

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTY-THIRD LEGISLATURE**

**SECOND REGULAR SESSION**  
**January 2, 2008 to March 31, 2008**

**FIRST SPECIAL SESSION**  
**April 1, 2008 to April 18, 2008**

**THE GENERAL EFFECTIVE DATE FOR**  
**SECOND REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**JUNE 30, 2008**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST SPECIAL SESSION**  
**NON-EMERGENCY LAWS IS**  
**JULY 18, 2008**

**PUBLISHED BY THE REVISOR OF STATUTES**  
**IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,**  
**TITLE 3, SECTION 163-A, SUBSECTION 4.**

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**Penmor Lithographers**  
**Lewiston, Maine**  
**2008**

**CHAPTER 620  
H.P. 1643 - L.D. 2277**

**An Act Regarding the Sunrise  
Review of Oral Health Care  
Issues**

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

**PART A**

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

**§1078. Subcommittee on Denturists**

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

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

- A. The dentist who is a member of the board;
- B. Two denturists, appointed by the Governor, who are qualified pursuant to subchapter 6, are legal residents of the State and, for appointments made after January 1, 2006, have practiced in the State for at least 6 years immediately preceding appointment; and
- C. Two dentists who are members of the board, appointed by the president of the board.

The subcommittee shall annually elect a chair and a secretary.

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

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

A. Perform an initial review of all complaints initiated pursuant to section 1077 involving denturists. Upon completion of its review of a complaint, the secretary of the subcommittee shall report to the board the subcommittee's recommended disposition of the complaint in accor-

dance with those dispositions authorized by section 1077. Notwithstanding the provisions of section 1077, the board shall adopt the subcommittee's recommended disposition of a complaint unless no fewer than 2/3 of the board members who are present and voting vote to reject that recommended disposition; and

B. Perform an initial review of all applications for licensure as a denturist pursuant to section 1100-D and all submissions relating to continuing education of denturists pursuant to section 1100-E-1. Upon completion of its review of an application or submission, the secretary of the subcommittee shall report to the board the subcommittee's recommended disposition of the application or submission, including issuance, renewal, denial or nonrenewal of a denturist license. Notwithstanding the provisions of section 1100-E, the board shall adopt the subcommittee's recommended disposition of an application or submission unless no fewer than 2/3 of the board members who are present and voting vote to reject that recommended disposition.

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

**Sec. A-2. 32 MRSA §1079**, as amended by PL 2005, c. 289, §1, is further amended to read:

**§1079. Subcommittee on Dental Hygienists**

The Subcommittee on Dental ~~Hygienist Submissions~~ Hygienists, referred to in this section as "the subcommittee," is established as follows:

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

- A. A dental hygienist who is a member of the board;
- B. Two dental hygienists, appointed by the Governor, who are qualified pursuant to subchapter 6, are legal residents of the State and have practiced in the State for at least 6 years immediately preceding appointment; and
- C. Two dentists who are members of the board, appointed by the president of the board.

The subcommittee shall annually elect a chair and a secretary.

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

**3. Duties.** ~~The subcommittee shall perform an initial review of all applications for licensure as a dental hygienist pursuant to section 1097, all submissions relating to continuing education of dental hygienists pursuant to sections 1098 B and 1099 and all submissions relating to public health supervision status of dental hygienists as defined by board rule. Upon completion of its review of an application or submission, the secretary of the subcommittee shall report to the board the subcommittee's recommended disposition of the application or submission, including issuance, renewal, denial or nonrenewal of a dental hygienist license. Notwithstanding the provisions of section 1098, the board shall adopt the subcommittee's recommended disposition of an application or submission unless no fewer than 2/3 of the board members who are present and voting vote to reject that recommended disposition.~~

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

B. Perform an initial review of all applications for licensure as a dental hygienist pursuant to section 1097, all submissions relating to continuing education of dental hygienists pursuant to sections 1098-B and 1099 and all submissions relating to public health supervision status of dental hygienists as defined by board rule. Upon completion of its review of an application or submission, the secretary of the subcommittee shall report to the board the subcommittee's recommended disposition of the application or submission, including issuance, renewal, denial or nonrenewal of a dental hygienist license. Notwithstanding the provisions of section 1098, the board shall adopt the subcommittee's recommended disposition of an application or submission unless no fewer than 2/3 of the board members who are present and voting vote to reject that recommended disposition.

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

**Sec. A-3. 32 MRSA §1099**, as amended by PL 2005, c. 289, §3, is further amended to read:

### **§1099. Endorsement**

The board may at its discretion, without examination, issue a license to an applicant to practice dental hygiene who furnishes proof satisfactory to the board that the dental hygienist has been duly licensed for at least 3 years to practice in another state or a Canadian province after full compliance with the requirements of its dental laws, except that the professional education may not be less than is required in this State. The board may require letters of reference as to ability. Applicants for licensure by endorsement who meet the requirements of this section must be interviewed in person by the Subcommittee on Dental Hygienist Submissions Hygienists, as established in section 1079 prior to being issued a license. Every license so given must state upon its face that it was granted on the basis of endorsement. The fee for that license must be determined by the board, but may not be more than \$175.

### **PART B**

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

#### **SUBCHAPTER 3-B**

#### **INDEPENDENT PRACTICE DENTAL HYGIENISTS**

##### **§1094-I. Independent practice**

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

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

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

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

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

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

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

**§1094-K. Education and experience**

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

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

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

**§1094-L. Licensure by endorsement**

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

**§1094-M. Application**

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

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

The board shall issue a license to practice as an independent practice dental hygienist to a person who has met the requirements for licensure set forth in this subchapter and has paid the application fee under section 1094-O. There is an initial license fee only for independent practice dental hygienists licensed by endorsement. The license must be exhibited publicly at the person's place of business or employment. The initial date of expiration of the license is the original expiration date of the person's dental hygienist license issued by the board pursuant to subchapter 4 or, for independent practice dental hygienists licensed by endorsement, January 1st of the first odd-numbered year following initial licensure. On or before January 1st of each odd-numbered year, the independent practice dental hygienist shall pay to the board a license renewal fee. Independent practice dental hygienists who have not paid the renewal fee on or before January 1st must be reinstated upon payment of a late fee

before February 1st of the year in which license renewal is due. Failure to be properly licensed by February 1st results in automatic suspension of a license to practice as an independent practice dental hygienist. Reinstatement of the independent practice dental hygienist license may be made, if approved by the board, by payment of a reinstatement fee to the board.

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

**§1094-O. Fees**

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

**§1094-P. Continuing education**

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

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

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

**§1094-Q. Scope of practice**

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

- A. Interview patients and record complete medical and dental histories;
- B. Take and record the vital signs of blood pressure, pulse and temperature;
- C. Perform oral inspections, recording all conditions that should be called to the attention of a dentist;
- D. Perform complete periodontal and dental restorative charting;

- E. Perform all procedures necessary for a complete prophylaxis, including root planing;
- F. Apply fluoride to control caries;
- G. Apply desensitizing agents to teeth;
- H. Apply topical anesthetics;
- I. Apply sealants;
- J. Smooth and polish amalgam restorations, limited to slow speed application only;
- K. Cement pontics and facings outside the mouth;
- L. Take impressions for athletic mouth guards and custom fluoride trays;
- M. Place and remove rubber dams;
- N. Place temporary restorations in compliance with the protocol adopted by the board; and
- O. Apply topical antimicrobials, excluding antibiotics, including fluoride, for the purposes of bacterial reduction, caries control and desensitization in the oral cavity. The independent practice dental hygienist shall follow current manufacturer's instructions in the use of these medications.

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

**2. Practice under supervision.** An independent practice dental hygienist licensed under this subchapter may perform duties under the supervision of a dentist as set forth in the rules of the board pursuant to section 1095.

#### **§1094-R. Responsibilities**

An independent practice dental hygienist licensed under this subchapter has the duties and responsibilities set out in this section with respect to each patient seen in an independent capacity pursuant to section 1094-Q, subsection 1.

**1. Acknowledgment.** Prior to an initial patient visit, an independent practice dental hygienist licensed under this subchapter shall obtain from the patient or the parent or guardian of a minor patient written acknowledgment of the patient's or parent's or guardian's understanding that the independent practice dental hygienist is not a dentist and that the service to be rendered does not constitute restorative care or treatment.

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

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

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

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

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

### **PART C**

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

**1. Penalties.** A person who practices or falsely claims legal authority to practice dentistry, dental hygiene, independent practice dental hygiene, denturism or dental radiography in this State without first obtaining a license as required by this chapter, or after the

license has expired, has been suspended or revoked or has been temporarily suspended or revoked, commits a Class E crime.

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

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

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

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

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

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

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

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

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

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

C. Retains the ownership or control of dental equipment or material or a dental office and makes the same available in any manner for the use by dentists or dental hygienists, independent practice dental hygienists or other agents, except that nothing in this subsection applies to bona fide sales of dental equipment or material secured by a chattel mortgage or retain title agreement. A person licensed to practice dentistry may not enter

into arrangements with a person who is not licensed to practice dentistry, with the exception of licensed denturists and independent practice dental hygienists, or the legal guardian or personal representative of a deceased or incapacitated dentist, pursuant to the provisions of Title 13, section 732.

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

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

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

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

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

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

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

#### **§1094-D. Definitions**

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

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

#### **§1100-A. Definition**

Duties of dental auxiliaries other than dental hygienists and expanded function dental assistants must be defined and governed by the rules of the Board of

Dental Examiners, except that duties of independent practice dental hygienists set forth in section 1094-Q, subsection 1 may not be restricted or expanded by the board. Dental auxiliaries include, but are not limited to, dental hygienists, independent practice dental hygienists, dental assistants, expanded function dental assistants, dental laboratory technicians and denturists.

**PART D**

**Sec. D-1. 13 MRSA §732, sub-§4,** as enacted by PL 2001, c. 640, Pt. B, §2 and affected by §7, is amended to read:

**4. Dentists, denturists and independent practice dental hygienists.** For the purposes of this chapter, a denturist or independent practice dental hygienist licensed under Title 32, chapter 16 may organize with a dentist who is licensed under Title 32, chapter 16 and may become a shareholder of a dental practice incorporated under the corporation laws. At no time may ~~a denturist one~~ or more denturists or independent practice dental hygienists in sum have an equal or greater ownership interest in a dental practice than the dentist or dentists have in that practice.

See title page for effective date.

**CHAPTER 621**

**H.P. 1644 - L.D. 2278**

**An Act To Create Efficiencies  
in Professional Licensing Laws  
Pursuant to the State  
Government Evaluation Act  
Review of the Department of  
Professional and Financial  
Regulation**

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

**Sec. 1. 5 MRSA §12004-A, sub-§44,** as amended by PL 2001, c. 166, §1, is repealed.

**Sec. 2. 10 MRSA §8003, sub-§5-A, ¶A,** as enacted by PL 2007, c. 402, Pt. C, §3, is amended to read:

A. The office, board or commission may deny or refuse to renew a license, may suspend or revoke a license and may impose other discipline as authorized in this subsection for any of the following reasons:

- (1) The practice of fraud, deceit or misrepresentation in obtaining a license from a bureau, office, board or commission, or in connection with services rendered while engaged in the occupation or profession for which the person is licensed;

- (2) Any gross negligence, incompetence, misconduct or violation of an applicable code of ethics or standard of practice while engaged in the occupation or profession for which the person is licensed;

- (3) Subject to the limitations of Title 5, chapter 341, conviction of a Class A, B or C crime or of a crime that bears directly on the licensed profession or occupation;

- (4) Any violation of the governing law of an office, board or commission;

- (5) Any violation of the rules of an office, board or commission;

- (6) Engaging in any activity requiring a license under the governing law of an office, board or commission that is beyond the scope of acts authorized by the license held;

- (7) Continuing to act in a capacity requiring a license under the governing law of an office, board or commission after expiration, suspension or revocation of that license;

- (8) Aiding or abetting unlicensed practice by a person who is not licensed as required by the governing law of an office, board or commission;

- (9) Noncompliance with an order or consent agreement of an office, board or commission;

- (10) Failure to produce any requested documents in the licensee's possession or under the licensee's control concerning a pending complaint or proceeding or any matter under investigation; or

- (11) Any violation of a requirement imposed pursuant to ~~paragraph D, subparagraph (1) or (2)~~ section 8003-G.

**Sec. 3. 10 MRSA §8003, sub-§5-A, ¶D,** as enacted by PL 2007, c. 402, Pt. C, §3, is amended to read:

D. The office, board or commission may:

- (1) ~~Require all applicants for license renewal to respond to all inquiries set forth on renewal forms;~~

- (2) ~~Require all licensees and applicants for licensure to report in writing any of the following to the office, board or commission no later than 10 days after the change or event, as the case may be:~~

- (a) ~~Change of name or address;~~

- (b) ~~Criminal conviction;~~

- (c) ~~Revocation, suspension or other disciplinary action taken in this or any other~~