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No. 2146

H.P. 1535

House of Representatives, March 10, 2020

An Act To Implement the Recommendations of the Board of Dental Practice Related to the Definitions of "Supervision" and "Teledentistry"

Reported by Representative TEPLER of Topsham for the Joint Standing Committee on Health Coverage, Insurance and Financial Services pursuant to Public Law 2019, chapter 388, section 11.

Reference to the Committee on Health Coverage, Insurance and Financial Services suggested and ordered printed pursuant to Joint Rule 218.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

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

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

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

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

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

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

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

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

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

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

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

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

35 D. A statement from the sponsoring supervising dentist that demonstrates that the
36 level of supervision and control of the services to be performed by the applicant are

1 adequate and that the performance of these services are within the applicant's dental
2 knowledge and skill.

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

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

8 **Sec. 8. 32 MRSA §18371, sub-§3**, as amended by PL 2017, c. 388, §15, is
9 further amended to read:

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

16 ~~A. A dentist may delegate the following activities to an unlicensed person as long as~~
17 ~~these activities are conducted under the general supervision of the delegating dentist:~~

18 ~~(1) Changing or replacing dry socket packets after diagnosis and treatment~~
19 ~~planned by a dentist;~~

20 ~~(2) For instruction purposes, demonstrating to a patient how the patient should~~
21 ~~place and remove removable prostheses, appliances or retainers;~~

22 ~~(3) For the purpose of eliminating pain or discomfort, removing loose, broken or~~
23 ~~irritating orthodontic appliances;~~

24 ~~(4) Giving oral health instructions;~~

25 ~~(5) Irrigating and aspirating the oral cavity;~~

26 ~~(6) Performing dietary analyses for dental disease control;~~

27 ~~(7) Placing and recementing with temporary cement an existing crown that has~~
28 ~~fallen out as long as the dentist is promptly notified that this procedure was~~
29 ~~performed so that appropriate follow-up can occur;~~

30 ~~(8) Placing and removing periodontal dressing;~~

31 ~~(9) Pouring and trimming dental models;~~

32 ~~(10) Removing sutures and scheduling a follow-up appointment with the dentist~~
33 ~~within 7 to 10 days of suture removal;~~

34 ~~(11) Retracting lips, cheek, tongue and other tissue parts;~~

35 ~~(12) Obtaining impressions for study casts;~~

36 ~~(13) Taking and recording the vital signs of blood pressure, pulse and~~
37 ~~temperature;~~

1 (14) Taking dental plaque smears for microscopic inspection and patient
2 education; and

3 (15) Taking intraoral photographs.

4 B. If the unlicensed person has successfully passed a certification examination
5 administered by a national dental assisting board, the dentist may delegate to that
6 unlicensed person the following additional activities, as long as these activities are
7 conducted under the general supervision of the dentist:

8 (1) Placing temporary fillings on an emergency basis as long as the patient is
9 informed of the temporary nature of the fillings; and

10 (2) Removing excess cement from the supragingival surfaces of teeth.

11 C. A dentist may delegate to an unlicensed person the following intraoral activities,
12 which must be conducted under the direct supervision of the delegating dentist:

13 (1) Applying cavity varnish;

14 (2) Applying liquids, pastes and gel topical anesthetics;

15 (3) Assisting a dentist who provides orthodontic services in preparation of teeth
16 for attaching, bonding and cementing fixed appliances in a manner appropriate
17 and according to manufacturer's directions;

18 (4) Delivering, but not condensing or packing, amalgam or composite restoration
19 material;

20 (5) Fabricating temporary crowns and bridges, limiting handpiece rotary
21 instrumentation used in the fabrication to extraoral use only, as long as the dentist
22 checks the occlusion and fit prior to releasing the patient;

23 (6) Irrigating and drying root canals;

24 (7) Isolating the operative field;

25 (8) Performing pulp vitality testing with confirmation by the dentist;

26 (9) Performing electronic vitality scanning with confirmation by the dentist;

27 (10) Performing preliminary selection and fitting of orthodontic bands, with final
28 placement and cementing in the patient's mouth by the dentist;

29 (11) Placing and cementing temporary crowns with temporary cement;

30 (12) Placing and removing matrix bands, rubber dams and wedges;

31 (13) Placing elastics and instructing in their use;

32 (14) Placing, holding or removing celluloid and other plastic strips prior to or
33 subsequent to the placement of a filling by the dentist;

34 (15) Placing or removing temporary separating devices;

35 (16) Placing wires, pins and elastic ligatures to tie in orthodontic arch wires that
36 have been fitted and approved by the dentist at the time of insertion;

- 1 (17) ~~Preparing tooth sites and surfaces with a rubber cup and pumice for banding~~
2 ~~or bonding of orthodontic brackets. This procedure may not be intended or~~
3 ~~interpreted as an oral prophylaxis, which is a procedure specifically reserved to~~
4 ~~be performed by dental hygienists or dentists. This procedure also may not be~~
5 ~~intended or interpreted as a preparation for restorative material. A dentist or~~
6 ~~dental hygienist shall check and approve the procedure;~~
- 7 (18) ~~Reapplying, on an emergency basis only, orthodontic brackets;~~
- 8 (19) ~~Recording readings with a digital caries detector and reporting them to the~~
9 ~~dentist for interpretation and evaluation;~~
- 10 (20) ~~Removing composite material using slow-speed instrumentation for~~
11 ~~debonding brackets, as long as the dentist conducts a final check prior to release~~
12 ~~of the patient;~~
- 13 (21) ~~Removing excess cement from the supragingival surfaces of teeth;~~
- 14 (22) ~~Removing gingival retraction cord;~~
- 15 (23) ~~Removing orthodontic arch wires and tension devices and any loose bands~~
16 ~~or bonds, but only as directed by the dentist;~~
- 17 (24) ~~Selecting and trying in stainless steel or other preformed crowns for~~
18 ~~insertion by the dentist;~~
- 19 (25) ~~Obtaining impressions for opposing models and retainers;~~
- 20 (26) ~~Obtaining impressions for single-arch athletic mouth guards, bleaching~~
21 ~~trays, custom trays and fluoride trays; and~~
- 22 (27) ~~Taking intraoral measurements and making preliminary selection of arch~~
23 ~~wires and intraoral and extraoral appliances, including head gear.~~

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

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

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

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

38 A. Apply cavity liners and bases as long as the dentist:

- 39 (1) Has ordered the cavity liner or base; and

- 1 (2) Has checked the cavity liner or base prior to the placement of the restoration;
 2 and
 3 (3) ~~Has checked the final restoration prior to patient dismissal;~~
 4 B. Apply pit and fissure sealants after an evaluation of the teeth by the dentist at the
 5 time of sealant placement;
 6 C. Apply supragingival desensitizing agents to an exposed root surface or dentinal
 7 surface of teeth;
 8 D. Apply topical fluorides recognized for the prevention of dental caries;
 9 E. ~~Cement provisional or temporary crowns and bridges and remove excess cement;~~
 10 F. ~~Perform pulp vitality tests;~~
 11 G. Place and contour amalgam, composite and other restorative materials prior to the
 12 final setting or curing of the material;
 13 I. Place and remove gingival retraction cord;
 14 K. Size, place and cement or bond orthodontic bands and brackets with final
 15 inspection by the dentist;
 16 L. ~~Supragingival polishing.—A dentist or a dental hygienist must first determine that~~
 17 ~~the teeth to be polished are free of calculus or other extraneous material prior to~~
 18 ~~polishing. Dentists may permit an expanded function dental assistant to use only~~
 19 ~~using a slow-speed rotary instrument and rubber cup.—Dentists may allow an~~
 20 ~~expanded function dental assistant to use high-speed, power-driven handpieces or~~
 21 ~~instruments to contour or finish newly placed composite materials; and~~
 22 M. ~~Obtain impressions for athletic mouth guards, provisional or temporary crowns~~
 23 ~~and bridges.~~
 24 HH. Contour or finish restorative materials using a high-speed, power-driven
 25 handpiece or instrument.

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

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

30 **§18374. Dental hygienist**

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

- 34 A. Administer local anesthesia or nitrous oxide analgesia, as long as the dental
 35 hygienist or faculty dental hygienist has authority to administer the relevant
 36 medication pursuant to section 18345, subsection 2, paragraph D or E;
 37 B. ~~Irrigate and dry root canals;~~

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

3 ~~D. Remove socket dressings;~~

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

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

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

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

15 ~~C. Apply desensitizing agents to teeth;~~

16 ~~D. Apply fluoride to control caries;~~

17 F. Apply sealants;

18 J. Expose and process radiographs;

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

20 ~~R. Obtain bacterial sampling when treatment is planned by the dentist;~~

21 S. Perform all procedures necessary for a complete prophylaxis, including root
22 planing;

23 U. Perform complete periodontal and dental restorative charting;

24 X. Perform oral inspections, recording all conditions that should be called to the
25 attention of the dentist;

26 ~~Y. Perform postoperative irrigation of surgical sites;~~

27 ~~CC. Place and remove gingival retraction cord without vasoconstrictor;~~

28 GG. Place localized delivery of chemotherapeutic agents when treatment is planned
29 by the dentist;

30 JJ. Place temporary restorations as an emergency procedure, as long as the patient is
31 informed of the temporary nature of the restoration; and

32 ~~LL. Prepare tooth sites and surfaces with a rubber cup and pumice for banding or~~
33 ~~bonding of orthodontic brackets. This procedure may not be interpreted as a~~
34 ~~preparation for restorative material;~~

35 TT. Smooth and polish amalgam restorations; and

36 ~~VV. Obtain impressions for study casts, athletic mouth guards, custom trays,~~
37 ~~bleaching trays, fluoride trays, opposing models, retainers and stents.~~

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

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

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

9 A. To the extent permitted in a written practice agreement, a dental therapist may
10 provide the care and services listed in this paragraph only under the direct supervision
11 of the supervising dentist:

12 (1) Perform oral health assessments, pulpal disease assessments for primary and
13 young teeth, simple cavity preparations and restorations and simple extractions;

14 (2) Prepare and place stainless steel crowns and aesthetic anterior crowns for
15 primary incisors and prepare, place and remove space maintainers;

16 ~~(3) Provide referrals;~~

17 (4) Administer local anesthesia and nitrous oxide analgesia;

18 ~~(5) Perform preventive services;~~

19 (6) Conduct urgent management of dental trauma, perform suturing, extract
20 primary teeth and perform nonsurgical extractions of periodontally diseased
21 permanent teeth if authorized in advance by the supervising dentist; and

22 (7) Provide, dispense and administer anti-inflammatories, nonprescription
23 analgesics, antimicrobials, antibiotics and anticaries materials; and

24 ~~(8) Administer radiographs; and~~

25 ~~(9) Perform other related services and functions authorized by the supervising~~
26 ~~dentist and for which the dental therapist is trained.~~

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

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

32 **§18394. Teledentistry**

33 An individual licensed under this chapter may provide oral health care services and
34 procedures authorized under this chapter or by rule using teledentistry. The board shall
35 adopt by rule guidelines and practice standards for the use of teledentistry, including, but
36 not limited to, practice requirements for protecting patient rights and protocols for
37 referrals, quality and safety, informed consent, patient evaluation, treatment parameters,
38 patient records, prescribing, supervision and compliance with data exchange standards for

1 the security and confidentiality of patient information. Rules adopted pursuant to this
2 section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

3 **Sec. 15. Board of Dental Practice to review dental practice laws and**
4 **recommend changes.** The Board of Dental Practice, in consultation with interested
5 parties, shall review the Maine Revised Statutes, Title 32, chapter 143, any rules adopted
6 by the board and the laws and rules in other states related to the scope of practice for
7 licensed dental hygienists and dental therapists. The board shall recommend changes to
8 the scope of practice for licensed dental hygienists and dental therapists for the purpose of
9 aligning current practice settings and reflecting advancements in the profession and
10 technology. The board shall submit its report and recommendations to the joint standing
11 committee of the Legislature having jurisdiction over health coverage, insurance and
12 financial services matters no later than February 1, 2021. The joint standing committee
13 may report out a bill to the First Regular Session of the 130th Legislature based on the
14 board's recommendations.

15 SUMMARY

16 This bill implements the recommendations of the Board of Dental Practice that were
17 included in the report required by Public Law 2019, chapter 388. The bill makes the
18 following changes.

19 1. It makes changes to the definitions of "direct supervision" and "general
20 supervision" and makes corresponding changes to the activities that may be performed
21 under direct or general supervision by a person licensed by the Board of Dental Practice.

22 2. It makes changes to provisions governing the delegation authority of dentists to
23 unlicensed persons and to persons licensed by the Board of Dental Practice.

24 3. It adds a definition of "teledentistry" and authorizes oral health care services and
25 procedures to be provided through teledentistry in accordance with rules adopted by the
26 Board of Dental Practice.

27 4. It directs the Board of Dental Practice to recommend changes to the scope of
28 practice for dental hygienists and dental therapists for the purpose of aligning current
29 practice settings and reflecting advancements in the profession and technology. The
30 Board of Dental Practice is required to submit its recommendations to the joint standing
31 committee of the Legislature having jurisdiction over health coverage, insurance and
32 financial services matters no later than February 1, 2021. The joint standing committee
33 may report out a bill to the First Regular Session of the 130th Legislature based on the
34 board's recommendations.