

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 1390

S.P. 460

In Senate, March 19, 2003

An Act To Provide Self-regulation for Registered Dental Hygienists

Reference to the Committee on Business, Research and Economic Development suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator YOUNGBLOOD of Penobscot.
Cosponsored by Representative SULLIVAN of Biddeford and
Senators: BROMLEY of Cumberland, PENDLETON of Cumberland, Representatives:
CHURCHILL of Orland, ROGERS of Brewer.

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

4 **Sec. 1. 5 MRSA §12004-A, sub-§10-A** is enacted to read:

6 10-A. Board of Legislative 32 MRSA §15301
6 Licensure of Dental Per Diem
8 Hygienists Secretary-
10 Treasurer,
as determined
by board

12 **Sec. 2. 13 MRSA §732, sub-§5** is enacted to read:

14 5. Dentists and dental hygienists. For the purposes of this
16 chapter, a dental hygienist licensed under Title 32, chapter 135
18 may organize with a dentist who is licensed under Title 32,
20 chapter 16 and may become a shareholder of a dental practice
incorporated under the corporation laws. At no time may a dental
hygienist or dental hygienists in sum have an equal or greater
ownership interest in a dental practice than the dentist or
dentists have in that practice.

22 **Sec. 3. 32 MRSA c. 16** is amended by repealing the chapter
24 headnote and enacting the following in its place:

26 **CHAPTER 16**

28 **DENTISTS**

30 **Sec. 4. 32 MRSA §1071, first ¶,** as amended by PL 2001, c. 260,
32 Pt. B, §1, is further amended to read:

34 The Board of Dental Examiners, established by Title 5,
36 section 12004-A, subsection 10, and in this chapter called the
38 "board," consists of -8- 7 members, appointed by the Governor as
follows: five members of the dental profession, ~~one--dental~~
~~hygienist,~~ one denturist and one representative of the public.

40 **Sec. 5. 32 MRSA §1071, sub-§3,** as amended by PL 1993, c. 600,
Pt. A, §56, is repealed.

42 **Sec. 6. 32 MRSA §1072, first ¶,** as repealed and replaced by PL
44 1993, c. 600, Pt. A, §57, is amended to read:

46 At its annual meeting, the board shall elect from among its
48 members a president, a vice-president and a secretary-treasurer.
50 ~~Five~~ Four members constitute a quorum. The board shall have a
common seal. At a time and place to be fixed by the board, the
board shall hold at least one regular meeting each year and
special meetings as necessary. The board may recognize

2 nationally or regionally administered examinations given at least
3 annually for applicants to practice dentistry in the State. The
4 board may make rules, not contrary to law, necessary for the
5 performance of its duties. On or before August 1st, the board
6 shall annually make a report of its proceedings to the
7 Commissioner of Professional and Financial Regulation. The
8 secretary-treasurer of the board shall keep records of all
9 proceedings of the board and be the custodian of these records.
10 Records that constitute and are recognized as the official
11 records of the board must be open for public inspection at
12 reasonable times.

13 **Sec. 7. 32 MRSA §1092**, as amended by PL 1993, c. 600, Pt. A,
14 §73, is further amended to read:

15 **§1092. Unlawful practice**

16
17 Whoever practices dentistry without obtaining a license, or
18 whoever practices dentistry under a false or assumed name, or
19 under the license of another person of the same name, or under
20 the name of a corporation, company, association, parlor or trade
21 name, or whoever, being manager, proprietor, operator or
22 conductor of a place for performing dental operations, employs a
23 person who is not a lawful practitioner of dentistry of this
24 State to do dental operations as defined in section 1081, or
25 permits persons to practice dentistry under a false name, or
26 assumes a title or appends or prefixes to that person's name the
27 letters that falsely represent the person as having a degree from
28 a dental college, or who impersonates another at an examination
29 held by the board, or who knowingly makes a false application or
30 false representation in connection with the examination,--~~or~~
31 ~~whoever practices as a dental hygienist without having a license,~~
32 ~~or whoever employs a person as a dental hygienist who is not~~
33 ~~licensed to practice~~ commits a Class E crime.

34
35 **Sec. 8. 32 MRSA c. 16, sub-c. 4**, as amended, is repealed.

36
37 **Sec. 9. 32 MRSA §1100-A**, as amended by PL 1993, c. 600, Pt.
38 A, §87, is further amended to read:

39 **§1100-A. Definition**

40
41 Duties of dental auxiliaries other than dental hygienists
42 must be defined and governed by the rules of the Board of Dental
43 Examiners. Dental auxiliaries include, but are not limited to,
44 ~~dental---hygienists,~~ dental assistants, dental laboratory
45 technicians and denturists.

46
47 **Sec. 10. 32 MRSA §1100-J, sub-§3, ¶A**, as enacted by PL 1983, c.
48 331, §2, is amended to read:
49
50

2 A. Dental hygienists licensed pursuant to subchapter--IV
chapter 135;

4
6 **Sec. 11. 32 MRSA §9854, sub-§3, ¶A**, as enacted by PL 1983, c.
524, is amended to read:

8 A. A dental hygienist licensed under chapter 167--subchapter
10 IV 135;

12 **Sec. 12. 32 MRSA c. 135** is enacted to read:

14 **CHAPTER 135**

16 **BOARD OF LICENSURE OF DENTAL HYGIENISTS**

18 **§15301. Membership; appointment; vacancies; removal;**
nominations; compensation

20 The Board of Licensure of Dental Hygienists, established by
22 Title 5, section 12004-A, subsection 10-A and in this chapter
24 called "the board," consists of 5 members, appointed by the
Governor as follows: four members of the dental hygienist
profession and one representative of the public.

26 1. Membership. A person who has been convicted of a
28 violation of the provisions of this chapter or who has been
30 convicted of a crime punishable by more than one year's
32 imprisonment is not eligible for appointment to the board. The
Governor may remove a member of the board on proven charges of
inefficiency, incompetence, immorality or unprofessional conduct.

34 2. Dental hygienists. In order to be eligible for
36 appointment to the board, a dental hygienist must be qualified
38 pursuant to section 15308, must be a legal resident of the State
40 and must have practiced in the State for at least 6 years
42 immediately preceding appointment. The term of a dental
hygienist on the board is 5 years. The Governor may accept
nominations from the Maine Dental Hygienists Association and from
other organizations and individuals before the appointment of a
dental hygienist to the board.

44 3. Public member. The public member of the board is
appointed to a 5-year term.

46 4. Compensation. The members of the board are entitled to
48 compensation according to the provisions of Title 5, chapter
379. Expenses of the board members must be certified by the
secretary-treasurer of the board.

50

2 **§15302. Elections; quorum; reports; records; secretary-**
3 **treasurer; expenses**

4 At its annual meeting, the board shall elect from among its
5 members a president, a vice-president and a secretary-treasurer.
6 Three members constitute a quorum. The board shall have a common
7 seal. At a time and place to be fixed by the board, the board
8 shall hold at least one regular meeting each year and special
9 meetings as necessary. The board may recognize nationally or
10 regionally administered examinations given in the United States
11 or Canada at least annually for applicants to practice as dental
12 hygienists in the State. The board may make rules, not contrary
13 to law, necessary for the performance of its duties. On or
14 before August 1st, the board shall annually make a report of its
15 proceedings to the Commissioner of Professional and Financial
16 Regulation. The secretary-treasurer of the board shall keep
17 records of all proceedings of the board and be the custodian of
18 these records. Records that constitute and are recognized as the
19 official records of the board must be open for public inspection
20 at reasonable times.

21 The secretary-treasurer of the board shall collect all fees,
22 charges and assessments payable to the board and account for and
23 pay them according to law. The secretary-treasurer is entitled
24 to receive an annual salary, to be fixed by the board, in lieu of
25 per diem compensation. The secretary-treasurer is entitled to
26 necessary expenses incurred in the discharge of official duties,
27 including clerical and stenographic assistance, printing and
28 postage. The allowance for expenses must be certified by the
29 president of the board.

30 **§15303. Powers**

31 The board may:

32 1. Employees and offices; funds. Employ persons to assist
33 in carrying out its duties in the administration and enforcement
34 of this chapter; provide offices, furniture, fixtures, supplies
35 or printing; and expend funds as determined necessary;

36 2. Rules. Adopt rules in accordance with the Maine
37 Administrative Procedure Act that are necessary for the
38 implementation of this chapter. Rules adopted by the board
39 pursuant to this chapter are routine technical rules as defined
40 in Title 5, chapter 375, subchapter 2-A. The rules may include,
41 but need not be limited to, requirements for licensure,
42 interviews for licensing and renewal, continuing education,
43 inactive licensure status, use of local anesthesia, application
44 fees, licensing and endorsement fees and fees for providing a
45 list of addresses of licensed professionals upon request;
46
47
48
49
50

2 3. False advertising. Establish rules relating to false,
3 deceptive or misleading advertising, except that no rules may be
4 inconsistent with any rule adopted pursuant to Title 5, section
5 207, subsection 2; and

6
7 4. Protocols for professional review committee. Establish
8 protocols for the operation of a professional review committee as
9 defined in Title 24, section 2502, subsection 4-A. The protocols
10 must include the committee's reporting information the board
11 considers appropriate regarding reports received, contracts or
12 investigations made and the disposition of each report, except
13 that the committee is not required to disclose any personally
14 identifiable information. The protocols may not prohibit an
15 impaired dental hygienist from seeking alternative forms of
16 treatment.

17 **§15304. Liaison; limitations**

18
19 On or before August 1st of each year, the board shall submit
20 to the Commissioner of Professional and Financial Regulation, for
21 the preceding fiscal year ending June 30th, an annual report of
22 its operations and financial position, together with comments and
23 recommendations the board considers essential.

24
25 The Commissioner of Professional and Financial Regulation
26 shall act as a liaison between the board and the Governor.

27
28 The Commissioner of Professional and Financial Regulation
29 may not exercise or interfere with the exercise of discretionary,
30 regulatory or licensing authority granted by law to the board.
31 The commissioner may require the board to be accessible to the
32 public for complaints and questions during regular business hours
33 and to provide any information the commissioner requires in order
34 to ensure that the board is operating administratively within the
35 requirements of this chapter.

36
37 **§15305. Budget**

38
39 The board shall submit to the Commissioner of Professional
40 and Financial Regulation its budgetary requirements in the same
41 manner as is provided in Title 5, section 1665, and the
42 commissioner shall in turn transmit these requirements to the
43 Department of Administrative and Financial Services, Bureau of
44 the Budget without any revision, alteration or change, unless
45 alterations are mutually agreed upon by the department and the
46 board or the board's designee. The budget submitted by the board
47 to the commissioner must be sufficient to enable the board to
48 comply with this chapter.

50

2 **§15306. Disciplinary actions**

4 **1. Disciplinary proceedings and sanctions.** The board, on
6 its own motion or upon receipt of a written complaint filed with
8 the board, shall investigate a complaint regarding noncompliance
10 with or violation of this chapter or of rules adopted by the
12 board.

14 The board shall notify a licensee under this chapter of the
16 content of a complaint filed against the licensee as soon as
18 possible but no later than 60 days from receipt of the
20 complaint. The licensee shall respond within 30 days. If the
22 licensee's response to the complaint satisfies the board that the
24 complaint does not merit further investigation or action, the
26 matter may be dismissed, with notice of the dismissal to the
28 complainant, if any.

30 If, in the opinion of the board, the factual basis of the
32 complaint is or may be true and the complaint is of sufficient
34 gravity to warrant further action, the board may request an
36 informal conference with the licensee. The board shall provide
38 the licensee with adequate notice of the conference and of the
40 issues to be discussed. The conference must be conducted in
42 executive session of the board, pursuant to Title 1, section 405,
44 unless otherwise requested by the licensee. Statements made at
46 the conference may not be introduced at a subsequent formal
48 hearing unless all parties consent.

50 If the board finds that the factual basis of the complaint is
true and is of sufficient gravity to warrant further action, it
may take any of the following actions it considers appropriate:

32 A. With the consent of the licensee, enter into a consent
34 agreement that fixes the period and terms of probation best
36 adapted to protect the public health and safety and to
38 rehabilitate or educate the licensee. A consent agreement
40 may be used to terminate a complaint investigation if
42 entered into by the board, the licensee and the Office of
44 the Attorney General; or

46 B. In consideration for acceptance of a voluntary surrender
48 of the license if a consent agreement is signed by the
board, the licensee and the Office of the Attorney General,
negotiate stipulations, including terms and conditions for
reinstatement, that ensure protection of the public health
and safety and that serve to rehabilitate or educate the
licensee.

50 If the board concludes that modification or nonrenewal of the
license is in order, the board shall hold an adjudicatory hearing

2 in accordance with the provisions of Title 5, chapter 375,
3 subchapter 4.

4 If the board concludes that suspension or revocation of the
5 license is in order, the board shall file a complaint in the
6 District Court in accordance with Title 4, chapter 5.

8 2. Grounds for discipline. The board may suspend or revoke
9 a license pursuant to Title 5, section 10004. The following are
10 grounds for an action to refuse to issue, modify, suspend, revoke
11 or refuse to renew the license of a person licensed under this
12 chapter:

14 A. The practice of fraud or deceit in obtaining a license
15 under this chapter or in connection with service rendered
16 within the scope of the license issued;

18 B. Habitual substance abuse that has resulted or is
19 foreseeably likely to result in the licensee's performing
20 services in a manner that endangers the health or safety of
21 patients;

22 C. A professional diagnosis of a mental or physical
23 condition that has resulted or may result in the licensee's
24 performing services in a manner that endangers the health or
25 safety of patients;

28 D. Aiding or abetting the practice of a dental profession
29 by an individual who is not licensed under this chapter and
30 who claims to be legally licensed;

32 E. Incompetence in the practice for which the licensee is
33 licensed. A licensee under this chapter is considered
34 incompetent if the licensee has:

36 (1) Engaged in conduct that evidences a lack of
37 ability or fitness to perform the duties owed by the
38 licensee to a client or patient or the general public;
39 or

40 (2) Engaged in conduct that evidences a lack of
41 knowledge or inability to apply principles or skills to
42 practice as a dental hygienist;

44 F. Unprofessional conduct. A licensee is considered to
45 have engaged in unprofessional conduct if the licensee
46 violates a standard of professional behavior that has been
47 established in the practice of dental hygiene;
48

2 G. Subject to the limitations of Title 5, chapter 341,
3 conviction of a crime that involves dishonesty or false
4 statement or that relates directly to the practice of dental
5 hygiene, or conviction of a crime for which incarceration
6 for one year or more may be imposed;

7 H. A violation of this chapter or a rule adopted by the
8 board; or

9 I. Engaging in false, misleading or deceptive advertising.

11 **§15307. Practice**

12 The dental hygienist may perform duties as defined and set
13 forth in the rules of the board, except that nothing in this
14 chapter may be construed to affect the practice of medicine or
15 dentistry or to prevent students of a dental college, university
16 or school of dental hygiene from practicing dental hygiene under
17 the supervision of their instructors.

18 **§15308. Qualifications**

19 A person 18 years of age or over who has successfully
20 completed 2 years' training in a school of dental hygiene in a
21 program approved by the Commission on Dental Accreditation or its
22 successor organization, or who is a full-time dental student who
23 has satisfactorily completed at least half of the prescribed
24 course of study in an accredited dental college but who has not
25 graduated from a dental college is eligible to apply for
26 examination.

27 **§15309. Application; fee**

28 An eligible person desiring to practice dental hygiene must
29 make written application to the board to take the examination.
30 The application must be accompanied by a fee to be determined by
31 the board. Applicants for licensure shall pay a fee set by the
32 board for the examination. The board may recognize a nationally
33 or regionally administered examination for applicants to practice
34 dental hygiene in the State.

35 **§15310. License; biennial fee**

36 The board shall issue a license to practice as a dental
37 hygienist in this State to an individual who has met the
38 licensure requirements under this chapter. The license must be
39 exhibited publicly at the person's place of employment. The
40 license authorizes practice as a dental hygienist in this State
41 for the year in which it is issued until the expiration date that
42 appears on the license. On or before January 1st of each
43 year.

2 odd-numbered year, the dental hygienist must pay to the board a
4 license renewal fee to be determined by the board or 1/2 of the
6 biennial licensure fee if the applicant applies in an
8 even-numbered year. Dental hygienists who have not paid as
10 provided must be reinstated upon payment of a fee to be
12 determined by the board if paid before February 1st of the year
14 in which license renewal is due. Failure to be properly licensed
16 by February 1st results in automatic suspension of a license to
18 practice dental hygiene. Reinstatement may be made, if approved
20 by the board, by payment to the secretary-treasurer of the board
22 of a fee determined by the board.

24 The board may issue temporary licenses to dental hygienists
26 who present credentials satisfactory to the board. The board may
28 charge a fee of up to \$25 for a temporary license.

30 **§15311. Fee for duplicate license**

32 An applicant for a duplicate license granted upon proof of
34 loss of the original shall pay a fee of \$15.

36 **§15312. Continuing education**

38 As a condition of renewal of a license to practice, a dental
40 hygienist must submit evidence of successful completion of 30
42 hours of continuing education consisting of board-approved
44 courses in the 2 years preceding the application for renewal.

46 **§15313. Endorsement**

48 The board may at its discretion, without examination, issue
50 a license to an applicant to practice dental hygiene who
52 furnishes proof satisfactory to the board that the dental
54 hygienist has been duly licensed to practice in another state
56 after full compliance with the requirements of its dental laws,
58 except that the professional education may not be less than is
60 required in this State. The board may require letters of
62 reference as to ability. Applicants for licensure by endorsement
64 who meet the requirements of this section must be interviewed in
66 person by the board or members of the board prior to being issued
68 a license. Every license so given must state upon its face that
70 it was granted on the basis of endorsement. The fee for that
72 license must be determined by the board.

74 **§15314. Use of former employers' lists; scope of duties**

76 A dental hygienist may not use or attempt to use in any
78 manner whatsoever any prophylactic lists, call lists, records,
80 reprints or copies of those lists, records or reprints, or
82 information gathered from those materials, of the names of

2 patients whom the hygienist might have served in the office of a
4 prior employer, unless these names appear on the bona fide call
6 or prophylactic list of the present employer and were caused to
8 so appear through the legitimate practice of dentistry as
10 provided for in chapter 16. A dentist may not aid or abet or
12 encourage a dental hygienist in the dentist's employ to make use
14 of a so-called prophylactic call list, or to call by telephone or
16 to use written letters transmitted through the mails to solicit
18 patronage from patients formerly served in the office of a
20 dentist formerly employing the hygienist.

22 **§15315. Unlawful practice**

24 Whoever practices as a dental hygienist without obtaining a
26 license or under a false or assumed name, under the license of
28 another person of the same name or under the name of a
30 corporation, company, association, parlor or trade name; who
32 impersonates another at an examination held by the board; or who
34 knowingly makes a false application or false representation in
36 connection with an examination and whoever employs a person as a
38 dental hygienist who is not licensed to practice commits a Class
40 E crime.

42 **§15316. Penalty**

A person who violates a provision of this chapter for the
violation of which a penalty has not been prescribed commits a
civil violation for which a forfeiture of not more than \$1,000
may be adjudged.

SUMMARY

This bill establishes the Board of Licensure of Dental Hygienists and transfers jurisdiction for licensing and regulation of dental hygienists from the Board of Dental Examiners to the Board of Licensure of Dental Hygienists. The bill also establishes membership, procedures and powers of the new board, as well as qualifications, disciplinary procedures, licensure, continuing education and other requirements for dental hygienists who will be licensed by the new board. The bill also includes a provision authorizing dental hygienists to become shareholders in dental practices up to a 49% ownership interest.