

# MAINE STATE LEGISLATURE

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# 130th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2021

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Legislative Document

No. 76

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H.P. 42

House of Representatives, January 13, 2021

**An Act To Amend the Dental Practice Act To Define "Supervision"  
and Authorize Teledentistry**

(EMERGENCY)

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Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 204.

Received by the Clerk of the House on January 11, 2021. Referred to the Committee on Health Coverage, Insurance and Financial Services pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT  
Clerk

Presented by Representative MATHIESON of Kittery.

Cosponsored by Representatives: BROOKS of Lewiston, MORALES of South Portland.

1           **Emergency preamble.** Whereas, acts and resolves of the Legislature do not  
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3           **Whereas,** the sole purpose of the Board of Dental Practice is to protect the public  
4 health and welfare by ensuring that the public is served by competent and honest  
5 practitioners and by establishing minimum standards of proficiency; and

6           **Whereas,** pursuant to Public Law 2019, chapter 388, section 11, the Board of Dental  
7 Practice issued a legislative report dated January 31, 2020, making recommendations to  
8 further revise the Dental Practice Act by revising existing supervision and scopes of  
9 practice provisions, to consider technological advances such as the use of teledentistry to  
10 provide greater flexibility in the delivery of dental services and to improve access to dental  
11 care in Maine; and

12           **Whereas,** LD 2146, An Act To Implement the Recommendations of the Board of  
13 Dental Practice Related to the Definitions of "Supervision" and "Teledentistry," was  
14 introduced during the Second Regular Session of the 129th Legislature, but was not enacted  
15 due to the existing state of civil emergency due to the COVID-19 pandemic; and

16           **Whereas,** substantive policy decisions such as authorizing the use of teledentistry and  
17 refining scopes of practice, including levels of supervision, are appropriate for the  
18 legislative process, not an administrative rule-making process; and

19           **Whereas,** immediate enactment of this legislation is necessary to authorize dental  
20 professionals to fully exercise their scopes of practice and use available technologies to  
21 provide care; and

22           **Whereas,** in the judgment of the Legislature, these facts create an emergency within  
23 the meaning of the Constitution of Maine and require the following legislation as  
24 immediately necessary for the preservation of the public peace, health and safety; now,  
25 therefore,

26 **Be it enacted by the People of the State of Maine as follows:**

27           **Sec. 1. 32 MRSA §18302, sub-§18,** as enacted by PL 2015, c. 429, §21, is amended  
28 to read:

29           **18. Direct supervision.** "Direct supervision" means the supervision required ~~by the~~  
30 ~~board by rule~~ of those tasks and procedures requiring the physical presence of the  
31 supervisor in the practice setting at the time such tasks or procedures are being performed.  
32 In order to provide direct supervision of patient treatment, the supervisor must at least  
33 identify or diagnose the condition to be treated; and authorize the treatment procedure prior  
34 to implementation ~~and examine the condition after treatment and prior to the patient's~~  
35 ~~discharge.~~

36           **Sec. 2. 32 MRSA §18302, sub-§22,** as enacted by PL 2015, c. 429, §21, is amended  
37 to read:

38           **22. General supervision.** "General supervision" means the supervision ~~required by~~  
39 ~~the board by rule~~ of those tasks and procedures ~~when~~ that do not require the physical  
40 presence of the supervisor ~~is not required~~ in the practice setting while procedures are being  
41 performed but do require the tasks and procedures to be performed with the prior  
42 knowledge and consent of the supervisor.

1           **Sec. 3. 32 MRSA §18302, sub-§35** is enacted to read:

2           **35. Supervisor.** "Supervisor" means either direct supervision or general supervision  
3 as determined by the tasks and procedures that are being performed in accordance with this  
4 chapter.

5           **Sec. 4. 32 MRSA §18302, sub-§36** is enacted to read:

6           **36. Supervisor.** "Supervisor" means an individual licensed by the board and  
7 authorized to provide supervision under this chapter.

8           **Sec. 5. 32 MRSA §18302, sub-§37** is enacted to read:

9           **37. Teledentistry.** "Teledentistry," as it pertains to the delivery of oral health care  
10 services, means the use of interactive, real-time visual and audio or other electronic media  
11 for the purposes of education, assessment, examination, diagnosis, treatment planning,  
12 consultation and directing the delivery of treatment by individuals licensed under this  
13 chapter and includes synchronous encounters, asynchronous encounters, remote patient  
14 monitoring and mobile oral health care in accordance with practice guidelines specified in  
15 rules adopted by the board.

16           **Sec. 6. 32 MRSA §18342, sub-§6, ¶D,** as enacted by PL 2015, c. 429, §21, is  
17 amended to read:

18           D. A statement from the ~~sponsoring~~ supervising dentist that demonstrates that the level  
19 of supervision and control of the services to be performed by the applicant are adequate  
20 and that the performance of these services are within the applicant's dental knowledge  
21 and skill.

22           **Sec. 7. 32 MRSA §18371, sub-§2, ¶E,** as enacted by PL 2015, c. 429, §21, is  
23 amended to read:

24           E. An individual with a resident dentist license may provide dental services only under  
25 the supervision of ~~the sponsoring~~ a dentist and in accordance with the level of  
26 supervision and control for which the license was issued by the board.

27           **Sec. 8. 32 MRSA §18371, sub-§3,** as amended by PL 2017, c. 388, §15, is repealed  
28 and the following enacted in its place:

29           **3. Delegation authorized.** A dentist may delegate to an unlicensed person or a  
30 licensed person activities related to dental care and treatment that are delegated by custom  
31 and usage as long as those activities are under the supervision or control of the dentist. A  
32 dentist who delegates activities to an unlicensed person as described is legally liable for the  
33 activities of that unlicensed person and the unlicensed person in this relationship is  
34 considered the dentist's agent.

35           **Sec. 9. 32 MRSA §18371, sub-§4,** as amended by PL 2017, c. 288, Pt. A, §35, is  
36 further amended to read:

37           **4. Delegation not authorized.** A dentist may not delegate any dental activity not  
38 listed in subsection 3 or 6 to an unlicensed person activities related to dental care or  
39 treatment that require a license under this chapter. A dentist may not delegate to a licensed  
40 person activities related to dental care or treatment that are outside the scope of practice of  
41 that licensed person.

1           **Sec. 10. 32 MRSA §18373, sub-§1**, as amended by PL 2017, c. 388, §17, is further  
2 amended to read:

3           **1. Scope of practice; ~~direct supervision~~.** An expanded function dental assistant may  
4 perform under the ~~direct~~ general supervision of a dentist all of the activities that may be  
5 delegated by a dentist to an unlicensed person pursuant to section 18371, subsection 3,  
6 ~~paragraph C~~. An expanded function dental assistant may also perform the following  
7 activities authorized under the ~~direct~~ general supervision of a dentist:

8           A. Apply cavity liners and bases as long as the dentist:

9                   (1) Has ordered the cavity liner or base; and

10                   (2) Has checked the cavity liner or base prior to the placement of the restoration;  
11                   and

12                   ~~(3) Has checked the final restoration prior to patient dismissal;~~

13           B. Apply pit and fissure sealants after an evaluation of the teeth by the dentist at the  
14 time of sealant placement;

15           C. Apply supragingival desensitizing agents to an exposed root surface or dentinal  
16 surface of teeth;

17           D. Apply topical fluorides recognized for the prevention of dental caries;

18           ~~E. Cement provisional or temporary crowns and bridges and remove excess cement;~~

19           ~~F. Perform pulp vitality tests;~~

20           G. Place and contour amalgam, composite and other restorative materials prior to the  
21 final setting or curing of the material;

22           I. Place and remove gingival retraction cord;

23           K. Size, place and cement or bond orthodontic bands and brackets with final inspection  
24 by the dentist;

25           ~~L. Supragingival polishing. A dentist or a dental hygienist must first determine that~~  
26 ~~the teeth to be polished are free of calculus or other extraneous material prior to~~  
27 ~~polishing. Dentists may permit an expanded function dental assistant to use only using~~  
28 ~~a slow-speed rotary instrument and rubber cup. Dentists may allow an expanded~~  
29 ~~function dental assistant to use high-speed, power-driven handpieces or instruments to~~  
30 ~~contour or finish newly placed composite materials; and~~

31           ~~M. Obtain impressions for athletic mouth guards, provisional or temporary crowns and~~  
32 ~~bridges.~~

33           HH. Contour or finish restorative materials using a high-speed, power-driven  
34 handpiece or instrument.

35           **Sec. 11. 32 MRSA §18373, sub-§2**, as amended by PL 2017, c. 388, §17, is  
36 repealed.

37           **Sec. 12. 32 MRSA §18374**, as amended by PL 2017, c. 388, §§18 and 19, is further  
38 amended to read:

39           **§18374. Dental hygienist**

1           **1. Scope of practice; direct supervision.** A dental hygienist and faculty dental  
2 hygienist may perform the following ~~procedures~~ under the direct supervision of a dentist:

3           A. Administer local anesthesia or nitrous oxide analgesia, as long as the dental  
4 hygienist or faculty dental hygienist has authority to administer the relevant medication  
5 pursuant to section 18345, subsection 2, paragraph D or E;

6           ~~B. Irrigate and dry root canals;~~

7           ~~C. Record readings with a digital caries detector and report them to the dentist for~~  
8 ~~interpretation and evaluation;~~

9           ~~D. Remove socket dressings;~~

10          ~~E. Take cytological smears as requested by the dentist; and~~

11          ~~F. Obtain impressions for nightguards and occlusal splints.~~

12           **2. Scope of practice; general supervision.** A dental hygienist and faculty dental  
13 hygienist may perform under the general supervision of a dentist all of the activities that  
14 may be delegated to an unlicensed person pursuant to section 18371, subsection 3, ~~except~~  
15 ~~the activities in section 18371, subsection 3, paragraph C, subparagraphs (6), (17) and (19).~~  
16 A dental hygienist and faculty dental hygienist may also perform the following procedures  
17 under the general supervision of a dentist:

18          A. Prescribe, dispense or administer anticavity toothpastes or topical gels with 1.1%  
19 or less sodium fluoride and oral rinses with 0.05%, 0.2%, 0.44% or 0.5% sodium  
20 fluoride, as well as chlorhexidine gluconate oral rinse;

21          ~~C. Apply desensitizing agents to teeth;~~

22          ~~D. Apply fluoride to control caries;~~

23          F. Apply sealants;

24          J. Expose and process radiographs;

25          ~~O. Interview patients and record complete medical and dental histories;~~

26          ~~R. Obtain bacterial sampling when treatment is planned by the dentist;~~

27          S. Perform all procedures necessary for a complete prophylaxis, including root  
28 planing;

29          U. Perform complete periodontal and dental restorative charting;

30          X. Perform oral inspections, recording all conditions that should be called to the  
31 attention of the dentist;

32          ~~Y. Perform postoperative irrigation of surgical sites;~~

33          ~~CC. Place and remove gingival retraction cord without vasoconstrictor;~~

34          GG. Place localized delivery of chemotherapeutic agents when treatment is planned  
35 by the dentist;

36          JJ. Place temporary restorations as an emergency procedure, as long as the patient is  
37 informed of the temporary nature of the restoration; and

1 ~~LL. Prepare tooth sites and surfaces with a rubber cup and pumice for banding or~~  
2 ~~bonding of orthodontic brackets. This procedure may not be interpreted as a~~  
3 ~~preparation for restorative material;~~

4 TT. Smooth and polish amalgam restorations; ~~and,~~

5 ~~VV. Obtain impressions for study casts, athletic mouth guards, custom trays, bleaching~~  
6 ~~trays, fluoride trays, opposing models, retainers and stents.~~

7 **3. Limitation.** An individual with a faculty dental hygienist license may provide the  
8 services described in this section only as part of the education program for which the license  
9 was issued by the board.

10 **Sec. 13. 32 MRSA §18377, sub-§1,** as amended by PL 2019, c. 388, §10, is further  
11 amended to read:

12 **1. Scope of practice.** A dental therapist may perform the following procedures in  
13 limited practice settings, if authorized by a written practice agreement with a dentist  
14 licensed in this State pursuant to subsection 3.

15 A. To the extent permitted in a written practice agreement, a dental therapist may  
16 provide the care and services listed in this paragraph only under the direct supervision  
17 of the supervising dentist:

18 (1) Perform oral health assessments, pulpal disease assessments for primary and  
19 young teeth, simple cavity preparations and restorations and simple extractions;

20 (2) Prepare and place stainless steel crowns and aesthetic anterior crowns for  
21 primary incisors and prepare, place and remove space maintainers;

22 ~~(3) Provide referrals;~~

23 (4) Administer local anesthesia and nitrous oxide analgesia;

24 ~~(5) Perform preventive services;~~

25 (6) Conduct urgent management of dental trauma, perform suturing, extract  
26 primary teeth and perform nonsurgical extractions of periodontally diseased  
27 permanent teeth if authorized in advance by the supervising dentist; and

28 (7) Provide, dispense and administer anti-inflammatories, nonprescription  
29 analgesics, antimicrobials, antibiotics and anticaries materials; and

30 ~~(8) Administer radiographs; and~~

31 ~~(9) Perform other related services and functions authorized by the supervising~~  
32 ~~dentist and for which the dental therapist is trained.~~

33 B. To the extent permitted in a written practice agreement, a dental therapist may  
34 provide the care and services ~~listed in~~ identified in section 18371, subsection 3 and  
35 section 18374, subsections 1 and 2 under the general supervision of the supervising  
36 dentist.

37 **Sec. 14. 32 MRSA §18394** is enacted to read:

38 **§18394. Teledentistry**

39 An individual licensed under this chapter may provide oral health care services and  
40 procedures authorized under this chapter or by rule using teledentistry. The board shall

1 adopt by rule guidelines and practice standards for the use of teledentistry, including, but  
2 not limited to, practice requirements for protecting patient rights and protocols for referrals,  
3 quality and safety, informed consent, patient evaluation, treatment parameters, patient  
4 records, prescribing, supervision and compliance with data exchange standards for the  
5 security and confidentiality of patient information. Rules adopted pursuant to this section  
6 are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

7 **Emergency clause.** In view of the emergency cited in the preamble, this legislation  
8 takes effect when approved.

9 **SUMMARY**

10 This bill implements the recommendations of the Board of Dental Practice that were  
11 included in the report required by Public Law 2019, chapter 388. The bill makes the  
12 following changes:

13 1. It makes changes to the definitions of "direct supervision" and "general supervision"  
14 and makes corresponding changes to the activities that may be performed under direct or  
15 general supervision by a person licensed by the Board of Dental Practice.

16 2. It makes changes to provisions governing the delegation authority of dentists to  
17 unlicensed persons and to persons licensed by the Board of Dental Practice.

18 3. It adds a definition of "teledentistry" and authorizes oral health care services and  
19 procedures to be provided through teledentistry in accordance with rules adopted by the  
20 Board of Dental Practice.