

GUIDANCE FOR DENTAL PROFESSIONALS UNDER THE STATE'S PLAN TO RESTART MAINE'S ECONOMY

May 15, 2020

The Board of Dental Practice (“Board”) issues this statement of guidance to assist its licensees in understanding their obligations when practicing during the current proclaimed State of Civil Emergency as a result of COVID-19. Based on information it has received, the Board understands that there may be some confusion about what those obligations are. This guidance is intended to clarify the obligations of dental practitioners as dictated by executive orders and other applicable requirements.

Previously Issued Orders and Guidance

1. On March 15, 2020, Governor Mills issued a Proclamation of State of Civil Emergency to Further Protect Public Health, which activated the Governor’s emergency powers for 30 days. On April 14, 2020, and May 13, 2020, Governor Mills issued additional proclamations, which extended the state of civil emergency through June 12, 2020.
2. On March 24, 2020, Governor Mills issued Executive Order 19 FY 19/20 “An Order Regarding Essential Businesses and Operations.” With regard to health care providers, this executive order stated: “As urged in Maine Center for Disease Control and Prevention guidance on March 15, 2020, non-urgent medical and dental procedures, elective surgeries, and appointments should be postponed based on consultations between individuals and providers; the use of telehealth and telephone consultation is strongly encouraged.” On April 7, 2020, Governor Mills issued Executive Order 19-A FY 19/20, which extended Executive Order 19 FY 19/20 through April 30, 2020.
3. On April 23, 2020, the Board issued guidance to the dental community to help practitioners understand their obligations under the then-available emergency orders. Notably, the Board’s guidance reinforced dental professionals’ obligation to be available to treat urgent and emergent patients, or to make referrals for established patients if providers opted not to provide treatment themselves. The Board also underscored that under the emergency orders and guidance from the U.S. CDC and other relevant organizations, non-emergent dental care and elective dental procedures should be postponed and noted that licensed dental professionals who treated patients for elective dental procedures during the coronavirus emergency risked engaging in unprofessional conduct.
4. On April 28, 2020, Governor Mills published her plan for restarting Maine’s economy entitled *Together We Are Maine: Restarting Maine’s Economy Plan* (“Restarting Plan”). The *Restarting Plan* states that the Department of Economic and Community Development (“DECD”) will collaborate with the private sector to develop business specific “COVID-19 Prevention Checklists.” Businesses that commit to complying with the requirements of these checklists will have their names posted on the DECD website and will be allowed to open. Checklists will not be developed for health care providers.

Instead, the *Restarting Plan* mandates as follows: “Health providers in Maine will follow U.S. CDC and professional association guidelines.” The *Restarting Plan* permits health care practitioners to open in Stage 1, which will commence in May. In addition to having to follow U.S. CDC and professional association guidelines, the *Restarting Plan* permits Maine licensed health care providers to open subject to the following recommendations: “that they prioritize care for patients with time-sensitive conditions; assure the safety of patients, staff, and communities; manage the use of essential resources such as personal protective equipment and testing supplies; and pace reopening services to the level of community COVID-19 activity, maintaining capacity in our hospitals for potential outbreaks.”

5. On April 29, 2020, Governor Mills issued Executive Order 49 FY 19/20 “An Order to Stay Safer at Home.” This executive order extended through May 31, 2020, the effective dates of several executive orders including Executive Order 19 FY 19/20. This executive order also incorporated the *Restarting Plan* and formally directed the DECD to start implementing the *Restarting Plan* on May 1, 2020. It also directed the Department of Health and Human Services (“DHHS”) to “issue guidance for DECD and others on the process for health services identified in the *Restarting Plan*.”
6. On April 29, 2020, DHHS updated its “COVID-19 Guidance for Health Care Providers” (“DHHS Guidance”). Foremost, the DHHS Guidance declares: “The State of Maine will rely on the Federal government’s guidance for what constitutes safely reopening health care services and activities.” The DHHS Guidance clarifies that, under the *Restarting Plan*, health care providers will not be required to participate in the DECD reopening approval process. Instead, DHHS will issue guidance on the process for health services identified in the *Restarting Plan*. The DHHS Guidance also reiterates that reopening for health care providers is “optional and subject to their adoption of safety recommendations described below,” which for dental settings is the “U.S. CDC Guidance—Interim Infection Prevention and Control Guidance for Dental Settings COVID-19.” The DHHS Guidance states that “adoption of these guidelines will be deemed as an approval for reopening services,” and warns that “any such approval is also subject to suspension or revocation depending upon actual and consistent compliance with such conditions.” Finally, the DHHS Guidance states: “If private health care organizations cannot secure sufficient PPE to reopen services safely within the guidance offered by the U.S. CDC, U.S. CMS, OSHA, and professional associations, then they may not reopen.”
7. On April 30, 2020, the Board issued guidance to the dental community that articulated the requirements of the DHHS Guidance and affirmed the Board’s expectation that dental professionals comply with that guidance.
8. On May 12, 2020, the Director of the U.S. CDC stated that the CDC was in the process of updating its April 27 guidance on dental services, which recommends postponing non-urgent dental care.
9. On May 12, 2020, DHHS issued updated COVID-19 Guidance for Health Care Providers, which acknowledged the CDC’s May 12th statement and announced that once

CDC issued updated guidance for dental services, DHHS “will rely upon it along with relevant guidance from the American Dental Association (ADA) and Maine Dental Association (MDA).” DHHS also reiterated that until the CDC issued this updated guidance, “dental providers continue to be encouraged to safely provide urgent care.” Finally, DHHS announced: “If CDC recommendations are not issued by May 18, DHHS will rely upon the ADA and MDA guidance.”

Board Guidance Under the *Restarting Plan*

1. The U.S. CDC guidelines that both the *Restarting Plan* and the DHHS Guidance require dental practitioners to follow can be found at <https://www.cdc.gov/coronavirus/2019-ncov/hcp/dental-settings.html>. As of May 15, 2020, these guidelines include the following: “Services should be limited to emergency visits only during this period of the pandemic.” Accordingly, dental professionals in Maine must limit their services to emergency and urgent care until the U.S. CDC guidelines change. However, if by May 18, 2020, the U.S. CDC has not updated these guidelines, pursuant to the DHHS Guidance of May 12th, dental professionals in Maine may rely upon the guidance of the ADA and MDA as the standards for resuming operation under the *Restarting Plan*. The ADA guidelines can be found at <https://success.ada.org/en/practice-management/patients/infectious-diseases-2019-novel-coronavirus> and the MDA guidelines can be found at <https://www.medental.org>.
2. Licensees of the Board who fail to comply with the requirements of the *Restarting Plan* or the DHHS Guidance may be subject to discipline for unprofessional conduct pursuant to 32 M.R.S. § 18325(1)(E). The Board expects dental practitioners to continue to comply with CDC guidelines as long as these guidelines are the standard recognized by DHHS and to comply with the ADA and MDA guidelines if the U.S. CDC does not update its guidance by May 18, 2020.
3. Consistent with the Board’s April 23 and 30, 2020 guidance, it remains the Board’s expectation that all licensed dental professionals will either be available to provide their patients with emergency and urgent care or refer their patients who require emergency or urgent care to other providers. Failure of a licensed dental professional to abide by this practice requirement may, depending on the circumstances, be considered patient abandonment which could in turn be found to be unprofessional conduct under applicable statutes and rules.
4. The Board recognizes that dental professionals may make difficult decisions during this COVID-19 pandemic. Dental practitioners are encouraged to document their practice decisions relating to the pandemic, including decisions to treat borderline urgent patients, or their declinations to treat borderline non-urgent patients. *See* Board Rules Ch. 12 § VII. In addition, dental professionals are urged to document the procedures, precautions, and safeguards they employ for ensuring the protection of their patients and employees from exposure to COVID-19.

5. As the CDC guidelines for dental settings evolve or the ADA or MDA guidelines become the guidelines relied upon by the DHHS, and dental professionals return to non-emergency care, the Board strongly urges its licensees to use the Return to Work Interim Guidance Tool Kit developed by American Dental Association as a model for restarting their practices. The ADA Tool Kit can be found at https://pages.ada.org/return-to-work-toolkit-american-dental-association?utm_campaign=covid-19-Return-to-Work-Toolkit&utm_source=cpsorg-alert-bar&utm_medium=cpsalertbar-virus&utm_content=covid-19-interim-return-to-work.

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