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SENATE BILL NO. 122

Offered January 8, 2020

Prefiled December 16, 2019

A *BILL to amend and reenact §§ 54.1-2700, 54.1-2711, and 54.1-2719 of the Code of Virginia and to amend the Code of Virginia by adding in Article 2 of Chapter 27 of Title 54.1 sections numbered 54.1-2708.5 and 54.1-2708.6, relating to teledentistry.*

Patrons—Barker, DeSteph, Locke, Chase, Dunnavant, Morrissey and Norment; Delegates: Kory, LaRock and Samirah

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2700, 54.1-2711, and 54.1-2719 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 2 of Chapter 27 of Title 54.1 sections numbered 54.1-2708.5 and 54.1-2708.6 as follows:

§ 54.1-2700. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Appliance" means a permanent or removable device used in a plan of dental care, including crowns, fillings, bridges, braces, dentures, orthodontic aligners, and sleep apnea devices.

"Board" means the Board of Dentistry.

"Dental hygiene" means duties related to patient assessment and the rendering of educational, preventive, and therapeutic dental services specified in regulations of the Board and not otherwise restricted to the practice of dentistry.

"Dental hygienist" means a person who is licensed by the Board to practice dental hygiene.

"Dentist" means a person who has been awarded a degree in and is licensed by the Board to practice dentistry.

"Dentistry" means the evaluation, diagnosis, prevention, and treatment, through surgical, nonsurgical, or related procedures, of diseases, disorders, and conditions of the oral cavity and the maxillofacial, adjacent, and associated structures and their impact on the human body.

"Digital scan technician" means a person who has completed a training program approved by the Board to take digital scans of teeth for use in the practice of teledentistry.

"Digital work order" means the digital equivalent of a written dental laboratory work order used in the construction or repair of an appliance.

"License" means the document issued to an applicant upon completion of requirements for admission to practice dentistry or dental hygiene in the Commonwealth or upon registration for renewal of license to continue the practice of dentistry or dental hygiene in the Commonwealth.

"Maxillofacial" means pertaining to the jaws and face, particularly with reference to specialized surgery of this region.

"Oral and maxillofacial surgeon" means a person who has successfully completed an oral and maxillofacial residency program, approved by the Commission on Dental Accreditation of the American Dental Association, and who holds a valid license from the Board.

"Teledentistry" means the delivery of dentistry through the use of telehealth systems and technologies, including live, two-way interactions between a patient and a dentist holding an active license to practice dentistry in the Commonwealth using audiovisual telecommunications technology or the secure transmission of electronic health records, digital files, or medical data to a dentist holding an active unrestricted license to practice dentistry in the Commonwealth to facilitate evaluation of a patient other than as part of a real-time live interaction.

§ 54.1-2708.5. Digital scans for use in the practice of dentistry; practice of digital scan technicians.

A. No person other than a dentist or a dental assistant II, digital scan technician, or other person under the direction of a dentist shall obtain dental scans for use in the practice of dentistry.

B. A digital scan technician who obtains dental scans for use in the practice of dentistry shall work under the direction of a dentist who is (i) licensed by the Board to practice dentistry in the Commonwealth, (ii) accessible and available for communication and consultation with the digital scan technician at all times during the patient interaction, and (iii) responsible for ensuring that the digital scan technician has a program of training approved by the Board for such purpose. All protocols and procedures for the performance of digital scans by digital scan technicians and evidence that a digital scan technician has complied with the training requirements of the Board shall be made available to the

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58 *Board upon request.*

59 *C. The provisions of subsection A shall not prohibit a person from obtaining digital scans of his own*
60 *teeth or transmitting such scans to a dentist holding an active license to practice dentistry in the*
61 *Commonwealth through systems and technologies, including audiovisual telecommunications technology*
62 *or other systems and technologies for the transmission of electronic data, to facilitate evaluation of a*
63 *patient other than as part of a real-time live interaction.*

64 **§ 54.1-2708.6. Practice of teledentistry; report.**

65 *The Board shall review all applications for renewal of a license to identify those applicants who are*
66 *engaged in the practice of teledentistry and shall report such information annually, by October 1, to the*
67 *Chairmen of the House Committee on Health, Welfare and Institutions, the Senate Committee on*
68 *Education and Health, and the Joint Commission on Health Care.*

69 **§ 54.1-2711. Practice of dentistry.**

70 *A. Any person shall be deemed to be practicing dentistry who (i) uses the words dentist, or dental*
71 *surgeon, the letters D.D.S., D.M.D., or any letters or title in connection with his name, which in any*
72 *way represents him as engaged in the practice of dentistry; (ii) holds himself out, advertises, or permits*
73 *to be advertised that he can or will perform dental operations of any kind; (iii) diagnoses, treats, or*
74 *professes to diagnose or treat any of the diseases or lesions of the oral cavity, its contents, or contiguous*
75 *structures; or (iv) extracts teeth, corrects malpositions of the teeth or jaws, takes or causes to be taken*
76 *digital scans or impressions for the fabrication of appliances or dental prosthesis, supplies or repairs*
77 *artificial teeth as substitutes for natural teeth, or places in the mouth and adjusts such substitutes. Taking*
78 *impressions for mouth guards that may be self-fabricated or obtained over-the-counter does not*
79 *constitute the practice of dentistry.*

80 *B. No person shall practice dentistry unless a bona fide dentist-patient relationship is established in*
81 *person or through teledentistry.*

82 *C. No person shall deliver dental services through teledentistry unless he holds an active unrestricted*
83 *license to practice dentistry in the Commonwealth issued by the Board and has established written or*
84 *electronic protocols for the practice of teledentistry that include (i) methods to ensure that patients are*
85 *fully informed about services provided through the use of teledentistry; (ii) safeguards to ensure*
86 *compliance with all state and federal laws and regulations related to the privacy of health information;*
87 *(iii) documentation of all dental services provided to a patient through teledentistry, including the full*
88 *name, address, telephone number, and Virginia license number of the dentist providing such dental*
89 *services; (iv) procedures for providing in-person services or for the referral of patients requiring dental*
90 *services that cannot be provided by teledentistry to another dentist licensed to practice dentistry in the*
91 *Commonwealth who actually practices dentistry in the geographic area of the Commonwealth where the*
92 *patient resides and who has entered into an agreement with the dentist to provide dental services to*
93 *patients who are referred for services; (v) provisions for the use of appropriate encryption when*
94 *transmitting patient health information via teledentistry; and (vi) any other provisions required by the*
95 *Board. A dentist who delivers dental services using teledentistry shall, upon request of the patient,*
96 *provide health records to the patient or a dentist of record in a timely manner in accordance with §*
97 *32.1-127.1:03 and any other applicable federal or state law or regulations.*

98 *D. No dentist shall provide or order an appliance for a patient through teledentistry without first*
99 *reviewing bone images or X-rays of the patient and documenting such review in the patient's medical*
100 *record.*

101 *E. Dental services delivered through use of teledentistry shall (i) be consistent with the same*
102 *standards of practice as are applicable to the delivery of such services in person and (ii) comply with*
103 *the requirements of this chapter and the regulations of the Board.*

104 *F. No dentist shall be supervised within the scope of the practice of dentistry by any person who is*
105 *not a licensed dentist.*

106 **§ 54.1-2719. Persons engaged in construction and repair of appliances.**

107 *A. Licensed dentists may employ or engage the services of any person, firm, or corporation to*
108 *construct or repair an appliance, extraorally, ~~prosthetic dentures, bridges, or other replacements for a~~*
109 *part of a tooth, a tooth, or teeth in accordance with a written or digital work order. Any appliance*
110 *constructed or repaired by a person, firm, or corporation pursuant to this section shall be evaluated and*
111 *reviewed by the licensed dentist who submitted the written or digital work order prior to delivery to the*
112 *patient. A person, firm, or corporation so employed or engaged shall not be considered to be practicing*
113 *dentistry. No such person, firm, or corporation shall perform any direct dental service for a patient, but*
114 *they may assist a dentist in the selection of shades for the matching of prosthetic devices when the*
115 *dentist sends the patient to them with a written or digital work order.*

116 *B. Any licensed dentist who employs the services of any person, firm, or corporation not working in*
117 *a dental office under his the dentist's direct supervision to construct or repair, an appliance extraorally,*
118 *prosthetic dentures, bridges, replacements, or orthodontic appliances for a part of a tooth, a tooth, or*
119 *teeth, shall furnish such person, firm, or corporation with a written or electronic work order on forms*

prescribed by the Board, which shall, at minimum, contain: (i) the name and address of the person, firm, or corporation; (ii) the patient's name or initials or an identification number; (iii) the date the work order was written; (iv) a description of the work to be done, including diagrams, if necessary; (v) specification of the type and quality of materials to be used; and (vi) the signature and address of the dentist.

The person, firm, or corporation shall retain the original *written work order or an electronic copy of a digital work order*, and the dentist shall retain a duplicate *of the written work order or an electronic copy of a digital work order*, for three years.

C. If the person, firm, or corporation receiving a written *or digital* work order from a licensed dentist engages a subcontractor to perform services relative to the work order, a written subwork order shall be furnished on forms prescribed by the Board, which shall, at minimum, contain: (i) the name and address of the subcontractor; (ii) a number identifying the subwork order with the original work order; (iii) the date the subwork order was written; (iv) a description of the work to be done by the subcontractor including diagrams, if necessary; (v) a specification of the type and quality of materials to be used; and (vi) the signature of the person issuing the subwork order.

The subcontractor shall retain the subwork order, and the issuer shall retain a duplicate *of the subwork order, which shall be* attached to the work order received from the licensed dentist, for three years.

D. No person, firm, or corporation engaged in the construction or repair of appliances shall refuse to allow the Board or its agents to inspect the files of work orders or subwork orders during ordinary business hours.

E. The provisions of this section shall not apply to a work order for the construction, reproduction, or repair, extraorally, of ~~prosthetic dentures, bridges, or other replacements for a part of a tooth, a tooth, or teeth,~~ *appliances* done by a person, firm, or corporation pursuant to a written work order received from a licensed dentist who is residing and practicing in another state, *provided that the appliance is constructed, reproduced, or repaired for a patient residing outside of the Commonwealth.*