

# MAINE STATE LEGISLATURE

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April 19, 1973

John W. Trinward, D.M.D.  
Secretary, Board of Dental Examiners  
Bethel, Maine 04217

Re: Legality of dental auxiliaries' placing amalgams

Dear Dr. Trinward:

I have your letter of March 26, 1973, and your further letter of April 18, 1973, each pertaining to the referenced subject. I regret not being able to attend to this more quickly but have had to treat it within our order of priorities.

After re-examining Maine statutes governing the practice of dentistry and regulation of dentists, and dental hygienists and other dental auxiliaries, I am convinced that under existing law it would be illegal for either a hygienist or assistant to place amalgams in teeth prepared for fillings by a dentist. 32 M.R.S.A. § 1081 in defining the practice of dentistry includes performance of "any phase of any operation incident to the replacement of a part of a tooth"; and further includes performance of repairs to or filling of cavities in human teeth.

Dental hygienists are permitted by virtue of 32 M.R.S.A. § 1095 to perform duties defined in the rules of the Board of Dental Examiners, so long as their duties do not constitute a practice of dentistry. Although the latter qualification is unwritten in the similar statute (32 M.R.S.A. § 1100-A) providing for the regulation of other dental auxiliaries, it would have to be construed as good "unwritten" law that dental assistants, etc. (anyone unlicensed to practice dentistry performing certain dental health services under the supervision of a dentist duly licensed) cannot be empowered by the Board of Dental Examiners by its rules to perform an act constituting a part of the practice of dentistry as defined by 32 M.R.S.A. § 1081.

Additionally, I note that 32 M.R.S.A. § 1091 sub-§ I cites as a cause for revocation or suspension of a dentist's license his allowing his hygienist "to perform any operation other than that permitted under section 1095". Since § 1095 does not itself set forth the duties of dental hygienists, but rather grants authority to the Board to define those duties (not inconsistent with the law defining dentistry practice) and because the Board has not yet filed any rules and regulations with the Secretary of State as required by 5 M.R.S.A. §§ 2352, 2301, (as I recall advising the need for at a meeting with the Board in Portland two winters ago) before such rules have any force whatsoever (see 5 M.R.S.A. § 2352), it would appear that every dentist in the State who employs a hygienist is in violation of 32 M.R.S.A. § 1091.

Please contact me for any further assistance in regard to the above referenced subject or in making the rules and regulations of the Board legally effective.

Yours very truly,

JK/mf  
Enclosure:  
copy of 5 M.R.S.A. § 2352

John Kendrick  
Assistant Attorney General