

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-ONE

—
H.P. 42 - L.D. 76

**An Act To Amend the Dental Practice Act To Define "Supervision" and
Authorize Teledentistry**

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the sole purpose of the Board of Dental Practice is to protect the public health and welfare by ensuring that the public is served by competent and honest practitioners and by establishing minimum standards of proficiency; and

Whereas, pursuant to Public Law 2019, chapter 388, section 11, the Board of Dental Practice issued a legislative report dated January 31, 2020, making recommendations to further revise the Dental Practice Act by revising existing supervision and scopes of practice provisions, to consider technological advances such as the use of teledentistry to provide greater flexibility in the delivery of dental services and to improve access to dental care in Maine; and

Whereas, LD 2146, An Act To Implement the Recommendations of the Board of Dental Practice Related to the Definitions of "Supervision" and "Teledentistry," was introduced during the Second Regular Session of the 129th Legislature, but was not enacted due to the existing state of civil emergency due to the COVID-19 pandemic; and

Whereas, substantive policy decisions such as authorizing the use of teledentistry and refining scopes of practice, including levels of supervision, are appropriate for the legislative process, not an administrative rule-making process; and

Whereas, immediate enactment of this legislation is necessary to authorize dental professionals to fully exercise their scopes of practice and use available technologies to provide care; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 32 MRSA §18302, sub-§18, as enacted by PL 2015, c. 429, §21, is amended to read:

18. Direct supervision. "Direct supervision" means the supervision required ~~by the board by rule~~ of those tasks and procedures requiring the physical presence of the supervisor in the practice setting at the time such tasks or procedures are being performed. In order to provide direct supervision of patient treatment, the supervisor must at least identify or diagnose the condition to be treated, and authorize the treatment procedure prior to implementation and examine the condition after treatment and prior to the patient's discharge.

Sec. 2. 32 MRSA §18302, sub-§22, as enacted by PL 2015, c. 429, §21, is amended to read:

22. General supervision. "General supervision" means the supervision ~~required by the board by rule~~ of those tasks and procedures ~~when that do not require~~ the physical presence of the supervisor ~~is not required~~ in the practice setting while procedures are being performed but do require the tasks and procedures to be performed with the prior knowledge and consent of the supervisor.

Sec. 3. 32 MRSA §18302, sub-§35 is enacted to read:

35. Supervision. "Supervision" means either direct supervision or general supervision as determined by the tasks and procedures that are being performed in accordance with this chapter.

Sec. 4. 32 MRSA §18302, sub-§36 is enacted to read:

36. Supervisor. "Supervisor" means an individual licensed by the board and authorized to provide supervision under this chapter.

Sec. 5. 32 MRSA §18302, sub-§37 is enacted to read:

37. Teledentistry. "Teledentistry," as it pertains to the delivery of oral health care services, means the use of interactive, real-time visual, audio or other electronic media for the purposes of education, assessment, examination, diagnosis, treatment planning, consultation and directing the delivery of treatment by individuals licensed under this chapter and includes synchronous encounters, asynchronous encounters, remote patient monitoring and mobile oral health care in accordance with practice guidelines specified in rules adopted by the board.

Sec. 6. 32 MRSA §18342, sub-§6, ¶D, as enacted by PL 2015, c. 429, §21, is amended to read:

D. A statement from the ~~sponsoring~~ supervising dentist that demonstrates that the level of supervision and control of the services to be performed by the applicant are adequate and that the performance of these services are within the applicant's dental knowledge and skill.

Sec. 7. 32 MRSA §18371, sub-§2, ¶E, as enacted by PL 2015, c. 429, §21, is amended to read:

E. An individual with a resident dentist license may provide dental services only under the supervision of ~~the sponsoring a~~ a dentist and in accordance with the level of supervision and control for which the license was issued by the board.

Sec. 8. 32 MRSA §18371, sub-§3, as amended by PL 2017, c. 388, §15, is repealed and the following enacted in its place:

3. Delegation authorized. A dentist may delegate to an unlicensed person or a licensed person activities related to dental care and treatment that are delegated by custom and usage as long as those activities are under the supervision or control of the dentist. A dentist who delegates activities to an unlicensed person as described is legally liable for the activities of that unlicensed person and the unlicensed person in this relationship is considered the dentist's agent.

Sec. 9. 32 MRSA §18371, sub-§4, as amended by PL 2017, c. 288, Pt. A, §35, is further amended to read:

4. Delegation not authorized. A dentist may not delegate any dental activity not listed in subsection 3 or 6 to an unlicensed person activities related to dental care or treatment that require a license under this chapter. A dentist may not delegate to a licensed person activities related to dental care or treatment that are outside the scope of practice of that licensed person.

Sec. 10. 32 MRSA §18373, sub-§1, as amended by PL 2017, c. 388, §17, is further amended to read:

1. Scope of practice; ~~direct supervision.~~ An expanded function dental assistant may perform under the ~~direct~~ general supervision of a dentist all of the activities that may be delegated by a dentist to an unlicensed person pursuant to section 18371, subsection 3, ~~paragraph C.~~ An expanded function dental assistant may also perform the following activities authorized under the ~~direct~~ general supervision of a dentist:

- A. Apply cavity liners and bases as long as the dentist:
 - (1) Has ordered the cavity liner or base; and
 - (2) Has checked the cavity liner or base prior to the placement of the restoration; and
 - (3) ~~Has checked the final restoration prior to patient dismissal;~~
- B. Apply pit and fissure sealants after an evaluation of the teeth by the dentist at the time of sealant placement;
- C. Apply supragingival desensitizing agents to an exposed root surface or dentinal surface of teeth;
- D. Apply topical fluorides recognized for the prevention of dental caries;
- E. ~~Cement provisional or temporary crowns and bridges and remove excess cement;~~
- F. ~~Perform pulp vitality tests;~~
- G. Place and contour amalgam, composite and other restorative materials prior to the final setting or curing of the material;
- I. Place and remove gingival retraction cord;
- K. Size, place and cement or bond orthodontic bands and brackets with final inspection by the dentist;

~~L. Supragingival polishing.—A dentist or a dental hygienist must first determine that the teeth to be polished are free of calculus or other extraneous material prior to polishing. Dentists may permit an expanded function dental assistant to use only using a slow-speed rotary instrument and rubber cup.—Dentists may allow an expanded function dental assistant to use high-speed, power-driven handpieces or instruments to contour or finish newly placed composite materials; and~~

~~M. Obtain impressions for athletic mouth guards, provisional or temporary crowns and bridges.~~

HH. Contour or finish restorative materials using a high-speed, power-driven handpiece or instrument.

Sec. 11. 32 MRSA §18373, sub-§2, as amended by PL 2017, c. 388, §17, is repealed.

Sec. 12. 32 MRSA §18374, as amended by PL 2017, c. 388, §§18 and 19, is further amended to read:

§18374. Dental hygienist

1. Scope of practice; direct supervision. A dental hygienist and faculty dental hygienist may perform the following ~~procedures~~ under the direct supervision of a dentist:

A. Administer local anesthesia or nitrous oxide analgesia, as long as the dental hygienist or faculty dental hygienist has authority to administer the relevant medication pursuant to section 18345, subsection 2, paragraph D or E;

~~B. Irrigate and dry root canals;~~

~~C. Record readings with a digital caries detector and report them to the dentist for interpretation and evaluation;~~

~~D. Remove socket dressings;~~

~~E. Take cytological smears as requested by the dentist; and~~

~~F. Obtain impressions for nightguards and occlusal splints.~~

2. Scope of practice; general supervision. A dental hygienist and faculty dental hygienist may perform under the general supervision of a dentist all of the activities that may be delegated to an unlicensed person pursuant to section 18371, subsection 3, ~~except the activities in section 18371, subsection 3, paragraph C, subparagraphs (6), (17) and (19).~~ A dental hygienist and faculty dental hygienist may also perform the following procedures under the general supervision of a dentist:

A. Prescribe, dispense or administer anticavity toothpastes or topical gels with 1.1% or less sodium fluoride and oral rinses with 0.05%, 0.2%, 0.44% or 0.5% sodium fluoride, as well as chlorhexidine gluconate oral rinse;

C. Apply desensitizing agents to teeth;

D. Apply fluoride to control caries;

F. Apply sealants;

J. Expose and process radiographs;

~~O. Interview patients and record complete medical and dental histories;~~

- ~~R. Obtain bacterial sampling when treatment is planned by the dentist;~~
- S. Perform all procedures necessary for a complete prophylaxis, including root planing;
- U. Perform complete periodontal and dental restorative charting;
- X. Perform oral inspections, recording all conditions that should be called to the attention of the dentist;
- ~~Y. Perform postoperative irrigation of surgical sites;~~
- ~~CC. Place and remove gingival retraction cord without vasoconstrictor;~~
- GG. Place localized delivery of chemotherapeutic agents when treatment is planned by the dentist;
- JJ. Place temporary restorations as an emergency procedure, as long as the patient is informed of the temporary nature of the restoration; and
- ~~LL. Prepare tooth sites and surfaces with a rubber cup and pumice for banding or bonding of orthodontic brackets. This procedure may not be interpreted as a preparation for restorative material;~~
- TT. Smooth and polish amalgam restorations; and
- ~~VV. Obtain impressions for study casts, athletic mouth guards, custom trays, bleaching trays, fluoride trays, opposing models, retainers and stents.~~

3. Limitation. An individual with a faculty dental hygienist license may provide the services described in this section only as part of the education program for which the license was issued by the board.

Sec. 13. 32 MRSA §18377, sub-§1, as amended by PL 2019, c. 388, §10, is further amended to read:

1. Scope of practice. A dental therapist may perform the following procedures in limited practice settings, if authorized by a written practice agreement with a dentist licensed in this State pursuant to subsection 3.

- A. To the extent permitted in a written practice agreement, a dental therapist may provide the care and services listed in this paragraph only under the direct supervision of the supervising dentist:
 - (1) Perform oral health assessments, pulpal disease assessments for primary and young teeth, simple cavity preparations and restorations and simple extractions;
 - (2) Prepare and place stainless steel crowns and aesthetic anterior crowns for primary incisors and prepare, place and remove space maintainers;
 - ~~(3) Provide referrals;~~
 - (4) Administer local anesthesia and nitrous oxide analgesia;
 - ~~(5) Perform preventive services;~~
 - (6) Conduct urgent management of dental trauma, perform suturing, extract primary teeth and perform nonsurgical extractions of periodontally diseased permanent teeth if authorized in advance by the supervising dentist; and

- (7) Provide, dispense and administer anti-inflammatories, nonprescription analgesics, antimicrobials, antibiotics and anticaries materials;
- (8) Administer radiographs; and
- (9) Perform other related services and functions authorized by the supervising dentist and for which the dental therapist is trained.

B. To the extent permitted in a written practice agreement, a dental therapist may provide the care and services ~~listed in~~ identified in section 18371, subsection 3 and section 18374, subsections 1 and 2 under the general supervision of the supervising dentist.

Sec. 14. 32 MRSA §18394 is enacted to read:

§18394. Teledentistry

An individual licensed under this chapter may provide oral health care services and procedures authorized under this chapter or by rule using teledentistry. The board shall adopt by rule guidelines and practice standards for the use of teledentistry, including, but not limited to, practice requirements for protecting patient rights and protocols for referrals, quality and safety, informed consent, patient evaluation, treatment parameters, patient records, prescribing, supervision and compliance with data exchange standards for the security and confidentiality of patient information. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.