

MAINE STATE LEGISLATURE

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FIRST SPECIAL SESSION

ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 2178

H. P. 1991

House of Representatives, February 4, 1976

Approved for Introduction by a Majority of the Committee on Reference of Bills pursuant to Joint Order S. P. 635 as amended and referred to Committee on Health and Institutional Services. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Dudley of Enfield.

Cosponsors: Mr. Goodwin of So. Berwick, Mr. Gould of Old Town.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SIX

AN ACT to Provide for the Licensing of Denturists.

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

32 MRSA c. 77 is enacted to read:

CHAPTER 77
DENTURIST ACT

§ 5101. Definitions

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings:

1. Apprentice dentist. "Apprentice dentist" means a person in training, working directly under the direct supervision of a licensed dentist, dentist or dental surgeon.
2. Board. "Board" means the Denturist Licensing Board established under this Act.
3. Commissioner. "Commissioner" means the Commissioner of Human Services.
4. Dental surgeon. "Dental surgeon" means a person entitled to practice dentistry or dental surgery under the Dental Act.
5. Denturist. "Denturist" means a person licensed under this Act to engage in the practice of denture technology.

6. Director. "Director" means the executive director for the Denturist Licensing Board appointed by the board.

7. Incompetence. "Incompetence" means the display of a lack of knowledge, skill or judgment in the care of a patient or disregard for the welfare of a patient of a nature or to an extent that demonstrates that the denturist is unfit to continue in the practice of denture technology.

8. Practice of denture technology. "Practice of denture technology" means:

A. The taking of impressions and bite registration for the purpose of or with a view to the making, producing, reproducing, constructing, finishing, supplying, altering or repairing of any removable partial or complete upper or complete lower prosthetic denture, or both, to be fitted to edentulous arch or arches or partially edentulous arch or arches.

B. The fitting of any removable partial or complete upper or lower prosthetic denture, or both, to an edentulous arch or arches, or partially edentulous arch or arches, and includes the making, producing, reproducing, constructing, finishing, supplying, altering and repairing partial and complete upper and lower prosthetic dentures in respect of which a service is performed under this Act.

9. Regulations. "Regulations" means the regulations made under this Act.

§ 5102. Licensing board

1. Board established. There is established a board, known as the Denturist Licensing Board, consisting of 7 members:

A. Four of the board members shall be denturists who shall be appointed as soon as practicable after the effective date of this Act;

B. Two dental surgeons; and

C. One consumer not being either a denturist, dental surgeon or person employed in any aspect of the dental profession.

2. Appointment. All members of the board shall be appointed by the Governor and confirmed by the Legislature.

3. Term of office. The members of the board shall hold office for a period of 2 years and any member is eligible for reappointment at the expiration of his term of office. No member may serve more than 3 consecutive terms. A vacancy due to death, resignation or incapacity will be filled in the method prescribed by this chapter and the person appointed shall fill the remaining term of office.

4. Chairman; quorum. The board shall designate one of its members to be chairman. Four members of the board shall constitute a quorum.

5. Regulations; meetings. The board may make regulations respecting the time and place of meetings and the conduct of business at the meetings and notice of meetings.

6. Duties of board. The board shall:

- A. Conduct the hearings and proceedings under sections 5109 and 5110;
- B. Review the operation of this Act and the regulations and from time to time make recommendations to the commissioner and the Legislature as it sees fit; and
- C. Perform such other duties as are assigned to it by this chapter or by the regulations or by any other law.

7. Personnel; expenses. The board may:

- A. Employ such persons and provide such services as may be required for the operation of this Act; and
- B. Provide for the payment of an allowance for traveling and living expenses to members of the board while engaged in the business of the board.

8. Executive director. There shall be an executive director of the Denturists Licensing Board who shall be appointed by the board for such a term and at such a remuneration as the board decides. Moneys for the operation of the board and the executive director shall come from such funds as are generated by the board from registration fees.

9. Regulations. The board may make regulations:

- A. Governing the manner in which denturists conduct their practice and business affairs;
- B. Respecting advertising by or on behalf of denturists;
- C. Defining misconduct;
- D. Prescribing the manner in which denturists may describe themselves and their practice and prohibiting the use of such descriptions in connection with any other person or activity;
- E. Governing applications for and issuing of licenses to engage in the practice of denture technology and renewals thereof and prescribing terms and conditions of licenses;
- F. Requiring the payment of fees on applications for licenses and renewals and for the taking of examinations and prescribing the amounts thereof;
- G. Prescribing procedures that may be performed as incidental to the practice of denture technology;
- H. Requiring licensed denturists to make returns and furnish information to the board;
- I. Requiring any information required to be furnished or contained in any form to be verified by affidavit;
- J. Prescribing forms for the purpose of this Act and providing for their use;

K. Prescribing further procedures respecting matters coming before the board; and

L. Prescribing any matter necessary to carry out effectively the intent and purpose of this Act.

§ 5103. Qualifications

No person shall represent himself as a denturist until he shall have been given a license by the board. The board shall have the authority for prescribing the qualifications of applicants for licenses and renewals and providing for the holding of oral and written examinations set by the board. For the purpose of this Act, all persons presently engaged in the practice of denture technology on the effective date of this Act and who have been continually practicing in all phases of full and partial denture construction for a period of 5 years prior thereto shall be given a one-year temporary license to practice denture technology. Within that one-year period, those denturists with temporary licenses must pass a written or oral examination established by the board.

§ 5104. Supervision

The board may make regulations prescribing the supervision, if any, of apprentice denturists and of the practice of denture technology and the extent and duration of such supervision. No denturist may have under direct supervision more than 3 nonlicensed persons, including apprentice denturists and dental technicians who are directly involved in learning the profession or working as an aide in the practice of denture technology.

§ 5105. Advertising

It shall be lawful for any denturist or dental technology laboratory to advertise its services. The advertising of price through television, radio, newspapers and flyers shall be prohibited.

§ 5106. Prohibition

1. License required. Subject to section 5119, no person, other than a dental surgeon, dentist or a person licensed under this Act as a denturist, shall engage in or hold himself out as qualified or entitled to engage in the practice of denture technology.

2. First prosthetic device. No denturist engaged in the practice of denture technology shall take impressions and bite registration for the purpose of or with a view to the making or producing of an individual's first prosthetic device until that individual presents the denturist with a certificate from a dental surgeon or medical doctor made within 30 days prior to the presentation of the certificate to the denturist certifying that the individual's mouth is free of infection, sores or other medical problems.

§ 5107. License

An applicant for a license to engage in the practice of denture technology shall be issued a license by the board unless the applicant does not have the

qualifications or experience required by the regulations or fails to pass the examinations set by the board.

A license is subject to such terms and conditions as are imposed by the board or by the regulations and expires 2 years after its issuance or renewal.

§ 5108. Refusal to issue license; suspension, revocation

1. Refusal to issue. Subject to section 5109, the board may refuse to issue or renew a license to an applicant where in the board's opinion the applicant is not entitled to a license by the regulations.

2. Suspension or revocation. Subject to section 5109, the board may suspend or revoke a license:

- A. For any reason that would disentitle the licensee to be issued a license under section 5107 if he were an applicant;
- B. Where the licensee is in breach of a term or condition of his license;
- C. Where the licensee is in contravention of this Act or regulations; or
- D. Where the licensee has been guilty of misconduct or incompetence.

§ 5109. Preliminary hearing procedure; board powers; continuation of license

1. Notice. Where the board proposes to refuse to issue a license or renew a license or proposes to suspend or revoke a license, it shall serve notice of its proposal, together with written reasons therefor on the applicant or licensee.

2. Contents of notice of hearing. A notice under subsection 1 shall inform the applicant or licensee that he is entitled to a hearing by the board, if he mails or delivers, within 15 days after the notice under subsection 1 is served on him, a written notice to the board that he desires such a hearing.

3. No hearing required. Where an applicant or licensee does not require a hearing by the board in accordance with subsection 2, the board may carry out the proposals stated in its notice under subsection 1.

4. Hearing. Where an applicant or licensee requires a hearing by the board in accordance with subsection 2, the board shall appoint a time for and hold the hearing. After the hearing is held, the board may reverse itself or continue with its original decision to refuse to issue or renew a license or suspend or revoke a license.

5. Conditions of order or license. The board may attach such terms and conditions to its order or the license as it considers proper to give effect to the purposes of this Act, and if it deems necessary, grant a temporary license not to exceed 90 days.

6. Extension of time. The board may extend the time for giving of notice requiring a hearing by an applicant or licensee under this section, either before or after the expiration of such time, where it is satisfied that there are prima facie grounds for granting relief to the applicant or licensee

pursuant to a hearing and that there are reasonable grounds for applying for the extension, and the board may give such directions as it considers proper consequent upon the extension.

7. Conditions when license deemed to continue. Where, before expiration of his license, a licensee has applied for renewal of his license and paid the prescribed fee, his license shall be deemed to continue:

A. Until the renewal is granted; or

B. Where he is served with notice that the board proposes to refuse to grant the renewal, until the time the board has made its decision.

§ 5110. Hearing procedure

1. Parties. The board, the applicant or licensee who has required the hearing and such other persons as the board may specify are parties to proceedings before the board under this Act.

2. Opportunity for compliance. Notice of a hearing under section 5109 shall afford the applicant or licensee a reasonable opportunity to show or to achieve compliance before the hearing with all lawful requirements for the issue or retention of the license.

3. Examination of evidence. An applicant or licensee, who is a party to proceedings under section 5108, shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report, the contents of which will be given in evidence at the hearing.

4. Information of certain allegations. Where the good character, propriety of conduct or competence of a party is an issue in a hearing, the party is entitled to be furnished prior to the hearing with reasonable information of any allegations with respect thereto.

5. Public meetings; exceptions. A hearing shall be open to the public, except where the board is of the opinion that intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public, in which case the board may hold the hearings concerning any such matters in executive session.

6. Rights and powers of party at hearing. A party to a hearing may at a hearing:

A. Be represented by counsel or an agent;

B. Call and examine witnesses and present his arguments and submissions; and

C. Conduct cross-examinations of witnesses reasonably required for a full and fair disclosure of the facts in relation to which they have given evidence.

7. Recording of testimony; transcription. The oral evidence taken before the board at a hearing shall be recorded and, if so required, copies of the recording or a transcript thereof shall be furnished upon the same terms as in the Supreme Judicial Court.

8. Finding of fact. The findings of fact of the board pursuant to a hearing shall be based exclusively on evidence admissible under this section and section 5111 or on matters that may be noticed under these sections.

9. Board member participation in hearings. No member of the board shall participate in a decision of the board pursuant to a hearing unless he was present throughout the hearing and heard the evidence and argument of the parties.

10. Release of documents after hearing. Documents and things put in evidence at the hearing shall, upon the request of the person who produced them, be released to him by the board within a reasonable time after the matter in issue has been finally determined.

§ 5111. Evidence at hearing

1. Admissibility. Subject to subsections 2 and 3, the board may admit as evidence at a hearing, whether or not given or proven under oath or affirmation or admissible as evidence in court, any oral testimony and any document or other thing relevant to the subject matter of the proceedings and may act on such evidence, but the board may exclude anything unduly repetitious.

2. Inadmissible evidence. Nothing is admissible in evidence at a hearing that would be inadmissible in a court by reason of any privilege under the law of evidence or that is inadmissible by any statute.

3. No other express statutory provision overridden. Nothing in subsection 1 overrides the provisions of any act expressly limiting the extent to or purpose for which any oral testimony, documents or things may be admitted or used in evidence in any proceedings.

4. Copies of documents. Where the board is satisfied as to their authenticity, a copy of a document or other thing may be admitted as evidence at a hearing.

5. Photocopies of documents. Where a document has been filed in evidence at a hearing, the board may, or the person producing it or entitled to it may, with the leave of the board, cause the document to be photocopied and the board may authorize the photocopy to be filed in evidence in the place of the document filed and release the document filed, or may furnish to the person producing it or the person entitled to it, a photocopy of the document filed certified by a member of the board.

6. Purported copy. A document purposing to be a copy of a document filed in evidence at a hearing, certified to be a true copy thereof by a member of the board, is admissible in evidence in proceedings in which the document is admissible.

§ 5112. Judicial notice

The board may, in making its decision in any hearing, take notice of facts that may be judicially noticed.

§ 5113. Appeal

1. Appeal to Superior Court. Any party to a hearing before the board may appeal from the decision of the board to the appropriate Superior Court.

2. Basis for appeal. An appeal under this section may be made on questions of law, of fact, or both, and the court may confirm or alter the decision of the board or direct the board to do any act it is authorized to do under this Act, or may refer the matter back to the board for reconsideration as the court considers proper and the court may substitute its opinion for that of the board.

3. Decision remains effective. Notwithstanding that an applicant or licensee has appealed under this section from a decision of the board, unless the board otherwise directs, the decision of the board is effective until the appeal is disposed of.

§ 5114. Service of notice

Except where otherwise provided, any notice required by this Act may be served personally or by registered mail addressed to the person to whom notice is to be given at his last known address and, where notice is served by registered mail, the service shall be deemed to have been made on the 5th day after the day of mailing unless the person to whom notice is given establishes that he did not, acting in good faith, through absence, accident, illness or other cause beyond his control, receive the notice until a later date.

§ 5115. Immunity from suit

No action or other proceeding for damages shall be instituted against the board or any member of the board or anyone acting under the authority of such board or member, for any act done in good faith in the execution or intended execution of his duty or for any alleged neglect or default in the execution in good faith of his duty.

§ 5116. Negligence or malpractice suit limitation

No licensed dentist is liable to any action for negligence or malpractice, by reason of services respecting denture technology requested or rendered, unless such action is commenced within 2 years from the date, when in the matter complained of, such service terminated.

§ 5117. Violations; limitation on prosecution

1. False application or other contravention of chapter or regulatory provisions. Every person who:

A. Knowingly furnishes false information in any application under this Act or under the regulations or in any statement or return required to be furnished under this Act or the regulations; or

B. Contravenes any provision of this Act or regulations is guilty of an offense and on summary conviction is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than 6 months, or to both.

2. Limitations. No proceedings under subsection 1, paragraph A, shall be commenced more than one year after the facts upon which the proceeding is based first came to the knowledge of the board. No proceeding under subsection 1, paragraph B shall be commenced more than 2 years after the time when the subject matter of the proceeding arose.

§ 5118. Certain statements prima facie evidence

A statement as to the licensing or nonlicensing of any person, the filing or nonfiling of any document or material required or permitted to be filed with the board, the time when the facts upon which proceedings are based first came to the knowledge of the board or any other matter pertaining to such licensing, nonlicensing, filing or nonfiling, purporting to be certified by the board is, without proof of the office or signature of the executive director, receivable in evidence as prima facie proof of the fact stated therein for all purposes in any action, proceeding or prosecution.

§ 5119. Application of Act

1. Existing statutory authorization. Nothing in this Act prohibits a duly qualified dental surgeon or dental technician or dental hygienist from performing work or services ordinarily performed by a denturist licensed under this Act to the extent those persons are authorized to perform the same services under existing Maine law.

2. Denture technology. Nothing in any other Maine law shall prohibit a licensed denturist from practicing denture technology for hire, gain or hope of reward if such denturist meets all the requirements of this Act.

3. Nonapplicability to practice under any general or special act. Nothing in this Act applies to nor affects the practice of any profession or calling by any person practicing if that practice is authorized by any general or special act.

STATEMENT OF FACT

This bill will establish the profession of denturism and allow denturists to fit and make dentures for people directly without a dentist prescription.