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Board Policy #2023-02
Guidance Specific to Delegation of Dental Activities by a Dentist

At its June 16, 2023 meeting, the Maine Board of Dental Practice (“the Board”) voted to adopt a policy to clarify the statutory limitations of a dentist’s scope of practice when delegating certain activities to an unlicensed individual such as a dental assistant as found the Board’s governing regulations. This policy is not intended to serve as either legal advice or practice advice, but to provide licensees guidance based on existing dental regulations as noted below:

Dental Practice Act:

32 M.R.S. § 18371 – a dentist’s scope of practice reads, in part:

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

Sub-§4. Delegation not authorized. A dentist may not delegate to an unlicensed person activities related to dental care or treatment that require a license under this chapter. A dentist may not delegate to a licensed person activities related to dental care or treatment that are outside the scope of practice of that licensed person.

Board Rules:

Board Rules Chapter 12 “Practice Requirements” Section III reads, in part:

- D. Use of lasers and digital equipment devices. A licensee may delegate the use of lasers and digital equipment when both the supervising licensee and the individual subject to the supervision obtain proper training on the use of the device. The use of the device is subject to the limitations of the licensee’s scope of practice, including the limitations of the licensee’s ability to delegate the procedure.

Board Rules Chapter 14 “Rules for Use of Sedation and General Anesthesia” Section V(H) reads, in part:

- (3) **Monitoring and medication administration** - The dentist retains full accountability, but delegation as authorized by the **Maine Dental Practice Act** to dental personnel may occur under:
 - a. Direct supervision by the dentist when a patient is being monitored, or
 - b. Direct, continuous, and visual supervision by the dentist when medication, excluding local anesthetic, is being administered to a patient.

The timing of issuing this policy is purposeful for two primary reasons. First, it is the Board's intent to provide guidance as Maine continues to experience a shortage of dental providers, most notably dental assistants and dental hygienists, amidst an increased demand for oral health care services. And secondly, the Board recognizes that there have been substantive changes to the Dental Practice Act specific to the elimination of the listing of authorized delegated procedures and further guidance to the regulated community and the public is necessary.

Over the past few legislative sessions, the Board has worked closely with stakeholders and its legislative oversight committee, the Joint Standing Committee on Health Coverage, Insurance and Financial Services, to streamline licensure requirements by eliminating barriers for otherwise qualified dental professionals. The Board and Joint Standing Committee have worked to revise various scopes of practice to remove not only antiquated practice language but to authorize dental professionals to work and practice at the top of their authorized scope.

This work also included shifting away from the list of dental procedures a dentist was authorized to delegate to either an unlicensed dental assistant or to any other member of the dental team who is licensed by the Board such as a dental hygienist, a dental radiographer or an expanded function dental assistant. The former lists were deemed to be unduly restrictive and not reflective of actual practice occurring in Maine.

The removal of the lists in statute also recognizes that a dentist is the most qualified to make their own clinical practice decisions on how best to utilize their dental team without further legislative involvement. However, with the removal of the lists of delegated procedures there remains two general statutory protections to further safeguard the public. Those limitations to delegation are:

1. Delegation authorized (32 M.R.S. § 18371(3)). It is the Board's expectation that a dentist who delegates has the appropriate training, education and experience to perform the delegated activities; and that the dentist who delegates ensures that the dental team member performing the delegated activities are performed competently and safely. The delegation activities must align with custom and usage (established national/state practices) and must be under the supervision and control of the dentist to ensure public protection.
2. Delegation not authorized (32 M.R.S. § 18371(4)). It is the Board's expectation that a dentist will not violate this section by delegating activities that require a dental professional license. Activities performed by licensed dental professionals are activities that are unique to the scope of practice by way of education, training and examination which cannot be competently or safely performed by delegation to an unlicensed person. Similarly, a dentist cannot delegate to a licensed dental professional duties that are outside of the dental professional's scope of practice.

The Board takes seriously its role in protecting the public from incompetent and/or unsafe practice and will enforce the delegation limitations accordingly.

Adopted: June 16, 2023