent shall provide written notice to the Commission at least (30) thirty days prior to the promulgation of any proposed or final rule, regulation, policy, issuance of a formal complaint in a disciplinary action, or other action of the Board, relating to the provision by dental hygienists of preventive dental services in a public health setting pursuant to S.C. Code Ann. § 40-15-110(A)(10), or any recodification thereof, including, but not limited to, an action concerning a dentist who authorizes, supervises, or bills for, the provision by dental hygienists of preventive dental services in a public health setting.

PROVIDED, HOWEVER, that if protection of the public health prevents Respondent from notifying the Commission thirty days in advance of an action, then Respondent shall provide the notice required by this Paragraph as soon as is reasonably practicable.

III.

IT IS FURTHER ORDERED that Respondent shall:

- A. Within thirty (30) days after the date on which this Order becomes final, distribute by first-class mail or electronic mail a notice in the form set forth in Appendix A of this Order, with a copy of the Order and Complaint attached, to:
 - 1. each Board member;
 - 2. each officer, director, representative, agent, and employee of the Board; and
 - 3. each person licensed to practice dentistry or dental hygiene in South Carolina.
- B. Within thirty (30) days after the date on which this Order becomes final, distribute by first-class mail a notice in the form set forth in Appendix A of this Order, with a copy of the Order and Complaint attached, to the superintendent of each school district listed in Appendix B.
- C. Within thirty (30) days after the date on which this Order becomes final, publish a notice in the form set forth in Appendix A of this Order, along with a link to a copy of the Order and Complaint, on the South Carolina State Board of Dentistry website, and maintain these materials on the website for three (3) years from the date this Order becomes final.
- D. Publish a notice in the form set forth in Appendix A of this Order in the first South Carolina State Board of Dentistry newsletter to be published after the date this Order becomes final, and annually thereafter for three (3) years.
- E. For a period of three (3) years after the date this Order becomes final, distribute by firstclass mail or electronic mail a notice in the form set forth in Appendix A of this Order, and attaching a copy of the Order and Complaint, to:
 - 1. any person who becomes a member of the Board, within thirty (30) days of the time his or her membership begins;
 - 2. any person who becomes an officer, director, representative, agent, or employee of the Board, within thirty (30) days of the time that he or she assumes such responsibility with the Board; and
 - 3. any person who becomes licensed to practice dentistry or dental hygiene in South Carolina, within thirty (30) days of the time he or she becomes licensed.

IV.

IT IS FURTHER ORDERED that within thirty (30) days after the date this Order becomes final, annually thereafter for three (3) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may by written notice require, the Board shall submit to the Commission a verified written report detailing the manner and form in which the Board has complied and is complying with this Order.

V.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and upon written request with reasonable notice, Respondent shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of Respondent and in the presence of counsel, to all facilities to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondent related to compliance with this Order; and
- B. Upon five (5) days' notice to Respondent and without restraint or interference from Respondent, to interview officers, directors, or employees of Respondent, who may have counsel present, regarding such matters.

VI.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any change in the Board's authority to regulate the practice of dentistry and dental hygiene in South Carolina that may affect compliance obligations arising out of this Order, such as the complete or partial assumption of that authority by another governmental entity, or the dissolution of the Board.

VII.

IT IS FURTHER ORDERED that this Order shall terminate on September 6, 2017.

By the Commission.
Donald S. Clark Secretary

ISSUED: September 6, 2007

X-Ray Certification of Dental Assistants

In order to legally perform dental radiologic procedures in South Carolina, a dental assistant must successfully complete a Board-approved structured course in radiation safety. Regulation 39-16 requires that the employer dentist is responsible for the verification of credentials of dental assistants who expose radiographs in his/her office, and must certify that all personnel in his/her dental office who expose radiographs have met the required training by obtaining certification from a Board-approved certification program.

Board-approved courses include those approved by the American Dental Association (ADA) accredited schools and their constituents, the Dental Assisting National Board, Inc. (DANB), and the South Carolina Dental Association (SCDA). A dental assistant who obtains certification from any of these programs has satisfactorily met the requirements of the SC Dental Practice Act and no further certification by the Board is necessary. Dental assistants should post a copy of their radiation safety certificate from their certification program as proof of compliance with Board regulations. Assistants who previously obtained a radiation certificate from the Board office may continue to post this certificate in lieu of the school certificate.

Note: The SCDA offers a Board-approved radiation safety course and exam. For information/application, contact the SCDA at (803) 750-2277 or visit their web site at www.scdadental.org.