

The American Association of Orthodontists the nation’s largest dental specialty organization and represents more than 19,000 orthodontists in the United States and abroad. 29 of those Members are residents of the State of South Dakota. The mission of the AAO is to advance our members’ success through education, advocacy, and research that drive excellence in patient care.

The South Dakota State Board of Dentistry has proposed extensive changes to ARSD 20:48:08:02, “Dental Assistant – Requirements.” Among the proposed changes are eleven enumerated duties or procedures that a dental assistant may perform “if the supervising dentist **is not present in the dental clinic**, but has prior knowledge and has authorized such.” The AAO has concerns that this language is potentially confusing for practitioners, as it appears to conflict with the language of the State’s statutes.

South Dakota Codified Laws § 36-6A-1 defines a “Dental assistant” as “a person who, **under the supervision of a dentist or dental hygienist**, renders assistance as authorized by this chapter.”

Per SDCL § 36-6A-1, “Definitions,” there are four levels supervision under which dental auxiliaries (dental hygienists, registered dental assistants, or dental assistants) may practice in South Dakota:

36-6A-1 (18) “Direct Supervision”	“the supervision of a dental hygienist or registered dental assistant requiring that a dentist diagnose the condition to be treated, a dentist authorize the procedure to be performed, a dentist remain in the dental clinic while the procedure is performed , and before dismissal of the patient a dentist approve the work performed by the dental hygienist or registered dental assistant;”
36-6A-1 (20) “General Supervision”	“the supervision of a dental hygienist requiring that a dentist authorize the procedures to be carried out, and that the patient to be treated is a patient of record of the supervising dentist, or a dentist practicing within the same entity or clinic as the supervising dentist, and has had a complete evaluation within the previous thirteen months of the delegation of procedures. A written treatment plan contained within the patient’s record shall accompany any authorization of treatment procedures;”
36-6A-1 (21) “Indirect Supervision”	“the supervision of a dental hygienist or registered dental assistant requiring that a dentist authorize the procedures and a dentist be in the dental clinic while the procedures are performed by the registered dental assistant or dental hygienist;”
36-6A-1 (26) “Personal Supervision”	“a level of supervision whereby the dentist or dental hygienist is personally treating a patient and authorizes the dental assistant to aid the treatment by concurrently performing a supportive procedure;”

Despite these statutory definitions, the proposed changes to ARSD 20:48:08:02 provide the following, in relevant part:

Subject to the supervising dentist exercising full responsibility, a dental assistant may perform the following duties or procedures **if the supervising dentist is not present in the dental clinic**, but has prior knowledge of and has authorized such: . . .

(Emphasis added). The foregoing change would allow a dentist to not be present in the dental clinic while an assistant (not registered dental assistant) performs one of the enumerated duties or procedures set forth in the proposed regulation. Yet, under current South Dakota statutes, the only type of supervision that applies to non-registered dental assistants, is “personal supervision,” whereby the dentist or dental hygienist is personally treating a patient (meaning they are in the office) and the non-registered assistant concurrently performs a supportive procedure. Even if direct and indirect supervision were to somehow be interpreted as applying to non-registered dental assistants (and the statutory language does not reflect that), under both, South Dakota statute still requires that a dentist must be present in the dental clinic while the procedure is performed. Here, the language of the proposed regulation clearly conflicts with all three statutory definitions (personal, direct, and indirect) relevant to dental assistants, whether they are registered or un-registered, and thus the proposed regulation should not be able to move forward. Under South Dakota statute, the only type of supervision that allows a dentist to not be present in the dental clinic is “general supervision” which is limited only to dental hygienists. *See* 36-6A-1 (20). Overall, the proposed regulation directly conflicts in multiple ways with clear South Dakota statute and therefore it should not be able to move forward.

Furthermore, and despite the foregoing statutory supervision definitions, the proposed changes to ARSD 20:48:08:02 also provide the following in relevant part:

Subject to the supervising dentist exercising full responsibility, a dental assistant may perform duties or procedures incidental to patient care, including intraoral services or assisting in the performance of clinical or clinical-related duties, while operating under direct or indirect supervision of a dentist or personal supervision of a dental hygienist.

(Emphasis added). As discussed thoroughly above, per the supervision definitions found in SDCL § 36-6A-1, a dental assistant is limited to practicing under “personal supervision.” Including either direct or indirect supervision to this section of the code would conflict with those definitions.

Finally, if the proposed changes allowing a dental assistant to operate “under direct or indirect supervision of a dentist or personal supervision of a dental hygienist” were to be finalized as is, it would result in dental hygienists being able to operate under a lower level of supervision than registered dental assistants. Per ARSD 20:43:08:01, a “Registered dental assistant,” is “a person registered as a registered dental assistant who is authorized to perform expanded functions under the direct supervision of a dentist as authorized by this article.” Because Registered dental assistants have demonstrated a higher level of training than dental assistants who are not registered, it does not seem appropriate to allow dental assistants to perform more functions under lower levels of supervision.

Therefore, the American Association of Orthodontists requests the Legislative Research Council take the above issues into account as it considers the proposed changes to ARSD 20:43:08:02.

1 (3) "Expanded functions" means reversible procedures which require professional
2 proficiency and specific training, performed under the direct supervision of a dentist;

3 (+ 4) "Registered dental assistant;" means a person registered as a registered dental
4 assistant who is authorized to perform expanded functions under the direct supervision of a dentist
5 as authorized by this article;

6 ~~——(2) "Expanded functions," reversible procedures which require professional proficiency and~~
7 ~~specific training, performed under the direct supervision of a dentist;~~

8 (3) ~~"Certificate of competency," a certificate attesting that a dental assistant is qualified to~~
9 ~~perform expanded functions by successfully completing a registered dental assistant examination~~
10 ~~as described in § 20:43:08:06.~~

11 **Source:** 19 SDR 32, effective September 6, 1992; 42 SDR 19, effective August 17, 2015.

12 **General Authority:** SDCL 36-6A-14, ~~36-6A-26.~~

13 **Law Implemented:** SDCL 36-6A-14, 36-6A-41.

14 **20:43:08:02. Dental assistant – Requirements Duties.** ~~The minimal requirements for a~~
15 ~~dental assistant are graduation from high school or its equivalent of eighteen years of age.~~

16 Subject to the supervising dentist exercising full responsibility, a dental assistant may perform
17 duties or procedures incidental to patient care, including intraoral services or assisting in the
18 performance of clinical or clinical-related duties, if the duties or procedures are performed under
19 direct or indirect supervision of a dentist or personal supervision of a dental hygienist.

20 Subject to the supervising dentist exercising full responsibility, a dental assistant may
21 perform the following duties or procedures if the supervising dentist is not present in the dental
22 clinic, but has prior knowledge of and has authorized the performance:

23 (1) Making impressions or obtaining digital records for casts and appliances;

- 1 (2) Creating or delivering vacuum-formed orthodontic retainers;
- 2 (3) Taking photographs extraorally or intraorally;
- 3 (4) Cutting long or broken wires;
- 4 (5) Removing loose bands, clasps, or brackets on orthodontic appliances or retainers;
- 5 (6) Removing and replacing existing ligature ties and arch wires on orthodontic
- 6 appliances;
- 7 (7) Removing existing and replacing lost or missing elastic orthodontic separators;
- 8 (8) Recementing existing provisional restorations;
- 9 (9) Manipulating dental software for designing restorations;
- 10 (10) Duties or procedures that involve infection control; and
- 11 (11) Taking vital signs and updating health history.

12 **Source:** 19 SDR 32, effective September 6, 1992.

13 **General Authority:** SDCL 36-6A-14.

14 **Law Implemented:** SDCL 36-6A-14(1)(10), 36-6A-41.

15 **20:43:08:02.01. Dental assistant – Prohibited duties.** The following list of duties or

16 procedures may not be performed by a dental assistant:

- 17 (1) Placing sealants;
- 18 (2) Placing nonsurgical retraction materials for gingival displacement;
- 19 (3) Fabricating provisional restorations;
- 20 (4) Using electronic instruments for caries detection;
- 21 (5) Adjusting dentures or partials;
- 22 (6) Intraoral use of rotary hand instruments or ultrasonic instruments;

- 1 (7) Any duty or procedure that falls outside of the relevant education, training, and
2 experience of the dental assistant;
3 (8) Any procedure that cannot be performed by a registered dental assistant; and
4 (9) Other duties or procedures prohibited by the board.

5 Source:

6 General Authority: SDCL 36-6A-14.

7 Law Implemented: SDCL 36-6A-14(1)(10), 36-6A-41.

8 **20:43:08:03. Registered dental assistant -- Requirements.** ~~In addition to the minimum~~
9 ~~requirements in § 20:43:08:02, a registered dental assistant must meet one of the following~~
10 ~~requirements~~

11 ~~(1) Successfully complete a dental assisting program approved by the board pursuant to~~
12 ~~§ 20:43:08:05;~~

13 ~~— (2) Hold current credentials as a nationally certified dental assistant; or~~

14 ~~— (3) Hold a certificate of competency from the board.~~

15 An applicant for a registration to practice as a registered dental assistant must be at least
16 eighteen years of age and shall submit to the board:

17 (1) A completed application form and an application fee of \$40;

18 (2) A copy of the applicant's birth certificate or equivalent documentation;

19 (3) Proof of one of the following:

20 a. Graduation from an American Dental Association Commission on Dental
21 Accreditation (CODA) accredited dental assisting program;

22 b. Current certification as a Certified Dental Assistant through the Dental Assisting
23 National Board, Inc.; or