DEPARTMENT OF
Professional & Financial Regulation
STATE OF MAINE

- OFFICE OF SECURITIES
- BUREAU OF INSURANCE
- CONSUMER CREDIT PROTECTION
- BUREAU OF FINANCIAL INSTITUTIONS
- OFFICE OF LICENSING AND REGISTRATION

Report of the Commissioner of Professional and Financial Regulation

To the

Joint Standing Committee on
Business, Research and Economic Development

Sunrise Review of Oral Health Care Issues

Submitted Pursuant to Resolve 2007, Ch. 85

February 15, 2008

Sunrise Review of Oral Health Care Issues

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Sunrise Review of Oral Health Care Issues
submitted to
Joint Standing Committee on Business, Research and Economic Development
by
Commissioner of Professional and Financial Regulation

I. *Introduction*

Four legislative proposals relating to the practice of dental hygiene, denturism and dental practice received public hearings before the Joint Standing Committee on Business, Research and Economic Development during the First Regular Session of the 123rd Maine Legislature.

LD 1246 proposed to expand the scope of practice of dental hygienists by creating a mid-level dental hygienist license category; **LD 550** proposed to allow dental hygienists to practice independently without supervision of licensed dentists; **LD 1472** proposed to establish a new licensing board within the Department of Professional and Financial Regulation for denturists which would operate separately from the Maine Board of Dental Examiners; and **LD 1129** proposed to allow dental graduates of foreign universities that are not accredited to become licensed in Maine pursuant to standards acceptable to the Maine Board of Dental Examiners.

Each proposal would either expand an existing scope of practice or otherwise make changes to the regulatory program of the Board of Dental Examiners. Because each bill would trigger the sunrise review requirement of 5 MRSA § 12015, the Committee converted LD 1129 to a resolve directing the Department of Professional and Financial Regulation to conduct an independent assessment of the four concepts described above and submit a consolidated sunrise report to the Committee by February 15, 2008 with recommendations and proposed legislation, if necessary.

The resolve was enacted as Resolve **2007, chapter 85**.[1] This report reflects the independent assessment of the Department as to whether the health, welfare and safety of Maine citizens warrant significant revisions to the practice of dentistry and oral health, as well as the regulation of the profession as a whole.

II. *Sunrise Review*

Pursuant to 5 MRSA § 12015(3), "sunrise review" must be undertaken whenever proposed legislation would license or otherwise regulate an occupation or profession that is not currently regulated in order to determine whether such regulation is necessary to protect the health, safety and welfare of the public.

[1] Copy of R. 2007, ch. 85 attached as Appendix A.

Sunrise review is a tool for state policymakers to systematically assess proposals to expand the scope of practice of a regulated profession or establish new regulatory requirements for a previously unregulated profession. The purpose of sunrise review is to analyze whether the proposed regulation is necessary to protect the health, safety and welfare of the public.

A sunrise review also seeks to identify the potential impact of the proposed regulation on the availability and cost of services to consumers. The rationale underlying the requirement for sunrise review is that the State of Maine should impose only the minimum level of regulation necessary to ensure public health and safety. Regulation should not be used for economic purposes to create unnecessary barriers of entry to a profession that could limit access to services or increase their cost. The Department's conclusion in each sunrise review study is an attempt to balance the competing demands of maximum access, minimizing cost and adequately protecting public health, safety and welfare.

Under Maine law, the sunrise review process may be conducted in one of three ways:

1. The Joint Standing Committee of the Legislature considering the proposed legislation may hold a public hearing to accept information addressing the sunrise review evaluation criteria;

2. The Committee may request the Commissioner of Professional and Financial Regulation to conduct an independent assessment of the applicant's answers to the evaluation criteria and report those findings back to the Committee; or

3. The Committee may request that the Commissioner establish a technical review committee to assess the applicant's answers and report its finding to the commissioner.

Copies of 5 MRSA § 12015(3) and a summary of the sunrise review process are included in Appendix B.

III. *Charge from the Joint Standing Committee on Business, Research and Economic Development*

Public Law 2007, chapter 85, requires the Commissioner of the Department of Professional and Financial Regulation to conduct an independent assessment pursuant to the provisions of 32 MRSA § 60-K, of the proposals to expand existing state regulation or establish new state regulation of the practice of dental care. This report documents the methodology of the Commissioner's assessment and includes recommendations for consideration by the Joint Standing Committee on Business, Research and Economic Development during the 123rd Legislature.

IV. *Independent Assessment by Commissioner*

The requirements for an independent assessment by the Commissioner are set forth in 32 MRSA § 60-K. The Commissioner is required to apply the specified evaluation criteria set forth in 32 MRSA § 60-J to all answers and information submitted to, or collected by, the Commissioner. After conducting the independent assessment, the Commissioner must submit a report to the Committee setting forth recommendations, including any draft legislation necessary to implement the report's recommendations.

The Commissioner's report to the Joint Standing Committee on Business, Research and Economic Development must contain an assessment of whether responses in support of the proposed regulation are sufficient to support some form of regulation. In addition, if there is sufficient justification for regulation, the report must recommend an agency of State government to be responsible for the regulation and the level of regulation to be assigned to the applicant group. Finally, the report must reflect the least restrictive method of regulation consistent with the public interest.

The Process

To begin the assessment process, the Department forwarded a sunrise survey instrument to applicant groups as well as other organizations and individuals that provided testimony on one or more of the four previously described legislative proposals during public hearings held on April 13, 2007 by the Business, Research and Economic Development Committee. Survey responses are attached as Appendix C, and may be accessed on the Department's website at http://www.maine.gov/pfr/legislative/index.htm.

The responses received from the applicant groups and interested parties were reviewed by the Acting Commissioner and other staff of the Department, and a series of additional questions was developed.

The Department's analysis tracks the evaluation criteria set forth in 32 MRSA § 60-J, and is presented in this report as follows:

1. The evaluation criteria, as set forth in statute;

2. A summary of responses received from the applicant group and interested parties; and

3. The Department's assessment of the response to the evaluation criteria.

The Applicant Groups

The independent assessment process requires the Commissioner to review and evaluate responses to the criteria submitted by the applicant group and interested parties. In this study, the applicant group includes the following organizations and individuals involved in the provision of dental and oral health care:

- **Maine Dental Hygienist Association** (MDHA) has 169 dental hygienist members in Maine. It was founded in 1926, and its stated mission is to: "improve the public's total health, the mission of the Maine Dental Hygienist's Association is to advance the art and science of dental hygiene by ensuring access to quality oral health care, increasing awareness of the cost-effective benefits of prevention, promoting the highest standards of dental hygiene education, licensure, practice and research, and representing and promoting the interests of dental hygienists."

- **Maine Dental Association** (MDA) is a professional membership organization of licensed dentists founded in 1867 whose stated mission is to "provide representation, information and other services for the dentist members and, through the dentist members, promote the health and welfare of the people of the State of Maine." MDA has 590 practicing members (dentists) and 133 retired members as of the end of 2007.

- **Maine Society of Denturists** (MSD)

- **National Association of Denturists**

- **International Federation of Denturists**

- **Maine Primary Care Association** (MPCA) was established over 25 years ago to strengthen and sustain Maine's Primary Care Safety Net. The Association includes Federally Qualified Health Centers (FQHCs) and Indian Health Centers which provide high quality primary care to underserved areas and underserved populations of the State where healthcare options are limited, and barriers to access would otherwise prevent the delivery of care. MPCA also has a number of affiliate members; these are generally community-based agencies that provide some but not all of the health services that are required for FQHCs.

- **Maine Board of Dental Examiners** (MBODE)

- **Maine Center for Disease Control,** Department of Health and Human Services (MCDC/DHHS)

- **Joan Davis**, Registered Dental Hygienist

- **Catherine J. Kasprak**, Registered Dental Hygienist

- **Stephen Mills**, DDS, specializing in pediatric dental care

- **Jane Walsh**, J.D., RDH, Assistant Professor, University of New England, Dental Hygiene Program

V. *Legislative History of Dental Practice Laws/Current Regulatory Environment in Maine*

The Board of Dental Examiners was established in 1891 by the Maine Legislature to protect the health, safety and welfare of Maine citizens through regulation of licensed dentists and the practice of dentistry. In 1917, the Legislature amended the law to permit dentists to employ "dental hygienists" to assist them in their individual practices. Educational qualifications for licensure, an annual renewal requirement and renewal fee for dental hygienists were added to the law in 1929 and, in 1964, the Legislature enacted Revised Statutes of 1964 in which dental hygiene licensure provisions were recodified within the overall dentistry law. Several subsequent recodifications of the dental practice law that affected licensed dental hygienists have been enacted by the Legislature since 1964, including a statutory amendment in 1965 which removed the restriction limiting license eligibility for dental hygienists to females.

In 1977, the Legislature enacted a legislative proposal to add licensure of denturists to the regulatory structure of the Board of Dental Examiners.

In 2003, as a result of State Government Evaluation Act review of the Board of Dental Examiners, the Legislature amended the law to create a Subcommittee on Dental Hygienist Submissions within the Board of Dental Examiners. The subcommittee was granted authority to conduct initial review of applications for dental hygiene licensure, continuing education submissions and submissions (subsequently changed to notifications) for public health supervision status of dental hygienists. The subcommittee has five members (one dental hygienist board member, two licensed dental hygienists who are not board members and two dentist board members). Its recommendations can be overruled only by a 2/3 vote of Board members present and voting.

At the same time, the Legislature also created within the Board a Subcommittee on Denturist Discipline. This subcommittee, comprised of one denturist board member, one dentist board member and two licensed denturists who are not board members, has authority to review all complaints filed against licensed denturists. The Board of Dental Examiners must accept the recommended disposition of the denturist subcommittee unless 2/3 of Board members present and voting reject the recommendation.

VI. *The Proposals*

A. Proposal to Create a New Pathway to Licensure for Foreign-Trained Applicants for Dentist Licensure

LD 1129 proposed that the Maine Board of Dental Examiners establish a mechanism for evaluating non-accredited foreign dental schools so that foreign-trained and educated applicants could more quickly become licensed in Maine. The intent of the proposal was

to increase the number of licensed dentists who can practice in Maine, thus addressing, to some extent, the shortage of licensed dentists that Maine and many other states are experiencing. The proposal at issue would have the effect of creating a new Dental Board function that would require a new level of specialized staff and significantly higher level of Board financial resources to conduct evaluations of programs in countries outside the United States.

Current Maine law provides that to qualify for a dentist license, "*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*." (32 MRSA § 1082). The accrediting agency approved by the Board is the American Dental Association's Commission on Dental Accreditation (CODA). CODA accredits dental educational institutions in the United States and Canada. CODA "is a peer review mechanism that includes the involvement of members of the discipline, the broad educational community, employers, practitioners, the dental licensing community and public members. All of these groups participate in a process designed to ensure educational quality."

Applicants for licensure in Maine who have *not* graduated from a CODA-accredited dental institution are required to complete a two-year equivalency program at a CODA-accredited dental program. The Board has provided information indicating that between 2003 and 2007 it has licensed 16 foreign-educated applicants, all of whom completed the required two-year academic program designed to ensure that applicants have received the level of education and clinical training provided by CODA-accredited dental programs in the United States and Canada. (Appendix D)

Only two states, California and Minnesota, have enacted laws that require their state dental board to license graduates of foreign dental programs by "accrediting" non-US dental programs. California has only approved one non-US program, the University De LaSalle in Leon, Guanajuato, Mexico. Minnesota's law has been in place for six years and is now the subject of a bill to repeal this directive at the request of the Minnesota Dental Board.

Proponents:

The **Maine Primary Care Association** (MPCA) is the strongest proponent of the proposal to require the Board of Dental Examiners to create a new mechanism for evaluating the qualifications of dentists trained in foreign countries for the specific purpose of increasing the number of dentists serving in our State. The MPCA represents Maine's Federally Qualified Health Centers and is, therefore, in a position to observe the impact of a shortage of licensed dentists in Maine. In its response to the sunrise survey, the MPCA asserts that if an evaluation mechanism for non-US dental programs were in place, up to six additional dentists could have been licensed by the Board and would now be practicing in Maine.

Other responders were generally supportive of the concept of easing the current licensure requirements for foreign-trained dentists by allowing applicants from non-CODA approved programs to sit for the North East Regional Board examination but only if patient care and public safety were not compromised as a result.

Information about the British dental licensing system was submitted by the **Maine Society of Denturists**. The General Dental Council (GDC) is the organization that licenses and regulates all practicing dentists in the United Kingdom. GDC is the national equivalent of the US state-by-state licensing system which has developed a process for evaluating "overseas" or foreign-trained dentists.

GDC has established a two-day clinical examination called the *Overseas Registration Examination* (ORE) which serves as the basis of its evaluation process. The ORE tests the clinical skills and knowledge of dentists from outside the Eastern European Area whose qualifications are not recognized for full registration (licensure) by the General Dental Council. Candidates are tested against the standard expected of graduate dentists which means that UK graduates and overseas dentists are expected to have the same basic level of knowledge and skills. The examination is based on the UK dental curriculum and uses modern assessment methods to ensure a consistent examination. Dentists who pass the ORE become eligible to apply for full registration to practice in the UK. For additional information about this regulatory process, please visit http://www.gdc-uk.org/Potential+registrant/Examination+for+Overseas+Qualified+Dentists.

The **Maine Dental Hygienists Association** generally supports any proposal to increase the number of licensed dentists in Maine "as long as these providers adhere to the same standards of care as regimented by the curriculum of comparable professionals in this country."

Jane Walsh on behalf of the **University of New England** generally supports any proposal that "respects an accreditation process that requires a minimum level of competency to maintain our standard of care."

Catherine J. Kasprak, a registered public health dental hygienist, supports the concept of loosening current requirements for foreign trained dentists and suggests requiring them to "follow guidelines for out-of-state dentists to become licensed in Maine."

A representative for the **Maine Center for Disease Control** within the Department of Health and Human Services noted that although the agency would be supportive of the proposal because "it would facilitate the employment of foreign-trained dentists in federally qualified health centers, in private non-profit dental centers, by other dentists in private practice and eventually . . . [in]self-employment [as] independently practicing dentists," the agency would, however, be concerned about whether an adequate evaluation process of foreign training could be developed.

Opponents:

The **Maine Board of Dental Examiners** and the **Maine Dental Association** oppose the concept of requiring the Board to, in effect; become an accrediting organization for non-CODA accredited dental programs. The Board cites the success of the current process by which U.S. and Canadian dental programs are accredited by ADA-CODA and the availability of two-year completion programs that graduates of non-CODA accredited dental programs can readily access. The Board asserts that these completion programs are "an extension of their education at a CODA approved dental program that ensures that their training, education and clinical skills meet the minimum standards required of all US and Canadian educated candidates for licensure."

The Maine Dental Association strongly opposes the concept of creating a new pathway to licensure for foreign-trained dentists for the same reason, but also cites the great variation in the quality of dental education programs in foreign countries as compared to dental programs in the US and Canada. It also cautions that it has serious doubts that the Maine Board of Dental Examiners has "the expertise or resources to take on this huge task." The Association indicates that "CODA is now offering its accreditation review to any foreign dental school that wishes to apply and go through the process."

***Department Assessment*:**

As noted previously, the purpose of sunrise review is to determine whether a proposed change in regulation is required to safeguard the public health and welfare against harm. The Department must analyze the impact on public health and welfare of creating a new, potentially less stringent licensing mechanism or standard for graduates of foreign dental educational institutions than is used to measure the qualifications of graduates of CODA-accredited dental programs.

There is no question that the current number of licensed dentists practicing in Maine is not adequate to meet the demand for dental care in all areas of the State. Furthermore, studies indicate that within the next three to five years retiring Maine dentists will not be replaced by new licensees at the same pace.

Other significant factors that the Department considered include:

- availability and accessibility of two-year dental education completion programs at CODA-accredited dental school programs in the US, two of which are located in Massachusetts;

- experience of the two states that have undertaken a state-supported accreditation process for foreign dental educational institutions (California and Minnesota);

- number of foreign trained applicants licensed in Maine since 2003 using the Board-approved CODA accreditation process; and

- cost that would be incurred by the Board to construct its own CODA-like accreditation program to evaluate the quality of foreign dental education programs.

These factors are addressed below:

Information provided by the Board of Dental Examiners indicates that between January 2003 and August 2007, applications from sixteen (16) foreign trained and educated applicants for dental licensure were received, evaluated and approved. All sixteen applicants received dental licenses. Of those, four applicants attended a two-year completion program at Tufts University in Boston, ten completed a program at Boston University, one completed the University of the Pacific program and another completed the University of British Columbia program in Canada.

Of these sixteen original applicants, five have either allowed their Maine licenses to lapse or have withdrawn from the Maine licensure pool voluntarily. The Board also provided anecdotal information indicating that some of the applicants themselves recognized that their level of education and clinical experience in their home countries was not of the same caliber as that of CODA-accredited dental education programs and benefited greatly from the two-year completion program that the Board requires.

A review of the statutes and experiences of other states that have addressed licensure of international dental graduates is instructive; particularly the statutes of California and Minnesota, two states that currently require their dental board to evaluate and license foreign dental graduates.

California Experience: In the mid-1970's, the California Legislature created a new pathway to state dental licensure for graduates of foreign dental programs. Foreign graduates were required to take and pass an exam called the "Restorative Techniques (RT) Examination." If the applicant passed the RT exam, he or she could then take the state licensure examination without any additional coursework at a CODA-accredited institution. Over time, the RT exam route to licensure fell into disfavor after complaints about varying skill levels of foreign trained California dentists were reported to the California Dental Board. A sunset date was attached to the use of the RT exam, but as that date approached the California Dental Board's financial situation became unstable and the board was unable to offer foreign graduates the required number of re-examinations required by law. (Each individual was given three attempts to pass the exam.)

The sunset date for taking the RT exam has been extended to December 31, 2008, but access to the exam is limited to applicants who have met all applicable license requirements including passage of the National Board Exam. The California Dental Board has accredited only one international dental school, the Universidad De La Salle Bajio, located in Leon, Mexico.

Minnesota Experience: In 2001, the Minnesota Legislature enacted a law that required its state dental board to create an accreditation process for foreign dental programs in an

effort to increase the number of practicing dentists in that state. After six years of experience attempting to act as an accrediting agency for foreign dental programs, the Minnesota Board recently announced that it no longer has confidence in its ability to ensure that only competent foreign-educated and trained dentists are licensed in Minnesota and more important, that it has not ensured that applicants who are not competent have been denied licenses as a result of the board's program. The Minnesota Board has now asked the Minnesota Legislature to relieve it of the responsibility for evaluating foreign dental programs in the interest of public safety. The Minnesota Board has submitted a legislative proposal to repeal the section of law that requires it to evaluate and license foreign dental graduates.

Other States: The majority of states, including Maine, require foreign dental graduates to complete a two-year course of study at a CODA-accredited dental school, among other requirements, in order to be considered eligible for a dental license. The two-year completion program requirement has served states well in their efforts to ensure that all applicants for a dentist license are measured against one standard of competency. There is little question that the American Dental Association's Commission on Dental Accreditation offers states an efficient and cost effective way to safeguard the health and welfare of their citizens and protect against substandard dental care.

Although the cost of developing a stand-alone accrediting system for foreign dental grads has not been specifically quantified for purposes of this report, the Department believes a Maine accreditation process would be prohibitively expensive and time-consuming. The Department concludes that the existing approach to licensure for foreign dental graduates is a reasonable and workable method of ensuring that foreign dental graduates are licensed by the Maine Board of Dental Examiners only after they have received the benefit of an additional two years of dental education and clinical training at a CODA-approved dental school.

New information provided by the American Dental Association indicates that the ADA's Commission on Dental Accreditation now offers accreditation services to foreign institutions that wish to assist their graduates in achieving licensure in the United States. The foreign institution may choose to receive an independent assessment which will allow them to benchmark to US programs, or full accreditation. As of this date, twelve foreign nations have indicated significant interest in this process. Like US dental programs accredited by CODA, foreign institutions seeking CODA accreditation would be required to pay the costs associated with either type of review.

Given the current economic environment in Maine and the other factors considered here, the Department believes the perceived benefit of a minimal increase in the number of licensed dentists in Maine that such a program might produce is greatly outweighed by the cost and liability to the Board of Dental Examiners if it were directed by the Legislature to undertake a state-supported accreditation process for foreign dental programs.

Based on the analysis above, the Department considers the current process used by the Maine Board of Dental Examiners to license foreign-trained dental graduates to be appropriate to ensure public protection and recommends that no change in the process be made.

B. Proposal to establish a new licensing entity to regulate denturists and dental hygienists

LD 1472 proposed to establish a new licensing entity, separate from the Board of Dental Examiners, to license and regulate denturists. The proposal would make the regulation of denturists the statutory responsibility of the Board of Complementary Health Care Providers, which currently has regulatory authority over acupuncturists and naturopathic doctors.

A similar proposal has been made by the **Maine Regulatory Fairness Board**. In its 2007 Annual Report, the Regulatory Fairness Board strongly recommended that the Legislature establish a new Board of Associated Dental Professions whose responsibility would be to regulate denturists and dental hygienists. The stated rationale for this recommendation relates to what the Regulatory Fairness Board refers to as "discord between the various dental professions that has gone on for several years." (2007 Annual Report, Maine Regulatory Fairness Board, p. 1)

As noted in the introduction, the Board of Dental Examiners was established in 1891 to license and regulate the conduct of dentists. Licensure provisions for dental hygienists were added to the Board's responsibilities in 1917 and in 1977, provisions authorizing the Board to license denturists were enacted.

In 2003, the Joint Standing Committee on Business, Research and Economic Development held public hearings on the Board of Dental Examiners' **State Government Evaluation Act Report**. Denturists and dental hygienists testified that they had experienced mistreatment by the Board, both individually and collectively, and further that the concerns of dental hygienists and denturists did not receive appropriate Board attention. The BRED Committee addressed this issue by proposing legislation to create two subcommittees within the Board structure. These subcommittees were designed to facilitate communication and a better working relationship among the three groups of licensees within the Board and to provide both denturists and dental hygienists with a more direct voice in Board decision-making with respect to these two components of dental care.

As of January 10, 2008, the Maine Board of Dental Examiners reported that there are 658 dentists, 836 dental hygienists, and 15 denturists licensed and actively practicing in Maine.

Proponents:

The **Maine Society of Denturists**, the **National Association of Denturists** and the **International Federation of Denturists** are solidly in support of a licensing entity distinct from the Board of Dental Examiners that would be responsible for licensing and regulating denturists. The reason most often cited for changing the current regulatory framework is that dentists are in direct competition with denturists for patients and therefore, the current regulatory structure is not equitable and impartial to denturists. Following this rationale, proponents of a separate licensing entity feel that dentists cannot be impartial because they are in a position of authority as employers of denturists.

Second, proponents assert that a separate board is required because, currently, the dentists on the Board control the decision-making process with regard to the scope of practice for denturists. Third, proponents contend that because the Commission on Dental Accreditation does not accredit denturism educational institutions or programs, denturism in Maine is not permitted to expand to provide lower cost dental care to underserved populations. Finally, proponents assert that denturists have no voice in determining the required curriculum for denturism programs and therefore, a new regulatory structure is required.

The **Maine Association of Dental Hygienists** and two registered dental hygienists (**Joan Davis and Catherine Kasprak**) also support the concept of separating regulation of dental hygienists from the regulation of dentists. The Association asserts that the Board does not keep pace with the dental access needs of Maine people. Citing the 2007 Annual Report of the Regulatory Fairness Board, the Association agrees with the assessment that the current regulatory structure is ineffective because of discord between dental professionals which prevents resolution of on-going problems. Finally, the Association contends that dental hygienists fear retaliation from their dentist employers if they report what they view as unprofessional conduct to the Board.

Similarly, the **University of New England** supports the creation of a separate licensing board to regulate dental hygienists particularly because new issues related to the concept of a mid-level dental hygiene practitioner will cause the current heavy workload of the Board to increase even further. UNE, however, does not support a combined licensing board to regulate both denturists and dental hygienists because the focus, technical skills and practices of these two groups are different.

Opponents:

The **Maine Dental Association** (MDA) opposes the establishment of additional licensing entities because it believes all dental practitioners, regardless of the specific focus of dental care, should be regulated by a single licensing entity. Further, the MDA asserts that creating separate licensing boards for different groups of professionals involved in providing dental care would confuse the public, cause more expense for the State and not result in public benefit.

The **Maine Board of Dental Examiners** (MBODE) similarly opposes the establishment of one or more additional licensing boards, pointing out that dental hygienists are not trained in denturism and conversely, denturists are not trained in prevention, so rather than resolving issues, this arrangement would actually create more challenges including conflicts of interest. Ultimately, however, the Board believes dentists, denturists and dental hygienists all provide important dental services and it views any effort that would end the link between the three groups by dividing up regulation as potentially counterproductive.

The Board notes that the subcommittee concept adopted by the Business, Research and Economic Development Committee in its 2003 legislation following the Board's sunset review hearing has facilitated a closer and more productive working relationship among the three groups of dental professionals. The Board also indicated that it is open to consideration of expanding the existing responsibilities of each subcommittee for licensure and discipline.

The **Maine Center for Disease** Control within the Department of Health and Human Services neither supports nor opposes the concept of a new regulatory structure but questions the "utility of separating the regulation of dental professionals who should be functioning together as 'team members' as much as possible." DHHS also questions whether the conclusion on this point reached by the Maine Regulatory Fairness Board was based on a broad enough "sample of opinion and experience."

***Department Assessment*:**

States have several options for exercising their police powers to protect citizens from unscrupulous and incompetent individuals and entities that provide services to the public.

1) State legislatures can appoint one official to regulate an industry. In Maine, for example, the Superintendent of Insurance regulates the insurance industry.

2) Many states choose the licensing board model that provides for gubernatorial appointments of members of the profession to be regulated, along with members of the public, to a licensing board, which acts as the final decision-making entity with regard to issues relating to public protection.

3) Some states are now moving to a hybrid form of regulation which provides for an advisory committee to assist a single administrator who is granted authority to implement licensing standards and impose discipline, when warranted.

4) In some instances, multiple professions are regulated by one licensing board populated with members of each profession and public members. The Board of Architects, Landscape Architects and Interior Designers regulates three different groups of licensees in Maine that have only a tangential connection with each other.

These variations are largely the product of the political climate and other factors in play in a particular state when a licensure proposal is presented to a state legislature. There is no right or wrong methodology for state protection of its citizens. The starting point, however, when analyzing a proposal to create new licensing boards must be an examination of the current structure and two questions must be addressed.

Question 1: Does the operation of the Maine Board of Dental Examiners, with regulatory authority to implement standards and requirements for dentists, denturists, dental hygienists, dental radiographers and expanded function dental assistants adequately protect the public from harm associated with substandard dental care?

Question 2: Would the public be better served if dental hygienists and denturists were regulated by an entity other than the Board of Dental Examiners?

In this discussion, the burden is on proponents to show that the public is being harmed by the existing regulatory structure.

Licensing Standards: In reviewing the survey information provided by proponents on this point, the Department was unable to identify any information to suggest that the standard of care in the dental and oral health area is somehow diminished by the Board's operation pursuant to statutory direction. The Department was not able to identify any requirement for licensure that was out of line with most other states' licensure requirements. Nor was it able to identify any requirement that served as a barrier to entry into the dental field.

Disciplinary Actions: With respect to the disciplinary process, it does not appear that the Board has been lax about taking action against licensees who have violated the statutes and rules of the Board, although allegations have been made in the past by denturists that the Board treats them unfairly by assessing larger fines and sanctions on denturists than on dentists.

A review of all disciplinary actions taken by the Board between 1989 to the end of 2007 indicates that adverse actions have been taken against 100 licensed dentists, 4 licensed dental hygienists, and 5 licensed denturists.

- Substance abuse was the subject in 3 of the 4 actions against dental hygienists. A fourth dental hygienist was cited for providing service to a patient who was not a "patient of record" of the supervising dentist. Only the fourth action might be considered a practice violation.

- Inappropriate advertising was the subject in two of five actions taken against licensed denturists. A third action was taken against a denturist for exceeding the bounds of a denturist's scope of practice. Two actions involved failure of an applicant for a denturist license to disclose disciplinary action in another jurisdiction.

- Many of the 100 actions taken against dentists are for serious practice violations, some involving practitioner incompetence. All Board disciplinary actions can be reviewed online at www.mainedental.org under "Adverse Action Reports."

Taken as a whole, the Board's disciplinary history does not appear to be unfair or discriminatory to denturists or dental hygienists. There is also no specific evidence or information to indicate that the public at large is dissatisfied or placed at risk as a result of the current regulatory arrangement.

Business Competition: The argument that dental hygienists and denturists should be regulated by a separate board because they are in direct competition with dentists for business is not persuasive. The Department has found no evidence that dentists directly or indirectly act to prevent denturists from practicing denturism. On the contrary, dentists have testified before the Committee on several occasions that they enjoy good working relationships with denturists and hope those relationships continue.

The need for many different categories of dental care, including the services provided by denturists, dental hygienists and dentists, is ever increasing. Given access to care realities in Maine, dental professionals should be investigating ways in which to work as teams. In the context of the larger medical community, of which dental treatment is a significant segment, all focus is on developing team approaches to providing health and dental care. It is therefore unclear why separating the dental profession into three groups, each with its own regulatory body, could possibly result in a benefit to the public.

Scope of Practice Issues: With regard to the perceived control of dentists over the scope of practice of dental hygienists and denturists, the medical model is instructive. Physicians have the broadest scope of practice in the medical community. The Board of Licensure in Medicine licenses and regulates physicians and physician assistants. Physician assistants are employed by physicians and regulated by the Board of Licensure in Medicine. The physician determines the scope of practice of a licensed physician assistant based on the assistant's level of training and experience. The physician can perform the same functions and procedures that may be within the scope of practice of a physician assistant. Similarly, the advanced practice registered nurse (APRN) has a broader scope of practice than a registered nurse that is employed by the APRN. APRNs are regulated by the Board of Nursing and may employ in their practice a registered nurse whose scope of practice is a subset of the practices and procedures an APRN is authorized to perform.

An employment relationship between two individuals in two different license categories performing different functions related to the same profession is one that is replicated in many other licensing board structures. Occupational therapists employ occupational therapy assistants and both are regulated by one licensing board. Licensed pharmacists employ licensed pharmacy technicians and both are regulated by the Board of Pharmacy. Licensed psychologists employ psychological examiners and both are regulated by the Board of Examiners of Psychologists.

The Committee's Government Evaluation Act review of the Board of Dental Examiners resulted in enacted legislation that underscores and supports the importance of dental hygienists and denturists to the provision of oral health care in Maine. The dental hygienist subcommittee and the denturist subcommittee are operational and functioning appropriately. The Board has testified publicly and in response to the Department's survey that it supports expanding the role of each subcommittee to include authority to make licensing decisions as well as disciplinary decisions.

Currently, Maine law authorizes the Dental Hygienist Subcommittee to review licensing issues including public health supervision and continuing education submissions from dental hygienists but does not provide similar authority for review and investigation of complaint and disciplinary matters. The reverse is true of the Denturist Subcommittee. It has authority to make decisions in the disciplinary process but does not have authority to make decisions involving license applications. It would be worth exploring how the authority of each subcommittee could be expanded to afford a greater opportunity for issues relating to denturism and dental hygiene to be resolved.

In summary, the Department finds that the current regulatory structure is appropriate and places public protection above the professional agendas and professional associations of denturists, dental hygienists and dentists.[2] In the Department's view, and with due respect to the work of the Maine Regulatory Fairness Board, discord among groups of dental professionals is not a valid justification for expanding State government and establishing new licensing programs. Professional discord exists among sub-groups in all regulated professions and, in this case, is greatly outweighed by the State's responsibility to maintain one standard of care for dental services provided to Maine citizens. Creating a new licensing structure is not the appropriate response to real and perceived problems, nor is it warranted. However, it is critically important for these three groups to continue to work collaboratively to improve communications and function as teams whenever possible to ensure public safety in all dental care settings.

The Legislature appropriately established the dental hygienist and denturist subcommittees within the Board structure. Other states have adopted a similar approach. Although challenges are associated with these subcommittees for Board members and staff, as well as professionals appointed to those subcommittees, the expanded Board with its subcommittees needs more time to work through practice issues, particularly now that the Board has greater staff resources to manage its day to day operations. In addition, the Board has expressed willingness to expand the role of each subcommittee and the Department agrees that such adjustments should be considered by the Legislature.

[2] It is not necessary to address other regulatory options, including direct administrative of dental hygienists and denturists by the Department. Nor is it necessary to analyze or assess the possibility of combining dental hygienists and denturists with any other licensing category for the sole purpose of excising public protection responsibility for those two license categories from the statute of the Board of Dental Examiners.

C. Proposal to Allow Licensed Dental Hygienists to Provide Dental Hygiene Services Independent of Supervision by Licensed Dentists

Background: LD 550 would provide statutory authority for licensed dental hygienists to offer dental services within their current scope of practice as set forth in Board rule (Chapter 2) but without either direct or general supervision of licensed dentists. The language of the proposal does not indicate specifically how the word "independent" is to be defined. The bill also refers to "independent practice" without elaborating on the meaning of the phrase.

Current Maine law allows certain licensed dental hygienists to work in a public health setting with limited supervision by licensed dentists. Public Health Supervision is a legal status within current law that permits dental hygienists to provide a range of educational and preventive dental services coupled with post-service reporting requirements outside the traditional dental office setting.

Chapter 1 of Board Rules states:

"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."

Whereas licensed dental hygienists working in a traditional dental practice perform specific functions with either direct or general dentist supervision, Public Health dental hygienists are permitted to perform many of the same functions and procedures (within the RDH scope of practice) without general supervision of a dentist. Under Maine statute, there must be a documented relationship between the licensed dental hygienist who wishes to practice in a public health setting and a licensed dentist.

For purposes of this study, the Department assumes that the drafters of the proposal intended to move beyond public health supervision status to permit any currently licensed dental hygienist to practice truly independent of a licensed dentist, in a non-traditional

setting, that is, without supervision of any kind, pursuant to rules promulgated by the Board of Dental Examiners.

Evaluation Criterion #1: Data on group proposed for regulation. A description of the professional or occupational group proposed for regulation or expansion of regulation, including the number of individuals or business entities that would be subject to expanded regulation; the names and addresses of associations, organizations and other groups representing the practitioners; and an estimate of the number of practitioners in each group.

Responses:

The Maine Dental Hygienists' Association (MDHA), founded in 1926, has 169 official members (dental hygienists). Its stated mission is to "improve the public's total health…by ensuring access to quality oral health care, increasing awareness of the cost-effective benefits of prevention, promoting the highest standards of dental hygiene education, licensure, practice and research, and representing and promoting the interests of dental hygienists."

Founded in 1867, the Maine Dental Association (MDA) is a professional membership organization of licensed dentists whose stated mission is to "provide representation, information and other services for the dentist members and, through the dentist members, promote the health and welfare of the people of the State of Maine." MDA has 590 practicing members (dentists) and 133 retired members as of the end of 2007.

Department Assessment: There are currently 1257 dental hygienists licensed by the Board to practice in Maine. There is no way to determine at this time how many current licensees would be inclined to pursue independent practice status because the bill outlines neither the parameters of independent practice nor the additional education and training requirements for such practice.

Evaluation Criterion #2: Specialized skill. Whether practice of the profession or occupation proposed for expansion of regulation requires such a specialized skill that the public is not qualified to select a competent practitioner without assurances that minimum qualifications have been met.

MDHA commented that it supports the concept of independent practice for dental hygienists provided the level of supervision by a dentist is defined and the outcome is linked to the concepts outlined in LD 1246.

MDA commented that it is not opposed conceptually to investigating how dental hygienists with a minimum of a bachelor's degree might be allowed to practice traditional dental procedures (preventive/educational) in an independent setting; however, the organization believes licensed dental hygienists would need additional diagnostic training and certification in order to protect the public from harm. In addition, MDA

recommended that collaborative arrangements with licensed dentists be included in any rules promulgated by the Board.

MBODE expressed no position on the proposal assuming that the current scope of practice for dental hygienists is not expanded beyond the current level of required education, experience and skill. However, in response to additional questions on this issue, the Board noted that "Dental hygienists, presently trained, are not educated in pathology and medicine and are not taught to perform and carry out the detailed history and physical examination necessary to diagnose and establish a safe and reliable treatment plan."

Joan Davis and Catherine Kasprak, both Registered Dental Hygienists, support the bill and commented that the assurance of minimum qualifications has already been met when an individual is licensed in Maine as a dental hygienist.

The Maine Society, National Association and International Federation of Denturists strongly support the bill and comment that testing for minimum qualifications would be important to protect the public. In addition, these organizations noted that independent practice dental hygienists are active in other countries without apparent problems.

The Maine Center for Disease Control (MCDC/DHHS) expressed no position on the concept of independent practice, but noted that additional information would be helpful in determining whether Maine would have the necessary infrastructure to support independent practice. Further, MDCD/DHHS noted that the independent practice of dental hygiene must still have "an explicit connection to the practice of dentistry to assure diagnosis, treatment and follow-up of dental and oral conditions."

Stephen Mills, DDS, opposes the bill because in his experience "dental hygienists are not trained to be independent" and comments that these decisions "cannot be made by anyone other than a qualified dental professional."

Jane Walsh, University of New England, indicates that UNE supports independent practice with the "caveat that the independent practice should be available for the newly created ADHP (Advanced Dental Hygiene Practitioner) proposed by the American Dental Hygienists' Association." Alternatively, Ms. Walsh asserts that independent practice pursuant to the current scope of practice for dental hygienists be limited to those licensees who have a Bachelor of Science degree in Dental Hygiene and at least two years experience in a traditional dental practice setting, in order to maintain the current standard of care. In her response to additional questions on this point, Ms. Walsh noted that "Dental hygienists are well qualified and licensed to deliver dental hygiene services..." "As with other independent practitioners. . . an appropriate amount of experience would make independent care more palatable as graduating students who pass their licensing exam meet minimum qualifications only."

Department Assessment: Dental hygienists have traditionally worked in private practice dental office settings under direct and general supervision of licensed dentists. The fact that the bill does not contain information that would allow respondents to comment more specifically about non-traditional work settings, or the education and experience requirements of a licensee working independent of a dentist, should not prevent consideration of the concept of independent practice for dental hygienists. Education and experience requirements will be addressed in the Conclusions and Recommendations section of this report.

Evaluation Criterion #3: Public health; safety; welfare. The nature and extent of potential harm to the public if the profession or occupation is not regulated, the extent to which there is a threat to the public's health, safety or welfare and production of evidence of potential harm, including a description of any complaints filed with state law enforcement authorities, courts, departmental agencies, other professional or occupational boards and professional and occupational associations that have been lodged against practitioners of the profession or occupation in this State within the past 5 years.

MDA indicated that no harm to the public will occur if current laws and rules are not expanded**,** however, if dental hygienists are permitted to practice on an independent basis, public safety could be jeopardized. It recommends that additional diagnostic training and a collaborative agreement between hygienist and dentist be required.

MBODE notes that Colorado has allowed independent practice of dental hygienists for many years without significant change in the traditional practice model. Further, the Board indicates that the evolution of the dental hygienist as part of a dental delivery team has occurred because it works. Greater efficiency, productivity and continuity of quality care, according to the Board, cannot be achieved by this additional "independent" avenue of dental hygiene practice.

MDHA says there is virtually no risk of harm to the public in expanding the scope of practice for dental hygienists who receive education and training comparable to that proposed in the ADHP competencies. The risk of harm to the public is in maintaining the status quo.

Joan Davis, RDH states that the citizens of Maine will not be provided with optimum accessibility if the regulation for dental hygienists is not expanded to that of independent practice. The foundation for oral health care is performed by the services of dental hygienists: education, prevention and therapeutic treatment. An expansion will lead to a "considerable decrease in oral disease…as will the need for intervention." Ms. Davis has no knowledge of any complaints or harm done by a dental hygienist in Maine.

Catherine Kasprak, RDH would "allow a hygienist to practice to the full extent of their license and education which is difficult in settings with supervision according to what many dentists allow." Ms. Kasprak is not aware of any complaints or harm to the public caused by a hygienist.

The National Denturist Association (NDA) contends that registered dental hygienists are capable of expanded duties and are no less ethical than dentists. All dental professionals are required to refer patients to the appropriate health care practitioner when confronted with a condition beyond their competency.

The International Federation of Denturists (IFD) explains that independent dental hygiene practice is permitted "in various locations around the world as well as in the USA and Canada with no jurisdiction ever abandoning this model after implementation."

Stephen Mills, DDS, Pediatric Dentistry, opposes independent practice on the basis of the potential for misinformation, lack of background knowledge and no back up for treatment needs. He provided no specific examples of harm.

Jane Walsh from UNE indicates that not allowing experienced Bachelor of Science dental hygienists working in their current scope of practice to work independently without supervision of a licensed dentist would continue to compound the access to care issues that exist in this State.

MDCD/DHHS sees no potential harm to the public if dental hygienists in Maine do not practice independently, but would be concerned that without appropriate standards for licensing, education, training and continuing education, the probability of harm would increase with independent practice.

Department Assessment: Independent practice by dental hygienists without appropriate education and clinical experience would place the public at risk. With an appropriate level of education and clinical experience, however, the risk to the public would be virtually the same as it is now under current practice requirements relating to public health supervision.

Evaluation Criterion #4: Voluntary and past regulatory efforts. A description of the voluntary efforts made by practitioners of the profession or occupation to protect the public through self-regulation, private certifications, membership in professional or occupational associations or academic credentials and a statement of why these efforts are inadequate to protect the public.

Department Assessment: Dental hygienists are already subject to State licensure laws. It is worth noting, however, that the Maine Dental Hygienists Association has a strong record of advocating for expanded functions for dental hygienists.

Evaluation Criterion #5. Costs and benefits of regulation. The extent to which regulation or expansion of regulation of the profession or occupation will increase the cost of goods or services provided by practitioners and the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers.

Respondents expressed varying views about whether allowing dental hygienists to practice independent of dentist supervision would reduce or increase service fees charged to consumers.

Stephen Mills, DDS, noted that independent practice would require hygienists to charge fees that are lower than those charged in traditional dental office settings. Otherwise, there would be no incentive for the public to access the services in an independent setting. Only lower fees would attract the segment of the Maine population that cannot access hygienist services in the dental office. It is hoped that lower fees would result in greater access to the services.

MCDC noted that it is not possible to respond because there is little impact information coming from other states and because it is impossible to estimate the number of current dental hygienists who might opt for independent practice if it were permitted by law. Further, MCDC suggested that increased access to preventive dental hygiene services today will reduce the need for and cost of restorative dental services in years to come.

MDHA notes that direct reimbursement to individual dental hygienists practicing independent of a licensed dentist or an agency is key to the success of independent practice. In addition, MDHA provided information on how access to preventive oral care leads to a healthier population and suggests expanding insurance company coverage of the cost of dental care.

Department Assessment: It is difficult to predict the impact on service fees of permitting dental hygienists to practice independent of dentists for the reasons given by respondents. It is not known whether the costs associated with investing in one's own small business would allow an independent dental hygienist to offer lower rates for services initially or over time.

Several states currently allow for less restrictive supervision of dental hygienists by dentists. However, only Colorado permits licensed dental hygienists to practice independent of dentists regardless of the setting. Independent practice status for hygienists in that state was enacted into law in 1987. Information about the impact indicates that fees charged by dental practices for dental hygiene services in Colorado were comparable in most cases to those charged by independent practice dental hygienists. So while there appears to be no discernible negative impact on patient safety when dental hygienists practice independently, neither is there any reduction in fees as a result of unlinking preventive and educational services from the licensed dentists in traditional private practices. This factor calls into question whether independent practice

presents an economic model that would attract dental hygienists who may not be comfortable taking on the risks associated with starting a small business.

Evaluation Criterion #6: Service availability under regulation. The extent to which regulation or expansion of regulation of the profession or occupation would increase or decrease the availability of services to the public.

MDHA contends that independent practice by dental hygienists would increase the availability of services.

IFD states that independent practice would increase the number of service providers thereby increasing access to care.

Joan Davis, RDH says independent practice would shorten waiting time for an appointment. Additionally, independent hygienist-owned practices could choose hours of service favorable to working parents and children. Ms. Davis also notes that hygienists live all over the State and would therefore increase access in various locations.

Catherine Kasprak, RDH suggests that independent practice would allow for services now limited by employer/employee relationship and eliminate conflicts of interest.

NDA states that a progressive delivery scheme would attract more hygienists to Maine.

MBODE contends that given the limited number of hygienists who may choose to practice independently, the amount of preventive care being delivered would not increase. There is a finite number of hygienists seeing a finite number of patients for prevention and education. Traditional or independent setting "has no effect on the numbers of services currently being delivered. Maine needs more qualified hygienists, not hygienists in independent practice."

Stephen Mills, DDS says independent practice would increase access for basic preventive and diagnostic services only.

Jane Walsh from UNE suggests that independent practice could provide more locations for preventive services thus increasing access to dental care and awareness of the importance of oral hygiene. She states that greater independence would create more opportunity for Maine citizens to seek treatment, continue preventive care and receive referrals for further care.

Department Assessment: Although it is true that there is no way to estimate or predict how many current dental hygienists might pursue a career in independent practice, it is also true that if circumstances favorable to forming new small businesses such as community dental clinics and direct reimbursement for certain services were in place, independent practice could become a mechanism for incrementally increasing access to oral preventive care. The fact that there has not been a demonstrated overall increase in access to care in Colorado as a result of allowing hygienists to practice independent of

dentists, does not mean that the public realizes no benefit from the Colorado model. Independent practices might make access easier by offering more flexible hours that accommodate working patients. Regardless of whether access to care is increased, there is ample evidence that patient satisfaction with independent practice dental hygienist in Colorado is notable.[3]

Evaluation Criterion #7: Existing laws and regulations. The extent to which existing legal remedies are inadequate to prevent or redress the kinds of harm potentially resulting from non-regulation and whether regulation can be provided through an existing state agency or in conjunction with presently regulated practitioners.

MDHA says that many Maine citizens who do not have access to health care have no legal redress. Legal redress in the context of sunrise review refers to the legal process whereby consumers may file complaints against practitioners. Groups responding to this criterion focused on "lack of access to oral health care" as a condition that deserves redress or relief of some sort.

Catherine Kasprak, RDH, asserts that a board comprised of dental hygienists would be better positioned to act on complaints against dental hygienists regardless of the practice setting.

Jane Walsh (UNE) acknowledges that the Board of Dental Examiners can regulate dental hygienists in independent practice but a dental hygienist board separate from dentists makes more sense and could more effectively regulate dental hygienists. A dental hygiene board would allow the existing board to focus on advances in dentistry.

The three denturist professional associations (NDA, IFD, MSD) contend that the existing law and composition of the Dental Board are inadequate to prevent harm resulting from denturists being regulated by a Board dominated by dentists. They believe the existing subcommittee is inadequate to serve the many needs of the denturist profession. According to these organizations, no profession should be regulated by its competition. An independent board or governance through the Department of Professional and Financial Regulation would bring more denturists and hygienists into the State.

MBODE, MCDC/DHHS, and MPCA suggest that existing legal remedies are adequate to prevent or redress the kinds of harm potentially resulting from independent practice of dental hygienists. They recommend regulation through the Board of Dental Examiners.

[3] Brown, LF, House DR, Nash KD. ***The economic aspects of unsupervised private hygiene practice and its impact on access to care.*** Dental Health Policy Analysis Series, Chicago: American Dental Association, Health Policy Resources Center; 2005 and ADHA's **Response to ADA Study: The Economic Impact of Unsupervised Dental Hygiene Practice and its Impact on Access to Care in the State of Colorado, 2005.**

Department Assessment: No respondents presented specific information demonstrating that existing law, legal remedies and regulatory structure of the existing licensing Board are inadequate to redress potential harm. Since dental hygienists are currently regulated, consumers have legal remedies by filing complaints with the Board. If dental hygienists are permitted to practice independently, the same legal remedy exists. The question of whether those within Maine's population who cannot access dental care have been deprived of a legal right or remedy is beyond the scope of this report.

Evaluation Criterion #8: Method of regulation. Why registration, certification, license to use the title, license to practice or another type of regulation is being proposed, why that regulatory alternative was chosen and whether the proposed method of regulation is appropriate.

The three denturist associations (NDA, MSA, IFS) state that no independent dental profession should be regulated by its competition. They recommend an independent board or governance by the Department.

Joan Davis, RDH, states that allowing hygienists to practice independently will expand access to preventive care, which will decrease dental disease and reduce the cost of services.

MDHA contends that Maine citizens need greater access to quality oral health care; and independent practice will broaden the availability of preventive services.

Department Assessment: Dental hygienists are required by Maine law to be licensed and their conduct is regulated by the Board of Dental Examiners. The Department does not view this proposal to permit dental hygienists to practice independent of dentists, as proposing a new method of regulation, rather, it proposes to expand the permissible practice settings and reduce the supervision for dental hygienists.

Evaluation Criterion #9: Other states. Please provide a list of other states that regulate the profession or occupation, the type of regulation, copies of other states' laws and available evidence from those states of the effect of regulation on the profession or occupation in terms of a before-and-after analysis.

See attached Appendix E.

Evaluation Criterion #10: Previous efforts to regulate. Please provide the details of any previous efforts in this State to implement regulation of the profession or occupation.

Not applicable. Dental hygienists are currently regulated.

Evaluation Criterion #11: Minimal competence. Please describe whether the proposed requirements for regulation exceed the standards of minimal competence and what those standards are.

Not applicable. The proposal as drafted appears to be based on current standards of minimal competence.

Evaluation Criterion #12: Financial analysis. Please describe the method proposed to finance the proposed regulation and financial data pertaining to whether the proposed regulation can be reasonably financed by current or proposed licensees through dedicated revenue mechanisms.

Department Assessment: All costs associated with regulation of the dental professions, as well as costs associated with changes in regulation, would be borne by licensees of the licensing entity.

Evaluation Criterion #13: Mandated Benefits. Please describe whether the profession or occupation plans to apply for mandated benefits.

Department Assessment. The term "mandated benefits" in the context of sunrise review refers to a process by which insurance companies are required by State law to provide insurance coverage for certain services or procedures rendered to consumers. The phrase implies State-required insurance coverage for the service provided.

Interested parties including the Maine Dental Hygienists Association make reference in their responses to the need for "direct reimbursement" of dental hygienists working in an independent practice. Currently, reimbursement may be directed to an "agency" for certain dental services provided, however, individual dental hygienists cannot receive direct payment under their own billing number. Those responses also state that "direct reimbursement" as a payment mechanism is a "requisite to expanding the scope of practice and access to care."

It is worth noting that when a legislative proposal calls for mandated insurance coverage and required payment to providers for certain procedures, the proposal is forwarded to the Joint Standing Committee on Insurance and Financial Services. That Committee typically requests a separate study conducted by the Department's Bureau of Insurance which reviews the proposal and files a report on the estimated cost of the mandate, were it to be enacted into law.

D. Establishment of Licensing Category for Mid-Level, Expanded Scope Dental Hygienist

The proposal under consideration would require the Board of Dental Examiners to establish a new license category requiring additional education, clinical training and experience beyond what is needed to obtain a dental hygienist license under current statute. The new license category, referred to in this report as a "mid-level dental hygienist" would be open to 1) licensed dental hygienists who 2) document completion of a one-year internship with either a Maine-licensed dentist or a dental hygienist already certified in this license category; and who 3) document completion of a recommended

number of hours of "didactic and clinical training" in an educational institution accredited by the American Dental Association's Commission on Dental Accreditation; and who 4) provide evidence of liability insurance.

The new license category envisioned by the proponents would have an expanded scope of practice allowing licensees to provide oral health services including triage, case management and dental hygiene prevention; administration of local anesthesia, including nitrous oxide; cavity prevention; simple restoration; pulpotomies; deciduous extractions; as well as the prescribing of antimicrobials, fluoride and antibiotics. It appears that the intent of the proponents is for these services to be provided outside the traditional dental office setting to low-income persons and MaineCare recipients without supervision by a licensed dentist, although the proposal is somewhat ambiguous on this point.[4]

The Board of Dental Examiners would be responsible for promulgating major substantive rules to provide meaningful guidance to licensees and applicants interested in obtaining this specialized license. The rules would include specific details with regard to the parameters of an acceptable internship and required hours and substantive elements of didactic and clinical training required for this category.

Note: Although many individuals and groups that participated in the BRED committee's public hearing on this bill may to some degree support some form of mid-level license category for dental hygienists, there was strong opposition to the establishment of any new program or regulation targeted at Maine's low-income and MaineCare eligible population. The bill's focus on this segment of Maine's population was undoubtedly well-intentioned but almost all public hearing participants noted that there should be only one standard of care for dental or oral health services provided in Maine regardless of an individual's ability to pay for those services and that the low-income individuals should not receive a lower standard of care than other segments of Maine's population.

Evaluation Criterion #1: Data on group proposed for regulation. A description of the professional or occupational group proposed for regulation or expansion of regulation, including the number of individuals or business entities that would be subject to expanded regulation; the names and addresses of associations, organizations and other groups representing the practitioners; and an estimate of the number of practitioners in each group.

Background: The subject group targeted for expanded State regulation is the license category of "dental hygienist" which would include individuals currently licensed and, hypothetically, those who may be licensed in the future. The bill implies that only Maine-licensed dental hygienists with additional training and education would be eligible

[4] Given that LD 1246 directed the Board of Dental Examiners to adopt rules setting forth practical limitations on the scope of practice and licensing requirements including whether certain procedures may be performed under direct or general supervision of a licensed dentist, reference to these services being provided "outside the traditional dental office" implies at most indirect supervision. It is unlikely, however, that the proposal envisioned advanced or expanded scope dental hygiene practice entirely independent of supervision by a licensed dentist.

for the new license category and the expanded scope of practice. There are currently 1257 Maine-licensed dental hygienists. Of that number, 819 are in active Maine practice. Also affected indirectly by the proposed legislation would be 830 Maine-licensed dentists, of which 658 are in active practice in Maine.[5]

Responses:

The Maine Dental Hygienists' Association, founded in 1926, has 169 official members (dental hygienists). Its stated mission is to "improve the public's total health…by ensuring access to quality oral health care, increasing awareness of the cost-effective benefits of prevention, promoting the highest standards of dental hygiene education, licensure, practice and research, and representing and promoting the interests of dental hygienists."

Founded in 1867, the Maine Dental Association (MDA) is a professional membership organization of licensed dentists whose stated mission is to "provide representation, information and other services for the dentist members and, through the dentist members, promote the health and welfare of the people of the State of Maine." MDA has 590 practicing members (dentists) and 133 retired members as of the end of 2007.

Department Assessment*:*

There is no way of determining how many, if any, currently licensed dental hygienists would work toward becoming eligible for this expanded scope mid-level dental hygienist license category.

Evaluation Criterion #2: Specialized skill. Whether practice of the profession or occupation proposed for expansion of regulation requires such a specialized skill that the public is not qualified to select a competent practitioner without assurances that minimum qualifications have been met.

Responses:

All responding parties agreed that setting minimum qualifications for a mid-level dental hygienist would be critical to protecting the public from harm.

Department Assessment: Currently, there are minimum license requirements and standards for dental hygienists practicing in certain public settings (public health supervision) and also for hygienists practicing in traditional dental office settings. More stringent license requirements, including a higher level of education and training, would be necessary for a mid-level dental hygienist whose scope of practice would include dental services and procedures that involve diagnosis and treatment and go substantially beyond the preventive and oral education services permitted by current statute.

[5] Licensure statistics were provided by the Maine Board of Dental Examiners on January 10, 2008.

Evaluation Criterion #3: Public health; safety; welfare. The nature and extent of potential harm to the public if the profession or occupation is not regulated, the extent to which there is a threat to the public's health, safety or welfare and production of evidence of potential harm, including a description of any complaints filed with state law enforcement authorities, courts, departmental agencies, other professional or occupational boards and professional and occupational associations that have been lodged against practitioners of the profession or occupation in this State within the past 5 years.

Responses:

The Maine Dental Hygienists' Association asserts that the "threat to the public of having no care or maintaining the status quo and the harm caused by complete lack of care is far worse than any outside risk associated with an expanded scope of practice." MDHA also provided several examples of tragic deaths of children in Georgia and Maryland resulting from untreated dental infections. Further, MDHA asserts that "the threat to the public's health, safety or welfare is that the scope of practice for dental hygienists remains the same thereby perpetuating the access to care crisis."

The Maine Board of Dental Examiners comments that the public will not be subject to any more risk than it is today, if the scope of practice for dental hygienists is not expanded. However, if the scope of practice is expanded without corresponding increases in educational levels and sufficient levels of clinical experience and training, the Board fears that the public health and welfare would certainly be jeopardized.

The Maine Dental Association agrees that the public will not be placed at risk if the scope of practice is not expanded and it opposes LD 1246, as drafted, but it "looks forward to the creation of a new category of licensee—envisioned to be a masters level clinician who would be appropriately educated, trained and tested to work in a collaborative arrangement in the dental community, providing specifically identified procedures now only allowed by a dentist." Further, the MDA comments that "this would require the development of an entirely new master's level curriculum in an accredited educational institution that meets the educational standards of the ADA Commission on Dental Accreditation to teach the necessary skill sets. These skills will need to include not only technical dental skills, but also academic understanding and…training in clinical judgment...focusing on pediatric aspects of dentistry."

Catherine Kasprak, RDH, asserts that there is "more potential harm to the public by not allowing a mid-level dental hygienist. This [level] would allow more care accessibility for citizens in Maine. There is a shortage of dentists which is making it difficult for many to access care."

Stephen Mills, DDS, comments that "if dental care is not provided by the highest level, the chance for perioperative problems are high and children may suffer."

MCDC/DHHS contends that much more information about the proposed change in scope of practice would be necessary in order to properly evaluate the impact on the public. The scope should be evaluated based on "best practices, education and training standards, quality assurance mechanisms, licensure and continuing education requirements." Focus on clinical training and outcomes should also be included.

Jane Walsh, (UNE) supports the concept of expanding the scope of practice of dental hygienists but proposes the creation of two new levels of licensure rather than just one—one for a mid-level advanced practice dental hygienist (ADHP) and another for a mid-level practitioner. The two categories would be distinguished by the entry level degree requirement. A bachelor's degree in dental hygiene and completion of another degree program that is the equivalent of a master's level of education would be required for the ADHP level and a Bachelor of Science degree and a master's level degree in another area would be required for the mid-level practitioner category. These two levels of licensure would correlate to the nurse practitioner and physician assistant levels, respectively, in the medical model.

Ms. Walsh explains UNE's vision that the Advanced Practice Dental Hygienist would be a licensed dental hygienist with a Bachelor of Dental Hygiene degree who then graduates from a program with a curriculum that tracks the draft curriculum set forth by the American Dental Hygienists Association (attached as Appendix F). The ADHP would be permitted to practice within the expanded scope of practice outlined in LD 1246 as part of a health care team, or on an independent basis, if the ADHP could demonstrate completion of two years of clinical experience in a traditional dental office setting.

The mid-level practitioner envisions an individual who is not a licensed dental hygienist but who has a Bachelor of Science degree and who has graduated from an accredited dental Mid-Level/Master's program "similar to but not exactly like" the curriculum proposed by the American Dental Hygienists Association. The mid-level practitioner would practice dentistry under the supervision of a licensed dentist who would determine the specific duties and functions of the mid-level practitioner.

Ms. Walsh agrees with other respondents that the threat to public safety arises if the current scope of practice of dental hygienists is not expanded and access to oral health care continues to be limited.

Department Assessment: Not applicable. The proposed license category does not currently exist.

Evaluation Criterion #4: Voluntary and past regulatory efforts. A description of the voluntary efforts made by practitioners of the profession or occupation to protect the public through self-regulation, private certifications, membership in professional or occupational associations or academic credentials and a statement of why these efforts are inadequate to protect the public.

Responses:

MDHA notes that it has been actively involved in advocating for legislation that has culminated in 1) permitting licensed dental hygienists to administer local anesthesia under direct supervision after receiving special certification to do so by the Board of Dental Examiners; 2) removing certain supervision requirements in public health settings and 3) expanding the permissible practice sites for public health supervision work.

MBODE acknowledges that there is an active but relatively small group of dental hygienists who are members of the Maine Dental Hygienists' Association and consequently the American Dental Hygienists Association. The Board notes that the Association has drawn less than one quarter of all licensed hygienists to its membership and indicates that MDHA does not represent the "vast majority of practicing hygienists in Maine."

Department Assessment: Dental hygienists have been licensed and regulated through the Board of Dental Examiners since 1917. This question may be more relevant in situations where regulation of a previously unregulated profession is proposed.

Evaluation Criterion #5. Costs and benefits of regulation. The extent to which regulation or expansion of regulation of the profession or occupation will increase the cost of goods or services provided by practitioners and the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers.

Responses:

MCDC/DHHS notes that the potential impact of this proposal on costs of services is difficult to estimate since there is still limited experience from other states; because it is unknown how many dental hygienists would pursue status as mid-level providers; and since it is not known how many would need to practice at this level to have an appreciable, measurable impact. However, it may be reasonable to assume that over the long term, since prevention is cost-effective, such services should reduce the volume of more involved and expensive restorative and operative care and the overall impact would be to reduce costs of services.

Stephen Mills, DDS, notes that if this kind of position is used in a dental office, it could reduce costs and increase productivity. Further, he asserts that "the future for this position could be, someday, very positive."

Catherine Kasparek, RDH, states that costs may be the same or less than what is now incurred, and there will be more competition and more access to care which will reduce medical care costs and increase the overall health of Maine citizens.

MBODE asserts that "creation of a mid-level dental hygienist license category will have little impact on costs of services…far too few hygienists will be interested in attaining

mid-level status to make any real difference." Further, the Board notes that it does not envision private practices employing this level of licensee.

MDHA takes the position that in order for this level of care to prosper, a direct reimbursement option would need to be identified. The mid-level practitioner would need an independent revenue stream in order to succeed financially.

Department Assessment: The effect of a new level of license authority on cost of services to consumers is not known.

Evaluation Criterion #6: Service availability under regulation. The extent to which regulation or expansion of regulation of the profession or occupation would increase or decrease the availability of services to the public.

Responses:

MBODE takes the position that "if enough hygienists are willing to undergo the time and expense to become mid-level practitioners, there can be a positive effect on access to care for Maine's underserved population." However, it would take a large number of interested dental hygienists (between 100-200) placed in high need areas to make a significant impact on access. The Board does not foresee fee-for-service patients becoming "a staple in the practice of a mid-level hygienist" and is concerned that hygienists will keep pressing to expand their scopes of practice, thus, creating the potential for negative outcomes if educational requirements are not increased at the same time.

MDA is hopeful that by establishing a mid-level dental hygienist position, the timeliness of care to currently underserved pediatric patients will be enhanced.

Catherine Kasparek, RDH, hopes that a mid-level hygienist will increase the availability of services to the public and will allow increased access in more locations.

Stephen Mills, DDS, asserts that creating a mid-level position for hygienists "would increase availability at a frightening decrease in quality."

MCDC/DHHS asserts that there is a growing understanding of the need to expand the dental workforce with the development of a mid-level practitioner who will be able to provide preventive care and other services as yet undefined that will maximize the use of skills possessed by dental professionals. Hopefully, if all dental professionals are permitted to practice to the limit of their skills and scope of practice, overall access to care will increase.

Jane Walsh (UNE) believes a mid-level dental provider (either ADHP or mid-level practitioner) would increase availability of oral health services to the public. Students would have patients to treat in their school clinic setting and would hopefully allow

expansion of the UNE dental clinic. Upon graduation, ADHPs could "potentially double the restorative output of the private practice dental office."

MDHA asserts that three factors must come together to result in increased access: 1) new reimbursement policies; 2) supervision that is appropriate to the skill level; and 3) an expanded scope of practice with supplemental education requirements.

Department Assessment: In general, imposing additional regulation on an already regulated group results in a decrease in licensee numbers. In this case, however, given that the proposal to allow dental hygienists to upgrade to mid-level dental hygienist status envisions the upgrade to be voluntary, rather than mandatory, the impact on availability of services could be less severe. Although there might be a decrease in actively practicing dental hygienists for some period of time during which hygienists might limit their work hours to obtain additional education and experience, the number of new dental hygienists licensed by the Board increases each year.

Evaluation Criterion #7: Existing laws and regulations. The extent to which existing legal remedies are inadequate to prevent or redress the kinds of harm potentially resulting from non-regulation and whether regulation can be provided through an existing state agency or in conjunction with presently regulated practitioners.

Responses:

MDHA indicates that Mainers who cannot access dental care have no legal remedy. Only Mainers who are fortunate enough to have dental care have a legal remedy and can file complaints with the Board.

Jane Walsh (UNE) asserts that as dental technology increases, so does the need for regulation of dental hygienists to be separate from the regulation of dentists, even though there is a link between the two types of dental practices. Existing regulation is not sufficient to allow for new technologies that must be learned through expanded educational requirements.

MCDC/DHHS and MBODE contend that existing legal remedies are adequate to prevent or redress the kinds of harm potentially resulting from the proposed legislation.

Department Assessment: No responses presented specific information demonstrating that existing law, legal remedies and regulatory structure of the existing licensing Board are inadequate to redress potential harm. Since dental hygienists are currently regulated, consumers have access to legal remedies by filing complaints with the Board. The question of whether those within Maine's population who cannot access dental care have been deprived of a legal right or remedy is beyond the scope of this report.

Evaluation Criterion #8: Method of regulation. Why registration, certification, license to use the title, license to practice or another type of regulation is being proposed, why that regulatory alternative was chosen and whether the proposed method of regulation is appropriate.

Responses:

MCDC/DHHS states that all three groups of dental professionals share concerns about access to oral health services particularly for low income Mainers and children, and about the adequacy of the oral health care workforce. The agency questions whether a new licensing board can address those issues and suggests that shared concerns can best be addressed by the professions working closely together rather than developing their own, separate methods of regulation.

Jane Walsh (UNE) says licensing is the regulatory method of choice for the medical and dental professions because the scope of practice and level of expertise demand a regulatory body that understands the nuances of daily practice and the issues practitioners face in an evolving field.

Department Assessment: Because the concept of an advanced practice dental hygienist is theoretical, it would be premature to address this criterion.

Evaluation Criterion #9: Other states. Please provide a list of other states that regulate the profession or occupation, the type of regulation, copies of other states' laws and available evidence from those states of the effect of regulation on the profession or occupation in terms of a before-and-after analysis.

Responses:

Jane Walsh (UNE) notes that the position of advanced practice dental hygienist does not yet exist in any other state. ADHP is a concept created and proposed by the American Dental Hygienists Association. No state has yet adopted the advanced practice dental hygienist as a license category.

Department Assessment: To date, no state has established a license category for a mid-level or advanced practice dental hygienist with an expanded scope of practice as proposed.

Evaluation Criterion #10: Previous efforts to regulate. Please provide the details of any previous efforts in this State to implement regulation of the profession or occupation.

Department Assessment: No assessment necessary. Dental hygienists are currently subject to state regulation.

Evaluation Criterion #11: Minimal competence. Please describe whether the proposed requirements for regulation exceed the standards of minimal competence and what those standards are.

Responses:

MDHA states that as proposed by the American Dental Hygienists Association, the ADHP licensing requirements would exceed minimum standards currently set forth in Maine statute.

Jane Walsh (UNE) notes that both the advanced practice dental hygienist and the mid-level practitioner would be subject to a new higher level of education and training, thus creating a new standard of minimal competence.

MCDC/DHHS indicates that standards describing competence for a mid-level dental hygienist would exceed current requirements for licensing of dental hygienists under Maine law. Such standards do not currently exist in Maine and should be developed with consideration of the various models being proposed by other states and at the national level to facilitate reciprocity with other states in light of developing best practices.

Stephen Mills, DDS, states that this is a new designation; no standards exist.

Catherine Kasparek, RDH, says standards would exceed current level of minimal competence following the proposed guidelines of the American Dental Hygienists Association.

MBODE raises concerns that the proposed requirements for regulation are not fully researched, identified, and agreed upon by professional educators to assure that appropriate knowledge, skill and experience will be guaranteed in the educational process of any new level of dental care provider. Board members feel strongly that before any such legislation is considered, recommended levels of education and training must be agreed upon. In addition, the legislation should include a mechanism for testing minimal competence and a re-evaluation of appropriate continuing education requirements.

Department Assessment: LD 1246, if enacted as drafted, would require a new minimum standard of eligibility for mid-level dental hygienists for the purpose of public protection. The new minimum standards would require a substantially higher level of advanced education and clinical experience to ensure that public health and safety would not be jeopardized by mid-level dental hygienists providing dental services with minimal supervision by licensed dentists.

Evaluation Criterion #12: Financial analysis. Please describe the method proposed to finance the proposed regulation and financial data pertaining to whether the proposed regulation can be reasonably financed by current or proposed licensees through dedicated revenue mechanisms.

Responses:

MBODE notes that any change resulting from this legislation "must be borne directly by the licensees via licensing and renewal fees and indirectly by the patients who avail themselves of these dental services by way of the fees charged for services rendered."

Department Assessment: All costs associated with regulation of the dental professions, as well as costs resulting from changes in regulation, would be borne by licensees of the licensing entity.

Evaluation Criteria #13 Mandated benefits. Please describe whether the profession or occupation plans to apply for mandated benefits.

Department Assessment: Although MDHA indicates that direct reimbursement of dental hygienists is critical to increasing access to oral health care, it does not indicate whether its members have or will submit legislation that would mandate dental or health insurance providers to reimburse mid-level dental hygienists for services provided.

VII. Department Conclusions and Recommendations

State sunrise review law requires the Commissioner to engage in a two-step evaluation process guided by 13 statutory evaluation criteria. First, the Commissioner must evaluate information provided by the applicant group in support of its proposal to regulate or expand regulation of a profession, as well as information from individuals or organizations opposing new regulation and other interested parties. Second, the Commissioner must recommend whether the Committee should take action on a legislative proposal. If the Commissioner's recommendation supports regulation or expansion, the report must include any legislation required to implement that recommendation. The recommendation must reflect the least restrictive method of regulation consistent with the public interest.

The purpose of a licensing board is singular in nature; 10 MRSA § 8009 provides that "*The sole purpose of an occupational and professional regulatory board is to protect the public health and welfare. A board carries out this purpose by ensuring that the public is served by competent and honest practitioners and by establishing minimum standards of proficiency in the regulated professions by examining, licensing, regulating and disciplining practitioners of those regulated professions. Other goals or objectives may not supersede this purpose*. (Emphasis added)

The role of a licensing board is frequently misunderstood. Licensing boards implement legislatively set public policy in the form of licensing standards and they apply practice statutes to complaints of misconduct. Their role is to carry out the directives of the Legislature by licensing applicants who satisfy license requirements and disciplining professionals whose relative skills cannot be assessed or evaluated by the public at large. Licensing boards do not set State policy—they carry out policy decisions made by the Legislature.

Licensing programs offer the public assurance that professionals who receive a state license possess a minimum level of skill and competence. Beyond those minimum standards, members of the public who interact with licensed professionals bear the responsibility for bringing to the boards' attention incidences of misconduct or substandard care. The Board of Dental Examiners carries out its legislative and statutory authorities and responsibilities in a professional manner, with careful analysis and within the due process safeguards of Maine's Administrative Procedure Act.

The purpose of the sunrise review process with respect to additional regulation of dental practitioners as described in Resolve 2007, Chapter 85 is to assess the public need for expanded regulation; and the consequences to the public of the expansion of an existing regulatory program. It is worth noting further that sunrise assessments evaluate the public's need for regulation or expanded regulation, not a profession's desire for heightened professional status and respect.[6]

In this regard, the four concepts examined in this report present unique difficulties given the nature of the profession under review. There is universal agreement that segments of Maine's population in unserved or underserved parts of the State have little or no access to dental care. Each proposal can be justified with the statement that Maine citizens need more access to dental care. However, the sunrise process focuses on when and how the State protects the public from individuals who have been issued a license. Much of the material and information submitted by interested parties makes a case that the State of Maine must act to provide wider access to dental and oral care. The Department suggests that the discussion of State health policies goes beyond the scope of this report and should be addressed by agencies other than the Department of Professional and Financial Regulation. The Department's task is to separate regulatory issues subject to sunrise from State financial and health policies that are within the purview of other segments of Maine government.

It is against this backdrop that the Department evaluates the four proposals described in the resolve.

[6] The Department does not suggest that professional associations are precluded from urging regulatory change on the Legislature but it should be understood that in the context of a sunrise review, the motivation to seek more regulation does not emanate from Maine's general public seeking more protection from dishonest or incompetent professionals. Rather, it comes from groups within the already regulated dental community whose associations seek greater respect and greater independence from licensed dentists for their members.

A. International Applicants for Maine Dental Licenses

Discussion and Conclusion:

The Department understands and appreciates the efforts of many interested groups and individuals working hard to attract new and transitioning dental professionals to Maine to increase the level of available dental care. Any licensing proposal that has the potential for producing even a handful of foreign-educated applicants for dental licenses seems worthy of consideration.

The information requested and received from the two states that have had experience with a state alternative to the CODA accreditation program shows that such a program is unreasonably expensive for a state dental board, and its ability to license only qualified applicants is highly questionable. As noted earlier in the report, California has a long history of administering a state-created restorative techniques examination intended to test the clinical skills of graduates of foreign dental programs. The California Board of Dental Examiners has expended considerable time and resources offering this exam which has resulted in the licensing of dentists who may not have skills and training that are equivalent to graduates of CODA-accredited dental programs. Moreover, California has only granted accreditation to one foreign dental program, located in Mexico.

Minnesota has also undertaken an effort to evaluate foreign dental programs only to admit that its program may not be successful in ensuring that only qualified foreign graduates are licensed to practice in that state.

Maine is fortunate, however, to be located close to two highly rated dental completion programs in Massachusetts which have produced quality applicants for licensure during the past six years.

Additionally, the Commission on Dental Accreditation is now offering accreditation services for international dental programs. CODA's interaction with foreign jurisdictions may eventually benefit Maine, as graduates are measured against the competency standards used to evaluate graduates of CODA-accredited US dental programs.

Recommendation:

The cost of creating and implementing a state accreditation program to evaluate dental education programs located outside the United States for the few applicants who do not qualify under existing licensure standards greatly outweighs the potential benefit. The Department therefore recommends that the Committee on Business, Research and Economic Development decline to act on this proposal.

B. Proposal to establish a new licensing entity to regulate denturists and dental hygienists

Discussion and Conclusion:

The Department finds that the public would not benefit from separating State regulation of denturists and dental hygienists from regulation of dentists. In fact, the Department suggests that the public would be harmed by such a separation given that the three license categories within the purview of this report are integral to the provision on oral and dental care in Maine. Separating regulation of dental hygiene and denturism from dental practice could impact negatively on the public if the professional and administrative connection between and among the three types of licensees was lost.

An instructive example of the benefit of regulating different segments of the same profession is the effectiveness of the Board of Counseling Professionals Licensure. Four distinct but related categories of practitioners are licensed and regulated by one licensing board. Licensed professional counselors, licensed clinical professional counselors, marriage and family therapists and pastoral counselors share a common code of ethics and distinct but related scopes of practice all focused on the goal of licensing qualified practitioners to provide Maine citizens with counseling services. Questions and concerns about the future of each segment of the regulated counselor community were raised in 1992 when the Legislature established the consolidated counselor licensing program. Those concerns, however, have been addressed and resolved. It is important that the dental profession reach the same level of comfort with a single licensing board.

Moreover, the Department finds allegations of mistreatment, decision-making based on competitive advantage and lack of attention against the Board of Dental Examiners by dental hygienists and denturists unfounded and unhelpful to the State's efforts to protect the public from unethical, unsafe and incompetent dental practitioners. The Department could not confirm that denturists are unable to work closely with dentists in Maine, and that dental hygienists do not generally have excellent working relationship with dentists. No interested party has submitted concrete, specific information to substantiate allegations of mistreatment by dentists or the Board as an administrative regulatory body.

The Maine Society of Denturists asserts that the Board has not made efforts to develop or establish denturist educational programs in Maine therefore creating a barrier to expansion of denturism. The Department notes that the development of new educational programs for students who are interested in becoming denturists, dental hygienists or dentists is not within the statutory purpose or regulatory purview of the Board. It is incumbent on existing public and private educational institutions to either create a new program or expand their existing dental health programs to include denturism education if they view it as viable. Husson College, for example, recently announced the establishment of a pharmacy degree program that will allow students to graduate with a Pharmacy Doctorate as a way of addressing the reported shortage of licensed pharmacists. The Maine Board of Pharmacy did not have statutory or regulatory responsibility for establishing such a program.

Denturists and dental hygienists were given ample opportunity to share information with the Business, Research and Economic Development Committee during legislative hearings on the Board of Dental Examiners 2003 Government Evaluation Act Review. The Committee accepted some recommendations and rejected others for improvements in the Board's regulatory process. The Committee considered separating denturists and dental hygienists but determined that doing so was not warranted and the Department agreed with that determination.

A few, but not all, licensed denturists then approached the Maine Regulatory Fairness Board because of their views that denturists were being prevented from flourishing in Maine for competitive reasons by dentists. Similarly, some, but not all, dental hygienists also testified that they are dominated by dentists for competitive reasons. Although the interested parties have the right to petition the Legislature at any time, and the Regulatory Fairness Board appropriately offered the parties a forum for discussing the concerns of denturists and dental hygienists, the Department respectfully disagrees with the Regulatory Fairness Board's recommendation that creation of a separate licensing board(s) is appropriate. The recommendation is based on the views of a narrow segment of the regulated community rather than an examination of a broader base of opinion and experience. The Department could not identify efforts by any group to prevent denturists and dental hygienists from providing services to the public.

Recommendation:

The Department recommends that the Committee on Business, Research and Economic Development take no action on this proposal. It does, however, suggest that the Committee strengthen and standardize the roles of the Dental Hygiene and Denturism Subcommittees within the structure and operation of the Dental Board. The Board has indicated its willingness to expand the role and function of these subcommittees. The public would be better served by strengthening the connection between dentists, denturists and dental hygienists rather than splintering the dental profession into three parts.

The Denturist subcommittee should be empowered not only to make disciplinary decisions on complaints against denturists, but also to address licensure and practice issues relative to denturism practice in collaboration with the Board. Similarly, the Dental Hygienist Subcommittee should be empowered not only to make decisions on hygienist applications, but also to consider and act on practice and disciplinary issues.

The Department is satisfied with the efforts of the Board to implement significant statutory changes made by the Legislature in 2003 to address issues of collaboration that resulted in the establishment of subcommittees. The Board and all interested groups of practitioners would benefit from additional time to work together to solidify the statutory improvements implemented by the Board at the direction of the Legislature.

C. Proposal to Allow Licensed Dental Hygienists to Provide Dental Hygiene Services Independent of Supervision by Licensed Dentists

Discussion and Conclusion:

A comparative analysis of the dental hygiene regulatory programs in other states and the Maine regulatory program indicates conclusively that the scope of practice of Maine dental hygienists is broader than that of most states.

Under current law, a Maine dental hygienist may work under direct or general supervision of a dentist in a traditional private dental practice or in a variety of public health settings under less restrictive supervision. Moreover, dental hygienists who demonstrate appropriate training and proficiency may administer local anesthesia in traditional dental offices. They may also, having demonstrated appropriate training and proficiency, administer nitrous oxide in traditional practice settings under direct supervision.

Only one state, Colorado, has a broader scope of dental hygiene practice because state law permits a dental hygienist to practice "independent" of a licensed dentist. The term "independent practice" in the context of this report means a dental hygienist may engage in a privately owned independent practice without any supervision, either direct or general, by a licensed dentist. Although the Department could find no study or external examination of the impact of independent practice by dental hygienists on patient outcomes in Colorado, it is likely that if negative outcomes had been documented in that state, those reports would be available.[7] The Colorado Board of Dental Examiners recently notified the Department that it is not aware of any study or report that has been released on this topic.

The Department suggests that the success of the existing public health supervision program is the most relevant indicator of the potential benefit and the low level of potential risk to the public of independent practice of dental hygienists. Under public health supervision, dental hygienists provide oral care services independent of dentist supervisions in large part. (See Appendix F.)

It is the Department's understanding that no significant practice issues or problems have been reported to the Board as a result of dental hygienists practicing pursuant to public health supervision, outside the traditional private office setting. The Board is currently providing educational support for dental hygienists who indicate an interest in working in a public health setting.

A review of disciplinary actions taken by the Board against licensed dental hygienists supports the Department's conclusion that Maine dental hygienists have no difficulty

[7] The Department notes that this sunrise report contains a prior reference to a study commissioned by the American Dental Association with respect to how independent practice of Colorado dental hygienists has affected overall access to oral health care in that state. That report did not contain a conclusion or recommendation about the impact of independent practice of dental hygienists on patient outcomes.

meeting minimum standards of care and competency outlined in existing statute and rule. Of the four adverse actions taken against dental hygienists in the Board's history, three actions were based on substance abuse issues that are not uncommon to health-related professions, and one action involved a dental hygienist who treated a patient who was not a "patient of record" of the licensee's supervising dentist.

Concerns raised by interested parties about independent practice of dental hygienists in Maine focused not on whether the proposal would benefit the public but on whether dental hygienists would need additional education or clinical experience in order to practice at a higher skill level as independent practitioners.

A final factor considered by the Department was whether permitting independent practice by dental hygienists would decrease access by the public to essential oral health care while interested practitioners obtain more qualifying education or more clinical experience. The Department concludes that any initial decrease in numbers of actively practicing dental hygienists as a result of this proposal would be minimal and would not result in a negative impact on the public with respect to access to care.

The Department concludes that the proposal to permit independent practice of preventive care and oral health education by dental hygienists who meet certain licensing qualifications should be considered by the Committee on Business, Research and Economic Development pursuant to the following recommendation.

Recommendation:

The Department recommends that statutory provisions be drafted to establish a license category for "independent practice dental hygienist" with a scope of practice limited to preventive care and oral health education on an independent basis without supervision by licensed dentists:

1) License Qualifications (in addition to requirements already applicable to dental hygienists including continuing education)

- licensed dental hygienist with a bachelor degree from an accredited dental hygiene program who demonstrate one year or 2,000 work hours of clinical practice in a traditional private dental practice or dental clinic completed within the two years preceding application for independent status; or

- licensed dental hygienist with an associate degree from an accredited dental hygiene program who demonstrate three years or 6,000 hours clinical practice in a traditional private dental practice or dental clinic completed within six years preceding application for independent status;

2) Scope of practice of the independent practice dental hygienist will include the following exclusive list of permissible functions and tasks limited to preventive oral care and oral health education:

- Interview patients and record complete medical and dental histories;
- Take and record the vital signs of blood pressure, pulse and temperature;
- Perform oral inspections, recording all conditions that should be called to the attention of a dentist;
- Perform complete periodontal and dental restorative charting;
- Perform all procedures necessary for a complete prophylaxis, including root planing;
- Apply fluoride to control caries;
- Apply desensitizing agents to teeth;
- Apply liquids, pastes or gel topical anesthetics;
- Apply sealants;
- Smooth and polish amalgam restorations, limited to slow speed application only;
- Cement pontics and facings outside the mouth;
- Take impressions for athletic mouth guards, and custom fluoride trays;
- Place and remove rubber dams;
- Place temporary restorations in compliance with the protocol adopted by the Board of Dental Examiners; and
- 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. For the purposes of this section, "topical" includes superficial and intrasulcular application.

3) A dental hygienist providing services on an <u>independent basis</u> shall perform the following duties:

- Provide to the patient, parent or guardian a written plan for referral or an agreement for follow-up by the patient, recording all conditions that should be called to the attention of a dentist;
- Have each patient sign an acknowledgment form that informs the patient that the practitioner is not a dentist and that the service to be rendered does not constitute restorative care or treatment;
- Inform each patient who may require further dental services of that need;

4) An independent practice dental hygienist may be the proprietor of a place where independent dental hygiene is performed and may purchase, own, or lease equipment necessary to perform independent dental hygiene.

5) Make conforming changes to the dental practice statute for the license category of independent practice dental hygienist including a definition of "independent practice."

Attached as Exhibit H is a draft legislative proposal to effectuate this recommendation.

D. Establishment of Licensing Category for Mid-Level, Expanded Scope Dental Hygienist

Discussion and Conclusion:

The fourth proposal envisions the creation of a license category that falls somewhere between a licensed dental hygienist and a licensed dentist. This new level of practitioner would have an expanded scope of practice that approaches the traditional practice of general dentistry. Survey responses on this proposal indicated that dental hygienists and their professional associations are enthusiastic about the concept as a way to expand access to oral health care based on advancing the interest of dental hygienists in becoming accepted as dental professionals educated and licensed to provide dental services beyond prevention and oral health education, including "diagnostic, preventive, restorative and therapeutic services directly to the public."[8]

The purpose of sunrise review is not to assess whether access to oral health care should be expanded, but rather to indicate whether proponents have made a case for creating a new licensing category because the public health and welfare is threatened without it. The Department concludes that the case for an advanced practice dental hygienist has not been made.

The proposal is premature for the following reasons:

1) The concept of a mid-level dental hygienist is, at this time, simply a concept.

No state has created such a license category; nor is there any generally accepted standard educational curriculum in place today that could be evaluated.

2) Educational curricula have not been established.

Although the American Dental Hygienist Association has compiled a list of "competencies" that describe the ADHA's vision of the advanced skill level, the Department was unable to find any educational institution that offers degree programs based on these draft competencies.

[8] Excerpt from "The American Dental Hygienists' Association's Draft Competencies for the Advanced Dental Hygiene Practitioner, June 2007, p. 6. (Appendix F).

3) Educational infrastructure is not in place to support the concept.

There are two associate degree programs in Maine that award associate degrees in dental hygiene—the University of Maine (Bangor) and the University of New England in Westbrook. Both educational institutions offer a bachelor's degree in dental hygiene but those two programs are open only to applicants who have already received an associate's degree in dental hygiene.

There is no educational institution in Maine that offers a direct entry Bachelor's or Master's Degree in Dental Hygiene. The concept advanced by the American Dental Hygiene Association envisions a Master's Degree in Dental Hygiene as the entry level degree for a mid-level dental practitioner. Although there are 15 master's programs in dental hygiene in the United States, it is unclear whether these programs focus on preparing students for this advanced license designation.

4) The Board of Dental Examiners is not the appropriate entity to evaluate curriculum and make determinations about educational and experiential requirements.

As noted previously, it is not within the statutory mission of the Board to either implement or recommend course curriculum for students who wish to eventually become mid-level practitioners in a license category that does not exist today. In the Department's view, it is the responsibility of private and public educational institutions to respond to the demand for new programs. Moreover, the Department is not aware of any established state or national examination focused on this subset of the dental profession.

Recommendation:

For the reasons discussed above, the Department recommends that the Committee on Business, Research and Economic Development take no action on this proposal.

Appendix H—Draft Legislation

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

PART A

Sec. A-1. 32 MRSA c. 16, sub-c. 4-A is enacted to read:

Subchapter 4-A: Independent Practice Dental Hygienists

§1099-A. 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. An independent practice dental hygienist, or a person employing one or more independent practice dental hygienists, may be the proprietor of a place where independent dental hygiene is performed and may purchase, own or lease equipment necessary for the performance of independent dental hygiene.

Every person practicing independent practice dental hygiene 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.

§1099-B. Qualifications for licensure

To qualify for licensure as an independent practice dental hygienist, a person must be:

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

2. Licensure as dental hygienist. Possess a valid license to practice dental hygiene issued by the Board of Dental Examiners pursuant to subchapter 4, or qualify for licensure as an independent practice dental hygienist by endorsement pursuant to section 1099-D; and

3. Education and experience. Meet the educational and experience requirements described in section 1099-C.

§1099-C. Education and Experience

An applicant for licensure as an independent practice dental hygienist must meet one of the following 2 sets of requirements:

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

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

§1099-D Licensure by endorsement

A person eligible for licensure as a dental hygienist by endorsement pursuant to section 1098-D(2) or 1099 is also eligible for licensure as an independent practice dental hygienist by endorsement if the applicant meets the education and experience requirements set forth in section 1099-C.

§1099-E. Application

An applicant for licensure as an independent practice dental hygienist shall apply to the Board of Dental Examiners 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 1099-G.

§1099-F. License; biennial renewal; discontinuation of dental hygienist license

The Board of Dental Examiners 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. 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 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 must 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 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 as a dental hygienist or an independent practice dental hygienist. Reinstatement of the independent practice dental hygienist license may be made, if approved by the board, by payment of a reinstatement fee to the board.

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

§1099-G. Fees

The Board of Dental Examiners 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 $xxx. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

§1099-H. Continuing education

As a condition of renewal 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 of Dental Examiners and the independent practice dental hygienist shall follow and are bound by the provisions of section 1084-A in the implementation of this section.

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

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

§1099-I. Scope of practice

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

A. Interview patients and record complete medical and dental histories;

B. Take and record the vital signs of blood pressure, pulse and temperature;

C. Perform oral inspections, recording all conditions that should be called to the attention of a dentist;

D. Perform complete periodontal and dental restorative charting;

E. Perform all procedures necessary for a complete prophylaxis, including root planing;

F. Apply fluoride to control caries;

G. Apply desensitizing agents to teeth;

H. Apply liquids, pastes or gel topical anesthetics;

I. Apply sealants;

J. Smooth and polish amalgam restorations, limited to slow speed application only;

K. Cement pontics and facings outside the mouth;

L. Take impressions for athletic mouth guards, and custom fluoride trays;

M. Place and remove rubber dams;

N. Place temporary restorations in compliance with the protocol adopted by the Board of Dental Examiners; and

O. Apply topical antimicrobials (excluding antibiotics), including fluoride for the purposes of bacterial reduction, caries control and desensitization in the oral cavity. The independent practice dental hygienist shall follow current manufacturer's instructions in the use of these medicaments. For the purposes of this section, "topical" includes superficial and intrasulcular application.

2. Practice under supervision. An independent practice dental hygienist may perform duties under the supervision of a dentist as defined and set forth in the rules of the Board of Dental Examiners pursuant to section 1095.

§1099-J. Responsibilities

An independent practice dental hygienist has the following duties and responsibilities with respect to each patient seen in an independent capacity pursuant to section 1099-I, subsection 1:

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

2. Referral plan. The independent practice dental hygienist shall provide to the 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.

§1099-K. Mental or physical examination

For the purposes of this section, by application for and acceptance of a license to practice, an independent practice dental hygienist is considered to have given consent to a mental or physical examination when directed by the Board of Dental Examiners. 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.

§1099-L. Use of former employers' lists

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

PART B

Sec. B-1. 32 MRSA §1062-A, sub-§1 is amended to read:

1. Penalties. A person who practices or falsely claims legal authority to practice dentistry, dental hygiene, independent practice dental hygiene, denturism or dental radiography in this State without first obtaining a license as required by this chapter, or after the license has expired, has been suspended or revoked or has been temporarily suspended or revoked, commits a Class E crime.

Sec. B-2. 32 MRSA §1081, sub-§2 is amended to read:

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;

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;

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;

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;

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

F. (rp).

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

H. Practice by an independent practice dental hygienist pursuant to subchapter 4-A.

Sec. B-3. 32 MRSA §1081, sub-§3 is amended to read:

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

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

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

C. Retains the ownership or control of dental equipment or material or a dental office and makes the same available in any manner for the use by dentists ~~or~~, dental hygienists, independent practice dental hygienists or other agents, except that nothing in this subsection applies to bona fide sales of dental equipment or material secured by a chattel mortgage or retain title agreement. A person licensed to practice dentistry may not enter into arrangements with a person who is not licensed to practice dentistry, with the exception of licensed denturists and independent practice dental hygienists, or the legal guardian or personal representative of a deceased or incapacitated dentist, pursuant to the provisions of Title 13, section 732.

Sec. B-4. 32 MRSA §1081, sub-§6 is enacted to read:

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

Sec. B-5. 32 MRSA §1092, sub-§1 is amended to read:

1. Unlawful practice. A person may not:

A. Practice dentistry without obtaining a license;

B. Practice dentistry under a false or assumed name;

C. Practice dentistry under the license of another person of the same name;

D. Practice dentistry under the name of a corporation, company, association, parlor or trade name;

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;

F. While manager, proprietor, operator or conductor of a place for performing dental operations, permit a person to practice dentistry under a false name;

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;

H. Impersonate another at an examination held by the board;

I. Knowingly make a false application or false representation in connection with an examination held by the board;

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

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

Sec. B-6. 32 MRSA §1094-D is amended to read:

§1094-D. Definitions

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

Sec. B-7. 32 MRSA §1100-A is amended to read:

§1100-A. Definition

Duties of dental auxiliaries other than dental hygienists and expanded function dental assistants must be defined and governed by the rules of the Board of Dental Examiners, except that duties of independent practice dental hygienists set forth in section 1099-I, subsection 1 may not be restricted nor enlarged by the board. Dental auxiliaries include, but are not limited to, dental hygienists, independent practice dental hygienists, dental assistants, expanded function dental assistants, dental laboratory technicians and denturists.

PART C

Sec. C-1. 13 MRSA §732, sub-§4 is amended to read:

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

SUMMARY

This bill creates the new license category of independent practice dental hygienist (IPDH). An IPDH must meet the ordinary requirements for licensure as a dental hygienist and, in addition, must have an associate degree in dental hygiene with 3 years experience or a bachelor degree in dental hygiene with one year experience. The bill authorizes an IPDH to perform specified procedures without supervision by a dentist, but requires an IPDH to provide a patient with a referral plan to a dentist for any necessary dental care. Under this bill an IPDH could be the proprietor of a business, or could be an employee of a dentist, denturist, another IPDH or a business owned by persons who are not dental professionals.

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