

MAINE STATE LEGISLATURE

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*Permits: Employees Cleaning Teeth
Nurses: Cleaning Teeth
32 M.R.S.A. 1095
32 M.R.S.A. 2102*



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2/1/77

TO: John W. Trinward, Secretary
Maine Board of Dental Examiners

FROM: Kate Clark Flora, Assistant Attorney General

RE: Opinion Request regarding RN's and LPN's cleaning teeth

FACTS: A licensed dentist in Calais presently employs a licensed practical nurse to clean patient's teeth under his supervision. The Board of Dental Examiners believes this is an activity reserved to Dental Hygienists, and has requested an opinion on the subject.

QUESTION: May a registered nurse or a licenced pratical nurse be employed to clean teeth under the supervision of a licensed dentist?

ANSWER: Although a registered nurse or a licensed practical nurse may provide some medical services under the supervision of a licensed dentist, under Maine law the performance of the procedures involved in oral prophylaxis, or "cleaning teeth" may only be done by a licensed dental hygienist.

REASONING: The section of the Maine statutes dealing with dental hygienists is located in Title 32 M.R.S.A. § 1095 et seq. In order to qualify as a dental hygienist, a person must be over 18, have completed 2 years of training in an approved school of dental hygenics or be a full-time dental student who has completed at least half the prescribed course of study in an accredited dental college. A person meeting these qualifications may take the examination given by the Board of Dental Examiners in order to become certified to practice as a dental hygienist. Anyone practicing as a dental hygienist who is not so certified or employing an unlicensed person as a dental hygienist, is subject to a fine and/or imprisonment. 32 M.R.S.A. §1092. (emphasis supplied).

Section 1095 delegates to the Board of Dental Examiners the authority to promulgate rules defining what activities constitute the duties of a dental hygienist. A copy of the rules promulgated by the Board pursuant to this section is attached to this opinion ¹. Section A (1) of the rules includes among the duties of a certified dental hygienist the performance of "all procedures necessary for a complete prophylaxis, including root planing and curettage". Section B provides that a dentist may delegate to "auxiliary personnel" ² other than dental hygienists procedures except:

1. Those procedures which require professional judgment and skill such as diagnosis and treatment planning and the cutting of hard and/or soft tissues or any intra-oral procedure which would lead to the fabrication of an appliance which, when worn by the patient would come in direct contact with hard or soft tissue.

2. Those procedures listed under Rules and Regulations for dental hygienists, #1,2,3, and 4.

It is clear from these rules that performance of the procedures necessary to clean teeth must be done by a certified dental hygienist.

It is important, however to also consider the language of Title 32 M.R.S.A. §2102 (2)(D) and (3) dealing with the practice of registered nursing and licensed practical nursing. Section 2102 (2)(D) includes in the definition of professional nursing the "administration of medication and treatment as prescribed by a licensed physician or dentist". Section 2102 (3) includes in the definition of practical nursing "treatment under the supervision of a dentist". In determining the meaning of this ambiguous language, and deciding whether a conflict exists between these sections and §1095 et seq. it is helpful to turn to the accepted rules of statutory interpretation.

The statutory sections in question are all a part of the title dealing with professions and occupations. Statutes dealing with the practice of dental hygiene have been part of the law for a long time. Similarly, statutes regulating the practice of registered nursing and licensed practical nursing have long been a part of the law. Both of these sections have been the subject of regular legislative amendment. When it amends legislation and enacts new legislation, the Legislature must be presumed to have in mind the content of prior statutes. Further, the Legislature must be considered to have entertained a consistent design and policy embracing both acts. State v. Beck, 156 Me. 403, 407 (1960). During the time they have been part of Maine law, both of these sections have been reviewed by the Legislature and it has consistently

¹ These rules have been adopted by the Board and are on file with the Secretary of State.

² Defined by 32 M.R.S.A. § 1100-A.

preserved the limitations on the practice of dental hygiene to certified hygienists. The only logically consistent way to interpret these two sections is to assume that the subchapter dealing with the practice of dental hygiene acts as a limitation on the section authorizing registered nurses and licensed practical nurses to give medication and treatment under the direction of a dentist.

This conclusion is supported by the fact that any other construction of these sections taken together would be absurd. "If the meaning is doubtful and words of the statute obscure, a court may properly take into consideration the practical consequences of any particular interpretation". Stetson v. Johnson, 159 Me. 37 (1963). The practical consequences of interpreting sections 2102 (2)(D) and (3) to allow registered nurses and licensed practical nurses to clean teeth would be to render the educational and certification requirements of section 1095 et seq. meaningless. This would not be in accord with the purpose of the subchapter on dental hygienists which is to establish criteria for the certification of professional dental hygienists. The Legislature had demonstrated by the enactment of this legislation that the establishment of formal criteria regarding the qualifications and activities of dental hygienists is necessary to protect the health and welfare of the people of Maine.

Therefore I conclude that there is no conflict between these statutory sections. The statutes and rules regarding the practice of dental hygiene limit the actions which may be performed by a registered nurse or licensed practical nurse by excluding them from the performance of duties specifically reserved for certified dental hygienists. The answer to the question propounded by the Board of Dental Examiners must be no. Neither a registered nurse nor a licensed practical nurse may be employed to clean teeth, as it is a function reserved by statute and regulation exclusively to the certified dental hygienist.

Rules and Regulations — Maine Board of Dental Examiners

A. Dental Hygienist Duties:

1. Perform all procedures necessary for a complete prophylaxis, including root planing and curettage.
2. Perform oral inspection, recording any oral conditions which should be called to the attention of the dentist.
3. Application of fluorides or other substances beneficial in control of caries, and/or, the application of desensitizing agents.
4. Smoothing and polishing of restorations.
5. Take a complete medical and dental history.
6. Counsel patients in dental health education and nutrition.
7. Exposure and processing of intra- and extra- oral films.
8. Cementing of facings and pontics outside of the mouth.
9. Placing of rubber dams.
10. Removal of sutures and periodontal packs.

B. Dental Auxiliary Personnel Except Dental Hygienists

A legally licensed and registered dentist may delegate to competent dental auxiliary personnel, except dental hygienists, those procedures for which the dentist exercises, direct supervision and full responsibility except as follows:

1. Those procedures which require professional judgment and skill such as diagnosis and treatment planning and the cutting of hard and/or soft tissues or any intra-oral procedure which would lead to the fabrication of an appliance which, when worn by the patient would come in direct contact with hard or soft tissue.
2. Those procedures listed under Rules and Regulations for dental hygienists, #1, 2, 3, and 4.

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