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TESTIMONY OF

PENNY VAILLANCOURT, EXECUTIVE DIRECTOR
MAINE BOARD OF DENTAL PRACTICE

IN OPPOSITION TO LD 992

“An Act to Prevent the Denial or Revocation of a Professional or Business License for a Violation
Not Related to That Profession or Business

Sponsored by Representative Daniel Newman

BEFORE THE JOINT STANDING COMMITTEE ON
INNOVATION, DEVELOPMENT, ECONOMIC ADVANCEMENT AND BUSINESS

April 8, 2021 9:30 A.M.

Good afternoon Senator Curry, Representative Roberts, and Members of the Committee. My name is Penny Vaillancourt and I am the Executive Director of the Maine Board of Dental Practice. Thank you for the opportunity to provide testimony on LD 992.

The Maine Board of Dental Practice (“the Board”) is a professional licensing board affiliated with the Department of Professional and Financial Regulation (“the DPFR”), and its sole purpose is to protect the public health and welfare of Maine citizens. The Board accomplishes this mission by ensuring that the public is served by competent and honest practitioners through its licensure process and conducting investigations into allegations of unprofessional conduct.

The Board is strongly opposed to LD 992 as the provisions are inconsistent with existing regulations and raises significant concerns that the Board would not be able to protect the public from unprofessional conduct that is currently identified and is authorized for its review as follows:

1. **32 M.R.S. § 18325(1) – Disciplinary action**: the Board may refuse to issue, modify, suspend, revoke or refuse to renew the license of a dental professional based, in part, on the following grounds:
 - A. The practice of fraud, deceit or misrepresentation in obtaining a license or authority from the board or in connection with services within the scope of the license or authority;
 - B. Misuse of alcohol, drugs or other substances that has resulted or may result in the licensee performing services in a manner that endangers the health or safety of patients;
 - 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;

D. Incompetence in the practice for which the licensee is licensed or authorized by the board. 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;

E. 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 or authorized by the board;

F. 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 authorized by the board, or conviction of a crime for which incarceration for one year or more may be imposed;

G. Engaging in false, misleading or deceptive advertising;

H. Aiding or abetting unlicensed practice by a person who is not licensed or authorized as required under this chapter;

I. Failure to provide supervision as required under this chapter or a rule adopted by the board;

J. Engaging in any activity requiring a license or authority under this chapter or rule adopted by the board that is beyond the scope of acts authorized by the license or authority held;

K. Continuing to act in a capacity requiring a license or authority under this chapter or a rule adopted by the board after expiration, suspension or revocation of that license or authority;

L. Noncompliance with an order of or consent agreement executed by the board;

M. Failure to produce any requested documents in the licensee's possession or under the licensee's control relevant to a pending complaint, proceeding or matter under investigation by the board;

N. Any violation of a requirement imposed pursuant to section 18352 (10-day reporting requirement);

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

P. Failure to comply with the requirements of Title 22, section 7253 (Prescription Monitoring Program - DHHS).

2. **32 M.R.S. § 18323(9) – Authority to order a mental or physical examination:** the Board has the authority to direct a licensee to submit to an examination if the Board determines that a licensee may be suffering from a mental illness or physical illness that may be interfering with competent practice or from the use of intoxicants or drugs to an extent that prevents the licensee from practicing competently and with safety to patients.

3. **5 M.R.S. § 10004(3) – Health or safety hazard:** the Board may revoke, suspend or refuse to renew a license without a hearing when the health or physical safety of a person is in immediate jeopardy and failure to act immediately would not adequately protect public health or safety and may not continue for more than 30 days.

4. **Board Rules Chapter 9 – Unprofessional Conduct:** this rule adopted by the Board identifies the following conduct as subject to disciplinary action:
 - A. Engaging in any activity which assists, encourages or induces any person to violate this Chapter or the rules of the Board.
 - B. Engaging in sexual misconduct, as set forth in Board Rule Chapter 10.
 - C. Obtaining any fee by fraud or misrepresentation.
 - D. Dividing fees or agreeing to split 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. Prescribing 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. Possessing, using, prescribing for use, or distributing 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 that 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. Inappropriately prescribing or administering of drugs or treatment, the excessive use of drugs for diagnostic procedures, or the excessive use of diagnostic or treatment procedures.
 - H. Advertising either professional superiority or the performance of professional services in a superior manner.
 - I. Using threats or 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. Altering a patient's record with the intent to deceive.
 - K. Failure of a licensee to adhere to the practice standards set forth in Board Rules, Chapter 12.
 - L. Failure of a licensee to adhere to the ethical and professional conduct standards set forth in Board Rules, Chapter 12.
 - M. Failure of a licensee to ensure that the appropriate licensure, authority, registration, and/or permit required under the *Maine Dental Practice Act* is obtained by an individual that is either supervised or employed by the licensee.

- N. Keeping or allowing any living animal, including domesticated pets or emotional support animals, in a practice setting, with the sole exception of fish aquariums. This section does not prevent the presence of a service animal as defined in the *Maine Human Rights Act*, 5 M.R.S. §§ 4551 – 4634 and the *Americans with Disabilities Act* 42 U.S.C. §§ 12101-12213 from being on the premises.
- O. Abandonment of a patient by a licensee before the completion of a phase of treatment.
- P. Delegation by a dentist of any dental activity not specified in 32 M.R.S. §18371(3).
- Q. Failure to respond to the Board regarding any matter for which a time frame is prescribed by statute or rule and/or failure to provide the Board with the records of treatment when requested by the Board.
- R. Violating a standard of care that has been established in the practice for which the individual is licensed under the *Maine Dental Practice Act*.
- S. Engaging in disruptive behavior that interferes with or is likely to interfere with the delivery of care.

5. **Board Rules Chapter 10 – Sexual Misconduct:** this rule adopted by the Board identifies the following conduct as subject to disciplinary action, including the range of sanctions and factors to be taken into consideration:

I. SEXUAL MISCONDUCT DEFINED

- A. 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:
 - (1) Deliberate or repeated comments or gestures of a sexual nature;
 - (2) Physical contact 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
 - (3) Offering to provide practice-related services, such as providing drugs, in exchange for sexual favors.
- B. 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.
- C. Sexual misconduct is unprofessional conduct within the meaning of 32 M.R.S. §18325 and Board Rule Chapter 9.

- II. DISCIPLINE; RELEVANT FACTORS. Upon a finding of sexual misconduct, the Board shall consider the following factors in imposing discipline:
 - A. Patient harm;
 - B. Severity of impropriety;
 - C. Culpability of the dental professional;
 - D. Age of patient or colleague;
 - E. Physical/mental capacity of patient or colleague;
 - F. Number of times behavior occurred; and
 - G. Nature and length of any existing, non-professional relationship.

6. **Board Rules Chapter 12 – Practice Requirements:** this rule adopted by the Board sets forth the practice requirements for individuals licensed by the Board in the following general categories:
 - I. General Requirements
 - A. Infection Control Guidelines
 - B. Radiation Protection; Dental Radiographs; Patient Selection
 - C. Local, State, And Federal Health And Safety Regulations
 - D. Emergency Protocol
 - E. Dental Adverse Occurrence Report
 - F. Controlled Substances; Inventory Control
 - G. Patient Recordkeeping
 - H. Content of Patient Records
 - I. Patient Dismissal
 - J. Practice Sale And Closure Notifications; Waiver
 - II. Specific Practice Requirements – Administration of Nitrous Oxide Analgesia
 - III. Specific Requirements for the Use of Certain Materials, Laser and Digital Equipment
 - IV. Specific Practice Requirements – Independent Practice Dental Hygiene Authority
 - V. Specific Practice Requirements – Referral Network
 - VI. Specific Practice Requirements – After Hour Patient Care
 - VII. Specific Practice Requirements – Deviation of Practice Standards

7. **Board Rules Chapter 12, Section X – Principles of Ethics and Codes of Professional Conduct:** this rule adopted by the Board incorporates the various codes of ethical conduct of the professional associations of dentists, dental hygienists and denturists.

8. **Practice Guidelines amid the COVID-19 Pandemic:** the Board enforces the guidelines for dental professionals to follow as identified in the publications issued by the American Dental Association’s *Return to Work Interim Guidance Tool Kit* and the Maine Dental Association’s *Establishing Safe Dental Care in the Era of COVID-19*.

The professional conduct standards identified in the Board’s testimony are not only reflective in existing Maine regulations, they are also recognized at the national level, incorporated into the curriculum of dental health programs and identified as best practices to reduce the spread of the COVID-19 virus during the state’s civil emergency.

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In consideration of the existing unprofessional conduct identified in this testimony that risks actual or potential public harm, the Board respectfully opposes LD 992. Again, thank you for the opportunity to comment. I would be happy to answer any questions now or attend work session.