

# STATE OF NEW YORK

9308

## IN SENATE

May 10, 2024

Introduced by Sen. FERNANDEZ -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education

AN ACT to amend the education law, in relation to permitting certain persons to perform the application of topical fluoride varnish

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 6608 of the education law, as amended by chapter  
2 512 of the laws of 2022, is amended to read as follows:  
3 § 6608. Definition of practice of registered dental assisting. The  
4 practice of registered dental assisting is defined as providing support-  
5 ive services to a dentist in his or her performance of dental services  
6 authorized under this article. Such support shall include providing  
7 patient education, taking preliminary medical histories and vital signs  
8 to be reviewed by the dentist, placing and removing rubber dams, select-  
9 ing and prefitting provisional crowns, selecting and prefitting ortho-  
10 dontic bands, removing orthodontic arch wires and ligature ties, placing  
11 and removing matrix bands, taking impressions for study casts or diag-  
12 nostic casts, removing periodontal dressings, placing and removing  
13 temporary restorations, application of topical fluoride varnish, and  
14 such other dental supportive services authorized by the dentist consist-  
15 ent with regulations promulgated by the commissioner, provided that such  
16 functions are performed under the direct personal supervision of a  
17 licensed dentist in the course of the performance of dental services.  
18 Such services shall not include diagnosing and/or performing surgical  
19 procedures, irreversible procedures or procedures that would alter the  
20 hard or soft tissue of the oral and maxillofacial area or any other  
21 procedures determined by the department. The practice of registered  
22 dental assisting may be conducted in the office of any licensed dentist  
23 or in any appropriately equipped school or public institution but must  
24 be done under the direct personal supervision of a licensed dentist.  
25 Direct personal supervision, for purposes of this section, means super-  
26 vision of dental procedures based on instructions given by a licensed  
27 dentist in the course of a procedure who remains in the dental office  
28 where the supportive services are being performed, personally diagnoses

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 the condition to be treated, personally authorizes the procedures, and  
2 before dismissal of the patient, who remains the responsibility of the  
3 licensed dentist, evaluates the services performed by the registered  
4 dental assistant. Nothing herein authorizes a registered dental assist-  
5 ant to perform any of the services or functions defined as part of the  
6 practice of dental hygiene in accordance with the provisions of subdivi-  
7 sion one of section sixty-six hundred six of this article, except those  
8 functions authorized pursuant to this section. All dental supportive  
9 services provided in this section may be performed by currently regis-  
10 tered dental hygienists either under a dentist's supervision, as defined  
11 in regulations of the commissioner, or, in the case of a registered  
12 dental hygienist working for a hospital as defined in article twenty-  
13 eight of the public health law, pursuant to a collaborative arrangement  
14 with a licensed dentist in accordance with subdivision one of section  
15 sixty-six hundred six of this article. Such collaborative arrangement  
16 shall not obviate or supersede any law or regulation which requires  
17 identified services to be performed under the personal supervision of a  
18 dentist.

19 § 2. Subdivision 2 of section 6902 of the education law, as amended by  
20 chapter 781 of the laws of 1990, is amended to read as follows:

21 2. The practice of nursing as a licensed practical nurse is defined as  
22 performing tasks and responsibilities within the framework of casefind-  
23 ing, health teaching, health counseling, the application of topical  
24 fluoride varnish, and provision of supportive and restorative care under  
25 the direction of a registered professional nurse or licensed physician,  
26 dentist or other licensed health care provider legally authorized under  
27 this title and in accordance with the commissioner's regulations.

28 § 3. Section 6610 of the education law is amended by adding a new  
29 subdivision 9 to read as follows:

30 9. The application of topical fluoride varnish to a child's teeth by  
31 such child's parent or legal guardian, provided that such application is  
32 done under the direction and supervision of a licensed practitioner  
33 authorized to apply topical fluoride varnish. A licensed practitioner  
34 acting within their scope of practice may prescribe topical fluoride  
35 varnish for the purposes of this subdivision provided that such practi-  
36 tioner dispenses written safety instructions to the parent or legal  
37 guardian.

38 § 4. This act shall take effect immediately; provided, however that  
39 section three of this act shall take effect eighteen months after it  
40 shall have become a law. Effective immediately, the addition, amendment  
41 and/or repeal of any rule or regulation necessary for the implementation  
42 of this act on its effective date are authorized to be made and  
43 completed on or before such date.