

STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

Manisha Juthani, MD
Commissioner



Ned Lamont
Governor
Susan Bysiewicz
Lt. Governor

PUBLIC HEALTH HEARING OFFICE

RE: DECLARATORY RULING CONCERNING REQUIREMENTS FOR USE OF UNATTENDED CARDIORESPIRATORY PORTABLE MONITORS, A/K/A PORTABLE MONITORS, TO AID IN DIAGNOSIS AND TREATMENT OF SLEEP APNEA

FINAL DECISION AND ORDER

The parties in the above-referenced matter were provided an opportunity, in accordance with Conn. Gen. Stat. § 4-179 and § 19a-14(f)(2), to file exceptions to the attached Proposed Declaratory Ruling of the Connecticut State Dental Commission rendered on January 26, 2022. Exceptions were due by February 25, 2022.


On February 25, 2022, the American Academy of Dental Sleep Medicine, a party in this matter, submitted a response which relied on information that was not available during the administrative hearing on October 14, 2020.¹ In that the record closed on October 14, 2020, the response from the American Academy of Dental Sleep Medicine was not considered by the undersigned.

In accordance with Conn. Gen. Stat. § 19a-14(f)(2), the undersigned was designated by Manisha Juthani, MD, the Commissioner of the State of Connecticut Department of Public Health, to review the Proposed Declaratory Ruling and the entire administrative record in this matter and to render a final determination.

The undersigned has reviewed the administrative record in its entirety and evaluated the findings of fact. After evaluating the substantive merits of the proposed ruling, the administrative record, and assessing whether the proposed ruling comports with the standards established by the state legislature in Conn. Gen. Stat. § 20-123(a) and § 20-123(b)(4), I hereby adopt the attached Declaratory Ruling of the Connecticut State Dental Commission rendered on January 26, 2022, as the Final Decision.

9/7/2022

Date


Stacy M. Schulman, Esq., Hearing Officer
Commissioner's Designee

¹ Such response from the American Academy of Dental Sleep Medicine was not appropriately submitted by legal counsel nor was the referenced policy included. See Practice Book § 2-44A; Conn. Gen. Stat. § 51-88.



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**STATE OF CONNECTICUT
CONNECTICUT STATE DENTAL COMMISSION**

Re: Declaratory Ruling:

Requirements for Use of Unattended Cardiorespiratory Portable Monitors, a/k/a Portable Monitors, to Aid in Diagnosis and Treatment of Sleep Apnea

PETITIONER: The American Academy of Dental Sleep Medicine

**DECLARATORY RULING
PROPOSED MEMORANDUM OF DECISION**

Procedural Background

On or about January 15, 2020, Nancy L. Addy, D.D.S., President of the American Academy of Dental Sleep Medicine (“AADSM”) (“Petitioner”) filed a request for a declaratory ruling with the Connecticut State Dental Commission (the “Commission”), on behalf of AADSM, to clarify the scope of practice of Connecticut dentists with respect to the treatment of sleep apnea with oral appliance therapy (“the Petition”). Commission (“Comm.”) Exhibit (“Ex.”) 1. On January 23, 2020, the Department of Public Health Hearing Office inquired whether the Petitioner was willing to waive the time requirements under Conn. Gen. Stat. § 4-176. Comm. Ex. 2.

On January 24, 2020, the former Commissioner of the Department of Public Health (“Commissioner”) Renee Coleman-Mitchell informed the Commission that in accordance with Conn. Gen. Stat. § 19a-14(f)(2), the Commission will be issuing a proposed decision, and the Commissioner or her designee will be issuing a final decision in this matter. Comm. Ex. 3.

On January 24, 2020, the AADSM agreed to waive the time requirements for the Commission to issue a decision in this case. Comm. Ex. 4

On April 22, 2020, the Commission unanimously voted to issue a Declaratory Ruling on the Petition regarding the following questions:

- 1. Is it within a dentist’s scope of practice to dispense portable monitors when ordered by physicians for patients at risk for sleep apnea? The test results are provided to a physician for interpretation and diagnosis.**

- 2. Is it within a dentist's scope of practice to order portable monitors for patients identified by the dentist as being at risk for sleep apnea? The test results are provided to a physician for interpretation and diagnosis.**
- 3. Is it within a dentist's scope of practice to use a portable monitor to help determine the optimal effective position of a patient's oral appliance?**
- 4. If a dentist does not use a portable monitor to determine the optimal effective position, is it within a dentist's scope of practice to order a portable monitor to verify the effectiveness of an oral appliance? The test results are provided to a physician for interpretation and diagnosis.**

Comm. Ex. 5.

On May 5, 2020, a Notice of Declaratory Ruling Proceeding was published in the *Connecticut Law Journal* giving notice of the Commission's intention to issue a declaratory ruling in accordance with Conn. Gen. Stat. § 4-176. Comm. Exs. 5 and 6.

On April 29, 2020, Anthony Dioguardi, D.M.D., Diplomate of the Board of Dental Sleep Medicine requested standing to participate in the hearing. Comm. Ex. 7.

On June 1, 2020, the Connecticut State Dental Association ("CSDA") petitioned the Commission to participate in the hearing as an intervenor, with the right to inspect and copy documents and other evidence and conduct cross examination of witnesses. Comm. Ex. 8.

On June 23, 2020, the Commission issued a Ruling in which it ordered all parties and intervenors to prefile their testimony and any supporting documentary evidence by July 15, 2020 and rebuttal testimony by July 29, 2020. The Ruling also scheduled a video conference hearing for August 5, 2020. On June 23, 2020, the Commission also granted Dr. Dioguardi intervenor status without the right of cross examination and granted the CSDA intervenor status with the right to inspect and copy documents and other evidence and to conduct cross examination of witnesses. Comm. Ex. 9.

On July 1, 2020, the Commission issued a Notice of Hearing in this matter. Comm. Ex. 10.

On July 7, 2020, a Notice of Hearing was published in the *Connecticut Law Journal* giving notice of the Commission's hearing for August 5, 2020 in accordance with Conn. Gen. Stat. §§ 4-166 et seq. and 4-176. Comm. Ex. 11.

On September 13, 2020, the Commission continued the hearing to October 14, 2020.
Comm. Ex. 12.

The hearing was held on October 14, 2020, the parties and intervenors provided exhibits and pre-filed testimony, which they adopted under oath during the hearing, and the witnesses were available for questioning and cross examination. Party Exs. A, B, Intervenor Ex. 1A-1H; Tr. pp. 11-76. Neither the Petitioner nor the CSDA appeared with legal counsel at the hearing.

By law, a declaratory ruling constitutes a statement of agency law, which is binding upon those who participate in the hearing and may also be utilized by the Commission, on a case-by-case basis, in future proceedings before the Commission concerning the practice of dentistry. This Declaratory Ruling addresses the scope of practice of Connecticut licensed dentists with respect to the use of unattended cardiorespiratory portable monitors, a/k/a portable monitors, to aid in diagnosis and treatment of sleep apnea under Conn. Gen. Stat. § 20-123(a).

Ruling

Conn. Gen. Stat. § 20- 123(a) sets forth the scope of practice of dentistry and provides, in relevant part that:

The practice of dentistry or dental medicine is defined as the diagnosis, evaluation, prevention or treatment by surgical or other means, of an injury, deformity, disease or condition of the oral cavity or its contents, or the jaws or the associated structures of the jaws. The practice of dentistry does not include: (1) The treatment of dermatologic diseases or disorders of the skin or face; (2) the performance of microvascular free tissue transfer; (3) the treatment of diseases or disorders of the eye; (4) ocular procedures; (5) the performance of cosmetic surgery or other cosmetic procedures other than those related to the oral cavity, its contents, or the jaws; or (6) nasal or sinus surgery, other than that related to the oral cavity, its contents or the jaws.

Conn. Gen. Stat. § 20-123(b)(4) further provides:

No person other than a person licensed to practice dentistry under this chapter shall: . . .

(4) Directly or indirectly, by any means or method, furnish, supply, construct, reproduce or repair any prosthetic denture, bridge, appliance or any other structure to be worn in a person's mouth, except upon the written direction of a licensed dentist, or place such appliance or structure in a person's mouth or attempt to adjust such appliance or structure in a person's mouth, or deliver such appliance or structure to any person other than the dentist upon whose direction the work was performed....

The Commission relied on the training and experience of its members in this Proposed Declaratory Ruling in making the decision listed below with respect to each of the four questions presented by this Petition. *Pet v. Department of Health Services*, 228 Conn. 651, 670 (1994).

The record before the Commission establishes the following collaborative arrangement between dentists and physicians with respect to obstructive sleep apnea that this ruling is based on. Physicians are responsible for evaluating and diagnosing obstructive sleep apnea and prescribing the most appropriate treatment options. CSDA Exs. B, D, E; October 14, 2020 Hearing Transcript, p. 20. Dentists may refer at risk patients for obstructive sleep apnea to physicians for diagnosis, evaluation and treatment based on a patient's history and clinical examination of the patient's oral cavity or its contents. CSDA Exs. A, D; October 14, 2020 Hearing Transcript, pp. 15, 40.

When oral appliance therapy is prescribed by a physician through written or electronic order for patients with obstructive sleep apnea, a dentist may evaluate the patient for the appropriateness of fabricating a suitable oral appliance.¹ CSDA Ex. B; October 14, 2020 Hearing Transcript, pp. 47-48. If deemed appropriate, a dentist may fabricate an oral appliance. CSDA Ex. B. Dentists who provide oral appliances monitor and adjust the oral appliance for treatment efficacy as needed. *Id.* Follow-up sleep testing by a physician should be conducted to confirm the treatment efficacy of the oral appliance therapy for obstructive sleep apnea. CSDA Exs. B, D, E; October 14, 2020 Hearing Transcript, pp. 16, 28, 29.

The Commission's determination with respect to each of the four questions is as follows:

1. Is it within a dentist's scope of practice to dispense portable monitors when ordered by physicians for patients at risk for sleep apnea? The test results are provided to a physician for interpretation and diagnosis.

Answer: Yes. If a physician has determined the use of an unattended cardiorespiratory portable monitor (portable monitor) is the appropriate means to diagnosis obstructive sleep apnea for patients at risk for sleep apnea and orders such monitor to be dispensed by a dentist, a dentist may dispense the monitor as part of the collaborate process in screening at-risk patients for sleep apnea as such condition may relate to physical abnormalities in the oral cavity or its contents. The physician is

responsible for interpreting the test results of the portable monitor and for making any diagnosis and treatment decision based on such results. Therefore, it is within a dentist's scope of practice to dispense portable monitors, when ordered by physicians for patients at risk for sleep apnea, and the test results are provided to the physician for interpretation and diagnosis.

2. Is it within a dentist's scope of practice to order portable monitors for patients identified by the dentist as being at risk for sleep apnea? The tests results are provided to a physician for interpretation and diagnosis.

Answer: No, it is not within a dentist's scope of practice to order portable monitors for patients identified by the dentist as being at risk for sleep apnea and the test results are provided to the physician for interpretation and diagnosis, without a request by a physician. The dentists should refer such patients to a physician for evaluation and diagnosis. The physician is responsible for prescribing the portable monitor and determining whether such device is an appropriate method of diagnosis. October 14, 2020 Hearing Transcript, p. 78.

3. Is it within a dentist's scope of practice to use a portable monitor to help determine the optimal effective position of a patient's oral appliance?

Answer: Yes, it is within a dentist's scope of practice to use a portable monitor to help determine the optimal effective position of a patient's oral appliance. Dentists are permitted to furnish, construct, supply, reproduce or repair an appliance or other structure worn in a person's mouth or place such appliance or structure in a person's mouth or attempt to adjust such appliance in a person mouth. Conn. Gen. Stat. § 20-123(b)(4). Oral appliances for obstructive sleep apnea must be positioned properly in the patient's mouth to achieve airway patency and not create unwarranted side effects such as temporomandibular joint pain and tooth movement caused by over protrusion. October 14, 2020 Hearing Transcript, p. 51. Using a portable monitor for titration assists the dentist in effectively adjusting the oral appliance to determine optimal effective position and prevents over protrusion. *Id.*, p. 52, 73, 82-83, 84-85. In such situation, the dentist is not providing the portable monitor results to diagnosis the

¹ Oral appliance therapy is an appropriate treatment for mild and moderate obstructive sleep apnea and severe sleep apnea when a continuous positive airway pressure therapy is not tolerated by the patient. CSDA Ex. B; October 14, 2020 Hearing Transcript, pp. 47-48.

patient but is using the results to measure the position of the oral appliance. Id. 54, 55-56.

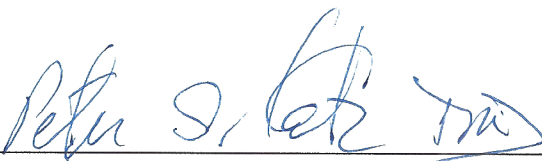
4. If a dentist does not use a portable monitor to determine the optimal effective position of a patient's oral appliance, is it within a dentist's scope of practice to order a portable monitor to verify the effectiveness of an oral appliance? The test results are provided to physicians for interpretation and therapeutic effectiveness is determined by physicians.

Answer: No, if the dentist does not use a portable monitor to determine optimal effective position of a patient's oral appliance, it is not within the dentist's scope of practice to order a portable monitor to verify the effectiveness of the oral appliance when the test results are provided to a physician for interpretation and therapeutic effectiveness is determined by a physician. Once the oral appliance is fabricated by the dentist, the patient should be referred to the physician for retesting and evaluation of the efficacy of the oral appliance. If necessary, the physician should refer the patient back to the dentist to adjust the oral appliance. This is because the method of determining the therapeutic effectiveness of the oral appliance for sleep apnea patients should remain with the physician, who is responsible for diagnosis, treating, and evaluating obstructive sleep apnea.

This Ruling sets forth the scope of practice of dentistry under Conn. Gen. Stat. § 20-123. In any future proceeding involving the standard of care with respect to this Ruling, the Commission will look at whether the dentist is adequately trained to use the portable monitor.

Based on the foregoing, the Commission issues this Proposed Declaratory Ruling as set forth above.

January 24, 2022
Date



Peter Katz, D.M.D., Chairperson
Connecticut State Dental Commission