

MAINE STATE LEGISLATURE

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No. 2277

H.P. 1643

House of Representatives, March 26, 2008

An Act Regarding the Sunrise Review of Oral Health Care Issues

Reported by Representative SMITH of Monmouth for the Joint Standing Committee on Business, Research and Economic Development pursuant to Resolve 2007, chapter 85, section 2.

Reference to the Committee on Business, Research and Economic Development suggested and ordered printed under Joint Rule 218.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

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

2 **PART A**

3 **Sec. A-1. 32 MRSA §1078**, as enacted by PL 2003, c. 669, §3, is amended to
4 read:

5 **§1078. Subcommittee on Denturists**

6 The Subcommittee on ~~Denturist Discipline~~ Denturists, referred to in this section as
7 "the subcommittee," is established as follows.

8 **1. Membership.** The subcommittee consists of 5 members as follows:

9 A. The denturist who is a member of the board;

10 B. Two denturists, appointed by the Governor, who are qualified pursuant to
11 subchapter 6, are legal residents of the State and, for appointments made after
12 January 1, 2006, have practiced in the State for at least 6 years immediately
13 preceding appointment; and

14 C. Two dentists who are members of the board, appointed by the president of the
15 board.

16 The subcommittee shall annually elect a chair and a secretary.

17 **2. Terms.** Each of the 3 members of the subcommittee who also are members of the
18 board shall serve on the subcommittee for the duration of that member's term on the
19 board. The term of a member of the subcommittee who is not a member of the board is 5
20 years.

21 **3. Duties.** The subcommittee shall ~~perform an initial review of all complaints~~
22 ~~initiated pursuant to section 1077 involving denturists. Upon completion of its review of~~
23 ~~a complaint, the secretary of the subcommittee shall report to the board the~~
24 ~~subcommittee's recommended disposition of the complaint in accordance with those~~
25 ~~dispositions authorized by section 1077. Notwithstanding the provisions of section 1077,~~
26 ~~the board shall adopt the subcommittee's recommended disposition of a complaint unless~~
27 ~~no fewer than 2/3 of the board members who are present and voting vote to reject that~~
28 ~~recommended disposition. ;~~

29 A. Perform an initial review of all complaints initiated pursuant to section 1077
30 involving denturists. Upon completion of its review of a complaint, the secretary of
31 the subcommittee shall report to the board the subcommittee's recommended
32 disposition of the complaint in accordance with those dispositions authorized by
33 section 1077. Notwithstanding the provisions of section 1077, the board shall adopt
34 the subcommittee's recommended disposition of a complaint unless no fewer than 2/3
35 of the board members who are present and voting vote to reject that recommended
36 disposition;

37 B. Perform an initial review of all applications for licensure as a denturist pursuant to
38 section 1100-D and all submissions relating to continuing education of denturists

1 pursuant to section 1100-E-1. Upon completion of its review of an application or
2 submission, the secretary of the subcommittee shall report to the board the
3 subcommittee's recommended disposition of the application or submission, including
4 issuance, renewal, denial or nonrenewal of a denturist license. Notwithstanding the
5 provisions of section 1100-E, the board shall adopt the subcommittee's recommended
6 disposition of an application or submission unless no fewer than 2/3 of the board
7 members who are present and voting vote to reject that recommended disposition;
8 and

9 C. Adopt rules in accordance with the Maine Administrative Procedure Act that are
10 necessary for the implementation of the provisions of this chapter dealing with
11 denturists. Rules adopted pursuant to this section are routine technical rules as
12 defined in Title 5, chapter 375, subchapter 2-A. The rules may include, but are not
13 limited to, requirements for licensure, interviews for licensing and renewal,
14 continuing education and inactive licensure status.

15 **4. Compensation.** The members of the subcommittee are entitled to compensation
16 according to the provisions of Title 5, chapter 379. Expenses of the subcommittee
17 members must be certified by the secretary of the board.

18 **Sec. A-2. 32 MRSA §1079, sub-§5** is enacted to read:

19 **5. Rules.** The subcommittee shall adopt rules in accordance with the Maine
20 Administrative Procedure Act that are necessary for the implementation of the provisions
21 of this chapter dealing with dental hygienists. Rules adopted pursuant to this subsection
22 are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. The rules
23 may include, but are not limited to, requirements for licensure, interviews for licensing
24 and renewal, continuing education and inactive licensure status.

25 **PART B**

26 **Sec. B-1. 32 MRSA c. 16, sub-c. 3-B** is enacted to read:

27 **SUBCHAPTER 3-B**

28 **INDEPENDENT PRACTICE DENTAL HYGIENISTS**

29 **§1094-I. Independent practice**

30 An independent practice dental hygienist licensed by the board pursuant to this
31 subchapter may practice without supervision by a dentist to the extent permitted by this
32 subchapter. An independent practice dental hygienist, or a person employing one or more
33 independent practice dental hygienists, may be the proprietor of a place where
34 independent practice dental hygiene is performed and may purchase, own or lease
35 equipment necessary for the performance of independent practice dental hygiene.

36 A person practicing independent practice dental hygiene as an employee of another
37 shall cause that person's name to be conspicuously displayed at the entrance of the place
38 where the practice is conducted.

1 **§1094-J. Qualifications for licensure**

2 To qualify for licensure under this subchapter as an independent practice dental
3 hygienist, a person must:

4 **1. 18 years of age.** Be 18 years of age or older;

5 **2. Licensure as dental hygienist.** Possess a valid license to practice dental hygiene
6 issued by the board pursuant to subchapter 4 or qualify for licensure as an independent
7 practice dental hygienist by endorsement pursuant to section 1094-L; and

8 **3. Education and experience.** Meet the educational and experience requirements
9 described in section 1094-K.

10 **§1094-K. Education and experience**

11 An applicant for licensure under this subchapter as an independent practice dental
12 hygienist must:

13 **1. Bachelor's degree and 2,000 hours experience.** Possess a bachelor's degree
14 from a dental hygiene program accredited by the American Dental Association
15 Commission on Dental Accreditation, or its successor organization, and document one
16 year or 2,000 work hours of clinical practice in a private dental practice during the 2
17 years preceding application; or

18 **2. Associate degree and 6,000 hours experience.** Possess an associate degree from
19 a dental hygiene program accredited by the American Dental Association Commission on
20 Dental Accreditation, or its successor organization, and document 3 years or 6,000 work
21 hours of clinical practice in a private dental practice during the 6 years preceding
22 application.

23 **§1094-L. Licensure by endorsement**

24 A person eligible for licensure as a dental hygienist by endorsement pursuant to
25 section 1098-D, subsection 2 or 1099 is also eligible for licensure under this subchapter
26 as an independent practice dental hygienist by endorsement if the applicant meets the
27 education and experience requirements set forth in section 1094-K.

28 **§1094-M. Application**

29 An applicant for licensure as an independent practice dental hygienist shall apply to
30 the board on forms provided by the board. The applicant shall include as part of the
31 application such information and documentation as the board may require to act on the
32 application. The application must be accompanied by the application fee set under section
33 1094-O.

34 **§1094-N. License; biennial renewal; discontinuation of dental hygienist license**

35 The board shall issue a license to practice as an independent practice dental hygienist
36 to a person who has met the requirements for licensure set forth in this subchapter and has

1 paid the application fee under section 1094-O. There is an initial license fee only for
2 independent practice dental hygienists licensed by endorsement. The license must be
3 exhibited publicly at the person's place of business or employment. The initial date of
4 expiration of the license is the original expiration date of the person's dental hygienist
5 license issued by the board pursuant to subchapter 4 or, for independent practice dental
6 hygienists licensed by endorsement, January 1st of the first odd-numbered year following
7 initial licensure. On or before January 1st of each odd-numbered year, the independent
8 practice dental hygienist shall pay to the board a license renewal fee. Independent
9 practice dental hygienists who have not paid the renewal fee on or before January 1st
10 must be reinstated upon payment of a late fee before February 1st of the year in which
11 license renewal is due. Failure to be properly licensed by February 1st results in
12 automatic suspension of a license to practice as an independent practice dental hygienist.
13 Reinstatement of the independent practice dental hygienist license may be made, if
14 approved by the board, by payment of a reinstatement fee to the board.

15 A dental hygienist license issued by the board pursuant to subchapter 4 of this chapter
16 automatically expires upon issuance under this subchapter of an independent practice
17 dental hygienist license to the same person.

18 **§1094-O. Fees**

19 The board may establish by rule fees for purposes authorized under this subchapter in
20 amounts that are reasonable and necessary for their respective purposes, except that the
21 fee for any one purpose may not exceed \$275. Rules adopted pursuant to this section are
22 routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

23 **§1094-P. Continuing education**

24 As a condition of renewal under this subchapter of a license to practice, an
25 independent practice dental hygienist must submit evidence of successful completion of
26 30 hours of continuing education consisting of board-approved courses in the 2 years
27 preceding the application for renewal. The board and the independent practice dental
28 hygienist shall follow and are bound by the provisions of section 1084-A in the
29 implementation of this section.

30 Continuing education completed pursuant to section 1098-B may be recognized for
31 purposes of this section in connection with the first renewal of an independent practice
32 dental hygienist license.

33 The board may refuse to issue a license under this subchapter to a person who has not
34 completed continuing education required by section 1098-B or may issue the license on
35 terms and conditions set by the board.

36 **§1094-Q. Scope of practice**

37 **1. Independent practice.** An independent practice dental hygienist licensed under
38 this subchapter may perform only the following duties without supervision by a dentist:

39 A. Interview patients and record complete medical and dental histories;

- 1 B. Take and record the vital signs of blood pressure, pulse and temperature;
- 2 C. Perform oral inspections, recording all conditions that should be called to the
- 3 attention of a dentist;
- 4 D. Perform complete periodontal and dental restorative charting;
- 5 E. Perform all procedures necessary for a complete prophylaxis, including root
- 6 planing;
- 7 F. Apply fluoride to control caries;
- 8 G. Apply desensitizing agents to teeth;
- 9 H. Apply topical anesthetics;
- 10 I. Apply sealants;
- 11 J. Smooth and polish amalgam restorations, limited to slow speed application only;
- 12 K. Cement pontics and facings outside the mouth;
- 13 L. Take impressions for athletic mouth guards and custom fluoride trays;
- 14 M. Place and remove rubber dams;
- 15 N. Place temporary restorations in compliance with the protocol adopted by the
- 16 board; and
- 17 O. Apply topical antimicrobials, excluding antibiotics, including fluoride, for the
- 18 purposes of bacterial reduction, caries control and desensitization in the oral cavity.
- 19 The independent practice dental hygienist shall follow current manufacturer's
- 20 instructions in the use of these medicaments.

21 For the purposes of this subsection, "topical" includes superficial and intraoral

22 application.

23 **2. Practice under supervision.** An independent practice dental hygienist licensed

24 under this subchapter may perform duties under the supervision of a dentist as set forth in

25 the rules of the board pursuant to section 1095.

26 **§1094-R. Responsibilities**

27 An independent practice dental hygienist licensed under this subchapter has the duties

28 and responsibilities set out in this section with respect to each patient seen in an

29 independent capacity pursuant to section 1094-Q, subsection 1.

30 **1. Acknowledgment.** Prior to an initial patient visit, an independent practice dental

31 hygienist licensed under this subchapter shall obtain from the patient or the parent or

32 guardian of a minor patient written acknowledgment of the patient's or parent's or

33 guardian's understanding that the independent practice dental hygienist is not a dentist

34 and that the service to be rendered does not constitute restorative care or treatment.

35 **2. Referral plan.** An independent practice dental hygienist licensed under this

36 subchapter shall provide to a patient or the parent or guardian of a minor patient a written

1 plan for referral to a dentist for any necessary dental care. The referral plan must identify
2 all conditions that should be called to the attention of the dentist.

3 **§1094-S. Mental or physical examination**

4 For the purposes of this section, by application for and acceptance of a license to
5 practice under this subchapter, an independent practice dental hygienist is considered to
6 have given consent to a mental or physical examination when directed by the board. The
7 board may direct an independent practice dental hygienist to submit to an examination
8 whenever the board determines the independent practice dental hygienist may be
9 suffering from a mental illness that may be interfering with the competent independent
10 practice of dental hygiene or from the use of intoxicants or drugs to an extent that they
11 are preventing the independent practice dental hygienist from practicing dental hygiene
12 competently and with safety to patients. An independent practice dental hygienist
13 examined pursuant to an order of the board may not prevent the testimony of the
14 examining individual or prevent the acceptance into evidence of the report of an
15 examining individual. Failure to comply with an order of the board to submit to a mental
16 or physical examination results in the immediate suspension of the license to practice
17 independent dental hygiene by order of the District Court until the independent practice
18 dental hygienist submits to the examination.

19 **§1094-T. Use of former employers' lists**

20 An independent practice dental hygienist may not use or attempt to use in any manner
21 whatsoever any prophylactic lists, call lists, records, reprints or copies of those lists,
22 records or reprints, or information gathered from these materials, of the names of patients
23 whom the independent practice dental hygienist might have served in the office of a prior
24 employer, unless these names appear on the bona fide call or prophylactic list of the
25 present employer and were caused to so appear through the independent practice of
26 dentistry, denturism or independent practice dental hygiene as provided for in this
27 chapter. A dentist, denturist or independent practice dental hygienist who employs an
28 independent practice dental hygienist may not aid or abet or encourage an independent
29 practice dental hygienist employed by such person to make use of a so-called
30 prophylactic call list, or to call by telephone or to use written letters transmitted through
31 the mails to solicit patronage from patients formerly served in the office of a dentist,
32 denturist or independent practice dental hygienist that formerly employed the independent
33 practice dental hygienist.

34 **PART C**

35 **Sec. C-1. 32 MRSA §1062-A, sub-§1**, as corrected by RR 1995, c. 2, §79, is
36 amended to read:

37 **1. Penalties.** A person who practices or falsely claims legal authority to practice
38 dentistry, dental hygiene, independent practice dental hygiene, denturism or dental
39 radiography in this State without first obtaining a license as required by this chapter, or
40 after the license has expired, has been suspended or revoked or has been temporarily
41 suspended or revoked, commits a Class E crime.

1 **Sec. C-2. 32 MRSA §1081, sub-§2, ¶E**, as amended by PL 1993, c. 600, Pt. A,
2 §63, is further amended to read:

3 E. The filling of prescriptions of a licensed dentist by any person, association,
4 corporation or other entity for the construction, reproduction or repair of prosthetic
5 dentures, bridges, plates or appliances to be used or worn as substitutes for natural
6 teeth, provided that this person, association, corporation or other entity does not
7 solicit nor advertise, directly or indirectly, by mail, card, newspaper, pamphlet, radio
8 or otherwise, to the general public to construct, reproduce or repair prosthetic
9 dentures, bridges, plates or other appliances to be used or worn as substitutes for
10 natural teeth; ~~and~~

11 **Sec. C-3. 32 MRSA §1081, sub-§2, ¶G**, as amended by PL 1993, c. 600, Pt. A,
12 §63, is further amended to read:

13 G. The taking of impressions by dental hygienists, independent practice dental
14 hygienists or dental assistants for study purposes only; ~~and~~

15 **Sec. C-4. 32 MRSA §1081, sub-§2, ¶H** is enacted to read:

16 H. Practice by an independent practice dental hygienist pursuant to subchapter 3-B.

17 **Sec. C-5. 32 MRSA §1081, sub-§3**, as amended by PL 2007, c. 210, §2, is
18 further amended to read:

19 **3. Proprietor.** The term proprietor, as used in this chapter, includes a person who:

20 A. Employs dentists or dental hygienists, independent practice dental hygienists,
21 denturists or other dental auxiliaries in the operation of a dental office;

22 B. Places in possession of a dentist or a dental hygienist, independent practice
23 dental hygienist or other dental auxiliary or other agent dental material or equipment
24 that may be necessary for the management of a dental office on the basis of a lease or
25 any other agreement for compensation for the use of that material, equipment or
26 office; or

27 C. Retains the ownership or control of dental equipment or material or a dental
28 office and makes the same available in any manner for the use by dentists or dental
29 hygienists, independent practice dental hygienists or other agents, except that nothing
30 in this subsection applies to bona fide sales of dental equipment or material secured
31 by a chattel mortgage or retain title agreement. A person licensed to practice dentistry
32 may not enter into arrangements with a person who is not licensed to practice
33 dentistry, with the exception of licensed denturists ~~and independent practice dental~~
34 hygienists, or the legal guardian or personal representative of a deceased or
35 incapacitated dentist, pursuant to the provisions of Title 13, section 732.

36 **Sec. C-6. 32 MRSA §1081, sub-§6** is enacted to read:

37 **6. Dental hygienist.** "Dental hygienist" or "independent practice dental hygienist,"
38 as used in this chapter, means a dental auxiliary licensed pursuant to subchapter 3-B or 4

1 who delivers preventive and educational services for the control of oral disease and the
2 promotion of oral health within the scope of practice authorized by the person's license.

3 **Sec. C-7. 32 MRSA §1092, sub-§1, ¶J**, as enacted by PL 2003, c. 452, Pt. R, §1
4 and affected by Pt. X, §2, is amended to read:

5 J. Practice as a dental hygienist or independent practice dental hygienist without
6 having a license to do so; or

7 **Sec. C-8. 32 MRSA §1092, sub-§1, ¶K**, as enacted by PL 2003, c. 452, Pt. R, §1
8 and affected by Pt. X, §2, is amended to read:

9 K. Employ a person as a dental hygienist or independent practice dental hygienist
10 who is not licensed to practice.

11 **Sec. C-9. 32 MRSA §1094-D**, as enacted by PL 2005, c. 322, §1, is amended to
12 read:

13 **§1094-D. Definitions**

14 As used in this subchapter, unless the context otherwise indicates, "expanded
15 function dental assistant" means an individual who holds a current valid certification
16 under this subchapter to perform reversible intraoral procedures authorized by this
17 subchapter under the direct supervision of a licensed dentist and under an assignment of
18 duties by a dentist. As used in this subchapter, unless the context otherwise indicates,
19 "reversible intraoral procedures" means placing and removing rubber dams and matrices;
20 placing and contouring amalgam, composite and other restorative materials; applying
21 sealants; supra gingival polishing; and other reversible procedures defined by the board
22 not designated by this chapter to be performed only by licensed dentists ~~or~~ dental
23 hygienists or independent practice dental hygienists.

24 **Sec. C-10. 32 MRSA §1100-A**, as amended by PL 2005, c. 322, §2, is further
25 amended to read:

26 **§1100-A. Definition**

27 Duties of dental auxiliaries other than dental hygienists and expanded function dental
28 assistants must be defined and governed by the rules of the Board of Dental Examiners,
29 except that duties of independent practice dental hygienists set forth in section 1094-Q,
30 subsection 1 may not be restricted or expanded by the board. Dental auxiliaries include,
31 but are not limited to, dental hygienists, independent practice dental hygienists, dental
32 assistants, expanded function dental assistants, dental laboratory technicians and
33 denturists.

34 **Sec. C-11. 32 MRSA §1100-B, sub-§3, ¶C**, as amended by PL 1993, c. 600, Pt.
35 A, §88, is further amended to read:

36 C. The procedures incidental to the procedures specified in paragraphs A and B, as
37 defined by the ~~board~~ Subcommittee on Denturists.

- 1 denturists, as well as provides the subcommittee with rule-making authority. It also
- 2 provides the Subcommittee on Dental Hygienist Submissions with rule-making authority.