

MAINE STATE LEGISLATURE

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126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 933

H.P. 657

House of Representatives, March 7, 2013

An Act To Establish a Separate Regulatory Board for Dental Hygienists

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

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative SIROCKI of Scarborough.
Cosponsored by Representatives: GUERIN of Glenburn, LIBBY of Waterboro, MALABY of Hancock, MASTRACCIO of Sanford, McELWEE of Caribou, PARRY of Arundel, PETERSON of Rumford, SANDERSON of Chelsea.

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

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

3 **10-A.**

4 State Board of Dental Legislative Per Diem 32 MRSA §19121
5 Hygienists

6 **Sec. 2. 13 MRSA §732, sub-§4**, as amended by PL 2007, c. 620, Pt. D, §1, is
7 further amended to read:

8 **4. Dentists, denturists, independent practice dental hygienists and any related**
9 **licensed dental hygiene professionals.** For the purposes of this chapter, a denturist ~~or~~
10 licensed under Title 32, chapter 16, an independent practice dental hygienist licensed
11 under Title 32, chapter ~~16~~ 141 or any related licensed dental hygiene professional may
12 organize with a dentist who is licensed under Title 32, chapter 16 and may become a
13 shareholder of a dental practice incorporated under the corporation laws. At no time may
14 one or more denturists ~~or~~, independent practice dental hygienists or any related licensed
15 dental hygiene professionals in sum have an equal or greater ownership interest in a
16 dental practice than the dentist or dentists have in that practice.

17 **Sec. 3. 22 MRSA §3174-RR, sub-§1**, as reallocated by RR 2011, c. 1, §32, is
18 amended to read:

19 **1. Reimbursement.** By October 1, 2012, the department shall provide for the
20 reimbursement under the MaineCare program of independent practice dental hygienists
21 practicing as authorized under Title 32, section ~~1094-I~~ 19161 for the following
22 procedures:

- 23 A. Prophylaxis performed on a person who is 21 years of age or younger;
- 24 B. Topical application of fluoride performed on a person who is 21 years of age or
25 younger;
- 26 C. Provision of oral hygiene instructions;
- 27 D. The application of sealants;
- 28 E. Temporary fillings; and
- 29 F. ~~X-rays.~~ Radiographic procedures, including but not limited to:
- 30 (1) Periapical x-rays;
- 31 (2) Bite-wing x-rays;
- 32 (3) Panoramic x-rays; and
- 33 (4) Full-mouth services.

34 Reimbursement must be provided to independent practice dental hygienists directly or to
35 a federally qualified health center pursuant to section 3174-V when an independent
36 practice dental hygienist is employed as a core provider at the center.

1 **Sec. 4. 24-A MRSA §2765, sub-§1**, as enacted by PL 2009, c. 307, §2 and
2 affected by §6, is amended to read:

3 **1. Services provided by independent practice dental hygienist.** An insurer that
4 issues individual dental insurance or health insurance that includes coverage for dental
5 services shall provide coverage for dental services performed by an independent practice
6 dental hygienist licensed under Title 32, chapter ~~16~~ 141, subchapter ~~3-B~~ 4 when those
7 services are covered services under the contract and when they are within the lawful
8 scope of practice of the independent practice dental hygienist.

9 **Sec. 5. 24-A MRSA §2847-Q, sub-§1**, as enacted by PL 2009, c. 307, §3 and
10 affected by §6, is amended to read:

11 **1. Services provided by independent practice dental hygienist.** An insurer that
12 issues group dental insurance or health insurance that includes coverage for dental
13 services shall provide coverage for dental services performed by an independent practice
14 dental hygienist licensed under Title 32, chapter ~~16~~ 141, subchapter ~~3-B~~ 4 when those
15 services are covered services under the contract and when they are within the lawful
16 scope of practice of the independent practice dental hygienist.

17 **Sec. 6. 24-A MRSA §4257, sub-§1**, as enacted by PL 2009, c. 307, §4 and
18 affected by §6, is amended to read:

19 **1. Services provided by independent practice dental hygienist.** All individual and
20 group health maintenance organization contracts that include coverage for dental services
21 shall provide coverage for dental services performed by an independent practice dental
22 hygienist licensed under Title 32, chapter ~~16~~ 141, subchapter ~~3-B~~ 4 when those services
23 are covered services under the contract and when they are within the lawful scope of
24 practice of the independent practice dental hygienist.

25 **Sec. 7. 32 MRSA §1062-A, sub-§1**, as amended by PL 2011, c. 184, §1, is
26 further amended to read:

27 **1. Penalties.** A person who practices or falsely claims legal authority to practice
28 dentistry, ~~dental hygiene, independent practice dental hygiene,~~ denturism or dental
29 radiography in this State without first obtaining a license as required by this chapter, or
30 after the license has expired, has been suspended or revoked or has been temporarily
31 suspended or revoked, commits a Class E crime. Violation of this subsection is a strict
32 liability crime as defined in Title 17-A, section 34, subsection 4-A.

33 **Sec. 8. 32 MRSA §1071, first ¶**, as amended by PL 2003, c. 669, §1, is further
34 amended to read:

35 The Board of Dental Examiners, established by Title 5, section 12004-A, subsection
36 10, and in this chapter called the "board," consists of ~~9~~ 7 members, appointed by the
37 Governor as follows: ~~five~~ 5 members of the dental profession, ~~2 dental hygienists,~~
38 dentist and one representative of the public.

1 **Sec. 9. 32 MRSA §1071, sub-§2**, as amended by PL 1993, c. 600, Pt. A, §56, is
2 further amended to read:

3 **2. Dentists.** The Governor may accept nominations from the Maine Dental
4 Association and from other organizations and individuals.

5 Members of the dental profession must hold a valid dental license and must have been in
6 the actual practice of dentistry in this State for at least 10 years immediately preceding
7 the appointment. The term for a member who is a dentist is 5 years. ~~A dentist is not~~
8 ~~eligible to serve as a member of the board while employing a dental hygienist who is a~~
9 ~~member of the board.~~

10 **Sec. 10. 32 MRSA §1071, sub-§3**, as amended by PL 2003, c. 669, §2, is
11 repealed.

12 **Sec. 11. 32 MRSA §1079**, as amended by PL 2007, c. 620, Pt. A, §2, is repealed.

13 **Sec. 12. 32 MRSA §1080, sub-§2**, as enacted by PL 2011, c. 581, §2, is amended
14 to read:

15 **2. Establishment of a pool of panel members.** The board shall establish a pool of
16 potential panel members. The board may not select a person for the pool who has been
17 found in violation of the dental practices laws or rules within the preceding 10 years.
18 After selection by the board, each member of the pool is subject to review and
19 appointment by the Governor. The pool must be composed of at least 5 dentists, and 5
20 denturists ~~and 5 dental hygienists~~ licensed under this chapter and 5 public members, but if
21 the board finds that it is beneficial to the administration of the pool, the pool may be
22 composed of no fewer than 3 from each category. A pool member may not be a member
23 of the board.

24 **Sec. 13. 32 MRSA §1080, sub-§4, ¶B**, as enacted by PL 2011, c. 581, §2, is
25 amended to read:

26 B. One member must be either a denturist or a dental hygienist. ~~A dental hygienist~~
27 ~~must be named to the first panel convened. For subsequent panels, the seat must~~
28 ~~alternate between a dental hygienist and a denturist, unless the defendant is either a~~
29 ~~denturist or a dental hygienist, in which case the member filling this seat must be of~~
30 ~~the defendant's profession; and~~

31 **Sec. 14. 32 MRSA §1081, sub-§2, ¶H**, as enacted by PL 2007, c. 620, Pt. C, §4,
32 is amended to read:

33 H. Practice by an independent practice dental hygienist pursuant to chapter 141,
34 subchapter ~~3-B~~ 4.

35 **Sec. 15. 32 MRSA §1081, sub-§3**, as amended by PL 2007, c. 620, Pt. C, §5, is
36 further amended to read:

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

- 1 A. Employs dentists ~~or dental hygienists, independent practice dental hygienists,~~
2 denturists or other dental auxiliaries in the operation of a dental office;
- 3 B. Places in possession of a dentist ~~or a dental hygienist, independent practice dental~~
4 ~~hygienist~~ or other dental auxiliary or other agent dental material or equipment that
5 may be necessary for the management of a dental office on the basis of a lease or any
6 other agreement for compensation for the use of that material, equipment or office; or
- 7 C. Retains the ownership or control of dental equipment or material or a dental office
8 and makes the same available in any manner for the use by dentists ~~or dental~~
9 ~~hygienists, independent practice dental hygienists~~ or other agents, except that nothing
10 in this subsection applies to bona fide sales of dental equipment or material secured
11 by a chattel mortgage or retain title agreement. A person licensed to practice
12 dentistry may not enter into arrangements with a person who is not licensed to
13 practice dentistry, with the exception of licensed denturists ~~and independent practice~~
14 ~~dental hygienists~~, or the legal guardian or personal representative of a deceased or
15 incapacitated dentist, pursuant to the provisions of Title 13, section 732.

16 **Sec. 16. 32 MRSA §1081, sub-§6**, as enacted by PL 2007, c. 620, Pt. C, §6, is
17 amended to read:

18 **6. Dental hygienist.** "Dental hygienist" or "independent practice dental hygienist,"
19 as used in this chapter, means a dental auxiliary licensed pursuant to chapter 141,
20 subchapter ~~3-B~~ 3 or 4 who delivers preventive and educational services for the control of
21 oral disease and the promotion of oral health within the scope of practice authorized by
22 the person's license.

23 **Sec. 17. 32 MRSA c. 16, sub-cc. 3-B and 4**, as amended, are repealed.

24 **Sec. 18. 32 MRSA §1100-A**, as amended by PL 2007, c. 620, Pt. C, §10, is
25 further 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 19169, subsection 1 may not be restricted or expanded by the board. Dental auxiliaries
31 include, but are not limited to, dental hygienists, independent practice dental hygienists,
32 dental assistants, expanded function dental assistants, dental laboratory technicians and
33 denturists.

34 **Sec. 19. 32 MRSA §1100-J, sub-§3, ¶A**, as enacted by PL 1983, c. 331, §2, is
35 amended to read:

36 A. Dental hygienists licensed pursuant to chapter 141, subchapter ~~IV~~ 3;

37 **Sec. 20. 32 MRSA §9854, sub-§3, ¶A**, as enacted by PL 1983, c. 524, is
38 amended to read:

39 A. A dental hygienist licensed under chapter ~~16~~ 141, subchapter ~~IV~~ 3;

1 **Sec. 21. 32 MRSA c. 141** is enacted to read:

2 **CHAPTER 141**

3 **DENTAL HYGIENISTS**

4 **SUBCHAPTER 1**

5 **GENERAL PROVISIONS**

6 **§19101. Definitions**

7 As used in this chapter, unless the context otherwise indicates, the following terms
8 have the following meanings.

9 **1. Board.** "Board" means the State Board of Dental Hygienists under section 19121.

10 **2. Dental hygienist.** "Dental hygienist" or "independent practice dental hygienist"
11 means a dental auxiliary, as described under section 1100-A, licensed pursuant to
12 subchapter 3 or 4, respectively, who delivers preventive and educational services for the
13 control of oral disease and the promotion of oral health within the scope of practice
14 authorized by the person's license.

15 **§19102. Addresses and change of address**

16 **1. Furnish to board.** A licensee under this chapter shall:

17 A. Furnish the secretary of the board with the licensee's place or places of practice;
18 and

19 B. Upon a change of name or registered address or addresses, furnish the secretary of
20 the board with the new name or address within 30 days of the change.

21 **2. Failure; fee.** For failure to comply with this section, a licensee is subject to a fee
22 imposed by the board of not more than \$25.

23 **§19103. Penalties; injunction**

24 **1. Penalties.** A person who practices or falsely claims legal authority to practice
25 dental hygiene or independent practice dental hygiene in this State without first obtaining
26 a license as required by this chapter, or after the license has expired, has been suspended
27 or revoked or has been temporarily suspended or revoked, commits a Class E crime.
28 Violation of this subsection is a strict liability crime as defined in Title 17-A, section 34,
29 subsection 4-A.

30 **2. Injunction.** The State may bring an action in Superior Court to enjoin a person
31 for violating this chapter, regardless of whether proceedings have been or may be
32 instituted in the District Court or whether criminal proceedings have been or may be
33 instituted.

34 **SUBCHAPTER 2**

1 **STATE BOARD OF DENTAL HYGIENISTS**

2 **§19121. Appointment; term; removal**

3 The State Board of Dental Hygienists, as established by Title 5, section 12004-A,
4 subsection 10-A, consists of 5 members who are appointed by the Governor. A full-term
5 appointment is for 5 years. Appointment of members must comply with Title 10, section
6 8009. Members of the board may be removed from office for cause by the Governor.

7 **§19122. Qualifications**

8 A member of the board must be a citizen of the United States and a resident of this
9 State for at least 3 consecutive years prior to appointment and shall file with the Secretary
10 of State an oath of office before beginning service. The board is composed of:

11 **1. Registered dental hygienists.** Two dental hygienists, each of whom:

12 A. Is a graduate of a state-approved educational program in dental hygiene; and

13 B. Holds a current state license to practice dental hygiene.

14 One dental hygienist must be active in an approved educational program in dental
15 hygiene. One dental hygienist must be active in dental hygiene service;

16 **2. Public health dental hygienist.** One public health dental hygienist with public
17 health supervision status as described in section 19149 who:

18 A. Is a graduate of a state-approved educational program in public health dental
19 hygiene; and

20 B. Holds a current state license to practice public health dental hygiene;

21 **3. Independent practice dental hygienist.** One independent practice dental
22 hygienist who:

23 A. Is a graduate of a state-approved educational program in independent practice
24 dental hygiene; and

25 B. Holds a current state license as an independent practice dental hygienist; and

26 **4. Public member.** One public member. A person may not qualify for appointment
27 as a public member of the board if that person or a member of that person's immediate
28 family is:

29 A. A member of another state licensing board;

30 B. On the board of a health care agency; or

31 C. Engaged for compensation in the provision of health services or the provision of
32 health research, instruction or insurance.

33 **§19123. Powers and duties**

34 The board shall hold annual meetings at which it shall elect from its members a chair
35 and a secretary. It may hold such other meetings during the year as it determines

1 necessary to transact its business. Special meetings must be called by the secretary on the
2 request of 2 members. Three members of the board constitute a quorum at a meeting.

3 The board shall perform an initial review of all complaints initiated pursuant to
4 section 19124 involving dental hygienists and independent practice dental hygienists.
5 Upon completion of the board's review of a complaint, the secretary of the board shall
6 dispose of the complaint in accordance with those dispositions authorized by section
7 19124.

8 The board shall perform an initial review of all applications for licensure as a dental
9 hygienist pursuant to section 19143 and an independent practice dental hygienist pursuant
10 to section 19165, all submissions relating to continuing education of a dental hygienist
11 pursuant to section 19146 and an independent practice dental hygienist pursuant to
12 section 19168 and all submissions relating to public health supervision status of a dental
13 hygienist and an independent practice dental hygienist as defined by board rule. Upon
14 completion of its review of an application or submission, the board shall dispose of the
15 application or submission, including issuance, renewal, denial or nonrenewal of a dental
16 hygienist and an independent practice dental hygienist license.

17 The board:

18 **1. Bylaws.** May adopt bylaws and rules for the transaction of the business of the
19 board and the government and management of its affairs, not inconsistent with the laws
20 of this State and of the United States, as it considers expedient;

21 **2. Seal.** May adopt a seal, which must be placed in the care of the executive
22 director;

23 **3. Curricula.** May prescribe curricula and standards for educational programs
24 preparing individuals for licensure under this chapter;

25 **4. Surveys.** May provide for surveys of the programs described in subsection 3 as it
26 determines necessary;

27 **5. Approval.** May approve such dental hygiene educational programs within the
28 State as meet the requirements of this chapter and of the board;

29 **6. Denial.** May place dental hygiene educational programs on probation or warn, or
30 deny, condition, withdraw or discontinue approval of, dental hygiene educational
31 programs for failure to meet approved curricula or other standards as established by this
32 chapter or pursuant to law;

33 **7. Licenses.** May examine, license and renew the licenses of qualified applicants;

34 **8. Prosecution.** May cause the prosecution and enjoinder of individuals violating
35 this chapter and incur necessary expenses for those activities;

36 **9. Records.** May keep a record of all its proceedings;

1 **10. Report.** May make an annual report to the Commissioner of Professional and
2 Financial Regulation for each fiscal year showing its receipts and disbursements and
3 giving a full account of its activities during the previous 12-month period;

4 **11. Budget.** Shall submit to the Commissioner of Professional and Financial
5 Regulation its budgetary requirements in the same manner as is provided in Title 5,
6 section 1665, and the commissioner shall in turn transmit these requirements to the
7 Bureau of the Budget without any revision, alteration or change unless alterations are
8 mutually agreed upon by the Department of Professional and Financial Regulation and
9 the board or the board's designee. The budget submitted by the board to the commissioner
10 must be sufficient to enable the board to comply with this chapter;

11 **12. Executive and assistant director.** May appoint and employ qualified
12 individuals, not members of the board, to serve as executive director and assistant
13 executive director to the board, fix their compensation and define their duties;

14 **13. Other employees.** May employ other individuals as may be necessary to carry
15 out the work of the board;

16 **14. Funds.** May set aside and budget funds for, make contracts for and procure
17 goods or services the board determines necessary to accomplish its duties under this
18 chapter;

19 **15. Accept federal funds.** Notwithstanding section 19128, may accept for the State
20 any federal funds appropriated under a federal law relating to the authorized programs of
21 the board. The board may undertake the necessary duties and tasks to implement federal
22 law with respect to the authorized programs of the board; and

23 **16. Rulemaking.** May establish rules to implement the provisions of this chapter.
24 Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5,
25 chapter 375, subchapter 2-A.

26 **§19124. Disciplinary actions**

27 **1. Disciplinary proceedings and sanctions.** Regarding noncompliance with or
28 violation of this chapter or of rules adopted by the board, the board shall investigate a
29 complaint on its own motion or upon receipt of a written complaint filed with the board.

30 The board shall notify the licensee of the content of a complaint filed against the licensee
31 as soon as possible, but no later than 60 days from receipt of this information. The
32 licensee shall respond within 30 days. If the licensee's response to the complaint satisfies
33 the board that the complaint does not merit further investigation or action, the matter may
34 be dismissed, with notice of the dismissal to the complainant, if any.

35 If, in the opinion of the board, the factual basis of the complaint is or may be true and the
36 complaint is of sufficient gravity to warrant further action, the board may request an
37 informal conference with the licensee. The board shall provide the licensee with adequate
38 notice of the conference and of the issues to be discussed. The conference must be
39 conducted in executive session of the board, pursuant to Title 1, section 405, unless

1 otherwise requested by the licensee. Statements made at the conference may not be
2 introduced at a subsequent formal hearing unless all parties consent.

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

6 A. With the consent of the licensee, enter into a consent agreement that takes any
7 action authorized by Title 10, section 8003, subsection 5 or Title 10, section 8003-D.
8 A consent agreement may be used to terminate a complaint investigation if entered
9 into by the board, the licensee and the Attorney General's office;

10 B. In consideration for acceptance of a voluntary surrender of the license, if a
11 consent agreement is signed by the board, the licensee and the Attorney General's
12 office under paragraph A, negotiate stipulations, including terms and conditions for
13 reinstatement, that ensure protection of the public health and safety and that serve to
14 rehabilitate or educate the licensee;

15 C. If the board concludes that denial of initial licensure or modification or
16 nonrenewal of an existing license is in order, refer the complaint to a dental hygienist
17 adjudicatory panel, convened pursuant to section 19129, for the purpose of holding
18 an adjudicatory hearing in accordance with the provisions of Title 5, chapter 375,
19 subchapter 4; and

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

22 Notwithstanding Title 10, section 8003, subsection 5, any nonconsensual revocation of a
23 license by a dental hygienist adjudicatory panel pursuant to Title 10, section 8003 may be
24 imposed only after a hearing conforming to the requirements of Title 5, chapter 375,
25 subchapter 4 and is subject to judicial review exclusively in the Superior Court in
26 accordance with Title 5, chapter 375, subchapter 7. The board retains the authority to
27 take any other action pursuant to this section and Title 10, section 8003 regarding the
28 disposition of any complaint that does not involve an adjudicatory hearing.

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

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

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

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

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

1 E. Incompetence in the practice for which the licensee is licensed. A licensee is
2 considered incompetent in the practice if the licensee has:

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

5 (2) Engaged in conduct that evidences a lack of knowledge or inability to apply
6 principles or skills to carry out the practice for which the licensee is licensed;

7 F. Unprofessional conduct. A licensee is considered to have engaged in
8 unprofessional conduct if the licensee violates a standard of professional behavior
9 that has been established in the practice for which the licensee is licensed;

10 G. Subject to the limitations of Title 5, chapter 341, conviction of a crime that
11 involves dishonesty or false statement or that relates directly to the practice for which
12 the licensee is licensed or conviction of a crime for which incarceration for one year
13 or more may be imposed;

14 H. A violation of this chapter or a rule adopted by the board; and

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

16 **§19125. Liaison; limitations**

17 The Commissioner of Professional and Financial Regulation shall act as a liaison
18 between the board and the Governor. The commissioner may not exercise or interfere
19 with the exercise of discretionary, regulatory or licensing authority granted by statute to
20 the board. The commissioner may require the board to be accessible to the public for
21 complaints and questions during regular business hours and to provide any information
22 the commissioner requires in order to ensure that the board is operating administratively
23 within the requirements of this chapter.

24 **§19126. Qualifications of executive director**

25 The executive director appointed pursuant to section 19123, subsection 12 must meet
26 all the qualifications for dental hygienist board members required in section 19122.

27 **§19127. Compensation**

28 Eligible members of the board are entitled to compensation in accordance with the
29 provisions of Title 5, chapter 379.

30 **§19128. Disposition of funds**

31 All money received by the board under this chapter must be paid to the Treasurer of
32 State. The Treasurer of State shall place the money to the credit of the State Board of
33 Dental Hygienists Fund, which is established as a nonlapsing, dedicated fund. All
34 amounts paid into this fund must be held subject to the order of the board to be used only
35 for the expenses incurred in the performance of the purposes of this chapter and the duties
36 imposed by it as well as the promotion of dental hygiene education and standards of
37 dental hygiene care in this State.

1 **§19129. Dental hygienist adjudicatory panels**

2 Dental hygienist adjudicatory panels may be convened in accordance with this
3 section.

4 **1. Purpose of panel.** The purpose of a dental hygienist adjudicatory panel, referred
5 to in this section as "a panel," is to conduct adjudicatory hearings independent of the
6 board after the board conducts the initial investigation of a complaint against a licensee
7 and refers the complaint to a panel.

8 **2. Establishment of a pool of panel members.** The board shall establish a pool of
9 potential panel members. The board may not select a person for the pool who has been
10 found in violation of the dental hygienist practices laws or rules within the preceding 10
11 years. After selection by the board, each member of the pool is subject to review and
12 appointment by the Governor. The pool must be composed of at least 5 independent
13 practice dental hygienists and 5 dental hygienists licensed under this chapter and 5 public
14 members, but if the board finds that it is beneficial to the administration of the pool, the
15 pool may be composed of no fewer than 3 from each category. A pool member may not
16 be a member of the board.

17 **3. Convening of a panel.** The board may convene a panel for a case that cannot be
18 resolved using a consent agreement. The board shall request a member of its staff to
19 draw names from the pool in accordance with subsection 4. A member of the board may
20 not have a role in the drawing or selection of individuals serving on a panel. For each
21 case, a separate panel must be created and then dissolved once it has issued its decision.

22 **4. Appointments for a panel.** A panel consists of 4 members appointed from the
23 pool under subsection 2:

24 A. One member must be a public member;

25 B. One member must be an independent practice dental hygienist;

26 C. One member must be a dental hygienist; and

27 D. One member must be either an independent practice dental hygienist or a dental
28 hygienist. A dental hygienist must be named to the first panel convened. For
29 subsequent panels, the seat must alternate between a dental hygienist and an
30 independent practice dental hygienist, unless the defendant is either an independent
31 practice dental hygienist or a dental hygienist, in which case the member filling this
32 seat must be of the defendant's profession.

33 **5. Vacancy.** In the event of a vacancy on a panel, the board shall appoint a
34 replacement member from the pool under subsection 2.

35 **6. Terms; vacancy.** Members of the pool under subsection 2 serve 5-year terms.
36 Members may be reappointed. In the event of a vacancy in the pool, the board shall
37 select a replacement member in the same manner as the original selection subject to the
38 provisions of subsection 2.

1 7. Chair. The members of a panel shall select a chair from among its members.
2 Any member may serve as the chair.

3 8. Duties and authority of a panel. Upon referral of a complaint by the board
4 pursuant to section 19124, subsection 1, paragraph C to a panel convened pursuant to
5 subsection 3, the panel shall hold an adjudicatory hearing. Upon completion of the
6 adjudicatory hearing, the panel shall issue a decision or order to:

7 A. Take any action authorized by section 19124, subsection 1; Title 10, section 8003,
8 subsection 5; or Title 10, section 8003-D; or

9 B. Dismiss the complaint.

10 9. Compensation. Members of a panel are entitled to reimbursement for travel
11 expenses.

12 10. Panel meetings. A panel shall hold its first meeting at the request of the board.
13 Subsequent meetings must be held at the request of the chair of the panel.

14 11. Quorum. Two members of a panel constitute a quorum.

15 12. Repeal. This section is repealed September 15, 2018.

16 **SUBCHAPTER 3**

17 **DENTAL HYGIENISTS**

18 **§19141. Definition**

19 A dental hygienist who practices under the supervision of a dentist of record may
20 perform duties as defined and set forth in the rules of the board, except that nothing in
21 this subchapter may be construed to affect the practice of medicine or dentistry or to
22 prevent students of a dental college, university or school of dental hygiene from
23 practicing dental hygiene under the supervision of their instructors.

24 **§19142. Qualifications**

25 A person 18 years of age or older who has successfully completed 2 years of training
26 in a school of dental hygiene approved by the board, or who is a full-time dental student
27 who has satisfactorily completed at least half of the prescribed course of study in an
28 accredited dental college but has not graduated from a dental college, is eligible to apply
29 for examination under section 19143.

30 **§19143. Application; fee**

31 An eligible person desiring to practice dental hygiene must make written application
32 to the board to take the examination. The application must be accompanied by a fee to be
33 determined by the board not to exceed \$175. Applicants for licensure must pay a fee set
34 by the board for the examination. The board may recognize a nationally or regionally
35 administered examination for applicants to practice dental hygiene in the State.

1 **§19144. License; biennial fee**

2 The board shall issue a license to practice as a dental hygienist in this State to a
3 person who has met the licensure requirements. The license must be exhibited publicly at
4 the person's place of employment. The license authorizes practice as a dental hygienist in
5 this State for the year in which it is issued until the expiration date that appears on the
6 license. On or before January 1st of each odd-numbered year, the dental hygienist shall
7 pay to the board a license renewal fee of not more than \$175 to be determined by the
8 board. Dental hygienists who have not paid the renewal fee on or before January 1st must
9 be reinstated upon payment of a late fee of not more than \$50 to be determined by the
10 board if paid before February 1st of the year in which license renewal is due. Failure to be
11 properly licensed by February 1st results in automatic suspension of a license to practice
12 dental hygiene. Reinstatement may be made, if approved by the board, by payment to the
13 secretary of the board of a fee determined by the board of not more than \$175. A new
14 applicant who has paid the application fee shall pay the biennial licensure fee if the
15 applicant applies in an odd-numbered year or half the biennial licensure fee if the
16 applicant applies in an even-numbered year.

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

20 **§19145. Fee for duplicate license**

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

23 **§19146. Continuing education**

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

29 **§19147. Mental or physical examination**

30 For the purposes of this section, by application for and acceptance of a license to
31 practice, a licensed dental hygienist is considered to have given consent to a mental or
32 physical examination when directed by the board. The board may direct a dental hygienist
33 to submit to an examination whenever the board determines the dental hygienist may be
34 suffering from a mental illness that may be interfering with the competent practice of
35 dental hygiene or from the use of intoxicants or drugs to an extent that they are
36 preventing the dental hygienist from practicing dental hygiene competently and with
37 safety to patients. A dental hygienist examined pursuant to an order of the board may not
38 prevent the testimony of the examining individual or prevent the acceptance into evidence
39 of the report of an examining individual. Failure to comply with an order of the board to
40 submit to a mental or physical examination results in the immediate suspension of the

1 license of the dental hygienist by order of the District Court until the dental hygienist
2 submits to the examination.

3 **§19148. Licensure requirements for graduates of accredited programs**

4 In order to be licensed as a dental hygienist under this subchapter, a person who is a
5 graduate of a dental hygiene program approved by the American Dental Association
6 Commission on Dental Accreditation or its successor organization must meet one of the
7 following 2 sets of requirements:

8 **1. Standard licensure.** For standard licensure, the applicant must:

9 A. Have received, at least, an associate degree from a dental hygiene program
10 accredited by the American Dental Association Commission on Dental Accreditation
11 or its successor organization and have provided a notarized statement from the dean
12 of the school affirming that the applicant has met all applicable degree requirements;

13 B. Have completed with a passing grade the National Board Dental Hygiene
14 Examination or the successor to that examination;

15 C. Have completed with a passing grade the North East Regional Board Dental
16 Hygiene Examination or the successor to that examination;

17 D. Have completed with a passing grade the jurisprudence examination given by the
18 board; and

19 E. For any applicant who has completed the North East Regional Board Dental
20 Hygiene Examination or the successor to that examination more than one year prior
21 to application for licensure in the State, have successfully completed a personal
22 interview before the board; and

23 **2. Licensure by endorsement.** For licensure by endorsement, the applicant must:

24 A. Have graduated from an accredited dental hygiene program;

25 B. If the candidate graduated subsequent to 1964, have completed with a passing
26 grade the National Board Dental Hygiene Examination or the successor to that
27 examination if such an examination was required;

28 C. Have furnished proof, satisfactory to the board, that the candidate has been duly
29 licensed to practice dental hygiene in another state after full compliance with its laws;

30 D. If the candidate graduated subsequent to 1970, have completed with a passing
31 grade the North East Regional Board Dental Hygiene Examination or the successor to
32 that examination if such an examination was required, except that the board may at its
33 discretion waive the North East Regional Board Dental Hygiene Examination or the
34 successor to that examination if all other requirements of this subsection have been
35 met;

36 E. Have engaged in active clinical practice for a minimum of 3 years prior to
37 application;

38 F. Have completed with a passing grade the jurisprudence examination given by the
39 board; and

1 G. Have successfully completed a personal interview before the board.

2 The board may at its discretion waive the North East Regional Board Dental Hygiene
3 Examination or the successor to that examination if all other requirements have been met.

4 **§19149. Temporary filling procedures**

5 A dental hygienist with public health supervision status, as defined by rules adopted
6 by the board, may perform temporary filling procedures without a dentist present under
7 protocols developed by the board.

8 **§19150. Endorsement**

9 The board may at its discretion, without examination, issue a license to an applicant
10 to practice dental hygiene who furnishes proof satisfactory to the board that the applicant
11 has been duly licensed for at least 3 years to practice in another state or a Canadian
12 province after full compliance with the requirements of its dental laws, except that the
13 professional education may not be less than is required in this State. The board may
14 require letters of reference as to ability. An applicant for licensure by endorsement who
15 meets the requirements of this section must be interviewed in person by the board prior to
16 being issued a license. A license so given must state upon its face that it was granted on
17 the basis of endorsement. The fee for that license must be determined by the board, but
18 may not be more than \$175.

19 **§19151. Use of former employers' lists; scope of duties**

20 A dental hygienist may not use or attempt to use in any manner whatsoever any
21 prophylactic lists, call lists, records, reprints or copies of those lists, records or reprints, or
22 information gathered from these materials, of the names of patients whom the dental
23 hygienist might have served in the office of a prior employer, unless these names appear
24 on the bona fide call or prophylactic list of the present employer and were caused to so
25 appear through the legitimate practice of dentistry as provided for in chapter 16. A dentist
26 may not aid or abet or encourage a dental hygienist in the dentist's employ to make use of
27 a so-called prophylactic call list or to call by telephone or to use written letters
28 transmitted through the mails to solicit patronage from patients formerly served in the
29 office of a dentist formerly employing the dental hygienist.

30 A dentist may not permit a dental hygienist operating under the dentist's supervision
31 to perform an operation other than that permitted under section 19141.

32 **SUBCHAPTER 4**

33 **INDEPENDENT PRACTICE DENTAL HYGIENISTS**

34 **§19161. Independent practice**

35 An independent practice dental hygienist licensed by the board pursuant to this
36 subchapter may practice without supervision by a dentist to the extent permitted by this
37 subchapter. Any licensee may be the proprietor of a place where independent practice
38 dental hygiene is performed and may purchase, own or lease equipment necessary for the
39 performance of independent practice dental hygiene.

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

4 **§19162. Qualifications for licensure**

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

7 **1. Eighteen years of age.** Be 18 years of age or older;

8 **2. Licensure as dental hygienist.** Possess a valid license to practice dental hygiene
9 issued by the board pursuant to subchapter 4 or qualify for licensure as an independent
10 practice dental hygienist by endorsement pursuant to section 19164; and

11 **3. Education and experience.** Meet the educational and experience requirements
12 described in section 19163.

13 **§19163. Education and experience**

14 An applicant for licensure under this subchapter as an independent practice dental
15 hygienist must:

16 **1. Bachelor's degree and 2,000 hours' experience.** Possess a bachelor's degree in
17 dental hygiene from a dental hygiene program accredited by the American Dental
18 Association Commission on Dental Accreditation, or its successor organization, and
19 document 2,000 work hours of clinical practice in a private dental practice or nonprofit
20 dental clinic under direct or general supervision of a dentist during the 4 years preceding
21 application; or

22 **2. Associate degree and 5,000 hours' experience.** Possess an associate degree in
23 dental hygiene from a dental hygiene program accredited by the American Dental
24 Association Commission on Dental Accreditation, or its successor organization, and
25 document 5,000 work hours of clinical practice in a private dental practice or nonprofit
26 dental clinic under direct or general supervision of a dentist during the 6 years preceding
27 application.

28 **§19164. Licensure by endorsement**

29 A person eligible for licensure as a dental hygienist by endorsement pursuant to
30 section 19148, subsection 2 or section 19150 is also eligible for licensure under this
31 subchapter as an independent practice dental hygienist by endorsement if the applicant
32 meets the educational and experience requirements set forth in section 19163.

33 **§19165. Application**

34 An applicant for licensure as an independent practice dental hygienist shall apply to
35 the board on forms provided by the board. The applicant shall include as part of the
36 application such information and documentation as the board may require to act on the

1 application. The application must be accompanied by the application fee set under section
2 19167.

3 **§19166. License; biennial renewal; discontinuation of dental hygienist license**

4 The board shall issue a license to practice as an independent practice dental hygienist
5 to a person who has met the requirements for licensure set forth in this subchapter and has
6 paid the application fee under section 19167. There is an initial license fee for
7 independent practice dental hygienists licensed by endorsement. The license must be
8 exhibited publicly at the person's place of business or employment. The initial date of
9 expiration of the license is the original expiration date of the person's dental hygienist
10 license issued by the board pursuant to subchapter 1 or, for independent practice dental
11 hygienists licensed by endorsement, January 1st of the first odd-numbered year following
12 initial licensure. On or before January 1st of each odd-numbered year, the independent
13 practice dental hygienist shall pay to the board a license renewal fee. Independent
14 practice dental hygienists who have not paid the renewal fee on or before January 1st
15 must be reinstated upon payment of a late fee before February 1st of the year in which
16 license renewal is due. Failure to be properly licensed by February 1st results in
17 automatic suspension of a license to practice as an independent practice dental hygienist.
18 Reinstatement of the independent practice dental hygienist license may be made, if
19 approved by the board, by payment of a reinstatement fee to the board.

20 A dental hygienist license issued by the board pursuant to subchapter 3 automatically
21 expires upon issuance under this subchapter of an independent practice dental hygienist
22 license to the same person.

23 **§19167. Fees**

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

28 **§19168. Continuing education**

29 As a condition of renewal under this subchapter of a license to practice, an
30 independent practice dental hygienist must submit evidence of successful completion of
31 30 hours of continuing education consisting of board-approved courses in the 2 years
32 preceding the application for renewal. The board and the independent practice dental
33 hygienist shall follow and are bound by the provisions of section 1084-A in the
34 implementation of this section.

35 Continuing education completed pursuant to section 19146 may be recognized for
36 purposes of this section in connection with the first renewal of an independent practice
37 dental hygienist license.

38 The board may refuse to issue a license under this subchapter to a person who has not
39 completed continuing education required by section 19146 or may issue the license on
40 terms and conditions set by the board.

1 **§19169. Scope of practice**

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

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

5 B. Take and record the vital signs of blood pressure, pulse and temperature;

6 C. Perform oral inspections, if the independent practice dental hygienist records all
7 conditions that should be called to the attention of a dentist;

8 D. Perform complete periodontal and dental restorative charting;

9 E. Perform all procedures necessary for a complete prophylaxis, including root
10 planing;

11 F. Apply fluoride to control caries;

12 G. Apply desensitizing agents to teeth;

13 H. Apply topical anesthetics;

14 I. Apply sealants;

15 J. Smooth and polish amalgam restorations, limited to slow speed application only;

16 K. Cement pontics and facings outside the mouth;

17 L. Take impressions for athletic mouth guards and custom fluoride trays;

18 M. Place and remove rubber dams;

19 N. Place temporary restorations in compliance with the protocol adopted by the
20 board; and

21 O. Apply topical antimicrobials, excluding antibiotics, including fluoride, for the
22 purposes of bacterial reduction, caries control and desensitization in the oral cavity.
23 The independent practice dental hygienist shall follow current manufacturer's
24 instructions in the use of these medicaments.

25 For the purposes of this subsection, "topical" includes superficial and intraoral
26 application.

27 **2. Practice under supervision.** An independent practice dental hygienist licensed
28 under this subchapter may perform duties under the supervision of a dentist as set forth in
29 the rules of the board pursuant to section 19141.

30 **§19170. Responsibilities**

31 An independent practice dental hygienist licensed under this subchapter has the duties
32 and responsibilities set out in this section with respect to each patient seen in an
33 independent capacity pursuant to section 19169, subsection 1.

34 **1. Acknowledgment.** Prior to an initial patient visit, an independent practice dental
35 hygienist licensed under this subchapter shall obtain from the patient or the parent or
36 guardian of a minor patient written acknowledgment of the patient's or parent's or

1 guardian's understanding that the independent practice dental hygienist is not a dentist
2 and that the service to be rendered does not constitute restorative care or treatment.

3 **2. Referral plan.** An independent practice dental hygienist licensed under this
4 subchapter shall provide to a patient or the parent or guardian of a minor patient a written
5 plan for referral to a dentist for any necessary dental care. The referral plan must identify
6 all conditions that should be called to the attention of the dentist.

7 **§19171. Mental or physical examination**

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

23 **§19172. Use of former employers' lists**

24 An independent practice dental hygienist may not use or attempt to use in any manner
25 whatsoever any prophylactic lists, call lists, records, reprints or copies of those lists,
26 records or reprints, or information gathered from these materials, of the names of patients
27 whom the independent practice dental hygienist might have served in the office of a prior
28 employer, unless these names appear on the bona fide call or prophylactic list of the
29 present employer and were caused to so appear through the independent practice of
30 dentistry, denturism or independent practice dental hygiene as provided for in this chapter
31 and chapter 16. A dentist, denturist or independent practice dental hygienist who employs
32 an independent practice dental hygienist may not aid or abet or encourage that
33 independent practice dental hygienist to make use of a so-called prophylactic call list or
34 to call by telephone or to use written letters transmitted through the mails to solicit
35 patronage from patients formerly served in the office of a dentist, denturist or
36 independent practice dental hygienist that formerly employed the independent practice
37 dental hygienist.

38 **Sec. 22. Maine Revised Statutes headnote amended; revision clause.** In
39 the Maine Revised Statutes, Title 32, chapter 16, in the chapter headnote, the words
40 "dentists and dental hygienists" are amended to read "dentists" and the Revisor of Statutes
41 shall implement this revision when updating, publishing or republishing the statutes.

42 **Sec. 23. Transition provisions.**

