

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

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Legislative Document

No. 498

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H. P. 369

House of Representatives, January 30, 1973

Referred to Committee on Judiciary. Sent up for concurrence and ordered printed.

E. LOUISE LINCOLN, Clerk

Presented by Mrs. Baker of Orrington.

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-THREE

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AN ACT Relating to the Sanction and Conduct of Assistants to Physicians.

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

Sec. 1. R. S., T. 32, § 2706, additional. Title 32 of the Revised Statutes is amended by adding a new section 2706 to read as follows:

§ 2706. Osteopaths

Nothing contained in this chapter shall be construed to prohibit osteopaths from delegating certain activities relating to osteopathic medical care and treatment to persons not licensed as osteopaths, if such activities are conducted under the supervision and control of a licensed osteopath, provided that these persons have satisfactorily completed a training program approved by the Department of Health and Welfare. Supervision and control shall not be construed as requiring the personal presence of the supervising osteopath at the place where such services are rendered unless such physical presence is necessary to provide patient care of the same quality as provided by the osteopath. Nothing in this chapter shall be construed to prohibit a student enrolled in an approved program for training such assistants from rendering services when and if such services are rendered as part of the conduct of the training program and are under the supervision and control of a licensed osteopath. The osteopath delegating such activities, either to program graduates or to participants in an approved training program, shall be deemed legally liable for such activities of such persons and such persons shall in this relationship be construed as the osteopath's agent.

Any delegation of activities pursuant to this section shall be subject to the following restrictions:

1. Vision. When the delegated activities consist of the measurement of the power or range of human vision; or the determination of the accommodation and refractive states of the human eye or the scope of its functions in general or the fitting or adaptation of lenses or frames for the aid thereof; or the prescribing or directing the use of or using any optical device in connection with ocular exercises, visual training, vision training or orthoptics; or the prescribing of contact lenses for or the fitting or adaptation of contact lenses to, the human eye, the person to whom such activities are delegated must possess a valid license to practice optometry in Maine. Nothing in this paragraph shall be construed as prohibiting the independent practice of optometry. The performance of routine screening of visual acuity, visual field testing, ocular movements and physical examination of the eye and associated structures may be delegated by physicians to a person not licensed as an optometrist;

2. Dentistry. When the delegated activities are part of the practice of dentistry as defined in section 1081 and following or dental hygiene as defined in section 1095, then the person to whom such activities are delegated shall possess a valid license to practice dentistry in Maine or be otherwise approved by the Board of Dental Examiners;

3. Podiatry. When the delegated activities are part of the practice of podiatry as defined in section 3551; that person to whom such activities are delegated shall possess a valid license to practice podiatry in Maine or be otherwise approved by the examiners of podiatrists;

4. Pharmacy. When the delegated activities are part of the practice of pharmacy as defined in section 2801, then the person to whom such activities are delegated shall possess a valid license as a pharmacist or be otherwise approved by the Board of Commissioners of the Profession of Pharmacy.

The Board of Osteopathic Examination and Registration shall include a review of an individual osteopath applicant's ability to delegate such activities and supervise the activities of assistants as part of the determination of an applicant's suitability for being registered as a licensed osteopath. Permission to employ or supervise such an assistant may be withdrawn or withheld from an individual osteopath by the board upon presentation of evidence satisfactory to the board that the individual osteopath is not capable of delegating activities or supervising such assistants in the best interests of the public health. The board shall notify any osteopath from whom such permission has been withdrawn or withheld of such action in writing. Any osteopath from whom permission to delegate and supervise activities has been withdrawn or withheld may appeal such action by requesting in writing a hearing from the board within 10 days after notice of the board's action. Any osteopath who employs, supervises or otherwise delegates activities to an assistant after such permission has been withdrawn or withheld shall be punished by a fine of not less than \$100 nor more than \$1,000 for each offense. A 2nd violation of this section may be construed as grounds for revocation of license to practice or other disciplinary action by the board pursuant to section 2705. Records of such activities by the board shall be confidential.

Registry of delegates, approval of assistants' training programs, studies of delegated activities and relationships shall be outlined and defined in section 3295.

Sec. 2. R. S., T. 32, § 3295, additional. Title 32 of the Revised Statutes is amended by adding a new section 3295 to read as follows:

§ 3295. Physicians

Nothing contained in this chapter shall be construed to prohibit physicians from delegating certain activities relating to medical care and treatment to persons not licensed as physicians, if such activities are conducted under the supervision and control of a physician or surgeon, provided that these persons have satisfactorily completed a training program approved by and registered with the Department of Health and Welfare. Supervision and control shall not be construed as requiring the personal presence of the supervising physician at the place where such services are rendered unless such physical presence is necessary to provide patient care of the same quality as provided by the physician. Nothing in this chapter shall be construed to prohibit a student enrolled in an approved program for training such assistants from rendering services when and if such services are rendered as part of the conduct of the training program and are under the supervision and control of a licensed physician. The physician delegating such activities, either to program graduates or to participants in an approved training program, shall be deemed legally liable for such activities of such persons and such a person shall in this relationship be construed as the physician's agent.

Any delegation of activities pursuant to this section shall be subject to the following restrictions:

1. Vision. When the delegated activities consist of the measurement of the power or range of human vision; or the determination of the accommodation and refractive states of the human eye or the scope of its functions in general or the fitting or adaptation of lenses or frames for the aid thereof; or the prescribing or directing the use of or using any optical device in connection with ocular exercises, visual training, vision training or orthoptics; or the prescribing of contact lenses for or the fitting or adaption of contact lenses to, the human eye, the person to whom such activities are delegated must possess a valid license to practice optometry in Maine. Nothing in this paragraph shall be construed as prohibiting the independent practice of optometry. The performance of routine screening of visual acuity, visual field testing, ocular movements and physical examination of the eye and associated structures may be delegated by physicians to a person not licensed as an optometrist;

2. Dentistry. When the delegated activities are part of the practice of dentistry as defined in section 1081 and following or dental hygiene as defined in section 1095, then the person to whom such activities are delegated shall possess a valid license to practice dentistry in Maine or be otherwise approved by the Board of Dental Examiners;

3. Podiatry. When the delegated activities are part of the practice of podiatry as defined in section 3551; that person to whom such activities are delegated shall possess a valid license to practice podiatry in Maine or be

otherwise approved by the examiners of podiatrists;

4. Pharmacy. When the delegated activities are part of the practice of pharmacy as defined in section 2801, then the person to whom such activities are delegated shall possess a valid license as a pharmacist or be otherwise approved by the Board of Commissioners of the Profession of Pharmacy.

The Board of Registration in Medicine shall include a review of an individual physician applicant's ability to delegate such activities and supervise the activities of assistants as part of the determination of an applicant's suitability for being registered as a licensed physician and surgeon. Permission to employ or supervise such an assistant may be withdrawn or withheld from an individual physician by the board upon presentation of evidence satisfactory to the board that the individual physician is not capable of delegating activities or supervising such assistants in the best interests of the public health. The board shall notify any physician from whom such permission has been withdrawn or withheld of such action in writing. Any physician from whom permission to delegate and supervise activities has been withdrawn or withheld may appeal such action by requesting in writing a hearing from the board within 10 days after notice of the board's action. Any physician who employs, supervises or otherwise delegates activities to an assistant after such permission has been withdrawn or withheld shall be punished by a fine of not less than \$100 nor more than \$1,000 for each offense. A 2nd violation of this section may be construed as grounds for revocation of license to practice or other disciplinary action by the board pursuant to section 3284. Records of such activities by the board shall be confidential.

The Department of Health and Welfare shall maintain a registry of persons who are graduates of approved programs and who are otherwise approved by the department to accept delegation of activities from physicians. The department may from time to time specify certain activities that may or may not be delegated to certain assistants to physicians based upon their training, skills or performance. No person not so registered shall be permitted to function as an assistant to a physician in Maine and it shall be unlawful for a physician to delegate activities to a person not so registered. The department will specify the format to be used in applying for such registration and registration is to be renewed annually. Every applicant shall pay the department a fee of not more than \$25 for initial registration and not more than \$10 for yearly re-registration. The department may require a lesser fee. Failure to register as an assistant to a physician, in accordance with this section, shall be punished by a fine of not less than \$25 nor more than \$500. However, any person already licensed as a physical therapist, podiatrist, optometrist, pharmacist, registered nurse, licensed practical nurse, dentist or dental hygienist may be registered by the department without payment of a fee and upon presentation to the department of evidence of licensure and whatever other information the department may require.

The Department of Health and Welfare shall maintain a registry of approved training programs for persons to accept such delegation in Maine. Approval of programs shall be on the basis of curriculum, qualifications of training staff, methods of evaluation of trainee performance and method of trainee selection. No training program shall be approved unless it is asso-

ciated with an approved college or university, a teaching hospital or similar educational institution sanctioned by a duly constituted governmental body. The department may charge any institution applying for approval for such a program a fee not to exceed \$1,000 but sufficient to defray the costs of approving the program. The department may use formal approval by an out-of-state training program by an official agency of another state's government as evidence of adequacy if it determines such action to be in the public interest.

All such fees collected by the Department of Health and Welfare under this section will be credited to the General Fund.

In approving applicants for registration, approving training programs and studying the functions and limitations of assistance to physicians, the department shall be advised by a committee to be called the **Advisory Committee on Assistance to Physicians** and consisting of one member elected by each of the boards of registration or licensure of physicians and surgeons, physical therapists, podiatrists, osteopaths, optometrists, pharmacists, nurses and dentists, and 11 additional Maine citizens to include a hospital administrator and 3 persons not professionally associated with health care. The members of this group of 11 Maine citizens shall be appointed by the Governor from a list prepared by the Commissioner of Health and Welfare. The members of this committee shall serve for 2-year terms coincident with the legislative biennial.

The Department of Health and Welfare shall conduct studies into the nature and scope of the duties and tasks of these assistants to physicians in order to promote effective functioning and utilization as members of the health care team. The department shall report to the Legislature no later than January 30, 1975, and thereafter in each regular session or as required by the Legislature, as to:

1. **Programs.** The number and types of programs which have been approved and a description of each;
2. **Number.** The number of physicians' assistants who are functioning in the State and the nature and character of the supervision exercised over them by their supervising physicians;
3. **Information.** Information about the physicians' supervising such personnel, the specialties and geographic locales in which they practice;
4. **Activities.** The types of activities being performed by these persons and the effectiveness and economy with which they deliver these services;
5. **Institutional relationships.** Information about the institutional relationships enjoyed by these persons functioning as physicians' assistants and the type of supervision exercised in the institutional relationship;
6. **Supervision.** Specific information about the type of supervision exercised when the supervising physician is not physically present or readily available to the site of practice of the assistant;

7. Other informtion. Any other information pertaining to the evaluation of these activities or as specified by the Legislative Research Committee.

Sec. 3. Appropriation. There is appropriated from the General Fund to the Department of Health and Welfare the sum of \$5,000 to carry out the purposes of this Act. The breakdown shall be as follows:

	1973-74	1974-75
HEALTH AND WELFARE, DEPARTMENT OF		
All Other	\$2,500	\$2,500

### STATEMENT OF FACT

Traditionally, over the years, physicians, both allopathic and osteopathic, have delegated certain activities to other persons not licensed as physicians in order to facilitate and economize the delivery of health services. Over the past several decades, such delegation has increased in amount and the type of activities which have been delegated have increased in complexity such that the appropriateness of such delegation is now unclear under the present physician, osteopathic, nurse, dentistry and related practice acts. Furthermore, this type of activity has prompted the development of programs to train other types of physician assistants and nurse practitioners who will be available to accept delegation of such activities, and it is generally recognized that this development is a healthy one which should further promote the ability to deliver universal and economical health care. Because the development of these new kinds of programs is still experimental, the programs vary widely in content and prerequisites, and the exact types of tasks which can be delegated and the methods by which such delegation and the accompanying supervision must be accomplished are not clearly defined. It does not seem appropriate at this time to enact specific restrictive licensing or certifying legislation. However, it does seem appropriate for the Legislature to formally recognize that such delegation does take place, that it considers an appropriate aspect of medical practice when done under close supervision, and that those who wish to carefully and productively experiment in the various ways in which it might be done should be afforded a certain degree of legal protection as long as their activities are in the interest of public health and not detrimental thereto. The Legislature also recognizes the need for the collection of more detailed information about these activities so that more specific legislation may be enacted at some future date when it is in the public interest.

The intent of the Legislature in passing this particular bill is to instruct the Department of Health and Welfare to automatically approve programs which are recognized by various licensure boards. In doing so, other health care professionals such as podiatrists, optometrists, opticians, registered nurses, licensed practical nurses and other health professionals presently licensed by the State would automatically be determined as appropriate persons to whom physicians may delegate certain tasks under supervision. In addition, it is

anticipated that the department would automatically approve already established and proven training programs for other health personnel, such as medical technicians, x-ray technologists, surgical technicians and the like. It is anticipated that the department would more closely examine new or innovate programs with the assistance of the various licensing agencies and approve only those which were conducted by a recognized educational facility using appropriately trained and licensed instructors and designed to train personnel to meet specific needs. In passing such legislation, the Legislature would thereby recognize the existence of physicians' assistants, sanction this existence, require that close supervision of their activities be conducted and instruct the Department of Health and Welfare to carefully examine the methods by which they have been trained and approve only those methods which in the judgment of the department are in the interest of the public health. Such activities are consistent with the general charge given to the Department of Health and Welfare by the Legislature to protect the public health.

This legislation is intended to be a formal statement by the Legislature of a "moratorium" on the enactment of specific licensing legislation pending the results of the inquiries conducted jointly by the Department of Health and Welfare, the various health professional licensure bodies and other concerned persons through the advisory committee created herein.