

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 1465

6
7 S.P. 483

In Senate, April 13, 1983

8 Submitted pursuant to Title 3, chapter 23.

9 On Motion of Senator Pray of Penobscot, referred to the Committee on
Audit and Program Review. Sent down for concurrence and ordered printed.

10 JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Diamond of Cumberland.

Cosponsor: Representative Rolde of York.

11
12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-THREE
16

17 AN ACT to Standardize the Disciplinary
18 Proceedings of Health Profession Licensing
19 Boards.
20

21 Be it enacted by the People of the State of Maine as
22 follows:

23 Sec. 1. 32 MRSA §64, as repealed and replaced by
24 PL 1977, c. 694, §536, is repealed.

25 Sec. 2. 32 MRSA §64-A is enacted to read:

26 §64-A. Disciplinary actions

27 1. Disciplinary proceedings and sanctions. The
28 board shall investigate a complaint, on its own
29 motion or upon receipt of a written complaint filed
30 with the board, regarding noncompliance with or
31 violation of this chapter or of any rules adopted by
32 the board.

1 The board shall notify the licensee of the content of
2 a complaint filed against the licensee as soon as
3 possible, but in no event later than within 60 days
4 of receipt of this information. If the licensee's
5 subsequent response to the complaint satisfies the
6 board that the complaint does not merit further
7 investigation or action, the matter may be dismissed,
8 with notice of the dismissal to the complainant, if
9 any.

10 If, in the opinion of the board, the factual basis of
11 the complaint is or may be true, and it is of suffi-
12 cient gravity to warrant further action, the board
13 may request an informal conference with the licensee.
14 The board shall provide the licensee with adequate
15 notice of the conference and of the issues to be dis-
16 cussed. The conference shall be conducted in execu-
17 tive session of the board, unless otherwise requested
18 by the licensee. Statements made at the conference
19 may not be introduced at a subsequent formal hearing
20 unless all parties consent.

21 If, at the informal conference, the board finds that
22 the factual basis of the complaint is true and is of
23 sufficient gravity to warrant further action, it may
24 take any of the following actions it deems appropri-
25 ate:

26 A. With the consent of the licensee, enter into
27 a consent agreement which fixes the period and
28 terms of probation best adapted to protect the
29 public health and safety and to rehabilitate or
30 educate the licensee. A consent agreement may be
31 used to terminate a complaint investigation, if
32 entered into by the board, the licensee and the
33 Attorney General's office;

34 B. In consideration for acceptance of a volun-
35 tary surrender of the license, negotiate stipu-
36 lations, including terms and conditions for rein-
37 statement, which ensure protection of the public
38 health and safety and which serve to rehabilitate
39 or educate the licensee. These stipulations shall
40 be set forth only in a consent agreement signed
41 by the board, the licensee and the Attorney
42 General's office; or

1 C. If the board concludes that modification,
2 suspension, revocation or nonrenewal of license
3 might be in order, provide the licensee with the
4 option of having the modification, suspension,
5 revocation or nonrenewal action heard either:

6 (1) Before the board in an adjudicatory
7 hearing held in accordance with the provi-
8 sions of the Maine Administrative Procedure
9 Act, Title 5, chapter 375, subchapter IV; or

10 (2) Before the Administrative Court in a
11 judicial proceeding.

12 2. Grounds for discipline. The board may sus-
13 pend or revoke a license pursuant to Title 5, section
14 10004. The following shall be grounds for an action
15 to refuse to issue, modify, suspend, revoke or refuse
16 to renew the license of a person licensed under this
17 chapter:

18 A. The practice of fraud or deceit in obtaining
19 a license under this chapter or in connection
20 with service rendered within the scope of the li-
21 cence issued;

22 B. Habitual intemperance in the use of alcohol
23 or the habitual use of narcotic or hypnotic or
24 other substances the use of which has resulted or
25 may result in the licensee performing his duties
26 in a manner which endangers the health or safety
27 of his patients;

28 C. A professional diagnosis of a mental or
29 physical condition which has resulted or may
30 result in the licensee performing his duties in a
31 manner which endangers the health or safety of
32 his patients;

33 D. Aiding or abetting the practice of adminis-
34 tration of a medical care facility by a person
35 not duly licensed under this chapter and who
36 represents himself to be so;

37 E. Incompetence in the practice for which he is
38 licensed. A licensee shall be deemed incompetent
39 in the practice if the licensee has:

1 (1) Engaged in conduct which evidences a
2 lack of ability or fitness to discharge the
3 duty owed by the licensee to a client or
4 patient or the general public; or

5 (2) Engaged in conduct which evidence a
6 lack of knowledge, or inability to apply
7 principles or skills to carry out the prac-
8 tice for which he is licensed;

9 F. A licensee shall be deemed to have engaged in
10 unprofessional conduct if he violates any stan-
11 dard of professional behavior which has been
12 established in the practice for which the licen-
13 see is licensed;

14 G. Subject to the limitations of Title 5, chap-
15 ter 341, conviction of a crime which involves
16 dishonesty or false statement or which relates
17 directly to the practice for which the licensee
18 is licensed, or conviction of any crime for which
19 incarceration for one year or more may be
20 imposed;

21 H. Any violation of this chapter or any rule
22 adopted by the board; or

23 I. Engaging in false, misleading or deceptive
24 advertising.

25 Sec. 3. 32 MRSA §503, as repealed and replaced
26 by PL 1981, c. 594, §1, is repealed.

27 Sec. 4. 32 MRSA §503-A is enacted to read:

28 §503-A. Disciplinary actions

29 1. Disciplinary proceedings and sanctions. The
30 board shall investigate a complaint, on its own
31 motion or upon receipt of a written complaint filed
32 with the board, regarding noncompliance with or
33 violation of this chapter or of any rules adopted by
34 the board.

35 The board shall notify the licensee of the content of
36 a complaint filed against the licensee as soon as
37 possible, but in no event later than within 60 days

1 of receipt of this information. If the licensee's
2 subsequent response to the complaint satisfies the
3 board that the complaint does not merit further
4 investigation or action, the matter may be dismissed,
5 with notice of the dismissal to the complainant, if
6 any.

7 If, in the opinion of the board, the factual basis of
8 the complaint is or may be true, and it is of suffi-
9 cient gravity to warrant further action, the board
10 may request an informal conference with the licensee.
11 The board shall provide the licensee with adequate
12 notice of the conference and of the issues to be dis-
13 cussed. The conference shall be conducted in execu-
14 tive session of the board, unless otherwise requested
15 by the licensee. Statements made at the conference
16 may not be introduced at a subsequent formal hearing
17 unless all parties consent.

18 If, at the informal conference, the board finds that
19 the factual basis of the complaint is true and is of
20 sufficient gravity to warrant further action, it may
21 take any of the following actions it deems appropri-
22 ate:

23 A. With the consent of the licensee, enter into
24 a consent agreement which fixes the period and
25 terms of probation best adapted to protect the
26 public health and safety and to rehabilitate or
27 educate the licensee. A consent agreement may be
28 used to terminate a complaint investigation, if
29 entered into by the board, the licensee and the
30 Attorney General's office;

31 B. In consideration for acceptance of a volun-
32 tary surrender of the license, negotiate stipu-
33 lations, including terms and conditions for rein-
34 statement, which ensure protection of the public
35 health and safety and which serve to rehabilitate
36 or educate the licensee. These stipulations shall
37 be set forth only in a consent agreement signed
38 by the board, the licensee and the Attorney
39 General's office; or

40 C. If the board concludes that modification,
41 suspension, revocation or nonrenewal of license
42 might be in order, provide the licensee with the

1 option of having the modification, suspension,
2 revocation or nonrenewal action heard either:

3 (1) Before the board in an adjudicatory
4 hearing held in accordance with the provi-
5 sions of the Maine Administrative Procedure
6 Act, Title 5, chapter 375, subchapter IV; or

7 (2) Before the Administrative Court in a
8 judicial proceeding.

9 2. Grounds for discipline. The board may sus-
10 pend or revoke a license pursuant to Title 5, section
11 10004. The following shall be grounds for an action
12 to refuse to issue, modify, suspend, revoke or refuse
13 to renew the license of a person licensed under this
14 chapter:

15 A. The practice of fraud or deceit in obtaining
16 a license under this chapter or in connection
17 with service rendered within the scope of the li-
18 cence issued;

19 B. Habitual intemperance in the use of alcohol
20 or the habitual use of narcotic or hypnotic or
21 other substances the use of which has resulted or
22 may result in the licensee performing his duties
23 in a manner which endangers the health or safety
24 of his patients;

25 C. A professional diagnosis of a mental or
26 physical condition which has resulted or may
27 result in the licensee performing his duties in a
28 manner which endangers the health or safety of
29 his patients;

30 D. Aiding or abetting the practice of chiroprac-
31 tic by a person not duly licensed under this
32 chapter and who represents himself to be so;

33 E. Incompetence in the practice for which he is
34 licensed. A licensee shall be deemed incompetent
35 in the practice if the licensee has:

36 (1) Engaged in conduct which evidences a
37 lack of ability or fitness to discharge the
38 duty owed by the licensee to a client or
39 patient or the general public; or

1 (2) Engaged in conduct which evidence a
2 lack of knowledge, or inability to apply
3 principles or skills to carry out the prac-
4 tice for which he is licensed;

5 F. A licensee shall be deemed to have engaged in
6 unprofessional conduct if he violates any stan-
7 dard of professional behavior which has been
8 established in the practice for which the licen-
9 see is licensed;

10 G. Subject to the limitations of Title 5, chap-
11 ter 341, conviction of a crime which involves
12 dishonesty or false statement or which relates
13 directly to the practice for which the licensee
14 is licensed, or conviction of any crime for which
15 incarceration for one year or more may be
16 imposed;

17 H. Any violation of this chapter or any rule
18 adopted by the board; or

19 I. Engaging in false, misleading or deceptive
20 advertising.

21 Sec. 5. 32 MRSA §552, as amended by PL 1977, c.
22 694, §554, is further amended to read:

23 §552. Examination of applicants; subjects included;
24 certificate; certificate without examination

25 The board shall require the applicant to submit
26 to an examination as to his ~~or her~~ qualifications for
27 the practice of chiropractic, which examination shall
28 include the subjects of anatomy, physiology,
29 symptomatology, hygiene, sanitation, chemistry,
30 pathology, electrotherapy, hydrotherapy, dietetics,
31 bacteriology, chiropractic analysis, the principles
32 and practice of chiropractic as taught in reputable
33 chiropractic schools and colleges and such other sub-
34 jects as the board may deem necessary. If such exami-
35 nation is passed in a manner satisfactory to the
36 board, then the board shall issue to the ~~said~~ appli-
37 cant a certificate granting him ~~or her~~ the right to
38 practice chiropractic in this State.

1 Any person of good moral character, licensed by a
2 chiropractic board of any other state or territory
3 having a standard equal to that of the State of
4 Maine, shall be licensed without examination, upon
5 the payment of \$40 and the production to the board of
6 his or her diploma, and the license obtained in such
7 other state and satisfactory evidence of good moral
8 character. The board may, in its discretion, require
9 an examination of any such applicant.

10 The board may refuse to grant a certificate to
11 any person on the basis of criminal history record
12 information in accordance with Title 5, chapter 341,
13 or who has been guilty of grossly unprofessional con-
14 duct, or who is addicted to any vice to such a degree
15 as to render such person unfit to practice chiroprae-
16 tic. Any certificate granted under this section
17 shall be subject to annual renewal as provided in
18 this chapter.

19 Sec. 6. 32 MRSA §1073, as amended by PL 1977, c.
20 458, §3, is repealed and the following enacted in its
21 place:

22 §1073. Powers

23 The board may:

24 1. Employees. Employ such persons as it may
25 deem necessary to assist it in carrying out its
26 duties in the administration and enforcement of this
27 chapter; provide offices, furniture, fixtures, sup-
28 plies, printing or secretarial service; and may
29 expend such funds as may be deemed necessary there-
30 for;

31 2. Rules. Adopt rules to carry out and make
32 effective this chapter and modify or repeal the rules
33 whenever the board deems it necessary; and

34 3. False advertising. Establish rules relating
35 to false, deceptive or misleading advertising, except
36 that no rules may be inconsistent with any rule
37 promulgated pursuant to Title 5, section 207, subsec-
38 tion 2.

39 Sec. 7. 32 MRSA §1077 is enacted to read:

1 §1077. Disciplinary actions

2 1. Disciplinary proceedings and sanctions. The
3 board shall investigate a complaint, on its own
4 motion or upon receipt of a written complaint filed
5 with the board, regarding noncompliance with or
6 violation of this chapter or of any rules adopted by
7 the board.

8 The board shall notify the licensee of the content of
9 a complaint filed against the licensee as soon as
10 possible, but in no event later than within 60 days
11 of receipt of this information. If the licensee's
12 subsequent response to the complaint satisfies the
13 board that the complaint does not merit further
14 investigation or action, the matter may be dismissed,
15 with notice of the dismissal to the complainant, if
16 any.

17 If, in the opinion of the board, the factual basis of
18 the complaint is or may be true, and it is of suffi-
19 cient gravity to warrant further action, the board
20 may request an informal conference with the licensee.
21 The board shall provide the licensee with adequate
22 notice of the conference and of the issues to be dis-
23 cussed. The conference shall be conducted in execu-
24 tive session of the board, unless otherwise requested
25 by the licensee. Statements made at the conference
26 may not be introduced at a subsequent formal hearing
27 unless all parties consent.

28 If, at the informal conference, the board finds that
29 the factual basis of the complaint is true and is of
30 sufficient gravity to warrant further action, it may
31 take any of the following actions it deems appropri-
32 ate:

33 A. With the consent of the licensee, enter into
34 a consent agreement which fixes the period and
35 terms of probation best adapted to protect the
36 public health and safety and to rehabilitate or
37 educate the licensee. A consent agreement may be
38 used to terminate a complaint investigation, if
39 entered into by the board, the licensee and the
40 Attorney General's office;

1 B. In consideration for acceptance of a voluntary
2 surrender of the license, negotiate stipulations,
3 including terms and conditions for reinstatement,
4 which ensure protection of the public
5 health and safety and which serve to rehabilitate
6 or educate the licensee. These stipulations shall
7 be set forth only in a consent agreement signed
8 by the board, the licensee and the Attorney
9 General's office; or

10 C. If the board concludes that modification,
11 suspension, revocation or nonrenewal of license
12 might be in order, provide the licensee with the
13 option of having the modification, suspension,
14 revocation or nonrenewal action heard either:

15 (1) Before the board in an adjudicatory
16 hearing held in accordance with the provi-
17 sions of the Maine Administrative Procedure
18 Act, Title 5, chapter 375, subchapter IV; or

19 (2) Before the Administrative Court in a
20 judicial proceeding.

21 2. Grounds for discipline. The board may sus-
22 pend or revoke a license pursuant to Title 5, section
23 10004. The following shall be grounds for an action
24 to refuse to issue, modify, suspend, revoke or refuse
25 to renew the license of a person licensed under this
26 chapter:

27 A. The practice of fraud or deceit in obtaining
28 a license under this chapter or in connection
29 with service rendered within the scope of the li-
30 cence issued;

31 B. Habitual intemperance in the use of alcohol
32 or the habitual use of narcotic or hypnotic or
33 other substances the use of which has resulted or
34 may result in the licensee performing his duties
35 in a manner which endangers the health or safety
36 of his patients;

37 C. A professional diagnosis of a mental or
38 physical condition which has resulted or may
39 result in the licensee performing his duties in a
40 manner which endangers the health or safety of
41 his patients;

1 D. Aiding or abetting the practice of a dental
2 profession by a person not duly licensed under
3 this chapter and who represents himself to be so;

4 E. Incompetence in the practice for which he is
5 licensed. A licensee shall be deemed incompetent
6 in the practice if the licensee has:

7 (1) Engaged in conduct which evidences a
8 lack of ability or fitness to discharge the
9 duty owed by the licensee to a client or
10 patient or the general public; or

11 (2) Engaged in conduct which evidence a
12 lack of knowledge, or inability to apply
13 principles or skills to carry out the prac-
14 tice for which he is licensed;

15 F. A licensee shall be deemed to have engaged in
16 unprofessional conduct if he violates any stan-
17 dard of professional behavior which has been
18 established in the practice for which the licen-
19 see is licensed;

20 G. Subject to the limitations of Title 5, chap-
21 ter 341, conviction of a crime which involves
22 dishonesty or false statement or which relates
23 directly to the practice for which the licensee
24 is licensed, or conviction of any crime for which
25 incarceration for one year or more may be
26 imposed;

27 H. Any violation of this chapter or any rule
28 adopted by the board; or

29 I. Engaging in false, misleading or deceptive
30 advertising.

31 Sec. 8. 32 MRSA §1081, sub-§2, ¶E, as enacted by
32 PL 1967, c. 544, §80, is amended to read:

33 E. The filling of prescriptions of a licensed
34 and registered dentist by any person or persons,
35 association, corporation or other entity, for the
36 construction, reproduction or repair of pros-
37 thetic dentures, bridges, plates or appliances to
38 be used or worn as substitutes for natural teeth,

1 provided that such person or persons, associa-
2 tion, corporation or other entity shall not
3 solicit nor advertise, directly or indirectly, by
4 mail, card, newspaper, pamphlet, radio or other-
5 wise, to the general public to construct, repro-
6 duce or repair prosthetic dentures, bridges,
7 plates or other appliances to be used or worn as
8 substitutes for natural teeth; and

9 Sec. 9. 32 MRSA §1081, sub-§2, ¶F, as enacted by
10 PL 1967, c. 544, §80, is amended to read:

11 F. The use of roentgen or x ray machines or
12 other rays for making radiograms or similar
13 records of dental or oral tissue under the super-
14 vision of a licensed dentist or physician. Such
15 service shall not be advertised by any name what-
16 ever as an aid or inducement to secure dental
17 patronage, and no person shall advertise that he
18 has, leases, owns or operates a roentgen or x ray
19 machine for the purpose of making dental
20 radiograms of the human teeth or tissues or the
21 oral cavity or administering treatment thereto
22 for any disease thereof; and

23 Sec. 10. 32 MRSA §1081, sub-§3, ¶C, as repealed
24 and replaced by PL 1975, c. 484, §4, is amended to
25 read:

26 C. Retains the ownership or control of dental
27 equipment or material or office and makes the
28 same available in any manner for the use by den-
29 tists or dental hygienists or other agents, pro-
30 vided that nothing in this subsection shall may
31 apply to bona fide sales of dental equipment or
32 material secured by a chattel mortgage or retain
33 title agreement. A person licensed to practice
34 dentistry who enters shall not enter into any of
35 these arrangements with a person who is not li-
36 censed to practice dentistry may have his license
37 suspended or revoked.

38 Sec. 11. 32 MRSA §1082, as amended by PL 1971,
39 c. 598, §69, is further amended to read:

40 §1082. Qualifications

1 Before receiving a certificate to practice den-
2 tistry in this State, a person shall be at least 18
3 years of age, ~~of good moral character~~ and shall be a
4 graduate of or have a diploma from an acceptable den-
5 tal college, school or dental department of a univer-
6 sity approved by the board.

7 Sec. 12. 32 MRSA §1088, as enacted by PL 1967,
8 c. 544, §80, is repealed.

9 Sec. 13. 32 MRSA §1091, as amended by PL 1977,
10 c. 458, §§4 and 4-A, is repealed.

11 Sec. 14. 32 MRSA §1096, as repealed and replaced
12 by PL 1975, c. 484, §12, is amended to read:

13 §1096. Qualifications

14 A person ~~of good moral character~~, 18 years old or
15 over, who has successfully completed 2 years' train-
16 ing in a school of dental hygiene approved by the
17 board, or who is a full-time dental student who has
18 satisfactorily completed at least half of the pre-
19 scribed course of study in an accredited dental col-
20 lege, but who has not graduated from any dental col-
21 lege, shall be eligible to apply for examination.

22 Sec. 15. 32 MRSA §1099, as amended by PL 1981,
23 c. 440, §14, is further amended to read;

24 §1099. Reciprocity

25 The board may at its discretion, without examina-
26 tion, issue its certificate to any applicant to prac-
27 tice dental hygiene who shall furnish proof satisfac-
28 tory to ~~said~~ the board that ~~said~~ the dental hygienist
29 has been duly licensed to practice in another state
30 after full compliance with the requirements of its
31 dental laws, provided that the professional education
32 shall not be less than required in this State. The
33 board may require letters of reference as to ability
34 ~~and moral character~~. Every certificate so given
35 shall state upon its face that it was granted on the
36 basis of reciprocity. The fee for ~~such~~ that certifi-
37 cate shall be determined by the board, but not more
38 than \$50.

1 Sec. 16. 32 MRSA §1100, as amended by PL 1981,
2 c. 440, §15, is repealed and the following enacted in
3 its place:

4 §1100. Use of former employers' lists; scope of
5 duties

6 No dental hygienist may use or attempt to use in
7 any manner whatsoever any prophylactic lists, call
8 lists, records, reprints or copies of those lists,
9 records or reprints, or information gathered there-
10 from, of the names of patients whom he might have
11 served in the office of a prior employer, unless
12 these names appear on the bona fide call or
13 prophylactic list of his present employer and were
14 caused to so appear through the legitimate practice
15 of dentistry as provided for in this chapter. No
16 dentist may aid or abet or encourage a dental hygien-
17 ist in his employ to make use of a so-called
18 prophylactic call list, or the calling by telephone
19 or by use of written letters transmitted through the
20 mails to solicit patronage from patients, formerly
21 served in the office of any dentist formerly employ-
22 ing the hygienist.

23 No dentist may permit any dental hygienist oper-
24 ating under his supervision to perform any operation
25 other than that permitted under section 1095.

26 Sec. 17. 32 MRSA §1100-C, sub-§§3 and 4, as
27 enacted by PL 1977, c. 484, §2, are repealed.

28 Sec. 18. 32 MRSA §1100-E, sub-§5, as enacted by
29 PL 1977, c. 696, §382, is repealed and the following
30 enacted in its place:

31 5. Additional prohibitions. No denturist may:

32 A. Hold himself out or permit himself to be
33 represented as a licensed dentist;

34 B. Perform otherwise than at the direction and
35 under the direct supervision of a dentist li-
36 icensed by the board and practicing in the State.
37 Direct supervision requires the dentist to be on
38 the same premises as the denturist;

1 C. Perform a task beyond his competence; or

2 D. Administer, dispense or prescribe any medica-
3 tion or controlled substance.

4 Sec. 19. 32 MRSA §1100-E, sub-§6 is enacted to
5 read:

6 6. Mental or physical examination. For the pur-
7 poses of this subsection, a licensed denturist shall
8 be deemed by the application for and acceptance of
9 the license to have given his consent to a mental or
10 physical examination when directed by the board. The
11 board may direct the examination whenever it deter-
12 mines a denturist may be suffering from a mental
13 illness which may be interfering with his competent
14 practice of denture technology or from the use of
15 intoxicants or drugs to an extent that they may be
16 preventing him from practicing denture technology
17 competently and with safety to his patients. A
18 denturist examined pursuant to an order of the board
19 shall have no privilege to prevent the testimony of
20 the examining individual or to prevent the acceptance
21 into evidence of the report of any examining indi-
22 vidual. Failure to comply with an order of the board
23 to submit to a mental or physical exam shall require
24 the Administrative Court to immediately order the li-
25 cence of the denturist suspended until such time as
26 he shall submit to the examination.

27 Sec. 20. 32 MRSA §2105, as amended by PL 1973,
28 c. 303, §3, is repealed.

29 Sec. 21. 32 MRSA §2105-A is enacted to read:

30 §2105-A. Disciplinary actions

31 1. Disciplinary proceedings and sanctions. The
32 board shall investigate a complaint, on its own
33 motion or upon receipt of a written complaint filed
34 with the board, regarding noncompliance with or
35 violation of this chapter or of any rules adopted by
36 the board.

37 The board shall notify the licensee of the content of
38 a complaint filed against the licensee as soon as
39 possible, but in no event later than within 60 days

1 of receipt of this information. If the licensee's
2 subsequent response to the complaint satisfies the
3 board that the complaint does not merit further
4 investigation or action, the matter may be dismissed,
5 with notice of the dismissal to the complainant, if
6 any.

7 If, in the opinion of the board, the factual basis of
8 the complaint is or may be true, and it is of suffi-
9 cient gravity to warrant further action, the board
10 may request an informal conference with the licensee.
11 The board shall provide the licensee with adequate
12 notice of the conference and of the issues to be dis-
13 cussed. The conference shall be conducted in execu-
14 tive session of the board, unless otherwise requested
15 by the licensee. Statements made at the conference
16 may not be introduced at a subsequent formal hearing
17 unless all parties consent.

18 If, at the informal conference, the board finds that
19 the factual basis of the complaint is true and is of
20 sufficient gravity to warrant further action, it may
21 take any of the following actions it deems appropri-
22 ate:

23 A. With the consent of the licensee, enter into
24 a consent agreement which fixes the period and
25 terms of probation best adapted to protect the
26 public health and safety and to rehabilitate or
27 educate the licensee. A consent agreement may be
28 used to terminate a complaint investigation, if
29 entered into by the board, the licensee and the
30 Attorney General's office;

31 B. In consideration for acceptance of a volun-
32 tary surrender of the license, negotiate stipu-
33 lations, including terms and conditions for rein-
34 statement, which ensure protection of the public
35 health and safety and which serve to rehabilitate
36 or educate the licensee. These stipulations shall
37 be set forth only in a consent agreement signed
38 by the board, the licensee and the Attorney
39 General's office; or

40 C. If the board concludes that modification,
41 suspension, revocation or nonrenewal of license
42 might be in order, provide the licensee with the

1 option of having the modification, suspension,
2 revocation or nonrenewal action heard either:

3 (1) Before the board in an adjudicatory
4 hearing held in accordance with the provi-
5 sions of the Maine Administrative Procedure
6 Act, Title 5, chapter 375, subchapter IV; or

7 (2) Before the Administrative Court in a
8 judicial proceeding.

9 2. Grounds for discipline. The board may sus-
10 pend or revoke a license pursuant to Title 5, section
11 10004. The following shall be grounds for an action
12 to refuse to issue, modify, suspend, revoke or refuse
13 to renew the license of a person licensed under this
14 chapter:

15 A. The practice of fraud or deceit in obtaining
16 a license under this chapter or in connection
17 with service rendered within the scope of the li-
18 cence issued;

19 B. Habitual intemperance in the use of alcohol
20 or the habitual use of narcotic or hypnotic or
21 other substances the use of which has resulted or
22 may result in the licensee performing his duties
23 in a manner which endangers the health or safety
24 of his patients;

25 C. A professional diagnosis of a mental or
26 physical condition which has resulted or may
27 result in the licensee performing his duties in a
28 manner which endangers the health or safety of
29 his patients;

30 D. Aiding or abetting the practice of nursing by
31 a person not duly licensed under this chapter and
32 who represents himself to be so;

33 E. Incompetence in the practice for which he is
34 licensed. A licensee shall be deemed incompetent
35 in the practice if the licensee has:

36 (1) Engaged in conduct which evidences a
37 lack of ability or fitness to discharge the
38 duty owed by the licensee to a client or
39 patient or the general public; or

1 (2) Engaged in conduct which evidence a
2 lack of knowledge, or inability to apply
3 principles or skills to carry out the prac-
4 tice for which he is licensed;

5 F. A licensee shall be deemed to have engaged in
6 unprofessional conduct if he violates any stan-
7 dard of professional behavior which has been
8 established in the practice for which the licen-
9 see is licensed;

10 G. Subject to the limitations of Title 5, chap-
11 ter 341, conviction of a crime which involves
12 dishonesty or false statement or which relates
13 directly to the practice for which the licensee
14 is licensed, or conviction of any crime for which
15 incarceration for one year or more may be
16 imposed;

17 H. Any violation of this chapter or any rule
18 adopted by the board; or

19 I. Engaging in false, misleading or deceptive
20 advertising.

21 Sec. 22. 32 MRSA §2201, sub-§1 is repealed.

22 Sec. 23. 32 MRSA §2251, sub-§1, as amended by PL
23 1965, c. 206, §4, is repealed.

24 Sec. 24. 32 MRSA §2417, sub-§1, ¶B, as enacted
25 by PL 1973, c. 788, §156, is repealed.

26 Sec. 25. 32 MRSA §2417, sub-§2, as enacted by PL
27 1973, c. 788, §156, is repealed.

28 Sec. 26. 32 MRSA §2419, sub-§1, as enacted by PL
29 1975, c. 563, §2, is amended to read:

30 1. Diagnostic drugs. The use of diagnostic drugs
31 is permitted only by an optometrist who has obtained
32 a diagnostic drug license under section 2427 or who
33 has passed the examination under section 2422 after
34 October 1, 1975.

35 Sec. 27. 32 MRSA §2427, first ¶, as enacted by
36 PL 1975, c. 563, §4, is amended to read:

1 Every presently licensed Unless he has passed the
2 examination under section 2422 after October 1, 1975,
3 every optometrist desiring to use diagnostic drugs
4 shall:

5 Sec. 28. 32 MRSA §2431, as repealed and replaced
6 by PL 1977, c. 694, §598, is repealed.

7 Sec. 29. 32 MRSA §2431-A is enacted to read:

8 §2431-A. Disciplinary actions

9 1. Disciplinary proceedings and sanctions. The
10 board shall investigate a complaint, on its own
11 motion or upon receipt of a written complaint filed
12 with the board, regarding noncompliance with or
13 violation of this chapter or of any rules adopted by
14 the board.

15 The board shall notify the licensee of the content of
16 a complaint filed against the licensee as soon as
17 possible, but in no event later than within 60 days
18 of receipt of this information. If the licensee's
19 subsequent response to the complaint satisfies the
20 board that the complaint does not merit further
21 investigation or action, the matter may be dismissed,
22 with notice of the dismissal to the complainant, if
23 any.

24 If, in the opinion of the board, the factual basis of
25 the complaint is or may be true, and it is of suffi-
26 cient gravity to warrant further action, the board
27 may request an informal conference with the licensee.
28 The board shall provide the licensee with adequate
29 notice of the conference and of the issues to be dis-
30 cussed. The conference shall be conducted in execu-
31 tive session of the board, unless otherwise requested
32 by the licensee. Statements made at the conference
33 may not be introduced at a subsequent formal hearing
34 unless all parties consent.

35 If, at the informal conference, the board finds that
36 the factual basis of the complaint is true and is of
37 sufficient gravity to warrant further action, it may
38 take any of the following actions it deems appropri-
39 ate:

1 A. With the consent of the licensee, enter into
2 a consent agreement which fixes the period and
3 terms of probation best adapted to protect the
4 public health and safety and to rehabilitate or
5 educate the licensee. A consent agreement may be
6 used to terminate a complaint investigation, if
7 entered into by the board, the licensee and the
8 Attorney General's office;

9 B. In consideration for acceptance of a volun-
10 tary surrender of the license, negotiate stipu-
11 lations, including terms and conditions for rein-
12 statement, which ensure protection of the public
13 health and safety and which serve to rehabilitate
14 or educate the licensee. These stipulations shall
15 be set forth only in a consent agreement signed
16 by the board, the licensee and the Attorney
17 General's office; or

18 C. If the board concludes that modification,
19 suspension, revocation or nonrenewal of license
20 might be in order, provide the licensee with the
21 option of having the modification, suspension,
22 revocation or nonrenewal action heard either:

23 (1) Before the board in an adjudicatory
24 hearing held in accordance with the provi-
25 sions of the Maine Administrative Procedure
26 Act, Title 5, chapter 375, subchapter IV; or

27 (2) Before the Administrative Court in a
28 judicial proceeding.

29 2. Grounds for discipline. The board may sus-
30 pend or revoke a license pursuant to Title 5, section
31 10004. The following shall be grounds for an action
32 to refuse to issue, modify, suspend, revoke or refuse
33 to renew the license of a person licensed under this
34 chapter:

35 A. The practice of fraud or deceit in obtaining
36 a license under this chapter or in connection
37 with service rendered within the scope of the li-
38 cence issued;

39 B. Habitual intemperance in the use of alcohol
40 or the habitual use of narcotic or hypnotic or

- 1 other substances the use of which has resulted or
2 may result in the licensee performing his duties
3 in a manner which endangers the health or safety
4 of his patients;
- 5 C. A professional diagnosis of a mental or
6 physical condition which has resulted or may
7 result in the licensee performing his duties in a
8 manner which endangers the health or safety of
9 his patients;
- 10 D. Aiding or abetting the practice of optometry
11 by a person not duly licensed under this chapter
12 and who represents himself to be so;
- 13 E. Incompetence in the practice for which he is
14 licensed. A licensee shall be deemed incompetent
15 in the practice if the licensee has:
- 16 (1) Engaged in conduct which evidences a
17 lack of ability or fitness to discharge the
18 duty owed by the licensee to a client or
19 patient or the general public; or
- 20 (2) Engaged in conduct which evidence a
21 lack of knowledge, or inability to apply
22 principles or skills to carry out the practice
23 for which he is licensed;
- 24 F. A licensee shall be deemed to have engaged in
25 unprofessional conduct if he violates any stan-
26 dard of professional behavior which has been
27 established in the practice for which the licen-
28 see is licensed;
- 29 G. Subject to the limitations of Title 5, chap-
30 ter 341, conviction of a crime which involves
31 dishonesty or false statement or which relates
32 directly to the practice for which the licensee
33 is licensed, or conviction of any crime for which
34 incarceration for one year or more may be
35 imposed;
- 36 H. Any violation of this chapter or any rule
37 adopted by the board;
- 38 I. Engaging in false, misleading or deceptive
39 advertising;

1 J. Practicing in or on premises where any materials
2 other than those necessary to render optometric
3 services are dispensed to the public;

4 K. Practicing under a name other than that given
5 in the certificate;

6 L. Representing one's self to the public as
7 something other than an optometrist, by which
8 shall be meant as an optician, eye physician or
9 by any other designation which would confuse the
10 nature of one's licensed practice. The following
11 titles shall be considered lawful:

12 (1) John Doe, O.D., Optometrist;

13 (2) John Doe, O.D.;

14 (3) John Doe, Optometrist;

15 (4) Dr. John Doe, Optometrist; and

16 (5) Doctor John Doe, Optometrist;

17 M. Engaging in house to house solicitation for
18 the purpose of fitting, selling or peddling spec-
19 tacles, eyeglasses or lenses, or in anyway other-
20 wise peddling optometric services;

21 N. Maintaining more than one office in which to
22 practice optometry without the prior written
23 approval of the board;

24 O. Failure to display a diagnostic drug license
25 issued under section 2427; or

26 P. Splitting or dividing any fee with any person
27 not an associate in conformance with section
28 2434, or giving or accepting any rebate from an
29 optician or ophthalmic dispenser.

30 Sec. 30. 32 MRSA §2432, as amended by PL 1975,
31 c. 563, §5, is repealed.

32 Sec. 31. 32 MRSA §2433, as amended by PL 1977,
33 c. 458, §§5 and 5-A, is repealed.

1 Sec. 32. 32 MRSA §2435, as enacted by PL 1973,
2 c. 788, §156, is amended to read:

3 §2435. Corporate practice of optometry

4 No registered optometrist, under this chapter,
5 ~~shall may~~ associate himself in any way with any
6 person not a registered optometrist nor any copart-
7 nership, firm or corporation for the promotion of any
8 commercial practice for profit or division of profit
9 which enables any such person, copartnership, firm or
10 corporation to engage, either directly or indirectly,
11 in the practice of optometry in this State. Any
12 ~~optometrist registered under this chapter guilty of~~
13 ~~such conduct or violation of this section shall be~~
14 ~~punished by having his certificate and registration~~
15 ~~to practice optometry in this State suspended or~~
16 ~~revoked. No certificate of registration shall be sus-~~
17 ~~sended or revoked for any of the foregoing causes~~
18 ~~unless the person accused has been given at least 10~~
19 ~~days' notice in writing of the charge against him and~~
20 ~~afforded a public hearing before the board.~~

21 Sec. 33. 32 MRSA §2571, as enacted by PL 1973,
22 c. 374, §1, is amended to read:

23 §2571. Registration; qualifications; fees

24 Any person, before engaging in the practice of
25 osteopathic medicine in this State, shall make appli-
26 cation for a certificate to the board, on a form pre-
27 scribed by it. ~~Said~~ The application shall be filed
28 with the secretary of the board at least 60 days
29 before the date of examination together with a fee of
30 \$125. The applicant shall present a diploma granted
31 by an osteopathic college or university accredited by
32 the American Osteopathic Association having the power
33 to grant a D.O. degree. Applicants graduating from an
34 osteopathic college or university having the power to
35 grant a D.O. degree shall present evidence of having
36 completed an internship of at least 12 months in a
37 hospital conforming to the minimal standards for ac-
38 creditation by the American Osteopathic Association,
39 or the equivalency, as determined by the board. All
40 ~~applicants must present a certificate of good moral~~
41 ~~character and such other shall provide such~~ reason-
42 able and proper facts as the board in its application

1 may require. The board at its discretion may permit
2 an applicant who is otherwise qualified to be exam-
3 ined during his internship, a certificate of licen-
4 sure to be withheld until successful completion of
5 his internship.

6 Sec. 34. 32 MRSA §2572, as enacted by PL 1973,
7 c. 374, §1, is amended to read:

8 §2572. Examination, reexamination; endorsement;
9 temporary registration

10 Applicants shall be examined in whole or in part
11 in writing and shall be thorough in such subjects as
12 the board may deem necessary, including osteopathic
13 theories and methods, to determine the competency of
14 the candidate to practice osteopathic medicine and
15 surgery in the State of Maine. If ~~such~~ the examina-
16 tion is passed in a manner satisfactory to the board,
17 the board shall issue to the ~~said~~ applicant a certifi-
18 cate granting him the right to practice osteopathic
19 medicine in this State. If ~~such~~ the applicant fails
20 to pass ~~such~~ the examination, he ~~or~~ she shall be
21 entitled to one reexamination within one year there-
22 after upon payment of a fee of \$100. Osteopathic
23 physicians who have been certified by the National
24 Board of Osteopathic Examiners or have been strictly
25 examined and thereafter licensed to practice
26 osteopathic medicine in another state, which has
27 equivalent licensing requirements as Maine, may be
28 licensed to practice osteopathic medicine in this
29 State upon the payment of \$100 and the substantiation
30 to the board of an earned D.O. degree, and the li-
31 cense obtained in such other state and satisfactory
32 evidence of good moral character. The board may at
33 its discretion require an examination of any such
34 applicant.

35 Sec. 35. 32 MRSA §2591, as amended by PL 1977,
36 c. 694, §§599 and 600, is repealed.

37 Sec. 36. 32 MRSA §2591-A is enacted to read:

38 §2591-A. Disciplinary actions

39 1. Disciplinary proceedings and sanctions. The
40 board shall investigate a complaint, on its own

1 motion or upon receipt of a written complaint filed
2 with the board, regarding noncompliance with or
3 violation of this chapter or of any rules adopted by
4 the board.

5 The board shall notify the licensee of the content of
6 a complaint filed against the licensee as soon as
7 possible, but in no event later than within 60 days
8 of receipt of this information. If the licensee's
9 subsequent response to the complaint satisfies the
10 board that the complaint does not merit further
11 investigation or action, the matter may be dismissed,
12 with notice of the dismissal to the complainant, if
13 any.

14 If, in the opinion of the board, the factual basis of
15 the complaint is or may be true, and it is of suffi-
16 cient gravity to warrant further action, the board
17 may request an informal conference with the licensee.
18 The board shall provide the licensee with adequate
19 notice of the conference and of the issues to be dis-
20 cussed. The conference shall be conducted in execu-
21 tive session of the board, unless otherwise requested
22 by the licensee. Statements made at the conference
23 may not be introduced at a subsequent formal hearing
24 unless all parties consent.

25 If, at the informal conference, the board finds that
26 the factual basis of the complaint is true and is of
27 sufficient gravity to warrant further action, it may
28 take any of the following actions it deems appropri-
29 ate:

30 A. With the consent of the licensee, enter into
31 a consent agreement which fixes the period and
32 terms of probation best adapted to protect the
33 public health and safety and to rehabilitate or
34 educate the licensee. A consent agreement may be
35 used to terminate a complaint investigation, if
36 entered into by the board, the licensee and the
37 Attorney General's office;

38 B. In consideration for acceptance of a volun-
39 tary surrender of the license, negotiate stipu-
40 lations, including terms and conditions for rein-
41 statement, which ensure protection of the public
42 health and safety and which serve to rehabilitate

1 or educate the licensee. These stipulations shall
2 be set forth only in a consent agreement signed
3 by the board, the licensee and the Attorney
4 General's office; or

5 C. If the board concludes that modification,
6 suspension, revocation or nonrenewal of license
7 might be in order, provide the licensee with the
8 option of having the modification, suspension,
9 revocation or nonrenewal action heard either:

10 (1) Before the board in an adjudicatory
11 hearing held in accordance with the provi-
12 sions of the Maine Administrative Procedure
13 Act, Title 5, chapter 375, subchapter IV; or

14 (2) Before the Administrative Court in a
15 judicial proceeding.

16 2. Grounds for discipline. The board may sus-
17 pend or revoke a license pursuant to Title 5, section
18 10004. The following shall be grounds for an action
19 to refuse to issue, modify, suspend, revoke or refuse
20 to renew the license of a person licensed under this
21 chapter:

22 A. The practice of fraud or deceit in obtaining
23 a license under this chapter or in connection
24 with service rendered within the scope of the li-
25 cence issued;

26 B. Habitual intemperance in the use of alcohol
27 or the habitual use of narcotic or hypnotic or
28 other substances the use of which has resulted or
29 may result in the licensee performing his duties
30 in a manner which endangers the health or safety
31 of his patients;

32 C. A professional diagnosis of a mental or
33 physical condition which has resulted or may
34 result in the licensee performing his duties in a
35 manner which endangers the health or safety of
36 his patients;

37 D. Aiding or abetting the practice of osteopathy
38 medicine by a person not duly licensed under this
39 chapter and who represents himself to be so;

1 E. Incompetence in the practice for which he is
2 licensed. A licensee shall be deemed incompetent
3 in the practice if the licensee has:

4 (1) Engaged in conduct which evidences a
5 lack of ability or fitness to discharge the
6 duty owed by the licensee to a client or
7 patient or the general public; or

8 (2) Engaged in conduct which evidence a
9 lack of knowledge, or inability to apply
10 principles or skills to carry out the prac-
11 tice for which he is licensed;

12 F. A licensee shall be deemed to have engaged in
13 unprofessional conduct if he violates any stan-
14 dard of professional behavior which has been
15 established in the practice for which the licen-
16 see is licensed;

17 G. Subject to the limitations of Title 5, chap-
18 ter 341, conviction of a crime which involves
19 dishonesty or false statement or which relates
20 directly to the practice for which the licensee
21 is licensed, or conviction of any crime for which
22 incarceration for one year or more may be
23 imposed;

24 H. Any violation of this chapter or any rule
25 adopted by the board;

26 I. Engaging in false, misleading or deceptive
27 advertising;

28 J. Advertising, practicing or attempting to
29 practice under a name other than one's own;

30 K. The revocation, suspension or denial of the
31 individual's license in any other state or ter-
32 ritory of the United States or any foreign coun-
33 try; or

34 L. Division of professional fees not based on
35 actual services rendered.

36 Sec. 37. 32 MRSA §2592, as amended by PL 1977,
37 c. 694, §601, is repealed.

1 Sec. 38. 32 MRSA §2594-D, sub-§1, as amended by
2 PL 1977, c. 694, §602, is repealed and the following
3 enacted in its place:

4 1. Grounds for discipline. A physician's assis-
5 tant shall be subject to the sanction of section
6 2591-A, if he:

7 A. Has held himself out or permitted himself to
8 be represented as a licensed physician;

9 B. Has performed otherwise than at the direction
10 of and under the supervision of a physician li-
11 icensed by the board; and

12 C. Has been delegated and performed a task
13 beyond his competence.

14 Sec. 39. 32 MRSA §2855, as repealed and replaced
15 by PL 1971, c. 282, §8, is repealed.

16 Sec. 40. 38 MRSA §2856, as repealed and replaced
17 by PL 1981, c. 426, is repealed.

18 Sec. 41. 32 MRSA §2856-A is enacted to read:

19 §2856-A. Disciplinary actions

20 1. Disciplinary proceedings and sanctions. The
21 board shall investigate a complaint, on its own
22 motion or upon receipt of a written complaint filed
23 with the board, regarding noncompliance with or
24 violation of this chapter or of any rules adopted by
25 the board.

26 The board shall notify the licensee of the content of
27 a complaint filed against the licensee as soon as
28 possible, but in no event later than within 60 days
29 of receipt of this information. If the licensee's
30 subsequent response to the complaint satisfies the
31 board that the complaint does not merit further
32 investigation or action, the matter may be dismissed,
33 with notice of the dismissal to the complainant, if
34 any.

35 If, in the opinion of the board, the factual basis of
36 the complaint is or may be true, and it is of suffi-

1 cient gravity to warrant further action, the board
2 may request an informal conference with the licensee.
3 The board shall provide the licensee with adequate
4 notice of the conference and of the issues to be dis-
5 ussed. The conference shall be conducted in execu-
6 tive session of the board, unless otherwise requested
7 by the licensee. Statements made at the conference
8 may not be introduced at a subsequent formal hearing
9 unless all parties consent.

10 If, at the informal conference, the board finds that
11 the factual basis of the complaint is true and is of
12 sufficient gravity to warrant further action, it may
13 take any of the following actions it deems appropri-
14 ate:

15 A. With the consent of the licensee, enter into
16 a consent agreement which fixes the period and
17 terms of probation best adapted to protect the
18 public health and safety and to rehabilitate or
19 educate the licensee. A consent agreement may be
20 used to terminate a complaint investigation, if
21 entered into by the board, the licensee and the
22 Attorney General's office;

23 B. In consideration for acceptance of a volun-
24 tary surrender of the license, negotiate stipu-
25 lations, including terms and conditions for rein-
26 statement, which ensure protection of the public
27 health and safety and which serve to rehabilitate
28 or educate the licensee. These stipulations shall
29 be set forth only in a consent agreement signed
30 by the board, the licensee and the Attorney
31 General's office; or

32 C. If the board concludes that modification,
33 suspension, revocation or nonrenewal of license
34 might be in order, provide the licensee with the
35 option of having the modification, suspension,
36 revocation or nonrenewal action heard either:

37 (1) Before the board in an adjudicatory
38 hearing held in accordance with the provi-
39 sions of the Maine Administrative Procedure
40 Act, Title 5, chapter 375, subchapter IV; or

41 (2) Before the Administrative Court in a
42 judicial proceeding.

1 2. Grounds for discipline. The board may sus-
2 pend or revoke a license pursuant to Title 5, section
3 10004. The following shall be grounds for an action
4 to refuse to issue, modify, suspend, revoke or refuse
5 to renew the license of a person licensed under this
6 chapter:

7 A. The practice of fraud or deceit in obtaining
8 a license under this chapter or in connection
9 with service rendered within the scope of the li-
10 cence issued;

11 B. Habitual intemperance in the use of alcohol
12 or the habitual use of narcotic or hypnotic or
13 other substances the use of which has resulted or
14 may result in the licensee performing his duties
15 in a manner which endangers the health or safety
16 of his patients;

17 C. A professional diagnosis of a mental or
18 physical condition which has resulted or may
19 result in the licensee performing his duties in a
20 manner which endangers the health or safety of
21 his patients;

22 D. Aiding or abetting the practice of pharmacy
23 by a person not duly licensed under this chapter
24 and who represents himself to be so;

25 E. Incompetence in the practice for which he is
26 licensed. A licensee shall be deemed incompetent
27 in the practice if the licensee has:

28 (1) Engaged in conduct which evidences a
29 lack of ability or fitness to discharge the
30 duty owed by the licensee to a client or
31 patient or the general public; or

32 (2) Engaged in conduct which evidence a
33 lack of knowledge, or inability to apply
34 principles or skills to carry out the prac-
35 tice for which he is licensed;

36 F. A licensee shall be deemed to have engaged in
37 unprofessional conduct if he violates any stan-
38 dard of professional behavior which has been
39 established in the practice for which the licen-
40 see is licensed;

1 G. Subject to the limitations of Title 5, chap-
2 ter 341, conviction of a crime which involves
3 dishonesty or false statement or which relates
4 directly to the practice for which the licensee
5 is licensed, or conviction of any crime for which
6 incarceration for one year or more may be
7 imposed;

8 H. Any violation of this chapter or of the phar-
9 macy laws of the State of any rule adopted by the
10 board; or

11 I. Engaging in false, misleading or deceptive
12 advertising.

13 3. Crime in course of business. If any regis-
14 tered pharmacist is convicted in state or federal
15 court of a crime which is committed during the course
16 of his duties as a registered pharmacist or committed
17 by him through the use of the pharmacy in which he is
18 employed, or which he owns or operates, and which
19 demonstrates his unfitness to practice as a pharma-
20 cist, including, but not limited to, convictions for
21 defrauding the Medicaid program, and for illegally
22 distributing prescription drugs, he is subject to the
23 following action by the Administrative Court.

24 A. A pharmacist convicted of such a crime, if it
25 is punishable by a maximum term of imprisonment
26 of less than one year, shall have his registra-
27 tion and certificate suspended for a minimum
28 period of 120 days.

29 B. A pharmacist convicted of such a crime, if it
30 is punishable by a maximum term of imprisonment
31 equal to or exceeding one year, shall have his
32 registration and certificate suspended for a min-
33 imum period of one year, and may have his regis-
34 tration and certificate revoked and be perma-
35 nently barred from reapplying for registration,
36 notwithstanding Title 5, sections 5301 to 5304.

37 Sec. 42. 32 MRSA §2901, last ¶, as amended by PL
38 1971, c. 282, §13, is repealed and the following
39 enacted in its place:

1 The board shall make such rules, consistent with
2 the law, as may be necessary to carry out the purpose
3 of and enforce this section. The permit to operate
4 a pharmacy shall be subject to the disciplinary pro-
5 ceedings and grounds in section 2856-A.

6 Sec. 43. 32 MRSA §2903, as amended by PL 1979,
7 c. 28, §4, is further amended to read:

8 §2903. Renewals; fees

9 Every registered pharmacist and every registered
10 assistant pharmacist who desires to continue to prac-
11 tice pharmacy in this State shall annually, after the
12 expiration of the first year of his registration, on
13 or before the last day of June, pay a renewal fee of
14 \$30 to the secretary of the board, in return for
15 which a renewal registration shall be issued. If any
16 person shall fail or neglect to procure his annual
17 renewal registration or permit, notice of such fail-
18 ure having been mailed to his post-office address,
19 ~~the board may, the original registration or permit~~
20 shall expire after the expiration of 30 days follow-
21 ing the issue of said that notice, suspend his orig-
22 inal registration and all other privileges conferred
23 by this chapter. Such person in order to regain
24 registration shall be required to pay one renewal fee
25 in addition to the sum of all fees such person may be
26 in arrears.

27 Sec. 44. 32 MRSA §3270-C, sub-§1, as amended by
28 PL 1977, c. 694, §607, is repealed and the following
29 enacted in its place:

30 1. Grounds. The sanctions of section 3282-A
31 shall apply to a physician's assistant who has:

32 A. Held himself out or permitted himself to be
33 represented as a licensed physician;

34 B. Performed otherwise than at the direction and
35 under the supervision of a physician licensed by
36 the board;

37 C. Been delegated and performed a task beyond
38 his competence; and

1 D. Administered, dispensed or prescribed any
2 controlled substance otherwise than as authorized
3 by law.

4 Sec. 45. 32 MRSA §3271, 2nd ¶, as amended by PL
5 1971, c. 622, §117-C, is further amended to read:

6 Each of the applicants must be 18 years of age
7 and ~~of good moral character~~. The board at its dis-
8 cretion may permit an applicant who is otherwise
9 qualified to be examined during his internship, the
10 certificate of licensure to be withheld until the
11 successful completion of his internship.

12 Sec. 46. 32 MRSA §3282, as amended by PL 1979,
13 c. 619, §1, is repealed.

14 Sec. 47. 32 MRSA §3282-A is enacted to read:

15 §3282-A. Disciplinary actions

16 1. Disciplinary proceedings and sanctions. The
17 board shall investigate a complaint, on its own
18 motion or upon receipt of a written complaint filed
19 with the board, regarding noncompliance with or
20 violation of this chapter or of any rules adopted by
21 the board.

22 The board shall notify the licensee of the content of
23 a complaint filed against the licensee as soon as
24 possible, but in no event later than within 60 days
25 of receipt of this information. If the licensee's
26 subsequent response to the complaint satisfies the
27 board that the complaint does not merit further
28 investigation or action, the matter may be dismissed,
29 with notice of the dismissal to the complainant, if
30 any.

31 If, in the opinion of the board, the factual basis of
32 the complaint is or may be true, and it is of suffi-
33 cient gravity to warrant further action, the board
34 may request an informal conference with the licensee.
35 The board shall provide the licensee with adequate
36 notice of the conference and of the issues to be dis-
37 cussed. The conference shall be conducted in execu-
38 tive session of the board, unless otherwise requested
39 by the licensee. Statements made at the conference

1 may not be introduced at a subsequent formal hearing
2 unless all parties consent.

3 If, at the informal conference, the board finds that
4 the factual basis of the complaint is true and is of
5 sufficient gravity to warrant further action, it may
6 take any of the following actions it deems appropri-
7 ate:

8 A. With the consent of the licensee, enter into
9 a consent agreement which fixes the period and
10 terms of probation best adapted to protect the
11 public health and safety and to rehabilitate or
12 educate the licensee. A consent agreement may be
13 used to terminate a complaint investigation, if
14 entered into by the board, the licensee and the
15 Attorney General's office;

16 B. In consideration for acceptance of a volun-
17 tary surrender of the license, negotiate stipu-
18 lations, including terms and conditions for rein-
19 statement, which ensure protection of the public
20 health and safety and which serve to rehabilitate
21 or educate the licensee. These stipulations shall
22 be set forth only in a consent agreement signed
23 by the board, the licensee and the Attorney
24 General's office; or

25 C. If the board concludes that modification,
26 suspension, revocation or nonrenewal of license
27 might be in order, provide the licensee with the
28 option of having the modification, suspension,
29 revocation or nonrenewal action heard either:

30 (1) Before the board in an adjudicatory
31 hearing held in accordance with the provi-
32 sions of the Maine Administrative Procedure
33 Act, Title 5, chapter 375, subchapter IV; or

34 (2) Before the Administrative Court in a
35 judicial proceeding.

36 2. Grounds for discipline. The board may sus-
37 pend or revoke a license pursuant to Title 5, section
38 10004. The following shall be grounds for an action
39 to refuse to issue, modify, suspend, revoke or refuse
40 to renew the license of a person licensed under this
41 chapter:

- 1 A. The practice of fraud or deceit in obtaining
2 a license under this chapter or in connection
3 with service rendered within the scope of the li-
4 cence issued;
- 5 B. Habitual intemperance in the use of alcohol
6 or the habitual use of narcotic or hypnotic or
7 other substances the use of which has resulted or
8 may result in the licensee performing his duties
9 in a manner which endangers the health or safety
10 of his patients;
- 11 C. A professional diagnosis of a mental or
12 physical condition which has resulted or may
13 result in the licensee performing his duties in a
14 manner which endangers the health or safety of
15 his patients;
- 16 D. Aiding or abetting the practice of medicine
17 by a person not duly licensed under this chapter
18 and who represents himself to be so;
- 19 E. Incompetence in the practice for which he is
20 licensed. A licensee shall be deemed incompetent
21 in the practice if the licensee has:
- 22 (1) Engaged in conduct which evidences a
23 lack of ability or fitness to discharge the
24 duty owed by the licensee to a client or
25 patient or the general public; or
- 26 (2) Engaged in conduct which evidence a
27 lack of knowledge, or inability to apply
28 principles or skills to carry out the prac-
29 tice for which he is licensed;
- 30 F. A licensee shall be deemed to have engaged in
31 unprofessional conduct if he violates any stan-
32 dard of professional behavior which has been
33 established in the practice for which the licen-
34 see is licensed;
- 35 G. Subject to the limitations of Title 5, chap-
36 ter 341, conviction of a crime which involves
37 dishonesty or false statement or which relates
38 directly to the practice for which the licensee
39 is licensed, or conviction of any crime for which

1 incarceration for one year or more may be
2 imposed;

3 H. Any violation of this chapter or any rule
4 adopted by the board;

5 I. Engaging in false, misleading or deceptive
6 advertising;

7 J. Prescribing narcotic or hypnotic or other
8 drugs listed as controlled substances by the Drug
9 Enforcement Administration for other than accept-
10 ed therapeutic purposes; or

11 K. Failure to report to the secretary of the
12 board a physician licensed under this chapter for
13 addiction to alcohol or drugs or for mental ill-
14 ness in accordance with Title 24, section 2505,
15 except when the impaired physician is or has been
16 a patient of the licensee.

17 Sec. 48. 32 MRSA §3283, as repealed and replaced
18 by PL 1979, c. 619, §2, is repealed.

19 Sec. 49. 32 MRSA §§3287 and 3288, as enacted by
20 PL 1971, c. 591, §1, are repealed.

21 Sec. 50. 32 MRSA §3651, first ¶, as amended by
22 PL 1979, c. 61, §3, is further amended to read:

23 Except as otherwise provided in this chapter, any
24 person before engaging in the practice of podiatry
25 shall be examined as to his qualifications. Each
26 applicant shall, at least 60 days before the date of
27 his examination, present to the secretary of the
28 Board of Registration in Medicine an application for
29 a license to practice podiatry on a form prescribed
30 by the examiners and containing satisfactory proof
31 that ~~said~~ the applicant is at least 18 years of age,
32 ~~of good moral character~~ and that he has received a
33 certificate of graduation from a legally incorpo-
34 rated, regular established school of podiatry, recog-
35 nized by the Council of Education of the American
36 Podiatry Association, having a minimum requirement of
37 not less than 4 consecutive years of 8 months each of
38 scholastic attendance, nor shall ~~such~~ the applicant
39 be entitled to registration and certificate unless

1 such the applicant shall have had, prior to the
2 beginning of his course in podiatry, as a minimum re-
3 quirement, a 2-year course in a legally recognized
4 college of the liberal arts or of the sciences.

5 Sec. 51. 32 MRSA §3654, first ¶, is amended to
6 read:

7 Any podiatrist of good moral character licensed
8 to practice podiatry in a state maintaining a stan-
9 dard equal to that maintained by this State may, upon
10 making application to the secretary of the Board of
11 Registration in Medicine, be licensed to practice
12 podiatry in this State without examination, upon pay-
13 ment of the required fee and the presentation of
14 satisfactory evidence of good moral character and of
15 his license to practice podiatry in such other state,
16 provided such other state extends the same privilege
17 to persons licensed to practice podiatry in this
18 State.

19 Sec. 52. 32 MRSA §3655, as amended by PL 1981,
20 c. 25, is repealed.

21 Sec. 53. 32 MRSA §3655-A is enacted to read:

22 §3655-A. Disciplinary actions

23 1. Disciplinary proceedings and sanctions. The
24 board shall investigate a complaint, on its own
25 motion or upon receipt of a written complaint filed
26 with the board, regarding noncompliance with or
27 violation of this chapter or of any rules adopted by
28 the board.

29 The board shall notify the licensee of the content of
30 a complaint filed against the licensee as soon as
31 possible, but in no event later than within 60 days
32 of receipt of this information. If the licensee's
33 subsequent response to the complaint satisfies the
34 board that the complaint does not merit further
35 investigation or action, the matter may be dismissed,
36 with notice of the dismissal to the complainant, if
37 any.

38 If, in the opinion of the board, the factual basis of
39 the complaint is or may be true, and it is of suffi-

1 cient gravity to warrant further action, the board
2 may request an informal conference with the licensee.
3 The board shall provide the licensee with adequate
4 notice of the conference and of the issues to be dis-
5 ussed. The conference shall be conducted in execu-
6 tive session of the board, unless otherwise requested
7 by the licensee. Statements made at the conference
8 may not be introduced at a subsequent formal hearing
9 unless all parties consent.

10 If, at the informal conference, the board finds that
11 the factual basis of the complaint is true and is of
12 sufficient gravity to warrant further action, it may
13 take any of the following actions it deems appropri-
14 ate:

15 A. With the consent of the licensee, enter into
16 a consent agreement which fixes the period and
17 terms of probation best adapted to protect the
18 public health and safety and to rehabilitate or
19 educate the licensee. A consent agreement may be
20 used to terminate a complaint investigation, if
21 entered into by the board, the licensee and the
22 Attorney General's office;

23 B. In consideration for acceptance of a volun-
24 tary surrender of the license, negotiate stipu-
25 lations, including terms and conditions for rein-
26 statement, which ensure protection of the public
27 health and safety and which serve to rehabilitate
28 or educate the licensee. These stipulations shall
29 be set forth only in a consent agreement signed
30 by the board, the licensee and the Attorney
31 General's office; or

32 C. If the board concludes that modification,
33 suspension, revocation or nonrenewal of license
34 might be in order, provide the licensee with the
35 option of having the modification, suspension,
36 revocation or nonrenewal action heard either:

37 (1) Before the board in an adjudicatory
38 hearing held in accordance with the provi-
39 sions of the Maine Administrative Procedure
40 Act, Title 5, chapter 375, subchapter IV; or

41 (2) Before the Administrative Court in a
42 judicial proceeding.

1 2. Grounds for discipline. The board may sus-
2 pend or revoke a license pursuant to Title 5, section
3 10004. The following shall be grounds for an action
4 to refuse to issue, modify, suspend, revoke or refuse
5 to renew the license of a person licensed under this
6 chapter:

7 A. The practice of fraud or deceit in obtaining
8 a license under this chapter or in connection
9 with service rendered within the scope of the li-
10 cence issued;

11 B. Habitual intemperance in the use of alcohol
12 or the habitual use of narcotic or hypnotic or
13 other substances the use of which has resulted or
14 may result in the licensee performing his duties
15 in a manner which endangers the health or safety
16 of his patients;

17 C. A professional diagnosis of a mental or
18 physical condition which has resulted or may
19 result in the licensee performing his duties in a
20 manner which endangers the health or safety of
21 his patients;

22 D. Aiding or abetting the practice of podiatry
23 by a person not duly licensed under this chapter
24 and who represents himself to be so;

25 E. Incompetence in the practice for which he is
26 licensed. A licensee shall be deemed incompetent
27 in the practice if the licensee has:

28 (1) Engaged in conduct which evidences a
29 lack of ability or fitness to discharge the
30 duty owed by the licensee to a client or
31 patient or the general public; or

32 (2) Engaged in conduct which evidence a
33 lack of knowledge, or inability to apply
34 principles or skills to carry out the prac-
35 tice for which he is licensed;

36 F. A licensee shall be deemed to have engaged in
37 unprofessional conduct if he violates any stan-
38 dard of professional behavior which has been
39 established in the practice for which the licen-
40 see is licensed;

1 Sections 33 to 38 apply to the statutes on
2 osteopathic medicine.

3 Sections 39 to 43 apply to the statutes on phar-
4 macy.

5 Sections 44 to 49 apply to the statutes on medi-
6 cine.

7 Sections 50 to 53 apply to the statutes on podia-
8 try.

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