

LAWS AND RULES
RELATING TO THE PRACTICE OF
DENTISTRY,
DENTAL HYGIENE,
AND
DENTURISM

M.R.S.A. Title 32, Chapter 16
and Rules of the

Board of Dental Examiners
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STATUTES

Maine Revised Statute Title 32, Chapter 16: DENTISTS AND DENTAL HYGIENISTS

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Subchapter 1: GENERAL PROVISIONS

32 §1061. ADDRESSES AND CHANGE OF ADDRESS

1. Furnish to board. Every licensee under this chapter shall:

A. Furnish the secretary of the board with the place or places of practice; and [1981, c. 440, §1 (NEW) .]

B. Upon a change of name or registered address or addresses, furnish the secretary-treasurer of the board with the new address within 30 days of the change. [1981, c. 440, §1 (NEW) .]

[1981, c. 440, §1 (NEW) .]

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

[1993, c. 600, Pt. A, §53 (AMD) .]

SECTION HISTORY

1967, c. 544, §80 (NEW). 1981, c. 440, §1 (RPR). 1993, c. 600, §A53 (AMD) .

32 §1062. INJUNCTION; PROCEDURE

(REPEALED)

SECTION HISTORY

1967, c. 544, §80 (NEW). 1973, c. 303, §3 (AMD). 1993, c. 600, §A54 (RP) .

32 §1062-A. PENALTIES; INJUNCTION

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

[1993, c. 600, Pt. A, §55 (NEW); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

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.

[2007, c. 620, Pt. C, §1 (AMD) .]

SECTION HISTORY

1993, c. 600, §A55 (NEW). RR 1995, c. 2, §79 (COR). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2007, c. 620, Pt. C, §1 (AMD) .

Subchapter 2: BOARD OF DENTAL EXAMINERS

32 §1071. MEMBERSHIP; APPOINTMENT; VACANCIES; REMOVAL; NOMINATIONS; COMPENSATION

The Board of Dental Examiners, established by Title 5, section 12004-A, subsection 10, and in this chapter called the "board," consists of 9 members, appointed by the Governor as follows: five members of the dental profession, 2 dental hygienists, one denturist and one representative of the public. [2003, c. 669, §1 (AMD) .]

1. Membership. A person is not eligible for appointment to the board who has been convicted of a violation of the provisions of this or any other prior dental practice act, or who has been convicted of a crime punishable by more than one year's imprisonment. A person is not eligible for appointment to the board who has served 10 years or more on a dental examining board in this State. Appointment of members must comply with Title 10, section 8009. The Governor may remove a member of the board on proven charges of inefficiency, incompetence, immorality or unprofessional conduct.

[2007, c. 695, Pt. B, §7 (AMD) .]

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

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

[1993, c. 600, Pt. A, §56 (AMD) .]

3. Dental hygienists. The dental hygienists must be qualified pursuant to subchapter 4, must be legal residents of the State and must have practiced in the State for at least 6 years immediately preceding appointment. The dental hygienist members of the board are full-voting members of the board. The term for a member who is a dental hygienist is 5 years. The Governor may accept nominations from the Maine Dental Hygienists' Association and from other organizations and individuals before the appointment of a hygienist to the board. A dental hygienist is not eligible to serve as a member of the board while employed by a dentist who is a member of the board.

[2003, c. 669, §2 (AMD) .]

3-A. Denturist. The denturist must be qualified pursuant to subchapter VI, must be a legal resident of the State and for appointments made after January 1, 2006, the denturist must have practiced in the State for at least 6 years immediately preceding appointment. The denturist member of the board is a full-voting member of the board. The term of the denturist is 5 years. A denturist is not eligible to serve as a member of the board while employed by a dentist who is a member of the board.

[2001, c. 260, Pt. B, §2 (NEW) .]

4. Public member. The public member is appointed to a 5-year term.

[1993, c. 600, Pt. A, §56 (AMD) .]

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

[1993, c. 600, Pt. A, §56 (AMD) .]

SECTION HISTORY

1967, c. 544, §80 (NEW). 1975, c. 575, §11 (AMD). 1975, c. 771, §§337,338 (AMD). 1977, c. 473, §§1-3 (AMD). 1981, c. 440, §2 (RPR). 1983, c. 176, §A11 (AMD). 1983, c. 812, §§200,201 (AMD). 1989, c. 152, §2 (AMD). 1993, c. 600, §A56 (AMD). 1999, c. 124, §1 (AMD). 2001, c. 260, §§B1,2 (AMD). 2003, c. 669, §§1,2 (AMD). 2007, c. 695, Pt. B, §7 (AMD) .

32 §1072. ELECTIONS; QUORUM; REPORTS; RECORDS; TREASURER; EXPENSES

At its annual meeting, the board shall elect from among its members a president, a vice-president and a secretary-treasurer. Five members constitute a quorum. The board shall have a common seal. At a time and place to be fixed by the board, the board shall hold at least one regular meeting each year and special meetings as necessary. The board may recognize nationally or regionally administered examinations given at least annually for applicants to practice dentistry in the State. The board may make rules, not contrary to law, necessary for the performance of its duties. On or before August 1st, the board shall annually make a report of its proceedings to the Commissioner of Professional and Financial Regulation. The secretary-treasurer of the board shall keep records of all proceedings of the board and be the custodian of these records. Records that constitute and are recognized as the official records of the board must be open for public inspection at reasonable times. [1993, c. 600, Pt. A, §57 (RPR).]

The secretary-treasurer of the board shall collect all fees, charges and assessments payable to the board and account for and pay them according to law. The secretary-treasurer is entitled to receive an annual salary, to be fixed by the board, in lieu of per diem compensation. The secretary-treasurer is entitled to necessary expenses incurred in the discharge of official duties, including clerical and stenographic assistance, printing and postage. The allowance for expenses must be certified by the president of the board. [1993, c. 600, Pt. A, §57 (RPR).]

SECTION HISTORY

1967, c. 544, §80 (NEW). 1975, c. 484, §§1,2 (AMD). 1975, c. 575, §12 (AMD). 1977, c. 473, §4 (AMD). 1977, c. 604, §13 (AMD). 1985, c. 748, §42 (AMD). 1989, c. 152, §3 (AMD). 1993, c. 600, §A57 (RPR).

32 §1073. POWERS

The board may: [1983, c. 378, §6 (RPR).]

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

[1993, c. 600, Pt. A, §58 (AMD) .]

2. Rules. Adopt rules in accordance with the Maine Administrative Procedure Act that are necessary for the implementation of this chapter. The rules may include, but need not be limited to, requirements for licensure, interviews for licensing and renewal, continuing education, inactive licensure status, use of general anesthesia and fees for providing a list of addresses of licensed professionals upon request;

[1997, c. 107, §4 (AMD) .]

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

[1997, c. 107, §5 (AMD) .]

4. Protocols for professional review committee. Establish protocols for the operation of a professional review committee as defined in Title 24, section 2502, subsection 4-A. The protocols must include the committee reporting information the board considers appropriate regarding reports received, contracts or investigations made and the disposition of each report, provided that the committee is not required to disclose any personally identifiable information. The protocols may not prohibit an impaired dentist from seeking alternative forms of treatment.

[1997, c. 107, §6 (NEW) .]

SECTION HISTORY

1967, c. 544, §80 (NEW). 1977, c. 458, §3 (AMD). 1983, c. 378, §6 (RPR). 1989, c. 90, §1 (AMD). 1993, c. 600, §§A58,59 (AMD). 1997, c. 107, §§4-6 (AMD).

32 §1074. AFFILIATION WITH AMERICAN ASSOCIATION OF DENTAL EXAMINERS

The board may affiliate with the American Association of Dental Examiners or its successor as an active member and pay regular dues to that association and may send one or more delegates to the meetings of the American Association of Dental Examiners or its successor. These delegates are entitled to receive compensation provided for in section 1071. [2005, c. 45, §1 (AMD).]

SECTION HISTORY

1967, c. 544, §80 (NEW). 1993, c. 600, §A60 (AMD). 2005, c. 45, §1 (AMD).

32 §1075. LIAISON; LIMITATIONS

On or before August 1st of each year, the board shall submit to the Commissioner of Professional and Financial Regulation, for the preceding fiscal year ending June 30th, its annual report of its operations and financial position, together with comments and recommendations the board considers essential. [1993, c. 600, Pt. A, §61 (AMD).]

The commissioner shall act as a liaison between the board and the Governor.

The commissioner may not exercise or interfere with the exercise of discretionary, regulatory or licensing authority granted by law to the board. The commissioner may require the board to be accessible to the public for complaints and questions during regular business hours and to provide any information the commissioner requires in order to ensure that the board is operating administratively within the requirements of this chapter. [1995, c. 462, Pt. A, §55 (RPR).]

SECTION HISTORY

1977, c. 604, §14 (NEW). 1985, c. 748, §42 (AMD). 1993, c. 600, §A61 (AMD). 1993, c. 659, §B4 (AMD). 1995, c. 462, §A55 (AMD).

32 §1076. BUDGET

The board shall submit to the Commissioner of Professional and Financial Regulation its budgetary requirements in the same manner as is provided in Title 5, section 1665, and the commissioner shall in turn transmit these requirements to the Bureau of the Budget without any revision, alteration or change, unless alterations are mutually agreed upon by the department and the board or the board's designee. The budget submitted by the board to the commissioner must be sufficient to enable the board to comply with this subchapter. [1993, c. 659, Pt. B, §5 (AMD).]

SECTION HISTORY

1977, c. 604, §14 (NEW). 1985, c. 748, §42 (AMD). 1993, c. 659, §B5 (AMD).

32 §1077. DISCIPLINARY ACTIONS

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

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

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

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

- A. With the consent of the licensee, enter into a consent agreement that fixes the period and terms of probation best adapted to protect the public health and safety and to rehabilitate or educate the licensee. A consent agreement may be used to terminate a complaint investigation, if entered into by the board, the licensee and the Attorney General's office; [1993, c. 600, Pt. A, §62 (AMD) .]
- B. In consideration for acceptance of a voluntary surrender of the license, if a consent agreement is signed by the board, the licensee and the Attorney General's office, negotiate stipulations, including terms and conditions for reinstatement, that ensure protection of the public health and safety and that serve to rehabilitate or educate the licensee; [1993, c. 600, Pt. A, §62 (AMD) .]
- C. If the board concludes that modification or nonrenewal of the license is in order, the board shall hold an adjudicatory hearing in accordance with the provisions of the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV; or [1993, c. 600, Pt. A, §62 (AMD) .]
- D. If the board concludes that suspension or revocation of the license is in order, the board shall file a complaint in the District Court in accordance with Title 4, chapter 5. [1999, c. 547, Pt. B, §60 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

[1999, c. 547, Pt. B, §60 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

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

- A. The practice of fraud or deceit in obtaining a license under this chapter or in connection with service rendered within the scope of the license issued; [1983, c. 378, §7 (NEW) .]
- B. Habitual substance abuse that has resulted or is foreseeably likely to result in the licensee performing services in a manner that endangers the health or safety of patients; [1993, c. 600, Pt. A, §62 (AMD) .]
- C. A professional diagnosis of a mental or physical condition that has resulted or may result in the licensee performing services in a manner that endangers the health or safety of patients; [1993, c. 600, Pt. A, §62 (AMD) .]
- D. Aiding or abetting the practice of a dental profession by an individual who is not licensed under this chapter and who claims to be legally licensed; [1993, c. 600, Pt. A, §62 (AMD) .]
- E. Incompetence in the practice for which the licensee is licensed. A licensee is considered incompetent in the practice if the licensee has:
 - (1) Engaged in conduct that evidences a lack of ability or fitness to perform the duties owed by the licensee to a client or patient or the general public; or
 - (2) Engaged in conduct that evidences a lack of knowledge or inability to apply principles or skills to carry out the practice for which the licensee is licensed; [1993, c. 600, Pt. A, §62 (AMD) .]
- F. Unprofessional conduct. A licensee is considered to have engaged in unprofessional conduct if the licensee violates a standard of professional behavior that has been established in the practice for which

the licensee is licensed; [1993, c. 600, Pt. A, §62 (AMD) .]

G. Subject to the limitations of Title 5, chapter 341, conviction of a crime that involves dishonesty or false statement or that relates directly to the practice for which the licensee is licensed, or conviction of a crime for which incarceration for one year or more may be imposed; [1993, c. 600, Pt. A, §62 (AMD) .]

H. A violation of this chapter or a rule adopted by the board; or [1993, c. 600, Pt. A, §62 (AMD) .]

I. Engaging in false, misleading or deceptive advertising. [1983, c. 378, §7 (NEW) .]

[1993, c. 600, Pt. A, §62 (AMD) .]

SECTION HISTORY

1983, c. 378, §7 (NEW). 1993, c. 600, §A62 (AMD). 1999, c. 547, §B60 (AMD). 1999, c. 547, §B80 (AFF) .

32 §1078. SUBCOMMITTEE ON DENTURISTS

The Subcommittee on Denturists, referred to in this section as "the subcommittee," is established as follows. [2007, c. 620, Pt. A, §1 (AMD) .]

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

A. The dentist who is a member of the board; [2003, c. 669, §3 (NEW) .]

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 [2003, c. 669, §3 (NEW) .]

C. Two dentists who are members of the board, appointed by the president of the board. [2003, c. 669, §3 (NEW) .]

The subcommittee shall annually elect a chair and a secretary.

[2003, c. 669, §3 (NEW) .]

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.

[2003, c. 669, §3 (NEW) .]

3. Duties. The subcommittee shall :

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 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 [2007, c. 620, Pt. A, §1 (NEW) .]

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. [2007, c. 2, §19 (COR) .]

[2007, c. 2, §19 (COR) .]

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.

[2003, c. 669, §3 (NEW) .]

SECTION HISTORY

2003, c. 669, §3 (NEW). 2007, c. 620, Pt. A, §1 (AMD). RR 2007, c. 2, §19 (COR).

32 §1079. SUBCOMMITTEE ON DENTAL HYGIENISTS

The Subcommittee on Dental Hygienists, referred to in this section as "the subcommittee," is established . [2007, c. 620, Pt. A, §2 (AMD) .]

1. Membership. The subcommittee consists of 5 members:

A. A dental hygienist who is a member of the board; [2003, c. 669, §3 (NEW) .]

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 [2003, c. 669, §3 (NEW) .]

C. Two dentists who are members of the board, appointed by the president of the board. [2003, c. 669, §3 (NEW) .]

The subcommittee shall annually elect a chair and a secretary.

[2007, c. 620, Pt. A, §2 (AMD) .]

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.

[2003, c. 669, §3 (NEW) .]

3. Duties. The subcommittee shall :

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 [2007, c. 620, Pt. A, §2 (NEW) .]

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. [2007, c. 620, Pt. A, §2 (NEW) .]

[2007, c. 620, Pt. A, §2 (AMD) .]

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.

[2003, c. 669, §3 (NEW) .]

SECTION HISTORY

2003, c. 669, §3 (NEW). 2005, c. 289, §1 (AMD). 2007, c. 620, Pt. A, §2 (AMD).

Subchapter 3: DENTISTS

32 §1081. DEFINITIONS; PERSONS EXCEPTED

1. Practicing dentistry. A person is considered to be practicing dentistry when that person performs, or attempts or professes to perform, a dental operation or oral surgery or dental service of any kind, gratuitously or for a salary, fee, money or other remuneration paid, or to be paid, directly or indirectly to the person or to any other person or agency who is a proprietor of a place where dental operations, oral surgery or dental services are performed. A person who directly or indirectly, by any means or method, takes impressions of a human tooth, teeth, jaws or performs a phase of an operation incident to the replacement of a part of a tooth; or supplies artificial substitutes for the natural teeth, or who furnishes, supplies, constructs, reproduces or repairs a prosthetic denture, bridge, appliance or any other structure to be worn in the human mouth, except on the written prescription of a duly licensed dentist; or who places dental appliances or structures in the human mouth, or adjusts or attempts or professes to adjust the same, or delivers the same to a person other than the dentist upon whose prescription the work was performed; or who professes to the public by any method to furnish, supply, construct, reproduce or repair a prosthetic denture, bridge, appliance or other structure to be worn in the human mouth, or who diagnoses or professes to diagnose, prescribes for or professes to prescribe for, treats or professes to treat, disease, pain, deformity, deficiency, injury or physical condition of the human teeth or jaws or adjacent structure, or who extracts or attempts to extract human teeth, or corrects or attempts to correct malformations of teeth or of the jaws is also considered to be practicing dentistry. A person who repairs or fills cavities in the human teeth; or who diagnoses, makes and adjusts appliances to artificial casts or malposed teeth for treatment of the malposed teeth in the human mouth, with or without instruction; or who uses an x-ray machine for the purpose of taking dental x rays, or who gives or professes to give interpretations or readings of dental x rays; or who administers an anaesthetic of any nature in connection with a dental operation; or who uses the words dentist, dental surgeon, oral surgeon or the letters D.D.S., D.M.D. or any other words, letters, title or descriptive matter that in any way represents that person as being able to diagnose, treat, prescribe or operate for a disease, pain, deformity, deficiency, injury or physical condition of the teeth or jaws or adjacent structures; or who states, or professes or permits to be stated or professed by any means or method whatsoever that the person can perform or will attempt to perform dental operations or render a diagnosis connected with dental operations is also considered to be practicing dentistry.

[1993, c. 600, Pt. A, §63 (AMD) .]

2. Exemptions. Nothing in this chapter applies to the following practices, acts and operations:

A. The practice of the profession by a licensed physician or surgeon under the laws of this State, unless that person practices dentistry as a specialty; [1993, c. 600, Pt. A, §63 (AMD) .]

B. The giving by a qualified anesthetist or nurse anesthetist of an anesthetic for a dental operation; the giving by a certified registered nurse of an anesthetic for a dental operation under the direct supervision of either a licensed dentist who holds a valid anesthesia permit or a licensed physician; and the removing of sutures, the dressing of wounds, the application of dressings and bandages and the injection of drugs subcutaneously or intravenously by a certified registered nurse under the direct supervision of a licensed dentist or physician; [1993, c. 600, Pt. A, §63 (AMD) .]

C. The practice of dentistry in the discharge of their official duties by graduate dentists or dental

surgeons in the United States Army, Navy, Public Health Service, Coast Guard or Veterans Bureau; [1967, c. 544, §80 (NEW) .]

D. The practice of dentistry by a licensed dentist of other states or countries at meetings of the Maine State Dental Association or its affiliates or other like dental organizations approved by the board, while appearing as clinicians; [1993, c. 600, Pt. A, §63 (AMD) .]

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; [2007, c. 620, Pt. C, §2 (AMD) .]

F. [1987, c. 402, Pt. A, §167 (RP) .]

G. The taking of impressions by dental hygienists, independent practice dental hygienists or dental assistants for study purposes only; and [2007, c. 620, Pt. C, §3 (AMD) .]

H. Practice by an independent practice dental hygienist pursuant to subchapter 3-B. [2007, c. 620, Pt. C, §4 (NEW) .]

[2007, c. 620, Pt. C, §§2-4 (AMD) .]

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; [2007, c. 620, Pt. C, §5 (AMD) .]

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 [2007, c. 620, Pt. C, §5 (AMD) .]

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. [2007, c. 620, Pt. C, §5 (AMD) .]

4. Corporations; names. A corporation may not practice, offer or undertake to practice or hold itself out as practicing dentistry. Every person practicing dentistry as an employee of another shall cause that person's name to be conspicuously displayed and kept in a conspicuous place at the entrance of the place where the practice is conducted. This subsection does not prohibit a licensed dentist from practicing dentistry as an employee of another licensed dentist in this State, as an employee of a nonprofit corporation, as an employee of a state hospital or state institution where the only remuneration is from the State or from a corporation that provides dental service for its employees at no profit to the corporation. This subsection does not prohibit the practice of dentists who have incorporated their practices pursuant to Title 13, chapter 22-A.

[2003, c. 344, Pt. D, §21 (AMD) .]

5. Dentist of record; office manager. Each patient in a multidentist practice must be provided with a dentist of record. The patient entering a multidentist practice, at the onset of treatment, must be informed as to the identity of the patient's dentist of record. The identity must at least consist of the name and telephone number.

Each office established or maintained in this State for the practice of dentistry by a person or persons subject to this chapter must be under the general supervision of a licensed dentist.

[1993, c. 600, Pt. A, §63 (AMD) .]

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.

[2007, c. 620, Pt. C, §6 (NEW) .]

SECTION HISTORY

1967, c. 544, §80 (NEW). 1971, c. 159, §§1,2 (AMD). 1975, c. 484, §§3-5 (AMD). 1981, c. 440, §3 (AMD). 1983, c. 331, §1 (AMD). 1983, c. 378, §§8-10 (AMD). 1987, c. 402, §A167 (AMD). 1993, c. 600, §A63 (AMD). 2001, c. 337, §2 (AMD). RR 2001, c. 2, §C7 (AFF). RR 2001, c. 2, §C6 (COR). 2003, c. 344, §D21 (AMD). 2007, c. 210, §2 (AMD). 2007, c. 620, Pt. C, §§2-6 (AMD).

32 §1082. QUALIFICATIONS

Before receiving a license to practice dentistry in this State, a person must be at least 18 years of age and must be a graduate of or have a diploma from a dental college, school or dental department of a university accredited by an agency approved by the board. [1993, c. 600, Pt. A, §64 (AMD) .]

SECTION HISTORY

1967, c. 544, §80 (NEW). 1969, c. 433, §79 (AMD). 1969, c. 197, §1 (RPR). 1969, c. 590, §60 (RPR). 1971, c. 598, §69 (AMD). 1983, c. 378, §11 (AMD). 1993, c. 600, §A64 (AMD).

32 §1083. APPLICATION FOR EXAMINATION; SUBJECTS; REEXAMINATION

The board may at its discretion recognize the results of an examination given by the National Board of Dental Examiners or an accredited clinical testing agency approved by the board in lieu of or in addition to the examination or examinations that it may require. The board may require as part of the examination a clinical demonstration of the candidate's skill in dentistry. An applicant who fails to pass the first examination to the satisfaction of the board is entitled to one reexamination. Applicants for licensure shall pay a fee set by the board for the examination. [1993, c. 600, Pt. A, §65 (AMD) .]

SECTION HISTORY

1967, c. 544, §80 (NEW). 1969, c. 197, §2 (AMD). 1981, c. 440, §§4,5 (AMD). 1993, c. 600, §A65 (AMD).

32 §1084. LICENSES; FEES

The board shall issue under its seal to any person who successfully meets all licensure requirements a license to practice dentistry in this State, signed by the members of the board. A dentist shall publicly exhibit the dentist's license. The license is prima facie evidence of authority to practice dentistry in this State, except that it is unlawful for a person to practice dentistry in this State after the expiration date that appears on the license unless the practitioner pays to the board on or before January 1st of even-numbered years a fee of not more than \$550 to be determined by the board, and meets other conditions that the board may require. Upon receipt of the required fee, the board shall issue a renewal of the practitioner's license, which the practitioner shall place beside or attach to the practitioner's initial license. Practitioners who have not paid as provided and who otherwise qualify for renewal may be reinstated upon payment of a fee to be determined by the board of not more than \$200 if paid before February 1st. A license to practice is automatically suspended on February 1st for nonpayment of the license renewal fee and may be reinstated, if approved by the board, on payment of a fee to be determined by the board of not more than \$550. A new applicant having paid the application fee

shall pay either the biennial licensure fee, if the applicant applies in an even-numbered year, or half the biennial licensure fee if the applicant applies in an odd-numbered year. [2003, c. 669, §4 (AMD).]

SECTION HISTORY

1967, c. 544, §80 (NEW). 1975, c. 484, §6 (RPR). 1981, c. 440, §§6,7 (AMD). 1993, c. 600, §A66 (AMD). 2003, c. 285, §1 (AMD). 2003, c. 669, §4 (AMD).

32 §1084-A. CONTINUING EDUCATION

As a condition of renewal of a license to practice, a dentist must provide evidence of having successfully completed 40 hours of continuing education during the 2 years prior to application for renewal. To meet this requirement, the education must relate to professional competency and relate to those aspects of the profession in which the practitioner is currently engaged. The board shall specify the desired content of the program of continuing education, establish criteria for approving providers of continuing education and approve those providers. The board shall specify the criteria for successful completion of a continuing education requirement. All actions by the board in the implementation of this program must be by rule and follow the provisions of the Maine Administrative Procedure Act. [1993, c. 600, Pt. A, §67 (AMD).]

The board may indicate to an individual practitioner specific subject areas on which that practitioner's continuing education is to focus in the future. Providers are required to obtain and retain for 3 years a written course assessment from each student, which must be reviewed periodically by the board. [1993, c. 600, Pt. A, §67 (AMD).]

SECTION HISTORY

1989, c. 90, §2 (NEW). 1993, c. 600, §A67 (AMD).

32 §1084-B. MENTAL OR PHYSICAL EXAMINATION

For the purposes of this section, by application for and acceptance of a license to practice, a licensed dentist is considered to have given consent to a mental or physical examination when directed by the board. The board may direct a dentist to submit to an examination whenever the board determines the dentist may be suffering from a mental illness that may be interfering with the competent practice of dentistry or from the use of intoxicants or drugs to an extent that they are preventing the dentist from practicing dentistry competently and with safety to patients. A dentist 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 of the dentist by order of the District Court until the dentist submits to the examination. [2003, c. 669, §5 (NEW).]

SECTION HISTORY

2003, c. 669, §5 (NEW).

32 §1085. ENDORSEMENT; FEES

The board is authorized, at its discretion, without the examination as provided, to issue a license to an applicant who furnishes proof, satisfactory to the board, that the applicant has been licensed to practice dentistry in another state or a Canadian province after full compliance with the requirements of its dental laws. If an applicant is licensed to practice dentistry in another state or a Canadian province, that applicant's professional education may not be less than is required in this State and the applicant must have been at least 3 years in actual practice in the state or Canadian province in which the license was granted. Applicants for licensure by endorsement who meet the requirements of this section must be interviewed in person by the board or members of the board, prior to being issued a license. The personal interview may be waived at the board's discretion based upon proof of overseas military deployment; however, the applicant shall submit to

an interview by telephone or the equivalent as determined by the board. Every license of this type issued by the board must state upon its face the grounds upon which it is issued and the applicant may be required to furnish proof upon affidavit. The fee for the license is determined by the board, but may not be more than \$550. [2005, c. 45, §2 (AMD).]

SECTION HISTORY

1967, c. 544, §80 (NEW). 1969, c. 197, §3 (AMD). 1981, c. 440, §8 (AMD). 1993, c. 600, §A68 (AMD). 1995, c. 590, §1 (AMD). 2001, c. 260, §B3 (AMD). 2003, c. 285, §2 (AMD). 2003, c. 557, §1 (AMD). 2003, c. 669, §6 (AMD). 2005, c. 45, §2 (AMD).

32 §1086. PERMITS FOR INTERNSHIP

The board has the authority, upon presentation of satisfactory credentials under the rules as the board may prescribe, to issue permits to a graduate of an approved dental school or college who has not been licensed to practice dentistry in this State, who has passed an examination for licensure in this State and who, in the board's judgment, has not violated a provision of this chapter or rules adopted by the board to serve as a dental intern in a licensed hospital, providing the hospital maintains a dental staff of at least one licensed dentist. Permits expire at the end of one month and may be renewed by the board. The intern functions under the supervision and direction of the dental staff of the hospital, and the intern's work is limited to patients admitted to the hospital. The intern is not eligible to receive a fee or compensation in addition to the salary or other remuneration received from the hospital. [1993, c. 600, Pt. A, §69 (AMD).]

A special permit may be issued by the board to a licensed dentist practicing outside this State when the request for the dentist comes from a charitable or social organization within the State and when the purpose for that permit is to provide free dental care for the public when resident dental service is not available. The board may provide an expiration date for a permit issued, except that a permit may not be valid for more than one year. [1993, c. 2, §33 (COR).]

The board has the authority, upon presentation of satisfactory proof of academic affiliation and good academic standing, and providing, in the board's judgment, a violation of a provision of this chapter or of the board's rules has not occurred, to issue a permit to a bona fide dental student of a school or university acceptable to the board, after the completion of satisfactory training to perform limited dental service in institutional and public health service programs within the State, commensurate with the student's level of training under the supervision and control of a licensed dentist or a teaching school. The board must, prior to the issuance of this permit, determine that the supervision and control of the services to be performed by the student are adequate and that the performance of these services by the student adds to the student's knowledge and skill in dentistry. Permits expire at the end of each month and may be renewed by the board. [1993, c. 2, §33 (COR).]

Specialists in particular fields of dentistry practicing outside the State may be issued a permit to practice within the State for a period not to exceed 6 months. [1993, c. 600, Pt. A, §69 (AMD).]

The board may charge a fee up to \$50 for licenses issued pursuant to this section. [1993, c. 600, Pt. A, §69 (NEW).]

The board has the authority, upon the presentation of credentials and other information satisfactory to it, to issue a temporary permit for practice of dentistry in the State as part of a board-approved program of clinical education for Maine practitioners. An individual who is not currently licensed to practice dentistry in another state may not receive a temporary permit. An individual may not receive a temporary permit for more than 7 days in any calendar year. [1997, c. 107, §7 (NEW).]

The board has the authority, upon the presentation of satisfactory credentials and fulfillment of other conditions set by rule adopted by the Board, to issue a permit to a graduate of an approved dental school or college who has not been licensed to practice dentistry in this State, who has passed an examination for licensure in this State and who, in the Board's judgment, has not violated a provision of this chapter or rules adopted by the Board to serve as a dental resident in a board-approved setting within the State. The Board must, prior to the issuance of a permit under this paragraph, determine that the supervision and control of the services to be performed by the dental resident are adequate and that the performance of these services y the

dental resident are within the dental resident's knowledge and skill. The dental resident must function under the supervision and direction of a dentist licensed in this State. A permit under this paragraph may not be valid for more than one year. The Board may charge a fee up to \$50 for a permit.

SECTION HISTORY

1967, c. 544, §80 (NEW). 1969, c. 197, §4 (AMD). 1975, c. 484, §7 (AMD). 1977, c. 694, §560 (RPR). 1993, c. 600, §A69 (AMD). RR 1993, c. 2, §33 (COR). 1997, c. 107, §7 (AMD), 2010.

32 §1087. FEE FOR DUPLICATE LICENSE

An applicant for a duplicate license granted upon proof of loss of the original shall pay a fee of no more than \$50. [2003, c. 285, §3 (AMD).]

SECTION HISTORY

1967, c. 544, §80 (NEW). 1981, c. 440, §9 (AMD). 1993, c. 600, §A70 (AMD). 2003, c. 285, §3 (AMD).

32 §1088. LAWFUL PRACTITIONERS

(REPEALED)

SECTION HISTORY

1967, c. 544, §80 (NEW). 1983, c. 378, §12 (RP).

32 §1089. DRUGS AND DENTAL PROCEDURE

A dentist may prescribe drugs or medicines, perform surgical operations, administer local anesthetics and use appliances as may be necessary for proper dental treatment. A dentist may also, with the appropriate permit issued by the board, administer general anesthetics and conscious sedation. A dentist is authorized to take case histories and perform physical examinations to the extent the activities are necessary in the exercise of due care in conjunction with the provision of dental treatment or the administration of general or local anesthetics. A dentist is not permitted to perform physical examinations within a hospital licensed by the Department of Health and Human Services unless this activity is permitted by the hospital. [2005, c. 45, §3 (AMD).]

SECTION HISTORY

1967, c. 544, §80 (NEW). 1975, c. 293, §4 (AMD). 1975, c. 484, §8 (RPR). 1985, c. 748, §42 (AMD). 1993, c. 600, §A71 (AMD). 2003, c. 689, §B6 (REV). 2005, c. 45, §3 (AMD).

32 §1090. PRESCRIPTION REQUIRED FOR DENTAL LABORATORY

1. Prescription. A dentist who uses the services of a person not licensed to practice dentistry in this State to construct, alter, repair or duplicate a denture, plate, partial plate, bridge, splint, orthodontic or prosthetic appliance shall first furnish the unlicensed person with a written prescription, which must contain:

- A. The name and address of the unlicensed person; [1993, c. 600, Pt. A, §72 (AMD).]
- B. The patient's name or number. In the event the number is used, the name of the patient must be written upon the duplicate copy of the prescription retained by the dentist; [1993, c. 600, Pt. A, §72 (AMD).]
- C. The date on which it was written; [1967, c. 544, §80 (NEW).]
- D. A prescription of the work to be done, with diagrams if necessary; [1967, c. 544, §80

(NEW) .]

E. A specification of the type and quality of materials to be used; and [1993, c. 600, Pt. A, §72 (AMD) .]

F. The signature of the dentist and the number of the dentist's state license. [1993, c. 600, Pt. A, §72 (AMD) .]

The unlicensed person shall retain the original prescription and the dentist shall retain for 2 years a duplicate copy for inspection by the board or its agent. For purposes of this subsection, "unlicensed person" includes all legal entities.

[1993, c. 600, Pt. A, §72 (AMD) .]

SECTION HISTORY

1967, c. 544, §80 (NEW). 1993, c. 600, §A72 (AMD) .

32 §1091. REVOCATION OF LICENSE

(REPEALED)

SECTION HISTORY

1967, c. 544, §80 (NEW). 1973, c. 303, §3 (AMD). 1975, c. 484, §9 (AMD). 1977, c. 458, §§4,4A (AMD). 1983, c. 378, §13 (RP) .

32 §1092. UNLAWFUL PRACTICE

1. Unlawful practice. A person may not:

A. Practice dentistry without obtaining a license; [2003, c. 452, Pt. R, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

B. Practice dentistry under a false or assumed name; [2003, c. 452, Pt. R, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

C. Practice dentistry under the license of another person of the same name; [2003, c. 452, Pt. R, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

D. Practice dentistry under the name of a corporation, company, association, parlor or trade name; [2003, c. 452, Pt. R, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

E. While manager, proprietor, operator or conductor of a place for performing dental operations, employ a person who is not a lawful practitioner of dentistry in this State to perform dental practices as described in section 1081; [2003, c. 452, Pt. R, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

F. While manager, proprietor, operator or conductor of a place for performing dental operations, permit a person to practice dentistry under a false name; [2003, c. 452, Pt. R, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

G. Assume a title or append or prefix to that person's name the letters that falsely represent the person as having a degree from a dental college; [2003, c. 452, Pt. R, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

H. Impersonate another at an examination held by the board; [2003, c. 452, Pt. R, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

I. Knowingly make a false application or false representation in connection with an examination held by the board; [2003, c. 452, Pt. R, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

J. Practice as a dental hygienist or independent practice dental hygienist without having a license to do so; or [2007, c. 620, Pt. C, §7 (AMD) .]

K. Employ a person as a dental hygienist or independent practice dental hygienist who is not licensed to practice. [2007, c. 620, Pt. C, §8 (AMD) .]

[2007, c. 620, Pt. C, §§7, 8 (AMD) .]

2. Penalty. A person who violates this section commits a Class E crime. Violation of this section is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

[2003, c. 452, Pt. R, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

SECTION HISTORY

1967, c. 544, §80 (NEW). 1975, c. 484, §10 (AMD). 1993, c. 600, §A73 (AMD). 2003, c. 452, §X2 (AFF). 2003, c. 452, §R1 (RPR). 2007, c. 620, Pt. C, §§7, 8 (AMD).

32 §1092-A. CONFIDENTIALITY

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Confidential communication" means a communication not intended to be disclosed to 3rd persons other than those present to further the interest of the patient in the consultation, examination or interview or persons who are participating in the diagnosis and treatment under the direction of the dentist, including members of the patient's family. [1981, c. 211, §2 (NEW) .]

B. "Patient" means a person who consults or is examined or interviewed by a dentist or dental auxiliary. [1981, c. 211, §2 (NEW) .]

[1981, c. 211, §2 (NEW) .]

2. General rule of privilege. A patient has a privilege to refuse to disclose and to prevent another person from disclosing confidential communications made for the purpose of diagnosis or treatment of the patient's physical, mental or emotional conditions, including alcohol or drug addiction, among the patient, the patient's dentist and persons who are participating in the diagnosis or treatment under the direction of the dentist, including members of the patient's family.

[1993, c. 600, Pt. A, §74 (AMD) .]

3. Who may claim the privilege. The privilege may be claimed by the patient, by the patient's guardian or conservator or by the personal representative of a deceased patient. The dentist or dental auxiliary at the time of the communication is presumed to have authority to claim the privilege, but only on behalf of the patient.

[1993, c. 600, Pt. A, §74 (AMD) .]

4. Exceptions. Notwithstanding any other provisions of law, the following are exceptions.

A. If the court orders an examination of the physical, mental or emotional condition of a patient, whether a party or a witness, communications made in the course of the examination are not privileged under this section with respect to the particular purpose for which the examination is ordered unless the court orders otherwise. [1993, c. 600, Pt. A, §75 (AMD) .]

B. There is not any privilege under this section as to communications relevant to an issue of the physical, mental or emotional condition of the patient in a proceeding in which the condition of the patient is an element of the claim or defense of the patient, or of a party claiming through or under the patient or because of the patient's condition or claiming as a beneficiary of the patient through a contract to which the patient is or was a party, or after the patient's death, in a proceeding in which a party puts the condition in issue. [1993, c. 600, Pt. A, §75 (AMD) .]

C. There is not any privilege under this section as to information regarding a patient that is sought by the Chief Medical Examiner or the Chief Medical Examiner's designee in a medical examiner case, as defined by Title 22, section 3025, in which the Chief Medical Examiner or the Chief Medical Examiner's designee has reason to believe that information relating to dental treatment may assist in determining the identity of a deceased person. [1993, c. 600, Pt. A, §75 (AMD) .]

D. There is not any privilege under this section as to disclosure of information concerning a patient when that disclosure is required by law and nothing in this section may modify or affect the provisions of Title 22, sections 4011-A to 4015 and Title 29-A, section 2405. [2001, c. 345, §8 (AMD) .]

[2001, c. 345, §8 (AMD) .]

SECTION HISTORY

1981, c. 211, §2 (NEW). 1985, c. 296, §2 (AMD). 1993, c. 600, §§A74,75 (AMD). 1995, c. 65, §A131 (AMD). 1995, c. 65, §§A153,C15 (AFF). 2001, c. 345, §8 (AMD) .

32 §1093. FRAUDULENT SALE OR ALTERATION OF DIPLOMAS OR LICENSES

1. Fraudulent or altered diploma or license; bribery. A person may not:

A. Sell or offer to sell a diploma conferring a dental degree or license granted pursuant to the laws of this State; [2003, c. 452, Pt. R, §2 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

B. Procure a license or diploma with intent that it be used as evidence of the right to practice dentistry by a person other than the one upon whom the diploma or license was conferred; [2003, c. 452, Pt. R, §2 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

C. With fraudulent intent alter a diploma or license to practice dentistry; [2003, c. 452, Pt. R, §2 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

D. Use or attempt to use an altered diploma or license; or [2003, c. 452, Pt. R, §2 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

E. Attempt to bribe a member of the board by the offer or use of money or other pecuniary reward or by other undue influence. [2003, c. 452, Pt. R, §2 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

[2003, c. 452, Pt. R, §2 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

2. Penalty. A person who violates this section commits a Class E crime. Except as otherwise specifically provided, violation of this section is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

[2003, c. 452, Pt. R, §2 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

SECTION HISTORY

1967, c. 544, §80 (NEW). 1991, c. 797, §14 (AMD). 1993, c. 600, §A76 (AMD). 2003, c. 452, §X2 (AFF). 2003, c. 452, §R2 (RPR) .

32 §1094. PENALTIES

A person who violates a provision of this chapter, for the violation of which a penalty has not been prescribed, commits a civil violation for which a forfeiture of not more than \$1,000 may be adjudged. [2001, c. 421, Pt. B, §94 (AMD); 2001, c. 421, Pt. C, §1 (AFF) .]

SECTION HISTORY

1967, c. 544, §80 (NEW). 1991, c. 797, §14 (AMD). 1993, c. 600, §A77

(AMD). 2001, c. 421, §B94 (AMD). 2001, c. 421, §C1 (AFF).

32 §1094-A. REVIEW COMMITTEE IMMUNITY

Any dentist who is a member of a peer review committee of a state or local association or society composed of doctors of dentistry, any staff member of such an association or society assisting a peer review committee and any witness or consultant appearing before or presenting information to the peer review committee is immune from civil liability for, without malice, undertaking or failing to undertake any act within the scope of the function of the committee. [1987, c. 646, §8 (RPR).]

SECTION HISTORY

1975, c. 484, §11 (NEW). 1987, c. 646, §8 (RPR).

32 §1094-B. REMOVABLE DENTAL PROSTHESES; OWNER IDENTIFICATION

1. Identification required. Every complete upper and lower denture and removable dental prosthesis fabricated by a dentist licensed under this chapter, or fabricated pursuant to the dentist's work order or under the dentist's direction or supervision, must be marked with the name and social security number of the patient for whom the prosthesis is intended. The markings must be done during fabrication and must be permanent, legible and cosmetically acceptable. The exact location of the markings and the methods used to apply or implant the markings must be determined by the dentist or dental laboratory fabricating the prosthesis. If, in the professional judgment of the dentist or dental laboratory, this identification is not practical, identification must be provided as follows:

A. The social security number of the patient may be omitted if the name of the patient is shown; [1983, c. 21, (NEW).]

B. The initials of the patient may be shown alone, if use of the name of the patient is impracticable; or [1983, c. 21, (NEW).]

C. The identification marks may be omitted in their entirety if none of the forms of identification specified in paragraphs A and B are practicable or clinically safe. [1983, c. 21, (NEW).]

[1993, c. 600, Pt. A, §78 (AMD) .]

2. Dentures already in existence. A removable dental prosthesis in existence prior to the effective date of this section that was not marked in accordance with subsection 1 at the time of its fabrication must be marked in accordance with subsection 1 at the time of a subsequent rebasing.

[1993, c. 600, Pt. A, §78 (AMD) .]

3. Technical assistance.

[1993, c. 600, Pt. A, §78 (RP) .]

4. Violations. Failure of a dentist to comply with this section is a violation for which the dentist is subject to proceedings pursuant to section 1077, provided that the dentist is charged with the violation within 2 years of initial insertion of the dental prosthetic device.

[1993, c. 600, Pt. A, §78 (AMD) .]

SECTION HISTORY

1983, c. 21, (NEW). 1985, c. 748, §42 (AMD). 1993, c. 600, §A78 (AMD).

32 §1094-C. BROCHURE AND POSTER

1. Display. Beginning July 1, 2002, a dentist who uses mercury or a mercury amalgam in any dental procedure shall display the poster adopted by the Department of Health and Human Services, Bureau of Health under this section in the public waiting area of that dentist's office and must provide each patient with a copy of the brochure adopted by the bureau under this section. The Department of Health and Human Services shall also post on its publicly accessible site on the Internet a copy of the brochure that is suitable for downloading and printing by dentists, patients and other interested parties.

[2001, c. 710, §17 (AMD); 2003, c. 689, Pt. B, §6 (REV) .]

2. Rules. The Director of the Bureau of Health within the Department of Health and Human Services shall develop a brochure that explains the potential advantages and disadvantages to oral health, overall human health and the environment of using mercury or mercury amalgam in dental procedures. The brochure must describe what alternatives are available to mercury amalgam in various dental procedures and what potential advantages and disadvantages are posed by the use of those alternatives. The brochure may also include other information that contributes to the patient's ability to make an informed decision when choosing between the use of mercury amalgam or an alternative material in a dental procedure, including, but not limited to, information on the durability, cost, aesthetic quality or other characteristics of the mercury amalgam and alternative materials. The director shall also develop a poster that informs patients of the availability of the brochure.

The Director of the Bureau of Health shall, in consultation with the Department of Environmental Protection, adopt the brochure and the poster described in this subsection as major substantive rules pursuant to Title 5, chapter 375, subchapter II-A. The brochure and poster must be provisionally adopted and submitted to the Legislature for consideration during the Second Regular Session of the 120th Legislature.

[2001, c. 710, §17 (AMD); 2003, c. 689, Pt. B, §6 (REV) .]

SECTION HISTORY

2001, c. 385, §1 (NEW). 2001, c. 710, §17 (AMD). 2003, c. 689, §B6 (REV) .

Subchapter 3-A: EXPANDED FUNCTION DENTAL ASSISTANT HEADING: PL 2005, C. 322, §1 (NEW)

32 §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, dental hygienists or independent practice dental hygienists. [2007, c. 620, Pt. C, §9 (AMD) .]

SECTION HISTORY

2005, c. 322, §1 (NEW). 2007, c. 620, Pt. C, §9 (AMD) .

32 §1094-E. PROCEDURES NOT AUTHORIZED

An expanded function dental assistant may not perform the following procedures: [2005, c. 322, §1 (NEW) .]

1. Examination, diagnosis and treatment planning. Complete or limited examination, diagnosis or treatment planning;

[2005, c. 322, §1 (NEW) .]

2. Surgical or cutting procedures. Surgical or cutting procedures of hard or soft tissue;

[2005, c. 322, §1 (NEW) .]

3. Prescribing drugs. Prescribing drugs, medicaments or work authorizations;

[2005, c. 322, §1 (NEW) .]

4. Performing pulp capping. Performing pulp capping, pulpotomy or other endodontic procedures;

[2005, c. 322, §1 (NEW) .]

5. Placement and adjustment of prosthetic appliances. Placement and intraoral adjustments of fixed or removable prosthetic appliances; or

[2005, c. 322, §1 (NEW) .]

6. Administration of anesthesia or sedation. Administration of local anesthesia, parenteral or inhalation sedation or general anesthesia.

[2005, c. 322, §1 (NEW) .]

SECTION HISTORY

2005, c. 322, §1 (NEW) .

32 §1094-F. SUPERVISION

An expanded function dental assistant shall perform under the direct supervision of a dentist. As used in this section, "direct supervision" means that a dentist is in the dental office or treatment facility, personally diagnoses the condition to be treated, personally authorizes the condition to be treated and remains in the dental office or treatment facility while the procedure is being performed by the expanded function dental assistant and, before dismissal of the patient, evaluates the work performed by the expanded function dental assistant. [2005, c. 322, §1 (NEW) .]

SECTION HISTORY

2005, c. 322, §1 (NEW) .

32 §1094-G. QUALIFICATIONS

The board may certify as an expanded function dental assistant a person 18 years of age or older who submits an application on forms furnished by the board together with the required fee to be determined by the board, not to exceed \$100, and: [2005, c. 322, §1 (NEW) .]

1. Holds certified dental assistant certificate or registered dental hygiene license and has completed training. Holds a current certified dental assistant certification or a current registered dental hygienist license and has successfully completed training in a school or program approved by the board; or

[2005, c. 322, §1 (NEW) .]

2. Is credentialed by another state or province. Is credentialed to perform as an expanded function dental assistant by another state or Canadian province, the standards of which are acceptable to the board.

[2005, c. 322, §1 (NEW) .]

The board may adopt routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A to implement this section. [2005, c. 322, §1 (NEW) .]

SECTION HISTORY
2005, c. 322, §1 (NEW) .

32 §1094-H. CERTIFICATION; RENEWAL

Certificates must be renewed every 5 years. On or before the expiration of the certificate, the expanded function dental assistant must pay to the board a certification renewal fee of not more than \$100 to be determined by the board. Expanded function dental assistants who have not paid the renewal fee on or before the expiration of the 5-year certificate must be reinstated upon payment of a late fee of not more than \$50 to be determined by the board if paid within 30 days of the certificate's expiration date. Failure to be properly certified within 30 days results in automatic suspension of a certificate to practice. Reinstatement may be made, if approved by the board, by payment to the secretary-treasurer of the board of a fee determined by the board of not more than \$100. [2005, c. 322, §1 (NEW) .]

The board may adopt routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A to implement this section. [2005, c. 322, §1 (NEW) .]

SECTION HISTORY
2005, c. 322, §1 (NEW) .

Subchapter 3-B: INDEPENDENT PRACTICE DENTAL HYGIENISTS

32 §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. [2007, c. 620, Pt. B, §1 (NEW) .]

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. [2007, c. 620, Pt. B, §1 (NEW) .]

SECTION HISTORY
2007, c. 620, Pt. B, §1 (NEW) .

32 §1094-J. QUALIFICATIONS FOR LICENSURE

To qualify for licensure under this subchapter as an independent practice dental hygienist, a person must: [2007, c. 620, Pt. B, §1 (NEW) .]

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

[2007, c. 620, Pt. B, §1 (NEW) .]

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

[2007, c. 620, Pt. B, §1 (NEW) .]

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

[2007, c. 620, Pt. B, §1 (NEW) .]

SECTION HISTORY

2007, c. 620, Pt. B, §1 (NEW) .

32 §1094-K. EDUCATION AND EXPERIENCE

An applicant for licensure under this subchapter as an independent practice dental hygienist must:
[2007, c. 620, Pt. B, §1 (NEW) .]

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

[2009, c. 318, §1 (AMD) .]

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

[2009, c. 318, §1 (AMD) .]

SECTION HISTORY

2007, c. 620, Pt. B, §1 (NEW) . 2009, c. 318, §1 (AMD) .

32 §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. [2007, c. 620, Pt. B, §1 (NEW) .]

SECTION HISTORY

2007, c. 620, Pt. B, §1 (NEW) .

32 §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. [2007, c. 620, Pt. B, §1 (NEW) .]

SECTION HISTORY

2007, c. 620, Pt. B, §1 (NEW) .

32 §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. [2007, c. 620, Pt. B, §1 (NEW).]

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. [2007, c. 620, Pt. B, §1 (NEW).]

SECTION HISTORY

2007, c. 620, Pt. B, §1 (NEW).

32 §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. [2007, c. 620, Pt. B, §1 (NEW).]

SECTION HISTORY

2007, c. 620, Pt. B, §1 (NEW).

32 §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. [2007, c. 620, Pt. B, §1 (NEW).]

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. [2007, c. 620, Pt. B, §1 (NEW).]

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. [2007, c. 620, Pt. B, §1 (NEW).]

SECTION HISTORY

2007, c. 620, Pt. B, §1 (NEW).

32 §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; [2007, c. 620, Pt. B, §1 (NEW).]

B. Take and record the vital signs of blood pressure, pulse and temperature; [2007, c. 620, Pt. B, §1 (NEW).]

C. Perform oral inspections, recording all conditions that should be called to the attention of a dentist; [2007, c. 620, Pt. B, §1 (NEW).]

D. Perform complete periodontal and dental restorative charting; [2007, c. 620, Pt. B, §1 (NEW).]

E. Perform all procedures necessary for a complete prophylaxis, including root planing; [2007, c. 620, Pt. B, §1 (NEW).]

F. Apply fluoride to control caries; [2007, c. 620, Pt. B, §1 (NEW).]

G. Apply desensitizing agents to teeth; [2007, c. 620, Pt. B, §1 (NEW).]

H. Apply topical anesthetics; [2007, c. 620, Pt. B, §1 (NEW).]

I. Apply sealants; [2007, c. 620, Pt. B, §1 (NEW).]

J. Smooth and polish amalgam restorations, limited to slow speed application only; [2007, c. 620, Pt. B, §1 (NEW).]

K. Cement pontics and facings outside the mouth; [2007, c. 620, Pt. B, §1 (NEW).]

L. Take impressions for athletic mouth guards and custom fluoride trays; [2007, c. 620, Pt. B, §1 (NEW).]

M. Place and remove rubber dams; [2007, c. 620, Pt. B, §1 (NEW).]

N. Place temporary restorations in compliance with the protocol adopted by the board; and [2007, c. 620, Pt. B, §1 (NEW).]

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 medicaments. [2007, c. 620, Pt. B, §1 (NEW).]

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

[2007, c. 620, Pt. B, §1 (NEW) .]

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.

[2007, c. 620, Pt. B, §1 (NEW) .]

SECTION HISTORY

2007, c. 620, Pt. B, §1 (NEW) .

32 §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. [2007, c. 620, Pt. B, §1 (NEW).]

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.

[2007, c. 620, Pt. B, §1 (NEW) .]

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.

[2007, c. 620, Pt. B, §1 (NEW) .]

SECTION HISTORY

2007, c. 620, Pt. B, §1 (NEW) .

32 §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. [2007, c. 620, Pt. B, §1 (NEW) .]

SECTION HISTORY

2007, c. 620, Pt. B, §1 (NEW) .

32 §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. [2007, c. 620, Pt. B, §1 (NEW) .]

SECTION HISTORY

2007, c. 620, Pt. B, §1 (NEW) .

Subchapter 4: DENTAL HYGIENISTS

32 §1095. DEFINITION

The dental hygienist who practices under the supervision of a dentist of record may perform duties as defined and set forth in the rules of the Board of Dental Examiners, except that nothing in this subchapter may be construed to affect the practice of medicine or dentistry or to prevent students of a dental college, university or school of dental hygiene from practicing dental hygiene under the supervision of their instructors. [1993, c. 600, Pt. A, §79 (AMD) .]

SECTION HISTORY

1967, c. 544, §80 (NEW). 1971, c. 159, §3 (RPR). 1981, c. 440, §10 (AMD). 1993, c. 600, §A79 (AMD).

32 §1096. QUALIFICATIONS

A person 18 years old or over who has successfully completed 2 years' training in a school of dental hygiene approved by the board, or who is a full-time dental student who has satisfactorily completed at least half of the prescribed course of study in an accredited dental college, but who has not graduated from a dental college, is eligible to apply for examination. [1993, c. 600, Pt. A, §80 (AMD).]

SECTION HISTORY

1967, c. 544, §80 (NEW). 1969, c. 197, §5 (RPR). 1975, c. 484, §12 (RPR). 1983, c. 378, §14 (AMD). 1993, c. 600, §A80 (AMD).

32 §1097. APPLICATION; FEE

An eligible person desiring to practice dental hygiene must make written application to the Board of Dental Examiners to take the examination. The application must be accompanied by a fee to be determined by the board not to exceed \$175. Applicants for licensure must pay a fee set by the board for the examination. The board may recognize a nationally or regionally administered examination for applicants to practice dental hygiene in the State. [2003, c. 669, §7 (AMD).]

SECTION HISTORY

1967, c. 544, §80 (NEW). 1981, c. 440, §11 (AMD). 1993, c. 600, §A81 (AMD). 2003, c. 669, §7 (AMD).

32 §1098. LICENSE; BIENNIAL FEE

The board shall issue a license to practice as a dental hygienist in this State to an individual who has met the licensure requirements. The license must be exhibited publicly at the person's place of employment. The license authorizes practice as a dental hygienist in this State for the year in which it is issued until the expiration date that appears on the license. On or before January 1st of each odd-numbered year, the dental hygienist must pay to the board a license renewal fee of not more than \$175 to be determined by the board. Dental hygienists who have not paid the renewal fee on or before January 1st must be reinstated upon payment of a late fee of not more than \$50 to be determined by the board if paid 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 dental hygiene. Reinstatement may be made, if approved by the board, by payment to the secretary-treasurer of the board of a fee determined by the board of not more than \$175. A new applicant who has paid the application fee shall pay the biennial licensure fee if the applicant applies in an odd-numbered year or half the biennial licensure fee if the applicant applies in an even-numbered year. [2005, c. 45, §4 (AMD).]

The board may issue temporary licenses to dental hygienists who present credentials satisfactory to the board. The board may charge a fee of up to \$25 for a temporary license. [1993, c. 600, Pt. A, §82 (NEW).]

SECTION HISTORY

1967, c. 544, §80 (NEW). 1975, c. 484, §13 (AMD). 1981, c. 440, §12 (AMD). 1993, c. 600, §A82 (AMD). 2003, c. 669, §8 (AMD). 2005, c. 45, §4 (AMD).

32 §1098-A. FEE FOR DUPLICATE LICENSE

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

[1993, c. 600, Pt. A, §83 (AMD).]

SECTION HISTORY

1981, c. 440, §13 (NEW). 1993, c. 600, §A83 (AMD).

32 §1098-B. CONTINUING EDUCATION

As a condition of renewal of a license to practice, a 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 dental hygienist shall follow and are bound by the provisions of section 1084-A in the implementation of this section. [2003, c. 669, §9 (AMD).]

SECTION HISTORY

1989, c. 90, §3 (NEW). 1993, c. 600, §A84 (AMD). 2003, c. 669, §9 (AMD).

32 §1098-C. MENTAL OR PHYSICAL EXAMINATION

For the purposes of this section, by application for and acceptance of a license to practice, a licensed dental hygienist is considered to have given consent to a mental or physical examination when directed by the board. The board may direct a dental hygienist to submit to an examination whenever the board determines the dental hygienist may be suffering from a mental illness that may be interfering with the competent practice of dental hygiene or from the use of intoxicants or drugs to an extent that they are preventing the dental hygienist from practicing dental hygiene competently and with safety to patients. A 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 of the dental hygienist by order of the District Court until the dental hygienist submits to the examination. [2003, c. 669, §10 (NEW).]

SECTION HISTORY

2003, c. 669, §10 (NEW).

32 §1098-D. LICENSURE REQUIREMENTS FOR GRADUATES OF ACCREDITED PROGRAMS

In order to be licensed as a dental hygienist under this chapter, a person who is a graduate of a dental hygiene program approved by the American Dental Association Commission on Dental Accreditation or its successor organization must meet one of the following 2 sets of requirements: [2003, c. 669, §10 (NEW).]

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

- A. Have received, at least, an associate degree from a dental hygiene program accredited by the American Dental Association Commission on Dental Accreditation or its successor organization and have provided a notarized statement from the dean of the school affirming that the applicant has met all applicable degree requirements; [2003, c. 669, §10 (NEW).]
- B. Have completed with a passing grade the National Board Dental Hygiene Examination or the successor to that examination; [2003, c. 669, §10 (NEW).]
- C. Have completed with a passing grade the Northeast Regional Board Dental Hygiene Examination or the successor to that examination; [2003, c. 669, §10 (NEW).]
- D. Have completed with a passing grade the jurisprudence examination given by the board; and [2003, c. 669, §10 (NEW).]

E. For any applicant who has completed the Northeast Regional Board Dental Hygiene Examination or the successor to that examination more than one year prior to application for licensure in the State, have successfully completed a personal interview before the board; or [2003, c. 669, §10 (NEW) .]

[2003, c. 669, §10 (NEW) .]

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

A. Have graduated from an accredited dental hygiene program; [2003, c. 669, §10 (NEW) .]

B. If the candidate graduated subsequent to 1964, have completed with a passing grade the National Board Dental Hygiene Examination, or the successor to that examination, if such examination was required; [2003, c. 669, §10 (NEW) .]

C. Have furnished proof, satisfactory to the board, that the candidate has been duly licensed to practice dental hygiene in another state after full compliance with its laws; [2003, c. 669, §10 (NEW) .]

D. If the candidate graduated subsequent to 1970, have completed with a passing grade the Northeast Regional Board Dental Hygiene Examination, or the successor to that examination, if such examination was required, except that the board may at its discretion waive the Northeast Regional Board Dental Hygiene Examination, or the successor to that examination, if all other requirements of this subsection have been met; [2003, c. 669, §10 (NEW) .]

E. Have engaged in active clinical practice for a minimum of 3 years prior to application; [2005, c. 289, §2 (AMD) .]

F. Have completed with a passing grade the jurisprudence examination given by the board; and [2003, c. 669, §10 (NEW) .]

G. Have successfully completed a personal interview before the board. [2003, c. 669, §10 (NEW) .]

The board may at its discretion waive the Northeast Regional Board Dental Examination, or the successor to that examination, if all other requirements have been met.

[2005, c. 289, §2 (AMD) .]

SECTION HISTORY

2003, c. 669, §10 (NEW) . 2005, c. 289, §2 (AMD) .

32 §1098-E. TEMPORARY FILLING PROCEDURES

A dental hygienist with public health supervision status, as defined by rules adopted by the Board of Dental Examiners, may perform temporary filling procedures without a dentist present under protocols developed by the Board of Dental Examiners. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2005, c. 198, §1 (NEW) .]

SECTION HISTORY

2005, c. 198, §1 (NEW) .

32 §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 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. [2007, c. 620, Pt. A, §3 (AMD).]

SECTION HISTORY

1967, c. 544, §80 (NEW). 1981, c. 440, §14 (AMD). 1983, c. 378, §15 (AMD). 1993, c. 600, §A85 (AMD). 1995, c. 590, §2 (AMD). 2003, c. 557, §2 (AMD). 2003, c. 669, §11 (AMD). 2005, c. 289, §3 (AMD). 2007, c. 620, Pt. A, §3 (AMD).

32 §1100. USE OF FORMER EMPLOYERS' LISTS; SCOPE OF DUTIES

A 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 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 legitimate practice of dentistry as provided for in this chapter. A dentist may not aid or abet or encourage a dental hygienist in the dentist's employ 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 formerly employing the hygienist. [1993, c. 600, Pt. A, §86 (AMD).]

A dentist may not permit a dental hygienist operating under the dentist's supervision to perform an operation other than that permitted under section 1095. [1993, c. 600, Pt. A, §86 (AMD).]

SECTION HISTORY

1967, c. 544, §80 (NEW). 1973, c. 303, §3 (AMD). 1981, c. 440, §15 (AMD). 1983, c. 378, §16 (RPR). 1993, c. 600, §A86 (AMD).

Subchapter 5: DENTAL AUXILIARIES

32 §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. [2007, c. 620, Pt. C, §10 (AMD).]

SECTION HISTORY

1971, c. 159, §4 (NEW). 1977, c. 484, §1 (AMD). 1993, c. 600, §A87 (AMD). 2005, c. 322, §2 (AMD). 2007, c. 620, Pt. C, §10 (AMD).

Subchapter 6: DENTURISTS

32 §1100-B. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following words and phrases shall have the following meanings. [1977, c. 484, §2 (NEW).]

1. Board. "Board" means the Board of Dental Examiners.

[1977, c. 484, §2 (NEW) .]

1-A. Denture. "Denture" means any removable full or partial upper or lower prosthetic dental appliance to be worn in the human mouth to replace any missing natural teeth.

[2009, c. 227, §1 (NEW) .]

2. Denturist. "Denturist" means a person engaging in the practice of denturism.

[1995, c. 590, §3 (AMD) .]

3. Practice of denturism. "Practice of denturism" means only:

A. The taking of denture impressions and bite registration for the purpose of or with a view to the making, producing, reproducing, construction, finishing, supplying, altering or repairing of a denture to be fitted to an edentulous or partially edentulous arch or arches; [2009, c. 227, §2 (AMD) .]

B. The fitting of a denture to an edentulous or partially edentulous arch or arches, including the making, producing, reproducing, constructing, finishing, supplying, altering and repairing of dentures, without performing alteration to natural or reconstructed tooth structure. Upon the receipt of a written statement of oral condition or oral health certificate as determined by the board by a licensed dentist, a denturist may complete clinical procedures related to the fabrication of a removable tooth-borne partial denture, including cast frameworks; and [2009, c. 227, §3 (AMD) .]

C. The procedures incidental to the procedures specified in paragraphs A and B, as defined by the board. [1993, c. 600, Pt. A, §88 (AMD) .]

[2009, c. 227, §§2, 3 (AMD) .]

SECTION HISTORY

1977, c. 484, §2 (NEW). 1981, c. 440, §16 (AMD). 1993, c. 600, §A88 (AMD). 1995, c. 590, §§3,4 (AMD). 2009, c. 227, §§1-3 (AMD).

32 §1100-C. RULES

1. Rules required. The board shall adopt rules necessary to implement this subchapter. Rules adopted may pertain, but are not limited to, continuing education, statement of oral conditions and other record retention requirements, precensure permits and the specification of other procedures incidental to the practice of denturism.

[1995, c. 590, §5 (AMD) .]

2. Contents.

[1995, c. 590, §5 (RP) .]

3. Public hearing on rules and regulations.

[1983, c. 378, §17 (RP) .]

4. Rules and regulations repealed or amended.

[1983, c. 378, §17 (RP) .]

5. Temporary denturist permit.

[2005, c. 45, §5 (RP) .]

SECTION HISTORY

1977, c. 484, §2 (NEW). 1977, c. 696, §381 (AMD). 1983, c. 378, §17 (AMD). 1995, c. 353, §§9,10 (AMD). 1995, c. 590, §5 (AMD). 2005, c. 45, §5 (AMD).

32 §1100-D. EXAMINATIONS

1. Authority. The board is authorized to prepare and give examinations in the area of denturism for the purpose of licensing denturists. All examinations prepared and given under this subchapter may be prepared and given by the full board, by an appointed subcommittee of the board or by an entity authorized by the board. The board may also recognize a nationally or regionally administered examination given at least annually for applicants to practice denturism in the State.

[1995, c. 590, §6 (AMD) .]

1-A. Examination content. Denturist examinations must consist of a clinical examination and a written examination concerning, but not limited to, dental materials, denture technology, United States Department of Health and Human Services Centers for Disease Control guidelines, basic anatomy and basic pathology.

[1995, c. 590, §6 (NEW) .]

2. Eligibility for examination.

[1995, c. 590, §6 (RP) .]

2-A. Eligibility for examination. Eligibility for taking the examination pursuant to subsection 1 is determined as follows:

A. [2001, c. 337, §3 (RP) .]

B. A person is eligible to take the examination if that person:

(1) Is a high school graduate or has obtained high school equivalency; and

(2) Has a diploma from a board-approved denturism postsecondary institution or, until September 30, 2009, has completed an equivalent denturist educational program approved by the board.

[2009, c. 227, §4 (AMD) .]

[2009, c. 227, §4 (AMD) .]

3. Application for examination; fee. An eligible person desiring to take an examination in order to become licensed as a denturist must make a written application to the board to take the examination. This application must be accompanied by an application fee, to be determined by the board, but not to exceed \$175 and an examination fee to be determined by the board that may not exceed the actual cost of the examination. The application fee includes the fee for the initial license and is nonrefundable.

[2003, c. 669, §12 (AMD) .]

4. Additional examinations; fee. An applicant failing to pass an examination is entitled to a reexamination upon payment of the examination fee set by the board. If an applicant has failed 3 examinations, the board may require the applicant to complete additional educational requirements prior to reexamination.

[1995, c. 590, §6 (AMD) .]

5. Timing of examination.

[1993, c. 600, Pt. A, §89 (RP) .]

SECTION HISTORY

1977, c. 484, §2 (NEW). 1981, c. 440, §§17,18 (AMD). 1993, c. 600, §A89 (AMD). 1995, c. 590, §6 (AMD). 2001, c. 337, §3 (AMD). 2003, c. 669, §12 (AMD). 2009, c. 227, §4 (AMD).

32 §1100-E. LICENSES; ENDORSEMENT

1. Authority. The board has the authority to issue licenses to qualified persons to practice denturism pursuant to this subchapter.

[1995, c. 590, §7 (AMD) .]

2. License issued. The board shall issue a license for the practice in this State to each person who has passed an examination under section 1100-D. This license authorizes the licensee to practice as a denturist in the State until the expiration date that appears on the license. Beginning October 1, 2009, the board shall require, in addition to passage of the examination, all applicants for licensure to have a diploma and be graduates of a board-approved denturism postsecondary institution. Denturists licensed in this State prior to October 1, 2009 that do not have a diploma from a board-approved denturism postsecondary institution shall successfully complete an upgraded curriculum approved by the board before a license may be issued or renewed.

[2009, c. 227, §5 (AMD) .]

3. Renewal; renewal fee. After a license has been issued under subsection 2, and on or before January 1st of odd-numbered years, a denturist must pay to the board a license renewal fee of not more than \$175 to be determined by the board in order to renew the license and to continue to be authorized to practice as a denturist in the State.

After the requirements for a license renewal, including any necessary continuing education, have been met, a renewal card of the denturist's license must be issued, which the denturist shall place beside or attach to the denturist's initial license. Denturists who have not paid the renewal fee on or before January 1st must be reinstated upon payment of a late fee, to be determined by the board, of not more than \$50 if paid by February 1st. A license to practice is automatically suspended on February 1st and may be reinstated, if approved by the board, on payment of a fee to be determined by the board of not more than \$175. A new applicant who has paid the application fee shall pay the biennial licensure fee if the applicant applies in an odd-numbered year or 1/2 the biennial licensure fee if the applicant applies in an even-numbered year.

[2005, c. 45, §6 (AMD) .]

4. Endorsement. The board, at its discretion, without examination, may issue a license to an applicant to practice as a denturist who furnishes proof satisfactory to the board that the denturist has been licensed to practice and has actively practiced for a period of 3 years in another state or Canadian province after full compliance with the requirements of its dental laws, if the licensure requirements are, in all essentials, at least equivalent to those of this State. The board may require letters of reference about the denturist. Applicants for licensure by endorsement who meet the requirements of this section must be interviewed in person by the board, or members of the board, 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 the license may not exceed \$175.

[2003, c. 669, §14 (AMD) .]

4-A. Duplicate license. A licensee must be issued a duplicate license by the board for a fee of \$15 upon attestation of loss of the original.

[1995, c. 590, §7 (AMD) .]

5. Additional prohibitions. A denturist may not:

A. Falsely claim to be a licensed dentist or allow another to falsely represent the denturist as a licensed dentist; [1993, c. 600, Pt. A, §90 (AMD) .]

B. [1995, c. 590, §7 (RP) .]

B-1. [2001, c. 337, §4 (RP) .]

C. Perform a task beyond the denturist's competence; or [1993, c. 600, Pt. A, §90 (AMD) .]

D. Administer, dispense or prescribe a medication or controlled substance. [1993, c. 600, Pt. A, §90 (AMD) .]

[2001, c. 337, §4 (AMD) .]

6. Mental or physical examination. For the purposes of this subsection, by the application for and acceptance of the license, a licensed denturist is deemed to have given consent to a mental or physical examination when directed by the board. The board may direct the examination whenever it determines a denturist may be suffering from a mental illness that may be interfering with the competent practice of denturism or from the use of intoxicants or drugs to an extent that they are preventing the denturist from practicing denturism competently and with safety to the patients. A denturist examined pursuant to an order of the board does not have the privilege to prevent the testimony of the examining individual or to 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 exam requires the District Court to immediately order the license of the denturist suspended until the denturist submits to the examination.

[1995, c. 590, §7 (AMD); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

SECTION HISTORY

1977, c. 484, §2 (NEW). 1977, c. 696, §236 (AMD). 1977, c. 696, §382 (AMD). 1981, c. 440, §§19-22 (AMD). 1983, c. 378, §§18,19 (AMD). 1993, c. 600, §A90 (AMD). 1995, c. 590, §7 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2001, c. 260, §B4 (AMD). 2001, c. 337, §4 (AMD). 2003, c. 669, §§13,14 (AMD). 2005, c. 45, §6 (AMD). 2009, c. 227, §5 (AMD) .

32 §1100-E-1. CONTINUING EDUCATION

As a condition of a license renewal, a denturist licensee shall submit evidence of successful completion of 20 hours of continuing education consisting of board-approved courses completed within the 2 years preceding the application for renewal. The board shall proportionally reduce the continuing education hours required for denturists who have been licensed for less than a 2-year period upon the date of renewal. [1995, c. 590, §8 (NEW) .]

SECTION HISTORY

1995, c. 590, §8 (NEW) .

32 §1100-F. PERSONS AND PRACTICES NOT AFFECTED

Nothing in this subchapter may be construed to prohibit a duly qualified dental surgeon, dental laboratory technician or dental hygienist from performing work or services performed by a denturist licensed under this subchapter to the extent those persons are authorized to perform the same services under existing state law. [1993, c. 600, Pt. A, §91 (AMD) .]

Nothing in this subchapter may be construed to prevent students of a dental college, university or school of dental hygiene from practicing dental hygiene under the supervision of their instructors. [1993, c. 600, Pt. A, §91 (AMD) .]

SECTION HISTORY

1977, c. 484, §2 (NEW). 1993, c. 600, §A91 (AMD) .

32 §1100-G. LIABILITY OF DENTIST FOR DENTURIST'S ACTIONS

(REPEALED)

SECTION HISTORY

1977, c. 484, §2 (NEW). 1993, c. 600, §A91 (AMD). 1995, c. 590, §9 (RP).

32 §1100-H. LEGISLATIVE REVIEW

(REPEALED)

SECTION HISTORY

1977, c. 484, §2 (NEW). 1981, c. 440, §23 (AMD). 1993, c. 600, §A92 (RP). 1993, c. 685, §B5 (RP).

Subchapter 7: DENTAL RADIOGRAPHERS

32 §1100-I. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1983, c. 331, §2 (NEW).]

1. Dental radiography. "Dental radiography" means the use of ionizing radiation on the maxilla, mandible and adjacent structures of human beings for diagnostic purposes.

[1983, c. 331, §2 (NEW) .]

2. Direct supervision.

[1993, c. 600, Pt. A, §93 (RP) .]

2-A. General supervision. "General supervision" means the supervising dentist is not required to be physically present in the dental office while procedures are being performed on a patient of record.

[1993, c. 600, Pt. A, §94 (NEW) .]

3. Licensed dental radiographer. "Licensed dental radiographer" means a person who practices dental radiography and holds a valid license issued by the board.

[1983, c. 331, §2 (NEW) .]

SECTION HISTORY

1983, c. 331, §2 (NEW). 1993, c. 600, §§A93,94 (AMD).

32 §1100-J. LICENSE REQUIRED; EXCEPTIONS

1. License required. It is unlawful for any person, not otherwise authorized by law, to practice dental radiography without having a current license issued by the board.

[1993, c. 600, Pt. A, §95 (AMD) .]

2. Medicine, osteopathy, dentistry. Nothing in the provisions of this subchapter may limit, enlarge or affect the practice of persons licensed to practice medicine, osteopathy or dentistry in this State.

[1983, c. 331, §2 (NEW) .]

3. Exceptions. The requirement of a license does not apply to:

- A. Dental hygienists licensed pursuant to subchapter IV; [1983, c. 331, §2 (NEW).]
- B. A resident physician or a student enrolled in and attending a school or college of medicine, osteopathy, dentistry, dental hygiene and dental assisting or radiologic technology; [1983, c. 331, §2 (NEW).]
- C. A person serving in the United States Armed Forces or public health service or employed by the Veterans' Administration or other federal agency while performing official duties, if the duties are limited to that service or employment; or [1993, c. 600, Pt. A, §96 (AMD).]
- D. Those persons having a current license to perform radiologic technology pursuant to section 9854 and who are practicing dental radiography under the general supervision of a dentist or physician. [1993, c. 600, Pt. A, §96 (AMD).]

[1993, c. 600, Pt. A, §96 (AMD) .]

SECTION HISTORY

1983, c. 331, §2 (NEW). 1983, c. 712, §1 (AMD). 1993, c. 600, §§A95,96 (AMD).

32 §1100-K. SUPERVISION REQUIRED

1. Supervision. A licensed dental radiographer may practice dental radiography only under the general supervision of a dentist.

[1993, c. 600, Pt. A, §97 (AMD) .]

2. Prohibition.

[1993, c. 600, Pt. A, §97 (RP) .]

SECTION HISTORY

1983, c. 331, §2 (NEW). 1993, c. 600, §A97 (AMD).

32 §1100-L. EMPLOYMENT OF DENTAL RADIOGRAPHERS

1. Dental radiographers; license. It is unlawful for a dentist to allow a person to practice dental radiography in the dentist's employment or under the dentist's supervision who does not hold a license to practice dental radiography issued by the board or who is otherwise authorized by law to practice dental radiography.

[1993, c. 600, Pt. A, §98 (AMD) .]

SECTION HISTORY

1983, c. 331, §2 (NEW). 1983, c. 712, §2 (AMD). 1993, c. 600, §A98 (AMD).

32 §1100-M. QUALIFICATIONS

1. Requirements. To qualify for a license to practice dental radiography, an applicant shall meet the following requirements:

- A. Be at least 18 years of age; [1983, c. 331, §2 (NEW).]
- B. Have a high school diploma or its equivalent, as determined by the Department of Education; and [1989, c. 700, Pt. A, §138 (AMD).]

C. Have successfully passed a test in dental radiologic technique and safety approved by the board.
[1983, c. 712, §3 (AMD).]

[1989, c. 700, Pt. A, §138 (AMD) .]

SECTION HISTORY

1983, c. 331, §2 (NEW). 1983, c. 712, §3 (AMD). 1989, c. 700, §A138 (AMD) .

32 §1100-N. APPLICATION

To apply for a license to practice dental radiography, an applicant must submit a written application with supporting documents to the board, on forms provided by the board, and must pay an application fee, which may not exceed \$125. [2003, c. 669, §15 (AMD) .]

SECTION HISTORY

1983, c. 331, §2 (NEW). 1993, c. 600, §A99 (AMD). 2003, c. 669, §15 (AMD) .

32 §1100-O. RENEWAL

1. Term of license; renewal. All licenses to practice dental radiography issued by the board are valid for 5 years from the date of issuance and may be renewed upon application to the board and payment of a renewal fee, which may not exceed \$125.

[2003, c. 669, §16 (AMD) .]

SECTION HISTORY

1983, c. 331, §2 (NEW). 1993, c. 600, §A99 (AMD). 2003, c. 669, §16 (AMD) .

32 §1100-P. RULES

1. Rules. The board may make rules in accordance with Title 5, chapter 375, which are necessary for the implementation of this subchapter. The rules may include, but need not be limited to, licensure requirements, approved courses, application and renewal procedures and fees.

[1983, c. 331, §2 (NEW) .]

SECTION HISTORY

1983, c. 331, §2 (NEW) .

32 §1100-Q. DISCIPLINARY ACTION

1. Suspension; revocation; refusal to issue or renew license. The board may suspend or revoke a license pursuant to Title 5, section 10004. In addition, the board may refuse to issue or renew a license or the District Court may revoke, suspend or refuse to renew a license issued under this subchapter for the following reasons:

A. The practice of fraud or deceit in obtaining a license under this subchapter or in connection with service rendered within the scope of the license issued; [1983, c. 331, §2 (NEW) .]

B. Habitual substance abuse that has resulted or is foreseeably likely to result in the licensed dental radiographer being unable to perform the duties of the profession or perform those duties in a manner

that would endanger the health or safety of the patients to be served; [1993, c. 600, Pt. A, §99 (AMD) .]

C. Incompetence in the practice of dental radiography. A licensed dental radiographer is considered incompetent in the practice if the dental radiographer has:

(1) Engaged in conduct that evidenced a lack of ability or fitness to discharge the duty owed to a client or patient or the general public; or

(2) Engaged in conduct that evidenced a lack of knowledge or inability to apply principles or skills to carry out the practice of dental radiography; [1993, c. 600, Pt. A, §99 (AMD) .]

D. Unprofessional conduct. In this context, unprofessional conduct means the violation of a standard of professional behavior that through professional experience has been established in the practice of dental radiography; [1993, c. 600, Pt. A, §99 (AMD) .]

E. Subject to the limitations of Title 5, chapter 341, conviction of a crime that involves dishonesty or false statement or that relates directly to the practice of dental radiography or conviction of a crime for which incarceration for one year or more may be imposed; or [1993, c. 600, Pt. A, §99 (AMD) .]

F. A violation of this chapter or a rule adopted by the board. [1993, c. 600, Pt. A, §99 (AMD) .]

[1993, c. 600, Pt. A, §99 (AMD); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

SECTION HISTORY

1983, c. 331, §2 (NEW). 1993, c. 600, §A99 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF) .

32 §1100-R. PENALTIES; INJUNCTION

(REPEALED)

SECTION HISTORY

1983, c. 331, §2 (NEW). 1993, c. 600, §A100 (RP) .

32 §1100-S. MENTAL OR PHYSICAL EXAMINATION

For the purposes of this section, by application for and acceptance of a license to practice, a licensed dental radiographer is considered to have given consent to a mental or physical examination when directed by the board. The board may direct a dental radiographer to submit to an examination whenever the board determines the dental radiographer may be suffering from a mental illness that may be interfering with the competent practice of dental radiography or from the use of intoxicants or drugs to an extent that they are preventing the dental radiographer from practicing dental radiography competently and with safety to patients. A dental radiographer 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 of the dental radiographer by order of the District Court until the dental radiographer submits to the examination. [2003, c. 669, §17 (NEW) .]

SECTION HISTORY

2003, c. 669, §17 (NEW) .

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RULES

Rules Relating To The Practice Of Dentistry, Dental Hygiene, and Denturism

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02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

313 BOARD OF DENTAL EXAMINERS

Chapter 1: DEFINITIONS

Summary: As used in the Board rules, unless the context otherwise indicates, the following words have the following meanings:

[NOTE: Additional definitions are found in 32 M.R.S.A. Chapter 16.]

1. **ACLS:** “ACLS” means advanced cardiac life support.
2. **ADA:** “ADA” means the American Dental Association or its successor.
3. **ADHA:** “ADHA” means the American Dental Hygienists’ Association or its successor.
4. **Advertising:** “Advertising” means any verbal, written, or electronic medium designed to call public attention to or to attract patronage to a dentist, dental practice, dental hygienist, dental hygiene practice, denturist, or denturist practice.
5. **BCLS:** “BCLS” means basic cardiac life support.
6. **Board:** “Board” means the Maine Board of Dental Examiners.
7. **Certificate of Oral Condition:** A written statement of oral condition on a form supplied and approved by the Board of Dental Examiners that is required to be completed by a licensed dentist and received by a Maine licensed denturist prior to the completion of clinical procedures by a Maine licensed denturist related to the fabrication of any removable tooth-borne partial denture, including cast frameworks.
 - A. “Prior to Completing Clinical Procedures.” The terms “prior to completing clinical procedures” mean that the certificate of oral condition is required prior to the commencement of the fabrication of the tooth-borne partial denture. This requirement does not apply to tissue-borne transitional partial dentures.
 - B. “Tooth-Borne Partial Denture.” The terms “tooth-borne partial denture” mean any partial denture borne by tooth/teeth, retained root(s), implant(s), and includes any acrylic partial with rests, cast clasps or rigid acrylic clasps.
8. **Certified Dental Assistant (CDA):** “Certified Dental Assistant” means a dental assistant who has successfully passed a certification examination administered by the Dental Assisting National Board.
9. **CDC:** “CDC” means the Center for Disease Control and Prevention or its successor.

10. **CDE:** “CDE” means continuing dental education.
11. **CME:** “CME” means continuing medical education.
12. **CODA:** “CODA” means the ADA Commission on Dental Accreditation.
13. **CPR:** “CPR” means cardiopulmonary resuscitation.
14. **Dental Auxiliaries:** “Dental Auxiliaries” means dental hygienists, dental assistants, expanded function dental assistants, dental laboratory technicians, dental radiographers, and denturists.
15. **Deep Sedation:** “Deep Sedation” means an induced state of depressed consciousness, accompanied by a partial loss of protective reflexes, including the inability to maintain independently and continuously an airway and/or to respond purposefully to physical stimulation or verbal command, produced by a pharmacologic or nonpharmacologic method or combination thereof.
16. **Dental Assistant:** “Dental Assistant” means an individual employed by a dentist and who may perform certain delegable duties pursuant to Board Rule Chapter 3 under the supervision of a dentist.
17. **Dental Hygienist:** “Dental Hygienist” means an individual licensed by the Board to practice dental hygiene in the State of Maine under the supervision of a dentist of record pursuant to Board Rule Chapter 2.
18. **Dental Radiographer:** “Dental Radiographer” means an individual licensed by the Board to practice dental radiography in the State of Maine while employed and supervised by a dentist.
19. **Dental Radiography:** “Dental Radiography” means the use of ionizing radiation on the maxilla, mandible and adjacent structures of human beings for diagnostic purposes.
20. **Dentist:** “Dentist” means an individual licensed by the Board to practice dentistry in the State of Maine as defined by 32 M.R.S.A. §1081.
21. **Denturist:** “Denturist” means an individual licensed by the Board to practice denturism in the State of Maine as defined by 32 M.R.S.A. §1100-B.3.
22. **Direct Supervision:** "Direct supervision" shall mean that the dentist must be physically present in the dental office at the time the duties under his/her supervision are being performed. In order to provide direct supervision of patient treatment, the dentist must at least diagnose the condition to be treated, authorize the treatment procedure prior to implementation, and examine the condition after treatment and prior to the patient's discharge.
23. **Edentulous Arch:** “Edentulous Arch” means a maxillary or mandibular arch devoid of or absent any teeth, roots, or implants.
24. **Expanded Function Dental Assistant (EFDA):** “Expanded Function Dental Assistant (EFDA) means a certified dental assistant (CDA) or a licensed dental hygienist who has

successfully completed a Board approved EFDA training program and who has been issued a certificate by the Board to perform reversible intraoral procedures as defined by Board Rule Chapter 3 under the direct supervision of a dentist.

25. **General Anesthesia:** “General Anesthesia” means an induced state of unconsciousness, accompanied by a partial or complete loss of protective reflexes, including inability to maintain independently an airway and respond purposefully to physical stimulation or verbal command, produced by a pharmacologic or a nonpharmacologic method, or combination thereof.
26. **General Supervision:** "General supervision" shall mean that the dentist is not required to be in the dental office at the time the procedures are being performed on a patient of record.
27. **Independent Practice Dental Hygienist:** “Independent Practice Dental Hygienist” or “IPDH” means an individual licensed by the Board to practice without supervision by a dentist in the State of Maine pursuant to a scope of practice as defined by 32 M.R.S.A. §1094-Q.
28. **Local Anesthesia:** “Local Anesthesia” means the use of any drug, element, or other material which results in a state of insensibility of a circumscribed area, or the loss of sensation of some definite, localized area without inhibition of conscious processes.
29. **Moderate Sedation:** a drug-induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation.
30. **NERB:** “NERB” means the Northeast Regional Board Examination or its successor.
31. **Nitrous Oxide Analgesia:** “Nitrous Oxide Analgesia” means the administration of nitrous oxide in order to induce a controlled state of relative analgesia with the goal being the control of anxiety.
32. **Overdenture:** A denture constructed to be placed over existing teeth, retained roots or dental implants.
33. **Patient of Record:** “Patient of Record” means a patient who has been examined by a dentist, and has been provided with a diagnosis or treatment plan by the dentist.
34. **PALS:** “PALS” means pediatric advanced life support.
35. **Practice of Denturism:** “Practice of Denturism” means:
 - A. The taking of denture impressions and bite registration for the purpose of or with a view to the making, producing, reproducing, constructing, finishing, supplying, altering or repairing of a denture to be fitted to an edentulous or partially edentulous arch or arches;
 - B. The fitting of a denture to an edentulous or partially edentulous arch or arches, including the making, producing, reproducing, constructing, finishing, supplying, altering and repairing of dentures without performing alteration to natural or reconstructed tooth structure; and

- C. The procedures incidental to the procedures specified in paragraphs a and b, as defined by Board Rule Chapter 4.

36. **Public Health Supervision:** "Public Health Supervision" means that:

- A. The dentist provides general supervision to a dental hygienist who is practicing in a Public Health Supervision status under Chapter 2 of these rules, with the exception that the patient being treated shall not be deemed to be a patient of record of the dentist providing Public Health Supervision; and
- B. The dental hygienist has an active Maine license and practices in settings other than a traditional dental practice, provided that the service is rendered under the supervision of a dentist with an active Maine license. These settings may include but are not necessarily limited to public and private schools, medical facilities, nursing homes, residential care facilities, dental vans, and any other setting where adequate parameters of care, infection control, and public health guidelines can and will be followed.

37. **Reversible Intraoral Procedures:** "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 as defined in Board Rule Chapter 3.

38. **"Teledentistry"**

- A. The practice of dentistry at a distance through the use of any electronic means.
 - i. **CONSULTATION:** Consultations shall be considered to occur when a dentist and/or physician not licensed in the State of Maine reviews records or interviews or examines a patient in any way, and provides a professional opinion or recommendation to a dentist licensed in the State of Maine who is a dentist of record for the patient being diagnosed or treated. Such consultant must be fully licensed in another state. A non-resident dentist and/or physician does not need a license in this State if he/she consults with a dentist licensed in this State.
 - ii. **DISTANCE DENTISTRY – TELEDENTISTRY:** For the purposes of Teledentistry the practice of dentistry occurs in the state where the patient is located at the time of the examination.

STATUTORY AUTHORITY: 32 M.R.S.A. §§ 1073(2), 1094-I, 1094-Q, 1095, 1100-A, 1100-B,
1100-C,
1100-E, 1100-I

EFFECTIVE DATE:
May 22, 2007 – filing 2007-192

Summary: This Chapter establishes the duties a dentist may delegate to dental hygienists. A dentist may not permit a dental hygienist to perform any act not specifically provided for in this chapter.

Section I. GENERAL SUPERVISION OF DENTAL HYGIENISTS

Dental hygienists may perform the following duties under the general supervision of 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 the dentist;
- D. Perform complete periodontal and dental restorative charting;
- E. Expose and process radiographs, permitted pursuant to Title 32 M.R.S.A. §1100-J(3)(A) (Supp. 1985);
- F. Perform pulp tests pursuant to the direction of a dentist;
- G. Perform all procedures necessary for a complete prophylaxis, including root planing and curettage;
- H. Apply fluoride to control caries;
- I. Apply desensitizing agents to teeth;
- J. Apply liquids, pastes or gel topical anesthetics;
- K. Apply sealants, provided that a licensed dentist first makes the determination and diagnosis as to the surfaces on which the sealants shall be applied;

In Public health or school sealant programs only, determination and diagnosis of the sealant site by a dentist need not occur.
- L. Smooth and polish amalgam restorations;
- M. Cement pontics and facings outside the mouth;

- N. Take impressions for study casts, athletic mouth guards, custom trays, bleaching trays, fluoride trays, opposing models, retainers, and stents;
- O. Re-cement temporary crowns with temporary cement;
- P. Place and remove rubber dams;
- Q. Remove sutures and periodontal dressings;
- R. Perform post-operative irrigation of surgical sites;
- S. Place temporary restorations as an emergency procedure, provided that the patient is informed of the temporary nature of the restoration;
- T. Isolate operative fields;
- U. Place and remove gingival retraction cord without vasoconstrictor;
- V. Obtain bacterial sampling when treatment is planned by the dentist;
- W. Place localized delivery of chemotherapeutic agents when treatment is planned by the dentist; and
- X. Perform any other duties that may be performed by a dental assistant under Chapter 3, Sections I - III of these rules.

Section II. DIRECT SUPERVISION OF DENTAL HYGIENISTS

A dental hygienist may perform the following duties only when under the direct supervision of a dentist:

- A. Place periodontal dressings;
- B. Remove socket dressings;
- C. Take cytological smears, as requested by the dentist;
- D. A dental hygienist who has not obtained a permit to administer nitrous oxide from the Board may, during nitrous oxide administration by the dentist, observe the gauges and advise the dentist of any changes in gauge indices or readings but shall not in any way or under any circumstances adjust, manipulate or control the nitrous oxide apparatus or equipment;
- E. **Permitting Process.** A hygienist may apply for a permit to administer nitrous oxide after satisfactory completion of a nitrous oxide course in a CODA approved dental or dental hygiene program or other Board approved course. The nitrous oxide course must be at least 8 hours in length and include didactic and clinical components and an exit examination. The hygienist must receive both a minimum of 75% on the exit examination and course grade in order to meet satisfactory completion requirements. A hygienist may obtain a nitrous oxide permit via

endorsement if the hygienist has taken a nitrous oxide course within a CODA approved dental or dental hygiene program, has been certified to administer nitrous oxide in another state, and has administered nitrous oxide within the last 2 years. Application fee and initial certification is \$40. Renewal is \$20 per biennium.

- F. A licensed dentist, who is providing the direct supervision, must decide which patient will receive nitrous oxide and should document this decision by note or prescription in the patient dental record.
- G. **Concentration of Nitrous Oxide.** A dental hygienist issued a permit by the Board to administer nitrous oxide may administer nitrous oxide, utilizing induction via titration and not to exceed 50% concentration;
- H. The supervising dentist must note in the patient dental record the condition of the patient's recovery prior to the patient's discharge.
- I. The supervising/licensed dentist must ensure that nitrous oxide equipment is calibrated every three years in order to ensure that it is functioning correctly.
- J. Administer local anesthesia;

Special Endorsement: After satisfying the Board of his or her competence to administer local anesthesia, a licensed dental hygienist may qualify for a special endorsement to administer local anesthesia under the direct supervision of a licensed dentist, by performing the following:

- (1) Competence to administer local anesthesia must be demonstrated to the Board by successfully completing with a passing grade a course of study of at least 40 hours of instruction in a formal program in administration of local anesthesia sponsored by an institutional program accredited by the Commission on Dental Accreditation of the American Dental Association. A certificate of course completion and a copy of the syllabus must be provided to the Board for approval. The course must include didactic studies and clinical experience in the administration of block and infiltration anesthesia. A minimum of 50 satisfactorily performed injections is required.

The curriculum for required study must include but is not necessarily limited to:

- a. Medical history evaluation procedures;
- b. Understanding pharmacology of local anesthesia and vasoconstrictors;
- c. Anatomy of head, neck, and oral cavity as it relates to administering local anesthetic agents;
- d. Indications and contraindications for administration of local anesthesia;

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- e. Selection and preparation of the armamentaria and record keeping for administering various local anesthetic agents;
 - f. Medical and legal management of complications;
 - g. Recognition and management of post-injection complications and management of reactions to injections;
 - h. Proper infection control techniques with regard to local anesthesia and proper disposal of sharps;
 - i. Methods of administering local anesthetic agents with emphasis on:
 - (i) technique
 - a. aspiration
 - b. slow injection
 - (ii) minimum effective dosage
- (2) Upon satisfactory completion of the application process, including submission of a copy of a valid CPR certification, the applicant must pass a Board-administered examination in the administration of local anesthesia, or a national, regional or state examination in the administration of local anesthesia as approved by the Board.
- (3) A dental hygienist who has been licensed and trained to administer local anesthesia in another state may qualify, at the discretion of the Board, to take the examination by presenting written documentation of such licensure and training to the Board, along with documentation of at least two years experience within the past five years and by gaining approval of the Board through the interview process.
- (4) A licensed dental hygienist who has demonstrated competence to the satisfaction of the Board may qualify for a special endorsement and may undertake the administration of local anesthesia by:
- a. Successfully completing the examination administered by the Board or a national, regional or state administered examination;
 - b. Substantiating the adequacy of training; and
 - c. Limiting administration of local anesthesia as provided by these rules.
- (5) The endorsement shall be for a period of 5 years and renewable with documentation of experience as required by the Board.
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- K. Take impressions for night guards and occlusal splints as long as the dentist takes all measurements and bite registrations; and
- L. Perform any other duties that may be performed by a dental assistant under Chapter 3, Sections I-III of these rules.

Section III. PUBLIC HEALTH SUPERVISION STATUS

- A. **Public Health Supervision Status Allowed.** Upon notification to the Board, as set forth below, hygienists may provide services pursuant to "Public Health Supervision" status as defined in Section 1(C).
- B. **Roles and Responsibilities.** When working together in a Public Health Supervision relationship, dentists and dental hygienists shall enter into a Public Health Supervision Agreement based on the following roles and responsibilities:
 - (1) The dentist providing Public Health Supervision must:
 - a. Be available to provide an appropriate level of contact, communication, collaboration, and consultation with the dental hygienist;
 - b. Have specific standing orders or policy guidelines for procedures which are to be carried out for each location or program, although the dentist need not be present when the procedures are being performed;
 - c. Help provide for the patient's additional needed care in collaboration with the dental hygienist, although the dentist has no responsibility for providing treatment.
 - (2) A dental hygienist providing services under Public Health Supervision may perform only those duties within the accepted scope of practice of dental hygiene, as follows:
 - 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 the dentist;
 - d. Perform complete periodontal and dental restorative charting;

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- e. Expose and process radiographs upon written standing prescription orders from a dentist who will be available to interpret all dental radiographs within 21 days and completes and signs a radiographic review and findings form;
 - f. Perform pulp tests pursuant to the direction of a dentist;
 - g. Perform all procedures necessary for a complete prophylaxis, including root planing;
 - h. Apply fluoride to control caries;
 - i. Apply desensitizing agents to teeth;
 - j. Apply liquids, pastes or gel topical anesthetics;
 - k. Apply sealants;
 - l. Smooth and polish amalgam restorations, limited to slow speed application only;
 - m. Cement pontics and facings outside the mouth;
 - n. Take impressions for athletic mouth guards, and custom fluoride trays;
 - o. Place and remove rubber dams;
 - p. Isolate operative fields;
 - q. Place temporary restorations in compliance with the protocol adopted by the Board and attached to this rule as Appendix 1;
 - r. Place and remove gingival retraction cord without vasoconstrictor;
 - s. Perform any other duties that may be performed by a dental assistant under Chapter 3, Sections I-III of these rules; and
 - t. Apply topical antimicrobials (excluding antibiotics), including fluoride for the purposes of bacterial reduction, caries control and desensitization in the oral cavity. The practitioner must follow current manufacturer's instructions in the use of these medicaments. For the purposes of this section, "topical" includes superficial and intrasulcular application.
- (3) A dental hygienist providing services under Public Health Supervision must perform the following duties:
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- a. Provide to the patient, parent or guardian a written plan for referral or an agreement for follow-up, recording all conditions that should be called to the attention of a dentist;
 - b. Have each patient sign a permission slip or consent form that informs them that the service to be received does not take the place of regular dental checkups at a dental office and is meant for people who otherwise would not have access to the service;
 - c. Inform each patient who may require further dental services of that need;
 - d. Inform the Board in writing of any changes in or termination of the Public Health Supervision Agreement; and
 - e. Maintain an appropriate level of contact and communication with the Maine licensed dentist providing Public Health Supervision.
- C. **Criteria.** Hygienists providing services pursuant to Public Health Supervision status shall meet the following criteria:
- (1) The proposal fills a need not currently being met;
 - (2) The particular proposed practice setting(s), including the proposed supervisor, will be adequate to accomplish the goal;
 - (3) Appropriate public health guidelines can be followed in the proposed setting(s);
 - (4) Adequate parameters of care can be maintained in the proposed practice setting(s);
 - (5) A dentist is available to provide Public Health Supervision to the dental hygienist and specific standing orders are submitted to the Board; and
 - (6) If criteria (1) – (4) are met, but a dentist is not readily available under (5), the Board shall assist the dental hygienist in finding a dentist to provide Public Health Supervision.
- D. **Notification Process.** A dental hygienist wishing to practice under Public Health Supervision must notify the Board on a notification form specified by the Board, providing such information as the Board may deem necessary, including the signature of the supervising dentist. The dental hygienist shall list all known locations at which he or she expects to practice. Upon filing of the written notification to the Board, the dental hygienist may practice under Public Health Supervision for a specified period not to exceed three years. If, during the specified period, the dental hygienist finds that he or she will be providing services at locations other than those described in the notification form, he or she shall notify the Board in writing about each of these locations, in the manner specified by the
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Board. Any notification for a specified period may be amended, upon written submission by the dental hygienist to the supervising dentist and the Board. The Board may revoke Public Health Supervision status if a program does not continue to meet the criteria specified in section III.C.

- E. **Reporting Requirements.** Each dental hygienist who has rendered services under Public Health Supervision must complete a summary report at the completion of a program or, in the case of an ongoing program, at least annually. The report must be completed in the manner specified by the Board, including information about each location where the dental hygienist has rendered these services. The dental hygienist must submit the form to the dentist providing Public Health Supervision for his or her signature, before sending it to the Board.

 - F. **Reimbursement.** Dental hygienists providing services under Public Health Supervision may be compensated for their work by salary, honoraria, and other mechanisms by the employing or sponsoring entity. Nothing in this rule shall preclude the entity that employs or sponsors a dental hygienist from seeking payment, reimbursement, or other source of funding for the services provided.
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STATUTORY AUTHORITY: 32 M.R.S.A. §§ 1073(2), 1079(2), 1095, 1098-E, 1100-A

EFFECTIVE DATE:

May 22, 2007 – filing 2007-193

Chapter Two

Appendix 1

Protocols for the Placement of Temporary Fillings by PHS Hygienists February 2006

The Maine State Board of Dental Examiners recognizes the unique position of the Public Health Supervision hygienist and his or her role in serving the needs of the citizens of Maine. Among the various procedures a PHS hygienist may perform in their non-traditional dental setting is the appropriate placement of temporary fillings.

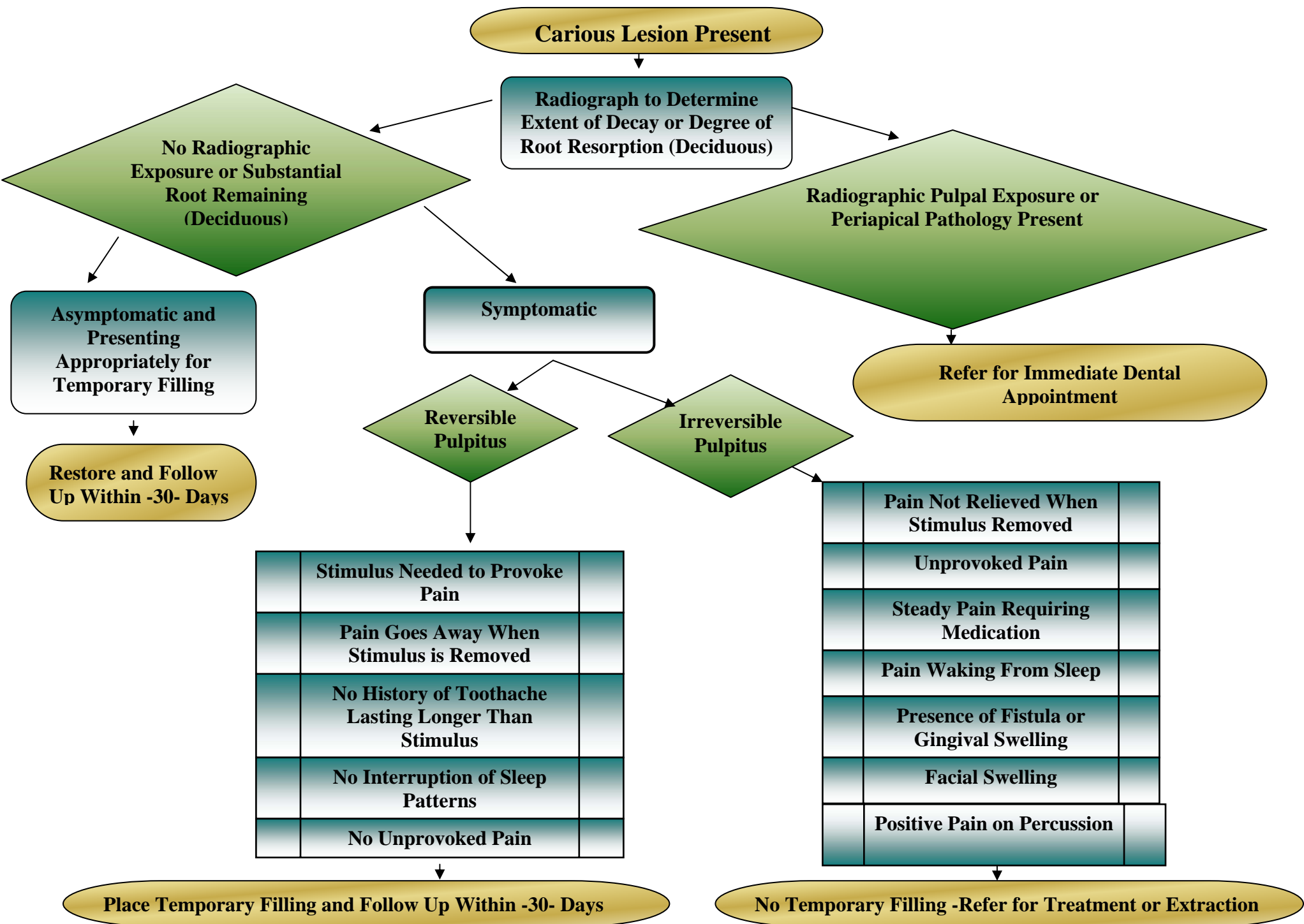
The Board directs that any temporary filling material must be of a nature that is not harmful to the tooth, and preferably be fluoride releasing. Desiccants and/or pulpal irritants are unacceptable as temporary filling materials.

The Board reminds its licensees that the standard of care in the placement of any dental restoration would include the use of diagnostic films or images. The Board recognizes that the PHS hygienist more often than not does not have this tool at their disposal. Whenever possible, however, the Board expects the PHS hygienist to obtain pre-operative films or images.

The Board reminds PHS hygienists that not all carious lesions are candidates for temporary restorations. These protocols include the following algorithms for the PHS hygienist to follow when deciding if a carious lesion in a tooth is to receive a temporary filling or whether it is to be left untreated. These algorithms should be used to determine the appropriateness of the placement of temporary fillings.

Pulpal Pathology Protocol

Figure 1.



Radiograph to Determine Extent of Decay or Degree of Root Resorption (Deciduous)

No Radiographic Exposure or Substantial Root Remaining (Deciduous)

Radiographic Pulpal Exposure or Periapical Pathology Present

Asymptomatic and Presenting Appropriately for Temporary Filling

Symptomatic

Refer for Immediate Dental Appointment

Restore and Follow Up Within -30- Days

Reversible Pulpitis

Irreversible Pulpitis

	Stimulus Needed to Provoke Pain	
	Pain Goes Away When Stimulus is Removed	
	No History of Toothache Lasting Longer Than Stimulus	
	No Interruption of Sleep Patterns	
	No Unprovoked Pain	

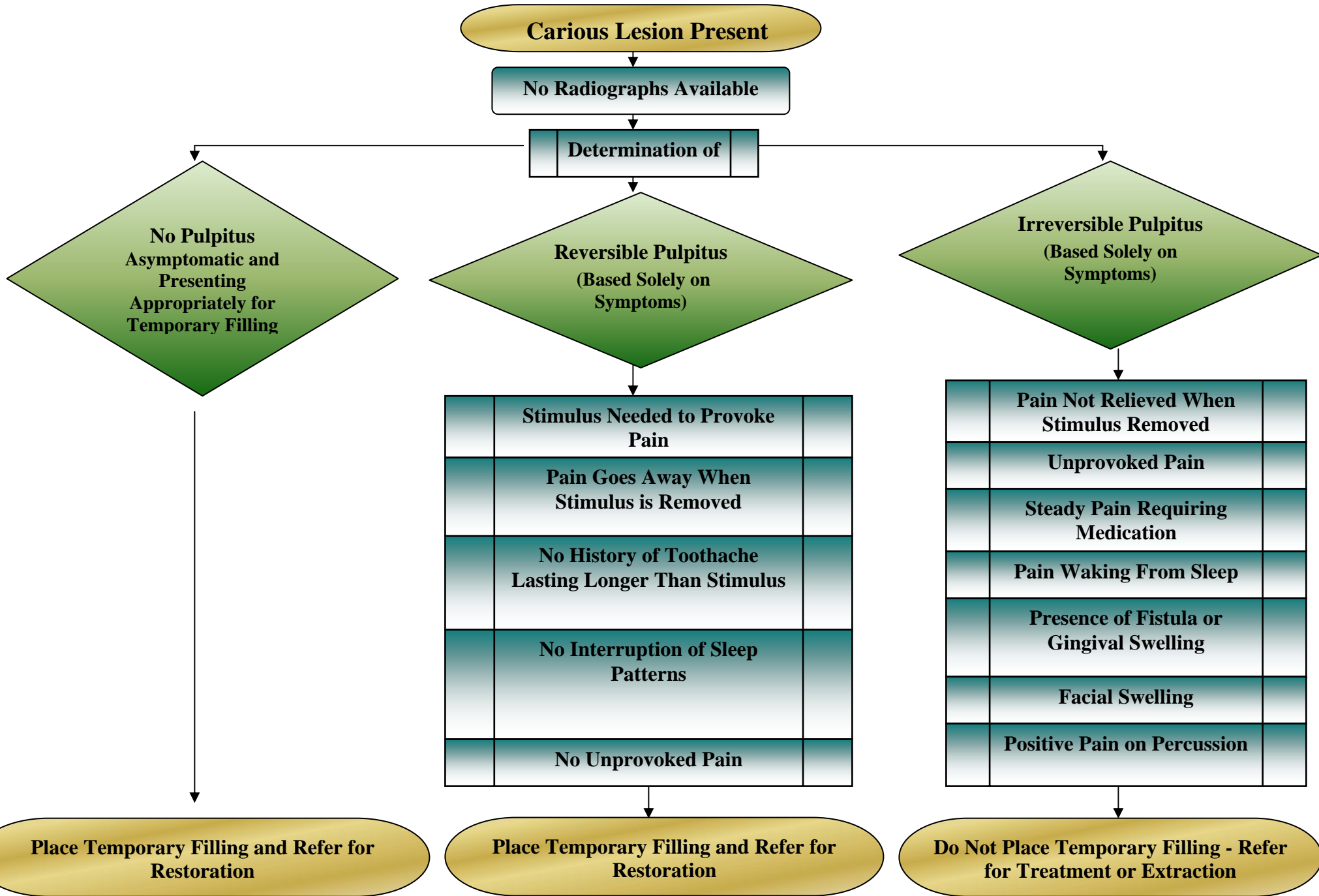
Place Temporary Filling and Follow Up Within -30- Days

	Pain Not Relieved When Stimulus Removed	
	Unprovoked Pain	
	Steady Pain Requiring Medication	
	Pain Waking From Sleep	
	Presence of Fistula or Gingival Swelling	
	Facial Swelling	
	Positive Pain on Percussion	

No Temporary Filling -Refer for Treatment or Extraction

Pulpal Pathology Protocol

Figure 2.



Summary: This Chapter establishes the duties a dentist may delegate to dental assistants, certified dental assistants, and expanded function dental assistants. A dentist may not permit a dental assistant, certified dental assistant or expanded function dental assistant to perform any act not specifically provided for in this chapter.

I. GENERAL SUPERVISION OF DENTAL ASSISTANTS

A dental assistant may perform the following duties under the general supervision of a dentist:

- A. Give oral health instructions.
- B. Perform dietary analyses for dental disease control.
- C. Take and record the vital signs of blood pressure, pulse and temperature.
- D. Take intra-oral photographs.
- E. Retract lips, cheek, tongue and other tissue parts.
- F. Irrigate and aspirate the oral cavity.
- G. Expose dental radiographs, but only if licensed as a Dental Radiographer pursuant to Title 32 M.R.S.A. §1100-I through §1100-R.
- H. For instruction purposes, a dental assistant may demonstrate to a patient how the patient should place and remove removable prostheses, appliances or retainers.
- I. Take dental plaque smears for microscopic inspection and patient education.
- J. For the purpose of eliminating pain or discomfort, remove loose, broken or irritating orthodontic appliances.
- K. Take and pour impressions for study casts.
- L. Change/replace dry socket packets after diagnosed and treatment planned by a dentist.
- M. Remove sutures with a follow-up appointment with the dentist within 7-10 days of suture removal.
- N. Pour and trim dental models.

II. DIRECT SUPERVISION OF DENTAL ASSISTANTS

A dental assistant may perform the following intra-oral procedures only under the direct supervision of a dentist:

- A. Apply liquids, pastes and gel topical anesthetics.
- B. Place and remove rubber dams.
- C. Place and recement temporary crowns with temporary cement.
- D. Place and remove matrix bands.
- E. Place, hold or remove celluloid and other plastic strips prior to or subsequent to the placement of a filling by the dentist.
- F. Place and remove wedges.
- G. Apply cavity varnish.
- H. Deliver, but not condense or pack, amalgam or composite restoration material.
- I. Remove gingival retraction cord.
- J. Select and try in stainless steel or other preformed crowns for insertion by the dentist.
- K. Take impressions for single-arch athletic mouth guards and for custom fluoride trays.
- L. Irrigate and dry root canals.
- M. Place or remove temporary separating devices.
- N. Remove orthodontic arch wires and tension devices and any loose bands or bonds, but only as directed by the dentist.
- O. Prepare tooth sites and surfaces with a rubber cup and pumice for banding or bonding of orthodontic brackets. This procedure shall not be intended or interpreted as an oral prophylaxis, which is a procedure specifically reserved to be performed by dental hygienists or dentists. This procedure also shall not be intended or interpreted as a preparation for restorative material. A dentist or dental hygienist shall check and approve the procedure.
- P. Place wires, pins and elastic ligatures to tie in orthodontic arch wires that have been fitted and approved by the dentist at the time of insertion.
- Q. Perform preliminary selection and fitting of orthodontic bands, but final placement and cementing in the patient's mouth shall be done by the dentist.
- R. Remove excess cement from the supragingival surfaces of teeth.

- S. Take intra-oral measurements and make preliminary selection of arch wires and intra and extra-oral appliances, including head gear.
- T. Take impressions for opposing models and retainers.
- U. Place elastics and/or instruct in their use.
- V. Reapply, on an emergency basis only, orthodontic brackets.
- W. Isolate the operative field.
- X. Fabricate temporary crowns and bridges, limiting handpiece rotary instrumentation used in the fabrication only to extraoral use, so long as the dentist checks the occlusion and fit prior to releasing the patient.
- Y. Remove composite material using slow speed instrumentation for de-bonding brackets, as long as the dentist conducts a final check prior to release of the patient.

III. GENERAL SUPERVISION OF CERTIFIED DENTAL ASSISTANTS

In addition to the duties permitted under Chapter 3, Section I of these Rules, a certified dental assistant may perform the following duties under general supervision of a dentist:

- A. Place temporary fillings on an emergency basis, provided that the patient is informed of the temporary nature of the fillings; and
- B. Remove excess cement from the supragingival surfaces of teeth.

IV. DIRECT SUPERVISION OF EXPANDED FUNCTION DENTAL ASSISTANT

In addition to the duties permitted under Chapter 3, section II of these rules, an EFDA may perform the following duties under direct supervision of a dentist.

- A. Place and contour amalgam, composite and other restorative materials prior to the final setting and/or curing of the material.
- B. Supragingival polishing: A Maine licensed dentist (DDS/DMD) or a Maine licensed hygienist (RDH) must first determine that the teeth to be polished are free of calculus or other extraneous material prior to polishing. Dentists may only permit an EFDA to perform supragingival polishing using a slow speed rotary instrument and rubber cup. Dentists may allow an EFDA to use high-speed, power-driven handpieces/instruments to contour or finish newly-placed composite materials.
- C. Cement provisional/temporary crowns and bridges and remove excess cement.
- D. Perform tooth vitality tests

- E. Place and remove retraction cord.
- F. Place and remove periodontal dressing.
- G. Size, place, and cement/bond orthodontic bands and brackets with final inspection by the dentist.
- H. Apply topical fluorides recognized for the prevention of dental caries.
- I. Apply supragingival desensitizing agents to an exposed root surface and/or dentinal surface of teeth.
- J. Apply pit and fissure sealants after an evaluation of the teeth by the dentist at the time of sealant placement.
- K. Take impressions for study casts, bleaching trays, sports guards, provisional/temporary crowns and bridges.

V. CERTIFICATION REQUIREMENTS FOR EFDAs

To qualify for certification to practice expanded function dental assisting, an applicant shall meet the following requirements:

- A. Be at least 18 years of age;
- B. Have a high school diploma or its equivalent;
- C. Hold a current CDA certificate or a registered dental hygiene license and have successfully completed a formal program in EFDA approved by the Board at a CODA accredited program or an equivalent program as determined by the Board, or is credentialed to perform as an EFDA by another state or Canadian province, except that the professional education and experience may not be less than is required in this State as set out in section VI;
- D. Have successfully completed with a passing grade of 90 percent, the jurisprudence examination given by the Board; and
- E. Provide documentary proof to the Board of current certification in CPR.

VI. CERTIFICATION BY ENDORSEMENT FOR EFDA'S

The Board may at its discretion, without examination, issue a certificate to an applicant to practice EFDA who furnishes proof satisfactory to the Board that the EFDA applicant has been duly licensed or certified as an EFDA to practice in another state or 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 and the applicant must: (a) have successfully completed with a passing grade of 90 percent, the jurisprudence examination given by the Board; and (b) provide documentary proof to the Board of current certification in CPR. In addition, the applicant must have been at least

three (3) years in actual practice in the state or Canadian province in which the EFDA license or certification was granted.

The Board may require letters of reference as to ability. Applicants for certification by endorsement who meet the requirements of this section must be interviewed in person by the Board or members of the Board prior to being issued a certificate. Every certification so given must state upon its face that it was granted on the basis of endorsement.

STATUTORY AUTHORITY: 32 M.R.S.A. §§ 1073(2), 1094-D, 1094-E, 1094-F, 1094-G, 1094-H, 1100-A, 1100 I – 1100 R.

EFFECTIVE DATE:

May 22, 2007 – filing 2007-194

Chapter 4: RULES RELATING TO THE PRACTICE OF DENTURISM

Summary: This chapter establishes general practice standards for all denturists and establishes minimum standards of acceptability for any removable full or partial upper or lower prosthetic dental appliance to be worn in the human mouth to replace any missing natural teeth made by denturists or dentists.

I. GENERAL

A. **License Display**

- (1) Each denturist shall post a current license to practice denturism in a conspicuous area on the premises where engaged in the practice of denturism.
- (2) Advertising by Professional Service Corporations. Denturists who have incorporated their practices as a professional service corporation may advertise in the name of the professional service corporation, provided that all such advertising shall clearly include the names of all licensed denturists affiliated with the professional service corporation who provide services which constitute the practice of denturism as defined in 32 M.R.S.A. § 1100-B and provided that such advertising shall not include the name of any denturist who is not providing such services.

II. PRACTICE STANDARDS. As part of her/his practice, every denturist shall perform the following tasks:

A. **Health History.** Record, update, and maintain a health history for each patient that will include the following information as a minimum:

1. General health status;
2. Systemic diseases or disorders;
3. Allergies and sensitivities;
4. Current medical and dental treatment, including medications;
5. Length of edentulousness; and

8. No occlusal interferences are present in lateral and protrusive excursions;
9. Occlusal surfaces may lack anatomic or nonanatomic detail, but masticatory forces are evenly distributed;
10. Occlusal disharmony may be present, but the patient is comfortable and no visible pathology exists; and
11. There may not be movement of the denture when biting pressure is applied in anterior and posterior segments of the arch except when it is not reasonably possible to achieve the desired result.
12. Prescriptions must exist for all work not personally performed by the dentist or under the direct supervision of that dentist.
13. The denture must be identified pursuant to Title 32 M.R.S.A. § 1094-B.

A denture may deviate from the standards outlined in II(F)(1) through (13) above, if the deviation is shown to be reasonable, is based upon physiological conditions or requirements, or responds to specific requests of the individual patient. The reason(s) for any deviation from the standards must be documented in the patient's records at the time the deviation is made.

G. Clinical Requirements

The Board will utilize current Center for Disease Control and Prevention ("CDC") guidelines in effect at the time of treatment when determining acceptable patient care and requirements for the clinical practice of denturism. It is the responsibility of the dentist to keep informed of the latest guidelines and to implement them appropriately.

H. Prohibited Activities

1. Denturists will not perform procedures which would alter any oral tissues or natural teeth.
2. Denturists will not perform initial insertion of an immediate denture in the mouth of the intended wearer within 48 hours of extractions.
3. Denturists will not diagnose or treat any abnormalities of the mouth.
4. Denturists will not prescribe any drugs or treatment for any oral or medical disease.

5. Prohibited activities enumerated in (1) through (4) above shall not be construed to prohibit changes to the denture base for the purpose of healing denture sores. The prohibitions of this chapter do not apply to:
 - a. The practice of dentistry or medicine by persons authorized to do so by this state;
 - b. A student of denturism in pursuit of scientific studies under an approved school program; or
 - c. A denture technician, as defined by the Board, performing services under the direction of a licensed denturist or licensed dentist, when the service does not involve contact with the intended patient.

I. **Ethics and Professional Conduct.** Denturists are held to the same ethical and professional standards as all other persons under the jurisdiction of the Board.

J. **Prior to the completion¹ of clinical procedures related to the fabrication of a removable tooth-borne² partial denture, including cast frameworks, a Maine licensed denturist must have:**

- (1) A certificate of oral condition approved by the Board and completed by a licensed dentist; and
- (2) A diploma from a post-secondary denturism educational institution approved by the International Federation of Denturists and the Maine Board of Dental Examiners; or
- (3) Completed the upgrade curriculum related to the fabrication of partial dentures as set forth in 32 M.R.S. §1100-E(6) and Board Rule, Chapter 5.

STATUTORY AUTHORITY: 32 M.R.S.A. §§ 1073(2), 1100-A, 1100-B, 1100-C(1);
1100-E

¹ The terms “prior to completing clinical procedures” mean that the certificate of oral condition is required prior to the commencement of the fabrication of the tooth-borne partial denture. This requirement does not apply to tissue-borne transitional partial dentures. See Chapter 1, paragraph 7(a).

² The terms “tooth-borne partial denture” mean any partial denture borne by tooth/teeth, retained root(s), implant(s), and includes any acrylic partial with rests, cast clasps or rigid acrylic clasps. See Chapter 1, paragraph 7(b).

Summary: This rule establishes the requirements for licensure as a denturist in the State of Maine.

I. Licensure by Original Application

To be eligible for licensure, applicants for a license to practice denturism in this category shall meet the following requirements:

- A. **Examination.** In order to qualify to take the denturist examination pursuant to 32 M.R.S.A. §1100-D, an applicant must:
1. Be a high school graduate or have obtained high school equivalency;
 2. Have a diploma from a post-secondary denturism educational institution approved by the International Federation of Denturists and the Maine Board of Dental Examiners and provide a statement under seal from the Office of the Dean of the school affirming that the applicant has met all applicable degree requirements;
 3. Have successfully completed with a passing grade of 90 percent, the jurisprudence examination given by the Board; and
 4. Provide the Board or Subcommittee with documentary proof of current certification in CPR.
 5. For any applicant who graduated from an approved post-secondary denturism educational institution more than one year prior to application for licensure in Maine, have successfully completed a personal interview before the Subcommittee. The personal interview may be waived at the Subcommittee's discretion; however, the applicant shall still submit to an interview by other means as determined by the Subcommittee or the Board.
- B. **Board-Approved Upgrade Curriculum.** Pursuant to 32 M.R.S.A. § 1100-E(2) (PL 2009, c. 227 as amended) denturists licensed in this State prior to October 1, 2009, who do not have a diploma from a Board-approved denturism post-secondary institution shall, within two (2) years following the adoption of this specific provision:
1. Provide documented proof to the satisfaction of the Board of successful completion of a comprehensive course or training (i.e. a semester-long course or its equivalent) that was completed prior to October 1, 2009, in each of the following areas: Radiographic Pattern Recognition; Periodontology; and Partial Denture Design and Application; and

2. Provide the Board with documentary proof of successful completion of an upgrade course in each of the following areas from a Board-approved institution, entity or individual:
 - a. An eight (8) hour review course in Radiographic Pattern Recognition;
 - b. An eight (8) hour review course in Periodontology; and
 - c. A twenty-four (24) hour review course in Partial Denture Design and Application.

3. Pursuant to 32 M.R.S.A. § 1100-E(2) (PL 2009, c. 227 as amended) denturists licensed in this State prior to October 1, 2009, who do not have a diploma from a Board-approved denturism postsecondary institution and who do not comply with this provision within two (2) years following the adoption of this specific provision shall be ineligible for licensure or re-licensure.

II. Licensure by Endorsement

To be eligible for licensure, applicants for a license to practice denturism in this category shall meet the following requirements:

- A. Have graduated from a post-secondary denturism educational institution approved by the International Federation of Denturists and the Board;
- B. Furnish proof, satisfactory to the Board, that the candidate has been duly licensed to practice denturism in another U.S. state or Canadian province after full compliance with the requirement of its laws;
- C. Have engaged in the active clinical practice of denturism in another U.S. state or Canadian province for a minimum of three years prior to application;
- D. Furnish the Board or Subcommittee, upon request, letters of reference about the denturist applicant;
- E. Provide the Board or Subcommittee with documentary proof of current certification in CPR; and
- F. Have successfully completed with a passing grade of 90 percent, the jurisprudence examination given by the Board; and
- G. Have successfully completed an interview with the Subcommittee on Denturists.

III. Waiver of Interview for License Reinstatement

- A. The Board or Subcommittee may at its discretion waive an interview for reinstatement of a license to practice denturism if it has been two (2) years or less since the lapse of licensure.

IV. Requirements for Licensure When Re-Entering the Profession of Denturism

- A. If an applicant has not been in active practice within the preceding five years, he/she must meet all of the requirements for initial licensure as outlined in section I above ; and
- B. Have successfully completed an interview with the Subcommittee on Denturists.

STATUTORY AUTHORITY: 32 M.R.S.A. §§ 1073(2), 1078, 1100-A, 1100-C, 1100-D, 1100-E.

EFFECTIVE DATE:

May 22, 2007 – filing 2007-196

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

313 BOARD OF DENTAL EXAMINERS

Chapter 6: RULES FOR RADIATION BARRIERS

Summary: This chapter establishes rules requiring the use of radiation barriers in dental procedures involving the exposure of patients to ionizing radiation.

- I. **Requirement.** In the interest of protecting the public health and safety, dentists, dental hygienists, and dental radiographers are required to place on or over a patient's body a radiation barrier prior to exposing that patient to ionizing radiation, (*i.e.*, before taking a dental X-Ray (radiograph) of the patient).

 - II. **Failure to Comply.** Any dentist, dental hygienist, or dental radiographer who fails to place on or over a patient's body a radiation barrier prior to exposing that patient to ionizing radiation, (*i.e.*, before taking a dental X-Ray (radiograph) of the patient), will be presumed by the Board to be engaging in incompetence or unskillfulness and/or unprofessional conduct in violation of 32 M.R.S.A. §1077(2).
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STATUTORY AUTHORITY: 32 M.R.S.A. §§ 1073(2), 1100-A, 1100-P.

EFFECTIVE DATE:

May 22, 2007 – filing 2007-197

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

313 MAINE BOARD OF DENTAL EXAMINERS

Chapter 7: LICENSING/CERTIFICATION/LATE FEES

Summary: This rule establishes licensure and other fees for registration (including reinstatement) of dentists, dental hygienists, independent practice dental hygienists, denturists, dental radiographers, and EFDA's and for failure of any licensee to report his place(s) of practice, change of address or change of name.

1. Failure to comply with the notice of place(s) of practice or change of name or address requirements of 32 M.R.S. §1061(I) \$ 25
 2. Certificate of registration to practice dentistry pursuant to 32 M.R.S. §1084
 - A. Biennial registration..... \$ 550
 - B. Late fee \$ 100
 - C. Reinstatement fee..... \$ 200
 3. Certificate of registration to practice dentistry by endorsement pursuant to 32 M.R.S. § 1085 \$550
 4. Certificate of registration to practice as a dental hygienist pursuant to 32 M.R.S. §1098
 - A. Biennial registration..... \$175
 - B. Late fee \$ 50
 - C. Reinstatement fee..... \$100
 5. Certificate of registration to practice as a dental hygienist by endorsement pursuant to 32 M.R.S. §1099 \$175
 6. Certificate of registration to practice as an independent practice dental hygienist pursuant to 32 M.R.S. § 1094-J
 - A. Biennial registration..... \$175
 - B. Late fee \$ 50
 - C. Reinstatement fee..... \$100
 7. Certificate of registration to practice as an independent practice dental hygienist by endorsement pursuant to 32 M.R.S. § 1094-L \$175
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- 8. Registration to practice denturism pursuant to 32 M.R.S. §1100-E
 - A. Biennial registration..... \$175
 - B. Late fee \$ 50
 - C. Reinstatement fee..... \$100

- 9. Certificate of registration to practice dental radiography pursuant to 32 M.R.S. §§ 1100-I-1100-P
 - A. Registration Fee.....\$125
 - B. Late Fee.....\$ 20
 - C. Reinstatement Fee.....\$125

- 10. Certification for EFDA’s (32 M.R.S. §1094-G & H)
 - A. Registration fee\$100
 - B. Late fee\$ 50
 - C. Reinstatement fee\$100

- 11. Anesthesia Permits
 - A. Local Anesthesia Permit (for Dental Hygienists)(32 M.R.S. §1095)
 - (1) Application/Examination Fee.....\$ 50
 - (2) Registration Fee.....\$ 50
 - (3) Late Fee.....\$ 20
 - (4) Reinstatement Fee.....\$ 50

 - B. Nitrous Oxide Permit (for Dental Hygienists)(32 M.R.S. § 1095)
 - (1) Application Fee.....\$ 20
 - (2) Registration Fee.....\$ 20
 - (3) Late Fee.....\$ 10
 - (4) Reinstatement Fee.....\$ 40

 - C. Moderate/Deep Sedation and General Anesthesia Permits (for Dentists)
 - (1) Moderate Sedation Permits (32 M.R.S. §§ 1073 (2) & 1089)
 - a. Permit Application Fee (five-year) \$500

- b. Permit Renewal Fee (five-year) \$500
 - c. Late Fee \$ 75
 - d. Reinstatement Fee \$500
- (2) Deep Sedation and General Anesthesia Permits (32 M.R.S. §§ 1073 (2) & 1089)
- a. Application/Inspection Fee (five-year) \$500
 - b. Registration/Permit Fee (five-year) \$500
 - c. Late Fee \$ 75
 - d. Reinstatement Fee \$500
12. Special Permits (32 M.R.S. § 1086)
- A. Hospital Intern (Dental School Graduate)\$ 50
 - B. Special Permit (Charitable Organization).\$ 50
 - C. Dental Student Permit (Institutional/Public Health Service).....\$ 50
 - D. Temporary Permit (Board-approved program of clinical education).....\$ 50
13. Any applicant who applies in the second half of the biennium of a two-year license or registration will only pay one-half of the biennial registration fee.
14. The Board, for good cause at its discretion, may grant a waiver of a fee or fees to an applicant for licensure or certification or a licensee of the Board.
15. Fee for Duplicate License (Upon Proof of Loss of Original) (32 M.R.S. § 1087).....\$15
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STATUTORY AUTHORITY: 32 M.R.S.A. §§ 1061, 1073(2), 1084, 1085, 1086, 1087, 1089, 1094-G, 1094-H, 1094-J, 1094-L, 1094-O, 1095, 1098, 1099, 1100-E, 1100-I-1100-P.

EFFECTIVE DATE:

May 22, 2007 – filing 2007-198

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

313 MAINE BOARD OF DENTAL EXAMINERS

Chapter 8: ADVERTISING

Summary: Any advertisement by a dental practice, whether a sole proprietorship, partnership, or a professional dental corporation must include the names of all licensed dentists or denturists whose services for such practice or corporation constitute the practice of dentistry or denturism.

I. General.

Any advertisement by a dentist and/or denturist, whether a sole proprietorship or partnership must include the names of all of the licensed dentists and/or denturists who perform services for the sole proprietorship and/or partnership.

II. Advertising by Professional Service Corporations.

Dentists or denturists who have incorporated their practices as a professional service corporation pursuant to Title 13 M.R.S.A. Chapter 22-A and Title 32 M.R.S.A. § 1081(3) & §1081(4) may advertise in the name of the professional service corporation, provided that all such advertising shall clearly include the names of all licensed dentists and/or denturists affiliated with the professional service corporation who render services which constitute the practice of dentistry as defined in 32 M.R.S.A. § 1081 or denturism as defined in 32 M.R.S.A. § 1100-B and provided further that such advertising shall not include the name of any dentist or denturist who is not providing such services.

STATUTORY AUTHORITY: 32 M.R.S.A. §§ 1073(2), 1073(3), 1081(3), 1081(4), 1092.

Summary: This rule describes the procedure by which the Board processes and/or initiates complaints and/or investigations and defines acts and/or omissions that constitute “unprofessional conduct” within the meaning of 32 M.R.S.A. §1077(2)(F).

I. COMPLAINTS/INVESTIGATIONS

The Board shall, to the extent practicable, receive and process complaints as follows:

- A. All complaints shall be submitted to the Board in writing. The Board may request that complaints be submitted on a complaint form which it provides. The Board may, on its own motion, conduct or authorize an investigation without a written complaint in any matter involving possible noncompliance with or violation of 32 M.R.S.A. Chapter 16 or any Board rule or regulation.
- B. A written complaint should set forth the facts which provide the basis for the complaint and include all available information concerning the identification of persons involved and dates.
- C. The Board will send a letter to the complaining party acknowledging receipt of the complaint. The Board will also furnish a copy to the person against whom the complaint has been registered and a written response to the charges shall be requested.
- D. In the event of an investigation, pertinent records shall be made available to the Board by a licensee at written Board request.
- E. Hearings may be conducted by the Board to assist with investigations, to determine whether cause exists for revocation or suspension of a license or for any other lawful purpose. Hearings shall be conducted in conformity with the Administrative Procedure Act, Title 5 M.R.S.A Chapter 375, Sub-Chapter IV, to the extent applicable. In an appropriate case, the Board may hold an informal proceeding to determine whether a matter may be disposed of by consent agreement.
- F. If the Board determines that any person has violated a provision of 32 M.R.S.A. Chapter 16 or has violated a rule or regulation of the Board, it may take any of the actions authorized by law pursuant to 32 M.R.S.A. §1077(2) and 10 M.R.S.A. §8003(5).
- G. The Board may, through staff, initiate an investigation concerning any potential violations of 32 M.R.S.A. Chapter 16 or 10 M.R.S.A. §8003-C.
- H. The Board may, based upon information it receives, initiate a complaint against a licensee for alleged violations of 32 M.R.S.A. Chapter 16.

II. UNPROFESSIONAL CONDUCT

Unprofessional conduct under 32 M.R.S.A. §1077(2)(F) includes, but is not limited to, the following:

- A. Engaging in any activity which assists, encourages or induces any person to violate this chapter or the rules of the Board.
- B. **Sexual Misconduct:** Sexual misconduct is defined as an unwanted or offensive act of a sexual nature, which is neither diagnostic nor therapeutic, committed with respect to either a patient or a colleague. It may include but is not limited to:

deliberate or repeated comments or gestures of a sexual nature;

physical contacts of a sexual nature, such as intentional touching of a body part for any purpose other than appropriate examination or treatment or when a patient has refused or withdrawn consent;

or

offering to provide practice-related services, such as providing drugs, in exchange for sexual favors.

Sexual misconduct may be established by a single act or by a series of acts. Sexual misconduct may also be established where such acts create a hostile environment of which the dental professional either is, or should be, aware.

In determining an appropriate sanction for a sexual misconduct violation, consideration will be given to the following factors: patient harm; severity of impropriety; culpability of the dental professional; age of patient or colleague; physical/mental capacity of patient or colleague; number of times behavior occurred; and nature and length of any existing, non-professional relationship. The above list is not intended to be exclusive.

- C. The obtaining of any fee by fraud or misrepresentation.
- D. Division of fees or an agreement to split the fees received for dental services with any person for referring a patient or for assisting in the care of a patient, without the knowledge of the patient or the patient's representative.
- E. The prescribing of any narcotic medication(s) by the licensee for himself/herself or to a family member or domestic partner with the exception of ongoing dental treatment by the licensee.
- F. Possession, use, prescription for use, or distribution of controlled substances or prescription drugs in any way other than for dental therapeutic purposes. Controlled substances and prescription drugs in the possession of a licensee which are prescribed for the licensee by a medical practitioner legally licensed to so prescribe and which are being used for therapeutic purposes by the licensee are exempted from this rule.
- G. The inappropriate prescribing or administering of drugs or treatment or the excessive use for diagnostic procedures, or the excessive use of diagnostic or treatment facilities.

- H. The advertising of either professional superiority or the advertising of the performance of professional services in a superior manner.
- I. The use of threats and harassment against any patient or former patient, employee or former employee, or licensee for providing evidence in any possible or actual disciplinary action, or other legal action.
- J. The alteration of a patient's record with the intent to deceive.
- K. The failure of a dentist to surrender a copy of a patient's records upon appropriate request by the patient or the patient's agent and payment of a reasonable duplication cost. This rule does not require a dentist to surrender original patient records. The records should be released within five business days of receipt of the request and shall be released within 21 calendar days of receipt of the request. Dentists shall maintain patient treatment records for a minimum of seven (7) years after the date on which the last dental services were provided to the patient.
- L. Violation of sanitary and safe office conditions as set forth below:
 - 1. Premises shall be kept clean, orderly and free of accumulated rubbish and similar substances;
 - 2. Premises shall be kept free of all insects and vermin by utilizing proper control and eradication methods;
 - 3. Water shall be piped under pressure and in an approved manner to all equipment and fixtures requiring the use of water. The water shall be from a properly constructed ground water supply and should be tested yearly if the source of the water is not from a recognized public water source. Water from private water sources shall meet all applicable State standards;
 - 4. All structures shall be in compliance with local and state building codes;
 - 5. Sanitary conditions shall be maintained at all times for patients and employees;
 - 6. Adequate toilet facilities shall be located on the premises of every dental office. Toilet facilities shall conform to standards of the Maine Center for Disease Control and Prevention (Maine "CDC"); and
 - 7. Failure to utilize Center for Disease Control and Prevention ("CDC") Guidelines for Infection Control in Dental Health-Care Settings, 2003 at the time of treatment. Copies of these rules are available at:

Centers for Disease Control and Prevention
1600 Clifton Rd.
Atlanta, GA 30333
1-800-311-3435

The electronic version may be accessed on line at:

<http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5217a1.htm>

8. Failure of the dentist(s) to ensure that any nitrous oxide delivery system within the dental practice meets the standards for controlling exposures to nitrous oxide during anesthetic administration as established by the following publications of the U.S. Department of Health and Human Services (DHHS), Centers for Disease Control and Prevention (CDC), National Institute for Occupational Safety and Health (NIOSH):
 - (i) DHHS (NIOSH) Publication No. 94-100, "Controlling Exposures to Nitrous Oxide During Anesthetic Administration";
 - (ii) DHHS (NIOSH) Publication No. 94-118, "NIOSH Warns: Nitrous Oxide Continues to Threaten Health Care Workers";
 - (iii) DHHS (NIOSH) Publication No. 96-107, "Control of Nitrous Oxide in Dental Operatories."

Copies of the foregoing publications may be obtained on line at:

<http://www.cdc.gov/niosh/pubs.html> or by calling 1-800-356-4674; the physical address is:

NIOSH
4676 Columbia Parkway, Mail Slot C-13
Cincinnati, OH 45226

9. The keeping or allowing of any living animal, including domesticated pets, in or on the premises of a dental or denturist practice, with the sole exception of fish aquariums. This section does not prevent a patient from bringing into or onto the premises of a dental practice a registered guide dog.
- M. The abandonment of the patient by the licensee before the completion of a phase of treatment.
- N. Delegations by a dentist of any duty not specified in Chapters 2 & 3, including but not limited to:
1. Diagnosis and treatment planning;
 2. Prescription of drugs, medicaments or authorization;
 3. Making occlusal adjustments;
 4. Performing pulp capping and pulpotomy procedures; and
 5. Placing, condensing, carving and contouring permanent restorations, except as delegated to an EFDA issued a permit by the Board.

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- O. Failure to respond to the Board regarding any matter for which a time frame is prescribed by law and/or failure to provide the Board with the records of treatment when requested by the Board.
 - P. Failure of a licensee to retain/maintain complete patient records for a period of no less than seven (7) years after cessation of a patient's treatment.
 - Q. Failure of a licensee to place on or over a patient's body a radiation barrier prior to exposing that patient to ionizing radiation, *i.e.*, before taking a dental X-Ray (radiograph) of the patient.
 - R. A violation of the standard of care that has been established in the practice of dentistry, dental hygiene, independent practice dental hygiene, denturism, expanded function dental assistants, or dental radiography.
 - S. Failure to publicly display a license, permit and/or certificate issued by the Board.
 - T. A violation of the standard of professional behavior, including engaging in disruptive behavior that has been established in the practice for which the licensee is licensed. For purposes of this paragraph, "disruptive behavior" means aberrant behavior that interferes with or is likely to interfere with the delivery of care.
 - U. The use of Dermal Fillers (including Botox) for non-dentally-related procedures. The administration of dermal filler(s) (including Botox) is allowed to be performed by Maine licensed dentists only for dentally-related procedures.
 - V. Failure of a licensed denturist to obtain a valid, signed certificate of oral condition from a licensed dentist prior to completing clinical procedures related to the fabrication of a removable tooth-borne partial denture, including cast frameworks.
 - 1. The terms "prior to completing clinical procedures" mean that the certificate of oral condition is required prior to the commencement of the fabrication of the tooth-borne partial denture. This requirement does not apply to tissue-borne transitional partial dentures.
 - 2. The terms "tooth-borne partial denture" mean any partial denture borne by tooth/teeth, retained root(s), implant(s), and includes any acrylic partial with rests, cast clasps or rigid acrylic clasps.
 - W. Failure to comply with practice closure procedures as follows:
 - 1. Notification in a local newspaper at least weekly starting thirty (30) days prior to closure with specific times listed for patients to obtain copies of their records;
 - 2. Good faith attempt to provide written or oral notification of practice closure to all patients of record;
 - 3. Document the good faith attempt to provide written or oral notification of practice closure;
 - 4. Provide written notification of practice closure date to the Maine Board of Dental Examiners.
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The Board retains the authority to waive the practice closure requirements where immediate practice closure is due to sudden illness, death, or other good cause as determined by the Board.

STATUTORY AUTHORITY: 32 M.R.S.A. §§ 1073(2) 1073(3), 1077, 1092.

EFFECTIVE DATE:

May 22, 2007 – filing 2007-200

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

313 BOARD OF DENTAL EXAMINERS

Chapter 10: LICENSURE REQUIREMENTS FOR DENTAL RADIOGRAPHERS

Summary: This rule establishes the qualifications for licensure as a dental radiographer in the State of Maine.

To qualify for a license to practice dental radiography, an applicant shall meet the following requirements:

1. Be at least 18 years of age;
2. Have a high school diploma or its equivalent;
3. Have successfully passed a test in dental radiologic technique and safety approved by the Board;
4. Have successfully completed with a passing grade of 85 percent, the jurisprudence examination given by the Board;
5. Obtain a radiography license within the five (5) years immediately following completion of the radiologic exam. After the five-year period has elapsed, if the candidate has not been issued a license, a new radiologic exam must be successfully completed.
6. Be currently certified in CPR.
7. Interview for License Reinstatement

The Board may at its discretion require an interview with an applicant for reinstatement of a license to practice dental radiography if it has been two (2) years or less since the lapse of the applicant's license.

8. Requirements for Licensure When Re-Entering the Profession of Dental Radiography

If an applicant has not been in active practice within the preceding five years, he/she must meet all of the requirements of paragraphs 1-7 above.

STATUTORY AUTHORITY: 32 M.R.S.A. §§ 1073 and 1100-P.

EFFECTIVE DATE:

May 22, 2007 – filing 2007-201

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

313 BOARD OF DENTAL EXAMINERS

Chapter 11: REQUIREMENTS FOR LICENSURE AS DENTAL HYGIENISTS

Summary: This rule establishes the requirements for licensure as a dental hygienist in the State of Maine.

I. Standard Licensure. To be licensed, candidates for dental hygiene licensure in this category shall meet the following requirements:

- A. Have received, at least, an associate degree from a dental hygiene program accredited by the American Dental Association (ADA) Commission on Dental Accreditation (CODA) or its successor organization and provide a notarized statement under seal from the Office of the Dean of the school affirming that the applicant has met all applicable degree requirements;
- B. Have completed with a passing grade the National Board Dental Hygiene examination or the successor to that examination;
- C. Provide the Board or Subcommittee on Dental Hygienists with documentary proof of current certification in CPR;
- D. Have completed with a passing grade all parts of: (1) the Northeast Regional Board (NERB) Dental Hygiene examination or its successor; (2) any other U.S. state or regional dental hygiene examination, so long as all modules are passed; or (3) a national dental hygiene examination approved by the Board;
- E. Have successfully completed with a passing grade of 90 percent, the jurisprudence examination given by the Board; and
- F. For any applicant who has completed NERB or its successor examination more than one year prior to application for licensure in Maine, have successfully completed a personal interview before the Subcommittee. The personal interview may be waived at the Subcommittee's or the Board's discretion; however, the applicant shall still submit to an interview by other means as determined by the Subcommittee or the Board.

II. Licensure by Endorsement. To be licensed, candidates for dental hygiene licensure in this category shall meet the following requirements:

- A. Have graduated from an accredited dental hygiene program. For the purposes of this section, an accredited dental hygiene program is one that is accredited by the American Dental Association (ADA) Commission on Dental Accreditation (CODA) or its successor organization;

- B. If the candidate was graduated subsequent to 1964, have completed with a passing grade the National Board Dental Hygiene examination or its successor examination if such examination was required;
- C. Provide the Board or Subcommittee with documentary proof of current certification in CPR;
- D. Furnish proof, satisfactory to the Board or Subcommittee, that the candidate has been duly licensed to practice dental hygiene in another state or Canadian province after full compliance with the requirement of its laws;
- E. If the candidate was graduated subsequent to 1970, have completed with a passing grade the Northeast Regional Board Dental Hygiene examination if such examination was required;
- F. Have engaged in active clinical practice for a minimum of three years prior to application;
- G. Have completed with a passing grade of 90 percent, the jurisprudence examination given by the Board ; and
- H. Have successfully completed a personal interview before the Subcommittee on Dental Hygienists.
- I. The Board may at its discretion waive the NERB exam or the successor to that examination if all other requirements have been met.

III. Requirements for Licensure When Re-Entering the Profession of Dental Hygiene

If an applicant has not been in active practice within the preceding five years, he/she must meet all of the requirements in section I above.

V. Waiver of Interview for License Reinstatement

The Board or Subcommittee may at its discretion waive an interview for reinstatement of a license to practice dental hygiene if it has been two (2) years or less since the lapse of their license.

STATUTORY AUTHORITY: 32 M.R.S.A. §§ 1073(2), 1096, 1099.

EFFECTIVE DATE:

May 22, 2007 – filing 2007-202

Summary: This rule establishes the requirements for licensure as a dentist in the State of Maine.

I. GENERAL STANDARDS FOR DENTAL LICENSURE

For the purpose of 32 M.R.S.A. §1082, "acceptable dental college, school or dental department of a university approved by the Board" shall be a dental college, school or dental department of a university whose general dentistry undergraduate program resulting in a D.M.D. or D.D.S. degree has been accredited by the American Dental Association (ADA) Commission on Dental Curriculum Accreditation (CODA).

II. SPECIFIC REQUIREMENTS FOR DENTAL LICENSURE

A. STANDARD LICENSURE

To be licensed, candidates for dental licensure in this category shall meet the following requirements:

1. Have received a D.M.D. or D.D.S. degree from an undergraduate dental school accredited by the A.D.A. Commission on Dental Accreditation (CODA) and have provided a statement under seal from the Office of the Dean of the school affirming that the applicant has met all applicable degree requirements;
2. Have successfully completed, with a passing grade, Parts I and II of the National Dental Board Examination or the successor to that examination;
3. Have successfully completed, with a passing grade, all parts of: (1) the Northeast Regional Board Dental examination ("NERB") or the successor to that examination; or (2) any other U.S. state or regional dental board examination, so long as all modules are passed; or (3) a national dental clinical examination approved by the Board;
4. Provide the Board with documentary proof of current certification in CPR;
5. Have successfully completed with a passing grade of 90 percent, the jurisprudence examination given by the Board; and
6. For any applicant who completed the requirement in Section II(A)(3) above more than one year prior to application for licensure in Maine, have successfully completed a personal interview before the Board. The personal interview may be waived at the Board's discretion; however, the applicant shall still submit to an interview by other means as determined by the Board.

B. LICENSURE BY ENDORSEMENT

To be licensed, candidates for dental licensure in this category shall meet the following requirements:

1. Have received a D.M.D. or D.D.S. degree from an undergraduate dental school accredited by the A.D.A. Commission on Dental Accreditation (CODA) and have provided a notarized statement from the Dean of the school affirming that the applicant has met all applicable degree requirements;
2. If the candidate was graduated subsequent to 1952, have successfully completed, with a passing grade, Parts I and II of the National Dental Board Examination or the successor to that examination if such examination was required;
3. Furnish proof, satisfactory to the Board, that the candidate has been duly licensed to practice dentistry in another U.S. state or Canadian province after full compliance with the requirements of its dental laws;
4. If the candidate was graduated subsequent to 1972, have successfully completed, with a passing grade, all parts of: (1) the Northeast Regional Board Dental Examination ("NERB") if such examination was required; or (2) any other U.S. state or regional dental board examination, so long as all modules are passed; or (3) a national dental clinical examination approved by the Board;
5. Have engaged in an active clinical practice in a U.S. state or Canadian province for a minimum of three years prior to application;
6. Provide the Board with documentary proof of current certification in CPR;
7. Have successfully completed with a passing grade of 90 percent, the jurisprudence exam given by the Board; and
8. Have successfully completed a personal interview before the Board.
9. The Board may at its discretion waive the NERB exam, another U.S. state or regional examination, or a national dental clinical examination approved by the Board, if all of the other requirements of the Board of Dental Examiners have been met.

C. REQUIREMENTS FOR LICENSURE WHEN RE-ENTERING THE PROFESSION OF DENTISTRY

If an applicant has not been in active practice within the preceding five years, he/she must meet all of the requirements of section II(A) above.

III. Waiver of Interview for License Reinstatement

The Board may at its discretion waive an interview for reinstatement of a license to practice dentistry if it has been two (2) years or less since the lapse of their license.

STATUTORY AUTHORITY: 32 M.R.S.A. §§ 1073(2), 1082, 1083, 1085

EFFECTIVE DATE:

May 22, 2007 – filing 2007-203

Chapter 13: CONTINUING EDUCATION

Summary: This rule establishes the continuing education required for licensed dentists, dental hygienists, independent practice dental hygienists, denturists, dental radiographers, and certified expanded function dental assistants in order to qualify for re-licensure and/or re-certification.

I. GENERAL

- A. **Dentists.** Every dentist licensed by the Board shall complete biennially a minimum of forty (40) hours of acceptable continuing education. This requirement must be completed during the two calendar years preceding December 31 of the year of expiration of the license.
1. With the exception of paragraph 4 below, the total forty (40) hours may be in Category 1, however at least 30 hours for dentists must be in Category 1 (as defined in subsection (II) (B)).
 2. With the exception of paragraph 4 below, no more than ten (10) hours for dentists may be in Category 2 (as defined in subsection (II) (C) (2)).
 3. Every dentist licensed by the Board shall complete CPR certification or re-certification prior to initial licensure and prior to the renewal of his/her dental license. Up to three hours of Category 1 credit is allowed per biennium.
 4. Dentists may claim up to a maximum of twenty (20) hours CDE per year when they are or have been enrolled in a CODA-approved post-graduate program of at least six months duration for the year in which the CDE is being claimed.
- B. **Dental Hygienists.** Every dental hygienist licensed by the Board shall complete biennially a minimum of thirty (30) hours of acceptable continuing education. This requirement must be completed during the two calendar years preceding December 31 of the year of expiration of the license.
1. With the exception of paragraph 4 below, the total thirty (30) hours may be in Category 1, however at least 20 hours for hygienists must be in Category 1 (as defined in subsection (II) (B)).
 2. With the exception of paragraph 4 below, no more than ten (10) hours for dental hygienists may be in Category 2 (as defined in subsection (II) (C)).

3. Every dental hygienist licensed by the Board shall complete CPR certification or re-certification prior to initial licensure and prior to the renewal of his/her dental hygiene license. Up to three hours of category 1 credit is allowed per biennium.
 4. Each full year of completed post-graduate training in one of the following programs will be considered the equivalent of the annual CDE requirements of 15 credits for a hygienist:
 - a. Internship or residency.
 - b. Graduate program in an approved specialty.
 - c. Related Dental, Medical or Dental Hygiene degree program.
- C. **Independent Practice Dental Hygienists.** Every independent practice dental hygienist licensed by the Board shall complete biennially a minimum of thirty (30) hours of acceptable continuing education. This requirement must be completed during the two calendar years preceding December 31 of the year of expiration of the license.
1. With the exception of paragraph 4 below, the total thirty (30) hours may be in Category 1, however at least 20 hours for independent practice dental hygienists must be in Category 1 (as defined in subsection (II) (B)).
 2. With the exception of paragraph 4 below, no more than ten (10) hours for independent practice dental hygienists may be in Category 2 (as defined in subsection (II) (C)).
 3. Every independent practice dental hygienist licensed by the Board shall complete CPR certification or re-certification prior to initial licensure and prior to the renewal of his/her independent practice dental hygiene license. Up to three hours of category 1 credit is allowed per biennium.
 4. Each full year of completed post-graduate training in one of the following programs will be considered the equivalent of the annual CDE requirements of 15 credits for an independent practice dental hygienist:
 - a. Internship or residency.
 - b. Graduate program in an approved specialty.
 - c. Related Dental, Medical or Dental Hygiene degree program.
- D. **Denturists.** Every denturist licensed by the Board shall complete biennially a minimum of twenty (20) hours of acceptable continuing education. This requirement must be completed during the two calendar years preceding December 31 of the year of expiration of the license.
1. The total twenty (20) hours may be in Category 1, however at least fifteen (15) hours for denturists must be in Category 1 (as defined in subsection (II) (B)).

2. No more than five (5) hours for denturists may be in Category 2 (as defined in subsection (II) (C)).
 3. Every denturist licensed by the Board shall complete CPR certification or re-certification prior to initial licensure and prior to the renewal of his/her denturist license. Up to three (3) hours of category 1 credit is allowed per biennium.
- E. **Dental Radiographers.** Every dental radiographer licensed by the Board shall complete CPR certification or re-certification prior to initial licensure and prior to the renewal of his/her dental radiographer license.
- F. **Expanded Function Dental Assistants.** Every EFDA certified by the Board shall complete fifty (50) hours of continuing education. This requirement must be completed during the five calendar years preceding the date on which the certification is due to expire.
1. The total fifty (50) hours may be in Category 1; however, at least forty (40) hours must be in Category 1.
 2. No more than ten (10) hours may be used in Category 2.
 3. CPR certification or re-certification will be required for all applicants for certification or re-certification. Up to three (3) hours of Category 1 credit is allowed for CPR per five year renewal period.

II. DEFINITIONS AND CATEGORIES

- A. **General.** Those courses that are directly related to the clinical practice of the dental professions will receive credit in category 1, as defined below. Those courses that are not directly related to the clinical practice of the dental professions, such as business management, financial planning, or other topics not directly related to the clinical practice of the dental professions are limited to category 2 status, as defined below.
- B. **Category 1:** Category 1 activities are those planned Continuing Dental Education (CDE) or Continuing Medical Education (CME) programs sponsored or co-sponsored by an organization or institution accredited by: (1) The American Dental Association (ADA) Commission on Dental Accreditation (CODA); (2) The Council on Medical Education of the American Medical Association (AMA); (3) The ADA and its constituent and component societies; (4) The American Dental Hygiene Association (ADHA) and its constituent and component societies; (5) The Academy of General Dentistry; or (6) The International Federation of Denturists.
1. All Category 1 CDE programs will be properly identified as such by the approved sponsoring organization.
 2. One credit hour may be claimed for each hour of participation.
 3. Clinically applied home study courses that include an examination will be accepted for category 1 credit, up to 10 credits for dentists, dental hygienists and

independent practice dental hygienists, 5 credits for denturists per biennium, and 10 credits for expanded function dental assistants per renewal period.

4. The Requirements of the following programs, if completed during the two calendar years preceding the registration or re-registration date may be considered as equivalent to the requirements listed in Section B: Definitions and Categories, (1) and (2) above.
 - a. Certification or recertification by a specialty board within two previous years preceding registration.
 - b. Completion of fellowship or mastership level in Academy of General Dentistry (AGD) within the two previous years preceding registration.
5. The Board may, in its discretion, approve programs other than those specified in paragraph II(B) above for Category 1 credit.

C. **Category 2:** The following programs and/or activities constitute Category 2 continuing dental, dental hygiene, independent practice dental hygiene, expanded function dental assistant, and denturist education:

1. CDE programs with non-accredited sponsorship, those dental and dental hygiene meetings and CDE programs not within the definition of Category 1: Value one (1) credit for each hour of participation.
2. Teaching of Dental/Medical students, interns, residents, practicing dentists, dental hygienists and physicians and allied health professionals. One (1) credit for each hour of participation.
3. Papers, publications, books as described below are acceptable. Credit may be claimed only for the first time the material is presented and should be claimed as of the date the materials were presented or published. Ten (10) credits for each:
 - a. A paper published in a recognized professional journal.
 - b. Each chapter of a book that is authorized and published in the Dental/Medical field.
4. Presentations or exhibits presented to a professional audience, including allied health professionals. Five (5) hours maximum credit for a minimum of one (1) hour presentation.
5. Non-supervised individual CDE/CME activities in non-clinical topic areas. One (1) credit for each hour of activity, maximum of ten (10) credits for dentists, five (5) credits for hygienists per biennium, and ten (10) credits for expanded function dental assistants per renewal period. Credit will be given in an amount to be determined by the Board for these self-instructional activities, provided they are sponsored by an approved organization and incorporate an approved testing mechanism.
 - a. Home study or correspondence courses; self-assessment tests.

- b. Educational television, audio-tape cassettes, and other audio-visual materials accompanied by a testing mechanism provided by the sponsor.
- 6. General attendance at multi-day convention type meetings sponsored by medical or dental organizations shall be given a maximum of 5 credit hours per renewal period.
- 7. Other meritorious learning experiences, including home study courses.

All requests for consideration of credit in this section must be submitted to the Board of Dental Examiners in writing no later than 90 days prior to date of expiration of license.

III. EVIDENCE OF COMPLETION

Each individual licensed or certified by the Board shall, prior to the renewal of his/her license/certification, submit to the Board on a form provided by the Board evidence of successful completion of the CDE/CME requirements as required by this rule. The individual licensed or certified by the Board shall be ultimately responsible for record keeping and proof of attendance and satisfactory completion of all continuing education courses and credit for the same.

IV. MONITORING PROCEDURE

For each renewal period, the Continuing Education Activity of some individuals licensed and/or certified by the Board will be audited by the Board. If the data submitted to the Board pursuant to the audit does not fulfill the requirements of this rule, the individual licensed or certified by the Board shall be notified and may be called before the Board for an adjudicatory hearing. Following hearing, the Board may impose discipline, including but not limited to: additional continuing educational requirements to be completed by the licensee, suspension of license or certification, revocation of license or certification, and non-renewal of license or certification. In addition, the Board may, without hearing, enter into a consent agreement with an individual licensed or certified by the Board who has not met the continuing education requirements of this rule.

V. EXCEPTIONS/WAIVERS TO CONTINUING EDUCATION REQUIREMENTS

- A. **Waiver/Extension.** The Board, at its discretion, may grant an extension of time or other waiver to an individual licensed or certified by the Board who, because of prolonged illness or other extenuating circumstances, e.g. military deployment, has been unable to meet his/her continuing educational requirements under this rule.
- B. **First Calendar Year of Licensure.** Dentists, dental hygienists, independent practice dental hygienists, and denturists who become licensed for the first time in the course of a calendar year will not be required to fulfill the continuing education requirements for that calendar year.
- C. **Inactive Licenses/Certifications.** Any individual who is licensed or certified by the Board and who is not actively practicing under his/her license and/or certification may be

- D. excused from completing the continuing education required by this rule by submitting to the Board an affidavit certifying that he/she will render no dental services during the term of the registration biennium. Upon receipt of such an affidavit, the Board may convert the individual's license and/or certification to "inactive status." An individual with an "inactive status" may not practice or perform any dental services under his/her "inactive status" license or certification. An individual whose license status is "inactive" may attempt to convert the license to "active status" by filing a written request to the Board. Upon receipt of such a request, the Board may grant or deny the request and may require the individual to undergo examinations, interviews and/or other requirements based upon the individual's particular factual situation.
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STATUTORY AUTHORITY: 32 M.R.S.A. §§ 1073(2), 1084-A, 1094-H, 1094-P, 1098-B, 1100-A, 1100-C, 1100-E1, 1100-P; 10 M.R.S.A. §8003(5).

EFFECTIVE DATE:

May 22, 2007 – filing 2007-204

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

313 MAINE STATE BOARD OF DENTAL EXAMINERS

Chapter 14: RULES FOR USE OF SEDATION AND GENERAL ANESTHESIA BY DENTISTS

Summary: This rule prescribes the circumstances under which dentists may administer Minimal, Moderate, and Deep Sedation and General Anesthesia in the State of Maine.

I. ADOPTION OF THE ADA GUIDELINES FOR THE USE OF SEDATION AND GENERAL ANESTHESIA BY DENTISTS.

The Board adopts and incorporates into this Chapter by reference the American Dental Association’s “Guidelines for the Use of Sedation and General Anesthesia by Dentists” (as adopted by the October 2007 ADA House of Delegates)[hereinafter referred to in these rules as “ADA Sedation Guidelines”]. All Dentists shall comply with the “ADA Sedation Guidelines” in addition to any other requirement imposed by the Board pursuant to this Chapter. In the event of a conflict between a standard in the “ADA Sedation Guidelines” and a provision of this Chapter, the provision of this Chapter shall govern.

Copies of the ADA “Guidelines for the Use of Sedation and General Anesthesia by Dentists” (as adopted by the October 2007 ADA House of Delegates) are available at:

American Dental Association
211 East Chicago Ave.
Chicago, IL 60611-2678
312-440-2500

The electronic version may be accessed on line at:

http://www.ada.org/prof/resources/positions/statements/anesthesia_guidelines.pdf

II. ADOPTION OF THE ADA GUIDELINES FOR THE USE OF SEDATION AND GENERAL ANESTHESIA BY DENTISTS.

The Board adopts and incorporates into this Chapter by reference the American Dental Association’s “Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students” (as adopted by the October 2007 ADA House of Delegates). [hereinafter referred to in these rules as “ADA Teaching Guidelines”]. All Dentists shall comply with the “ADA Teaching Guidelines” in addition to any other requirement imposed by the Board pursuant to this Chapter. In the event of a conflict between a standard in the “ADA Teaching Guidelines” and a provision of this Chapter, the provision of this Chapter shall govern.

Copies of the ADA Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students” (as adopted by the October 2007 ADA House of Delegates) are available at:

American Dental Association
211 East Chicago Ave.
Chicago, IL 60611-2678
312-440-2500

The electronic version may be accessed on line at:

http://www.ada.org/prof/resources/positions/statements/anxiety_guidelines.pdf

III. PERMITS REQUIRED. No dentist may administer moderate sedation or deep sedation/general anesthesia to any person without first being issued a permit by the Board. A dentist issued a Permit for Moderate Sedation Level II (Parenteral) by the Board may also perform moderate sedation level I (enteral) and minimal sedation. A dentist issued a Permit for Deep Sedation/General Anesthesia by the Board may also perform any type of moderate or minimal sedation.

- A. Posting of Permits. All dentists who have been issued a permit pursuant to this Chapter are required to post such permit within the dental practice in an area that is accessible to the public.
- B. Minimal Sedation:
 - 1. General. No dentist shall be required to obtain a permit in order to administer minimal sedation as defined by the “ADA Guidelines.”
 - 2. Exception. Dentists who administer minimal sedation to patients age 12 and under require a Permit for Moderate Sedation, which sedation may only be administered to the child inside the dental office, if:
 - a. The dentist prescribes a preoperative sedative to be administered to the child (Level I – Enteral); or
 - b. The dentist administers a combination of minimal sedation methods (i.e. oral sedative and nitrous oxide)(Level I – Enteral).
- C. Moderate Sedation:
 - 1. Permit Required. No dentist shall employ or use moderate sedation as defined by the “ADA Guidelines” on an outpatient basis for dental patients, unless such dentist possesses a “Permit for Moderate Sedation” issued by the Maine Board of Dental Examiners (The Board).
 - 2. Duration of Permits. Permits issued by the Board pursuant to this rule shall not exceed five (5) years in duration, and must be renewed in order for the dentist to continue to perform moderate sedation. Dentists holding such permits shall be subject to review of their education, training, and office equipment and procedures at the discretion of the Board.

3. Method of Obtaining Permits. In order to receive such permits, dentists must apply on a prescribed application form to the Board, submit a permit application fee of \$500.00, and meet the educational and training requirements established by this Chapter for the type of permit requested.
4. Types of Permits for Moderate Sedation: The Board shall issue two types of permits for moderate sedation:
 - a. Permit for Moderate Sedation Level I (Enteral); and
 - b. Permit for Moderate Sedation Level II (Parenteral).
5. Qualifications for Permits for Moderate Sedation: In order to obtain a Permit for Moderate Sedation, applicants must meet the following educational and training criteria established for the type of permit for which he/she applies:
 - a. Permit for Moderate Sedation Level I (Enteral). Applicants for this type of permit must:
 - i. Have successfully completed a Board-approved comprehensive training program of a minimum of twenty-four (24) hours duration, plus management of at least ten (10) adult case experiences by the enteral and/or enteral-nitrous oxide/oxygen route as described in the “ADA Teaching Guidelines.” The ten (10) cases must include at least three live clinical dental experiences managed by participants in groups no larger than five (5). The remaining cases may include simulations and/or video presentations, but must include one experience in returning (rescuing) a patient from deep to moderate sedation. Participants should be provided supervised opportunities for clinical experience to demonstrate competence in airway management. Clinical experience will be provided in managing healthy adult patients. This course in moderate enteral sedation is not designed for the management of children (aged 12 and under). Additional supervised clinical experience is necessary to prepare participants to manage medically compromised adults and special needs patients. This course in moderate enteral sedation does not result in competency in moderate paraenteral sedation.

Waiver: The Board may waive the educational and training requirements established by this section for any dentist who holds a current and unrestricted Maine dental license and who executes an affidavit on a form developed by the Board, attesting that the dentist has a minimum of five (5) patient experiences utilizing “moderate sedation” (as defined by the ADA Guidelines as adopted by the October 2007 ADA House

of Delegates) within the previous three (3) years prior to the enactment of this rule. Any application for a waiver under this section must be made within one (1) year of the enactment of this rule.

- ii. Possess a current certification in: (a) Basic Life Support for Healthcare Providers (BCLS); and (b) Advanced Cardiac Life Support (ACLS) or an appropriate dental sedation/anesthesia emergency management course; and
 - iii. Have successfully completed an on-site facility, equipment, personnel, procedures, techniques and documents inspection by the Anesthesia Subcommittee, a subcommittee established by this Chapter whose membership is appointed by the Board to act as its agent(s) in performing these inspections. In performing the on-site facility inspections, the Anesthesia Subcommittee shall employ the “ADA Sedation Guidelines.” In the case of a mobile or portable facility, one inspection of that facility shall be conducted in the office of a Maine licensed dentist where sedation is administered. The applicant/dentist shall provide the Anesthesia Subcommittee with a written statement that includes a list of all monitors, emergency equipment and other materials, which the mobile sedation provider agrees to have available at all times while administering sedation in multiple locations. This evaluation may also include the observance of at least one actual or simulated procedure where the general anesthetic or sedation techniques are employed. **Hospitals licensed by the State of Maine are exempt from an on-site facility and equipment inspection.**
- b. Permit for Moderate Sedation Level II (Parenteral). Applicants for this type of permit must:
- i. Have successfully completed a Board-approved comprehensive training program of a minimum of sixty (60) hours of instruction, plus management of at least 20 patients by the intravenous route per participant as described in the “ADA Teaching Guidelines.” Clinical experience in managing a compromised airway is critical to the prevention of emergencies. Participants should be provided supervised opportunities for clinical experience to demonstrate competence in management of the airway. Typically, clinical experience will be provided in managing healthy adult patients. Additional supervised clinical experience is necessary to prepare participants to manage children (aged 12 and under) and medically compromised adults.
Waiver: The Board may waive the educational and training requirements established by this section for any dentist who holds a current and unrestricted Maine dental license and who

executes an affidavit on a form developed by the Board attesting that the dentist has a minimum of five (5) patient experiences utilizing “moderate sedation” (as defined by the ADA Guidelines as adopted by the October 2007 ADA House of Delegates) within the previous three (3) years prior to the enactment of this rule. Any application for a waiver under this section must be made within one (1) year of the enactment of this rule.

- ii. Possess a current certification in: (a) Basic Life Support for Healthcare Providers (BCLS); and (b) Advanced Cardiac Life Support (ACLS) or an appropriate dental sedation/anesthesia emergency management course; and
 - iii. Have successfully completed an on-site facility, equipment, personnel, procedures, techniques and documents inspection by the Anesthesia Subcommittee, a subcommittee established by this Chapter whose membership is appointed by the Board to act as its agent(s) in performing these inspections. In performing the on-site facility inspections, the Anesthesia Subcommittee shall employ the “ADA Sedation Guidelines.” In the case of a mobile or portable facility, one inspection of that facility shall be conducted in the office of a Maine licensed dentist where sedation is administered. The applicant/dentist shall provide the Anesthesia Subcommittee with a written statement that includes a list of all monitors, emergency equipment and other materials, which the mobile sedation provider agrees to have available at all times while administering sedation in multiple locations. This evaluation may also include the observance of at least one actual or simulated procedure where the general anesthetic or sedation techniques are employed. **Hospitals licensed by the State of Maine or CODA accredited clinical settings are exempt from an on-site facility and equipment inspection.**
- c. Temporary Permit for Moderate Sedation. The Board may issue a Temporary Permit for Moderate Sedation Level I or Level II. Temporary permits are nonrenewable and may not exceed six (6) months duration. To be eligible to receive a temporary permit, an applicant must show proof satisfactory to the Board that:
- i. He/she has successfully completed a comprehensive training program as described in the “ADA Teaching Guidelines” that is commensurate with the level of temporary permit for moderate sedation sought;

- ii. He/she possesses a current certification in: (a) Basic Life Support for Healthcare Providers (BCLS); and (b) Advanced Cardiac Life Support (ACLS) or an appropriate dental sedation/anesthesia emergency management course; and
 - iii. He/she has scheduled but not undergone an on-site facility, equipment, personnel, procedures, techniques and documents inspection by the Anesthesia Subcommittee.
- 6. Renewal of Permit for Moderate Sedation. The Board may renew a permit if the following criteria are met:
 - a. The Board receives an application to renew the permit;
 - b. An on-site re-evaluation has been successfully completed by the Anesthesia Subcommittee within one (1) year prior to permit renewal;
 - c. The applicant has completed a minimum of six (6) continuing education hours biannually directly related to anesthesia/sedation, physical diagnosis, complications, techniques, A.C.L.S. and B.C.L.S;
 - d. The applicant possesses a current certification in: (a) Basic Life Support for Healthcare Providers (BCLS); and (b) Advanced Cardiac Life Support (ACLS) or an appropriate dental sedation/anesthesia emergency management course;
 - e. The applicant pays the \$500.00 permit renewal fee; and
 - f. There are no other grounds to deny the renewal of the permit.
- 7. Board Access to Dental Practice. By applying for and obtaining a permit for moderate sedation from the Board, an applicant or permittee agrees to allow the Board or its agent(s) access to his/her dental practice in order to inspect and evaluate the facility, equipment, personnel, procedures, techniques and documents to ensure that they comply with the “ADA Sedation Guidelines.” The Board, in its discretion, may perform random quality assurance audits, which may include, but are not limited to, a review of documentation of pre-sedation evaluations, sedation and recovery records, and documentation of appropriateness for discharge. The permit holder shall be responsible for the actual costs incurred in a formal reevaluation, not to exceed two hundred dollars.
- 8. Permits are Site Specific. All moderate permits are site specific and cannot be relocated to or extended to another site without site approval and a new permit issued by the Board.

D. Deep Sedation and General Anesthesia

1. Permit Required. No dentist shall employ or use deep sedation or general anesthesia as defined by the “ADA Guidelines” on an outpatient basis for dental patients, unless such dentist possesses a “Permit for Deep Sedation/General Anesthesia” issued by the Maine Board of Dental Examiners (The Board).
2. Duration of Permits. Permits issued by the Board pursuant to this rule shall not exceed five (5) years in duration, and must be renewed in order for the dentist to continue to perform moderate sedation. Dentists holding such permits shall be subject to review of their education, training, and office equipment and procedures at the discretion of the Board.
3. Method of Obtaining Permits. In order to receive a Permit for Deep Sedation/General Anesthesia, dentists must apply on a prescribed application form to the Board, submit an application fee of \$500.00, and meet the educational and training requirements established by this Chapter.
4. Qualifications for Permits for Deep Sedation/General Anesthesia: In order to obtain a Permit for Deep Sedation/General Anesthesia, dentist applicants must meet the following educational and training criteria:
 - a. Have successfully completed an advanced education program accredited by the ADA Commission on Dental Accreditation (CODA) that affords comprehensive and appropriate training necessary to administer and manage deep sedation or general anesthesia commensurate with Part IV.C of the “ADA Sedation Guidelines;”
 - b. Possess a current certification in: (a) Basic Life Support for Healthcare Providers (BCLS); and (b) Advanced Cardiac Life Support (ACLS) or an appropriate dental sedation/anesthesia emergency management course;
 - c. Have a properly equipped facility for the administration of deep sedation or general anesthesia staffed with a supervised team of auxiliary personnel capable of reasonably handling procedures, problems, and emergencies as outlined in the “ADA Sedation Guidelines;” and
 - d. Successfully completed an on-site facility, equipment, personnel, procedures, techniques and documents inspection by the Anesthesia Subcommittee, a subcommittee established by this Chapter whose membership is appointed by the Board to act as its agent(s) in performing these inspections. In performing the on-site facility inspections, the Anesthesia Subcommittee shall employ the “ADA Sedation Guidelines.” This evaluation may also include the observance of at least one actual or simulated procedure where the general anesthetic or sedation techniques are employed. **Hospitals licensed by the State of Maine or CODA**

accredited clinical settings are exempt from an on-site facility and equipment inspection.

5. Temporary Permit for Deep Sedation/General Anesthesia. The Board may issue a Temporary Permit for Deep Sedation/General Anesthesia to any applicant who meets the criteria established in sections (a) to (c) above, and have scheduled but not yet undergone an on-site inspection of his/her facility, equipment, personnel, procedures, techniques and documents inspection by the Anesthesia Subcommittee. Temporary permits for deep sedation/general anesthesia shall be nonrenewable and no more than six (6) months in duration.
6. Renewal of Permit for Deep Sedation/General Anesthesia. The Board may renew a permit if the following criteria are met:
 - a. The Board receives an application to renew the permit;
 - b. An on-site re-evaluation has been successfully completed by the Anesthesia Subcommittee within one (1) year prior to permit renewal;
 - c. The applicant has completed a minimum of six (6) continuing education hours biannually directly related to anesthesia/sedation, physical diagnosis, complications, techniques, A.C.L.S. and B.C.L.S.;
 - d. The applicant possesses a current certification in: (a) Basic Life Support for Healthcare Providers (BCLS); and (b) Advanced Cardiac Life Support (ACLS) or an appropriate dental sedation/anesthesia emergency management course;
 - e. The applicant pays the \$500.00 permit renewal fee; and
 - f. There are no other grounds to deny the renewal of the permit.
7. Board Access to Dental Practice. By applying for and obtaining a permit for deep sedation/general anesthesia from the Board, an applicant agrees to permit the Board or its agent(s) access to his/her dental practice in order to inspect and evaluate the facility, equipment, personnel, procedures, techniques and documents to ensure that they comply with the “ADA Sedation Guidelines.” The Board, in its discretion, may perform random quality assurance audits, which may include, but are not limited to, a review of documentation of pre-sedation evaluations, sedation and recovery records, and documentation of appropriateness for discharge. The permit holder shall be responsible for the actual costs incurred in a formal reevaluation, not to exceed two hundred dollars.
8. Permits are Site Specific. All deep sedation/general anesthesia permits are site specific and cannot be relocated to or extended to another site without site approval and a new permit issued by the Board

IV. STANDARD OF CARE

- A. Minimal Sedation. All dentists shall comply with the generally accepted standards as established by the “ADA Sedation Guidelines” for the administration of minimal sedation.

- B. **Moderate Sedation. All dentists administering moderate sedation shall:**
 - 1. **Comply with the generally accepted standards as established by the “ADA Sedation Guidelines” for the administration of moderate sedation; and**

 - 2. **Not have more than one patient under moderate sedation simultaneously with other patients in the dental office. EXEMPTION: A moderate sedation permittee may administer moderate sedation to no more than three patients within a Board-approved educational setting, for purposes of acting as an instructor.**

- C. Deep Sedation/General Anesthesia. All dentists shall comply with the generally accepted standards as established by the “ADA Sedation Guidelines” for the administration of deep sedation/general anesthesia. In addition, each permitted dentist administering deep sedation/general anesthesia:
 - 1. Must employ and document the use of continuous E.C.G. monitoring for all patients to whom deep sedation/general anesthesia is administered; and

 - 2. Must not have more than one patient under deep sedation/general anesthesia and/or moderate sedation simultaneously.

V. THE ANESTHESIA SUBCOMMITTEE

- A. General. The Board shall create an Anesthesia Subcommittee, which shall be comprised of at least three dental licensees who have successfully completed an advanced education program accredited by the ADA Commission on Dental Accreditation (CODA) that affords comprehensive and appropriate training necessary to administer and manage deep sedation or general anesthesia commensurate with Part IV.C of the “ADA Sedation Guidelines.”

- B. Authority. The Anesthesia Subcommittee is an agent of the Board created pursuant to 32 M.R.S. § 1073(1) & (2) in order to facilitate the Board’s inspection of numerous dental facilities located throughout the State of Maine that administer moderate and deep sedation/general anesthesia. As agents of the Board, Anesthesia Subcommittee members shall be reimbursed for travel expenses incurred while performing any inspection required prior to the issuance of a permit for moderate or deep sedation/general anesthesia pursuant to this Chapter.

C. Duties. The Anesthesia Subcommittee shall:

1. Perform all on-site inspections of the facilities, equipment, personnel, procedures, techniques and documents of any applicant or permittee as required by this Chapter.
2. Evaluate the applicant's facility, equipment, personnel, procedures, techniques and documents employing the "ADA Sedation Guidelines." This evaluation may also include the observance of at least one actual or simulated procedure where the general anesthetic or sedation techniques are employed.
3. Create a written report of the evaluation following the inspection.
4. Provide the Board and the applicant or permittee with a copy of the report of inspection.
5. Perform any follow-up inspections of the facility, equipment, personnel, procedures, techniques and documents of any applicant or permittee as directed by the Board.
6. At the discretion of the Board, perform random quality assurance audits of permittees, which may include, but are not limited to, a review of documentation of pre-sedation evaluations, sedation and recovery records, and documentation of appropriateness for discharge. The permit holder shall be responsible for the actual costs incurred in a formal reevaluation.
7. Advise the Board on any issues involving moderate sedation or deep sedation/general anesthesia.
8. Perform any other act not explicitly stated herein in the performance of its duties for the Board.

VI. BOARD ACTION.

- A. Board Action Upon Receipt of Application. The Board staff shall ensure that the application is complete and that all paperwork has been completed and all fees remitted before processing an application for a permit. Once a completed application is received, the Board staff shall consult with the Board's president or vice-president, who may decide, on behalf of the Board, to issue a temporary permit or full permit.
- B. Board Action Upon Receipt of Evaluation Report. In the event that the Board deems the inspection or evaluation unsatisfactory, a written explanation documenting deficiencies and suggested remedies shall be forwarded to the

applicant or permittee within fourteen days. The Board may issue a permit based on documentation that deficiencies have been corrected; or the Board may require a formal evaluation; or the applicant or permittee may request an appearance before the Board to address the documented deficiencies.

- C. Board Action Upon Receipt of Adverse Event Report. In the event that the Board receives a report regarding any mortality or morbidity occurring in the out-patient facilities of a dentist, the Board may, in its discretion, investigate the circumstances surrounding the mortality or morbidity, including but not limited to a review of the dentists' documentation of pre-sedation evaluations, and sedation and recovery records.
- VII. PROHIBITED CONDUCT. No dentist, without personally obtaining the appropriate sedation permit, may employ or work in conjunction with a moderate or deep sedation/general anesthesia provider in an out-patient dental facility unless that sedation provider is:
- A. A dentist holding a valid moderate or deep sedation/general anesthesia permit under this rule, provided that:
1. The moderate or deep sedation/general anesthesia provider remains on the premises of the dental facility until any patient given moderate or deep sedation/general anesthesia has adequately recovered; and
 2. The operating dentist shall provide advance written notification to the Board that moderate or deep sedation/general anesthesia services are provided at his or her facility by a physician anesthesiologist.
- B. A Maine licensed physician who has successfully completed graduate medical education in the field of anesthesiology, as defined by the Maine Board of Licensure in Medicine, provided that:
1. Such physician maintains successful completion of a course in advanced cardiac life support whenever moderate or deep sedation/general anesthesia is provided in a dental facility;
 2. The moderate or deep sedation/general anesthesia provider, whether a dentist or physician, remains on the premises of the dental facility until any patient given moderate or deep sedation/general anesthesia has adequately recovered; and
 3. The operating dentist shall provide advance written notification to the Board that moderate or deep sedation/general anesthesia services are provided at his or her facility by a physician anesthesiologist.

C. A Maine licensed certified registered nurse anesthetists, as defined by the Maine State Board of Nursing, provided that:

1. Such certified registered nurse anesthetist maintains successful completion of a course in advanced cardiac life support whenever moderate or deep sedation/general anesthesia is provided in a dental facility;
2. The certified registered nurse anesthetist remains on the premises of the dental facility until any patient given moderate or deep sedation/general anesthesia has adequately recovered;
3. The operating dentist shall provide advance written notification to the Board that moderate or deep sedation/general anesthesia services are provided at his or her facility by a certified registered nurse anesthetists; and
4. The dental facility has successfully completed a Board-approved facility inspection within six (6) months of the operating dentist providing the Board with written notification that the moderate or deep sedation/general anesthesia services are provided at the facility by a certified nurse anesthetist, which inspection shall be repeated at intervals not to exceed five (5) years.

Failure to comply with the requirements of this section may result in disciplinary action against the operating dentist.

VIII. PENALTIES FOR VIOLATIONS. A violation of these rules pertaining to the use of Moderate or Deep Sedation/General Anesthesia shall constitute unprofessional conduct and may result in disciplinary action against the licensee.

STATUTORY AUTHORITY: 32 M.R.S.A. §§ 1073 (2), 1089.

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

313 BOARD OF DENTAL EXAMINERS

Chapter 15 Mortality or Significant Health Incidents in a Dental Office.

Summary: This rules requires licensees to report to the Board mortality or significant health incidents that occur in a dental office.

All licensees shall file a written report with the Board within thirty days from the date of the occurrence of any mortality or significant health incident(s) requiring medical care as a sequela of care in a dental office.

STATUTORY AUTHORITY: 32 M.R.S.A. § 1073(2).

02	DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
313	BOARD OF DENTAL EXAMINERS
373	BOARD OF LICENSURE IN MEDICINE
380	STATE BOARD OF NURSING
383	BOARD OF OSTEOPATHIC LICENSURE
396	BOARD OF LICENSURE OF PODIATRIC MEDICINE

Chapter 21: USE OF CONTROLLED SUBSTANCES FOR TREATMENT OF PAIN

Summary: Chapter 21 is a joint rule of the Board of Osteopathic Licensure, the Board of Licensure in Medicine, the Board of Dental Examiners, the Board of Nursing and the Board of Podiatric Medicine to ensure adequate relief of pain to the citizens of Maine.

Rule Index

Section I:	Definitions
Section II:	Joint Statement on the Treatment of Pain
Section III:	Principles of Proper Pain Management
Section IV:	Controlled Substances Contract

Section I: Definitions. As used by the Boards when evaluating practice and prescribing issues, the following terms are defined as follows:

1. **Acute pain** – Acute pain is the normal, predicted physiological response to a noxious chemical, thermal or mechanical stimulus and typically is associated with invasive procedures, trauma and disease. It is generally time-limited.
2. **Addiction** – Addiction is a primary, chronic, neurobiologic disease, with genetic, psychosocial and environmental factors influencing its development and manifestations. It is characterized by behaviors that include the following: impaired control over drug use, craving, compulsive use and continued use despite harm. Physical dependence and tolerance are normal physiological consequences of extended opioid therapy for pain and are not the same as addiction.
3. **Chronic Pain** – Chronic pain is a state in which pain persists beyond the usual course of an acute disease or healing of an injury that may or may not be associated with an acute or chronic pathologic process that causes continuous or intermittent pain over months or years.
4. **Clinician** – An allopathic (MD) or osteopathic (DO) physician, physician assistant (PA), nurse practitioner (NP) or certified nurse midwife (CNM), dentist (DMD or DDS), or podiatrist (DPM).
5. **Pain** – An unpleasant sensory and emotional experience associated with actual or potential tissue damage or described in terms of such damage.
6. **Physical Dependence** – Physical dependence is a state of adaptation manifested by drug class-specific signs and symptoms that can be produced by abrupt cessation, rapid dose reduction,

decreasing blood level of the drug, and/or administration of an antagonist. Physical dependence, by itself, does not equate with addiction.

7. **Pseudoaddiction** – the iatrogenic syndrome (medically caused) resulting from the misinterpretation of relief seeking behaviors as though they are drug-seeking behaviors that are commonly seen with addiction. The relief seeking behaviors resolve upon institution of effective analgesic therapy.

8. **Substance Abuse** – Substance abuse is the use of any substance(s) for non-therapeutic purposes of medication for purposes other than those for which it is prescribed.

9. **Tolerance** – Tolerance is a physiologic state resulting from regular use of a drug in which an increased dosage is needed to produce a specific effect or a reduced effect is observed with a constant dose over time. Tolerance may or may not be evident during opioid treatment and does not equate with addiction.

Section II: Joint Statement on the Treatment of Pain.

The Boards recognize that principles of quality medical, dental and advanced nursing practice dictate that the people of the State of Maine have access to appropriate and effective pain relief. The appropriate application of up-to-date knowledge and treatment modalities can serve to improve the quality of life for those patients who suffer from pain as well as to reduce the morbidity and costs associated with untreated or inappropriately treated pain. For the purposes of this rule, the inappropriate treatment of pain includes nontreatment, undertreatment, overtreatment and the continued use of ineffective treatments.

The diagnosis and treatment of pain is integral to the practice of medicine, dentistry and advanced nursing. The Boards encourage clinicians to view pain management as a part of quality medical practice for all patients with pain, acute or chronic, and it is especially urgent for patients who experience pain as a result of terminal illness. All clinicians should become knowledgeable about assessing patients' pain and effective methods of pain treatment, as well as statutory requirements for prescribing controlled substances. Accordingly, this rule has been developed to clarify the Boards' position on pain control, particularly as related to the use of controlled substances, to alleviate clinician uncertainty and to encourage better pain management.

Inappropriate pain treatment may result from clinicians' lack of knowledge about pain management. Fears of investigation or sanction by federal, state and local agencies may also result in inappropriate treatment of pain. Appropriate pain management is the treating clinician's responsibility. As such, the Boards will consider the inappropriate treatment of pain to be a departure from standards of practice and will investigate such allegations, recognizing that some types of pain cannot be completely relieved, and taking into account whether the treatment is appropriate for the diagnosis.

The Boards recognize controlled substances, including opioid analgesics, may be essential in the treatment of acute pain due to trauma or surgery and chronic pain, whether due to cancer or non-cancer origins. The Boards will refer to current clinical practice guidelines and expert review in approaching cases involving management of pain. The management of pain should consider current clinical knowledge and scientific research and the use of pharmacologic and non-pharmacologic modalities according to the judgment of the clinician. Pain should be assessed and treated promptly and the quantity and frequency of doses should be adjusted according to the intensity, duration of the pain and treatment outcomes. Clinicians should recognize that tolerance and physical dependence are normal consequences of sustained use of opioid analgesics and are not the same as addiction.

The Boards are obligated under the laws of the State of Maine to protect the public health and safety. The Boards recognize that the use of opioid analgesics for other than legitimate medical purposes poses a threat to the individual and society and that the inappropriate prescribing of controlled substances, including opioid analgesics, may lead to drug diversion and abuse by individuals who seek them for other than legitimate medical use. Accordingly, the Boards expect that clinicians will incorporate safeguards into their practices to minimize the potential for the abuse and diversion of controlled substances.

Clinicians should not fear disciplinary action from the Boards for ordering, prescribing, dispensing or administering controlled substances, including opioid analgesics, for a legitimate medical purpose and in the course of professional practice. The Boards will consider prescribing, ordering, dispensing or administering controlled substances for pain to be for a legitimate medical purpose if based on sound clinical judgment. All such prescribing must be based on clear documentation of unrelieved pain. To be within the usual course of professional practice, a clinician-patient relationship must exist and the prescribing should be based on a diagnosis and documentation of unrelieved pain. Compliance with applicable state and/or federal law is required.

The Boards will judge the validity of the clinician's treatment of the patient based on available documentation, rather than solely on the quantity and duration of medication administration. The goal is to control the patient's pain while effectively addressing other aspects of the patient's functioning, including physical, psychological, social and work-related factors.

Allegations of inappropriate pain management will be evaluated on an individual basis. The Boards will not take disciplinary action against a clinician for deviating from this rule when contemporaneous medical records document reasonable cause for deviation. The clinician's conduct will be evaluated to a great extent by the outcome of pain treatment, recognizing that some types of pain cannot be completely relieved, and by taking into account whether the drug used is appropriate for the diagnosis, as well as improvement in patient functioning and/or quality of life.

Section III: Principles of Proper Pain Management

The Boards have adopted the following criteria when evaluating the clinician's treatment of pain including the use of controlled substances. Each of these principles is essential in the treatment of patients with pain.

- Evaluation of the Patient** — A medical history and appropriate physical examination must be obtained, evaluated and documented in the medical record. The medical record should document the nature and intensity of the pain, current and past treatments for pain, underlying or coexisting diseases or conditions, the effect of the pain on physical and psychological function and history of substance abuse. It is recommended that the State's Controlled Substance Prescription Monitoring Program Database (PMP) be utilized. The medical record also should document the presence of one or more recognized medical indications for the use of a controlled substance.
- Treatment Plan** — The written treatment plan should state objectives that will be used to determine treatment success, such as pain relief and improved physical and psychosocial function, and should indicate if any further diagnostic evaluations or other treatments are planned. After treatment begins, the clinician should adjust drug therapy to the individual medical needs of each patient. Other treatment modalities or a rehabilitation program may be necessary depending on the etiology of the pain and the extent to which the pain is associated with physical and psychosocial impairment.
- Informed Consent and Agreement for Treatment** — The clinician should discuss the risks and benefits of the use of controlled substances with the patient, persons designated by the patient or with the

patient's surrogate or guardian if the patient is without medical decision-making capacity. The patient should receive prescriptions from one clinician and one pharmacy whenever possible. If the patient is at high risk for medication abuse or has a history of substance abuse or substance dependence, the clinician should use a written agreement between clinician and patient outlining patient responsibilities, including:

- a. urine/serum medication levels screening when requested;
- b. pill count when requested;
- c. number and frequency of all prescription refills; and
- d. reasons for which drug therapy may be discontinued (e.g., violation of agreement).

4. **Periodic Review of Treatment Efficacy** — The clinician should periodically review the course of pain treatment and any new information about the etiology of the pain or the patient's state of health. Continuation or modification of controlled substances for pain management therapy depends on the clinician's evaluation of progress toward treatment objectives. Satisfactory response to treatment may be indicated by the patient's decreased pain, increased level of function or improved quality of life. Objective evidence of improved or diminished function should be monitored and information from family members or other caregivers should be considered in determining the patient's response to treatment. If the patient's progress is unsatisfactory, the clinician should assess the appropriateness of continued use of the current treatment plan and consider the use of other therapeutic modalities. Likewise, the clinician should periodically review the course of treatment where psychoactive drugs are used for the treatment of components of chronic pain, e.g., emotional, psychological, or psychosocial stressors, and assess the appropriateness of continued use of the current treatment plan if the patient's progress is unsatisfactory.

5. **Consultation or Referral** — The clinician should consult or refer, as necessary, for additional evaluation and treatment in order to achieve treatment objectives. Special attention should be given to those patients with pain who are at risk for medication misuse, abuse or diversion. Chronic pain often has, as a component, emotional, psychological, or psychosocial stress. In these situations, a number of patients may benefit from psychoactive medications, as well as controlled substances for pain control. The combination of opiates with psychoactive medications, e.g., benzodiazepines, may place the patient at greater risk. The risk may be associated with drug interaction, potentiation, or abuse. In these situations, consultation with or referral to an expert in the management of such patients may be required.

6. **Medical Records** — The clinician should keep accurate and complete records to include:

- a. the medical history and appropriate physical examination;
- b. diagnostic, therapeutic and laboratory results;
- c. evaluations and consultations;
- d. treatment objectives;
- e. discussion of risks and benefits;

- f. informed consent;
- g. treatments;
- h. medications (including date, type, dosage and quantity prescribed);
- i. instructions and agreements; and
- j. periodic reviews.

Records should remain current and be maintained in an accessible manner, readily available for review.

7. **Reportable Acts** — Generally, information gained as part of the clinician/patient relationship remains confidential. However, the clinician has an obligation to deal with persons who use the clinician to perpetrate illegal acts, such as illegal acquisition or selling of drugs; this may include reporting to law enforcement. Information suggesting inappropriate or drug-seeking behavior, should be addressed appropriately and documented. Use of the PMP is recommended.

8. **Compliance With Controlled Substances Laws and Regulations** — To prescribe, dispense or administer controlled substances, the clinician must be licensed or otherwise authorized and comply with applicable federal and state regulations. Clinicians are referred to the *Physicians Manual of the U.S. Drug Enforcement Administration* and any relevant documents issued by the appropriate board or agency for specific rules governing controlled substances as well as applicable state regulations.

Section IV: Controlled Substances Contract.

Suggested elements of a controlled substance contract are as follows:

1. Specifies that the clinician is the single source of controlled substances;
2. May specify the pharmacy;
3. Provides written, informed consent to release contract to local emergency departments and pharmacies;
4. If written consent is given for release to local emergency departments and/or pharmacies, consent is also being given to the other clinicians and providers such as pharmacists to report violations of the contract back to the prescribing clinician;
5. Specifies that if the clinician becomes concerned that there has been illegal activity, the clinician may notify the proper authorities;
6. Provides that if the clinician has obtained a written release, ER personnel and other providers shall report violations of the contract back to the doctor who prescribed the controlled substance(s);
7. Specifies that a violation of the contract will result in a tapering and discontinuation of the narcotics prescription;

8. Specifies that a risk of chronic narcotics treatment is physical dependence (as defined);
9. Specifies that a risk of chronic narcotics treatment is addiction (as defined);
10. Specifies that it is the responsibility of the patient to be discreet about possessing narcotics and keeping medications in an inaccessible place so that they may not be stolen;
11. If the patient violates the terms of the contract, the violation should be documented. The clinician response to the violation should be documented, as well as the rationale of and changes in the treatment plan;
12. Clinician may consider “fill only at _____ pharmacy” on the prescription form;
13. Specifies use of urine/serum medications levels screening when appropriate; and
14. Specifies use of a pill count when appropriate.

STATUTORY AUTHORITY:

- R. 2009, c. 56
- 32 MRSA §1072 and 1073(2) (Board of Dental Examiners)
- 32 MRSA §§2102(2-A) and 2153-A(1) (State Board of Nursing)
- 32 MRSA §2562 (Board of Osteopathic Licensure)
- 32 MRSA §3269(3), (7) (Board of Licensure in Medicine)
- 32 MRSA §3605-B (Board of Licensure of Podiatric Medicine)

EFFECTIVE DATE: JUNE 13, 2010