

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 1677

H. P. 1274

House of Representatives, March 28, 1973

On motion of Mr. Dyar of Strong, referred to Committee on Health and Institutional Services. Sent up for concurrence and ordered printed.

E. LOUISE LINCOLN, Clerk

Presented by Mr. LaCharite of Brunswick.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-THREE

AN ACT Relating to the Registration of Osteopathic Physicians
and Surgeons.

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

Sec. 1. R. S., T. 32, c. 36, additional. Title 32 of the Revised Statutes is amended by adding a new chapter 36 to read as follows:

CHAPTER 36

OSTEOPATHIC PHYSICIANS AND SURGEONS

SUBCHAPTER I

BOARD OF OSTEOPATHIC EXAMINATION AND REGISTRATION

§ 2561. Membership; qualifications; tenure; vacancies

The Board of Osteopathic Examination and Registration, as heretofore established and in this chapter called the "board," shall consist of 5 persons appointed by the Governor, with the advice and consent of the Council. Said persons shall be residents of this State, shall be graduates of a legally chartered college of osteopathic medicine or university having the power to confer degrees in osteopathic medicine and shall have been at the time of their appointment actively engaged in the practice of their profession in Maine for a period of at least 5 years. Each appointment shall be for a period of 5 years as the terms of the present members expire. Any vacancy in said board caused by death, resignation or for any other cause, except completion of a full term of service, shall be filled by the like appointment of a person qualified as aforesaid to hold office during the unexpired term of the member whose place he fills. Any member of said board may be removed

from office, for cause, by the Governor with the advice and consent of the Council. Members of the board on the effective date of this Act shall continue in office to the date of expiration of their current terms.

§ 2562. Meetings; organizations; duties; powers

The board shall meet annually in June of each year at such time and place as the chairman may designate. It shall elect one of its members as chairman annually and one of its members as secretary and treasurer, to hold such office at the pleasure of the board. The board shall be required annually to set a reregistration fee for the ensuing year, based on a balance of operating expenses and income factors. The treasurer shall receive all fees, charges and assessments payable to the board and account for and pay over the same to the State. Special meetings may be called at the pleasure of the chairman and in case of the death or inability of the chairman, the secretary may call special meetings. Said board shall cause a seal of suitable inscription to be procured and to be affixed to such papers as may require such seal, shall keep a correct record of all of its proceedings and shall have power to make such rules and regulations, not inconsistent with this chapter, as it may deem necessary for the successful enforcement of its authority and the performance of its duties. The board shall at its annual meeting in every even year prepare and distribute to each licensed osteopathic physician practicing in Maine a copy of its code of ethics and current rules and regulations relative to continuing medical education. The chairman and the secretary shall be empowered to administer oaths in matters connected with the duties of said board. The records of said board shall include, among other things, a report of all moneys received and disbursed by said board, also a list of all applicants for certificates, giving the name and location of the institution granting a D.O. degree, Doctor of Osteopathic Medicine, to the applicant, and the fact shall be recorded whether the applicant was granted or denied a certificate. Such records, or duplicates thereof, shall always be open to inspection in the office of the Secretary of State during regular office hours. Three members of the board shall constitute a quorum for the transaction of business. No certificate to practice osteopathic medicine shall be granted, except on an affirmative vote of at least 3 members of the board.

Each member of the board shall receive \$25 per day, or any part thereof, plus necessary expenses incurred in the discharge of his duties. All requisitions for payment of money shall be signed by the chairman and the secretary of said board. If the fees to be collected under any of the provisions of this chapter are insufficient to pay the salaries and expenses provided by this section, the members of said board shall be entitled to only a pro rata payment for salary in any years in which such fees are insufficient.

The board shall have the duty and the power to annually determine the salary of the secretary-treasurer, not to exceed \$6,000. The board has the power to employ, fix the salary of and prescribe the duties of other personnel as the board shall deem necessary.

§ 2563. Annual reports

The board shall annually on or before the first of July in each year make a report to the Governor containing a full and complete account of all of its official acts during the preceding year and a statement of its receipts and disbursements and such comments or suggestions as it may deem essential.

SUBCHAPTER II

REGISTRATION

§ 2571. Registration; qualifications; fees

Any person, before engaging in the practice of osteopathic medicine in this State, shall make application for a certificate to the board, on a form prescribed by it. Said application shall be filed with the secretary of the board at least 60 days before the date of examination together with a fee of \$125. The applicant shall present a diploma granted by an osteopathic college or university accredited by the American Osteopathic Association having the power to grant a D.O. degree. Applicants graduating from an osteopathic college or university having the power to grant a D.O. degree shall present evidence of having completed an internship of at least 12 months in a hospital conforming to the minimal standards for accreditation by the American Osteopathic Association, or the equivalency, as determined by the board. All applicants must present a certificate of good moral character and such other reasonable and proper facts as the board in its application may require. The board at its discretion may permit an applicant who is otherwise qualified to be examined during his internship, a certificate of licensure to be withheld until successful completion of his internship.

SUBCHAPTER III

EXAMINATION

§ 2572. Examination, reexamination; endorsement; temporary registration

Applicants shall be examined in whole or in part in writing and shall be thorough in such subjects as the board may deem necessary, including osteopathic theories and methods, to determine the competency of the candidate to practice osteopathic medicine and surgery in the State of Maine. If such examination is passed in a manner satisfactory to the board, the board shall issue to the said applicant a certificate granting him the right to practice osteopathic medicine in this State. If such applicant fails to pass such examination, he or she shall be entitled to one reexamination within one year thereafter upon payment of a fee of \$100. Osteopathic physicians who have been certified by the National Board of Osteopathic Examiners or have been strictly examined and thereafter licensed to practice osteopathic medicine in another state, which has equivalent licensing requirements as Maine, may be licensed to practice osteopathic medicine in this State upon the payment of \$100 and the substantiation to the board of an earned D.O. degree, the license obtained in such other state and satisfactory evidence of good moral character. The board may at its discretion require an examination of any such applicant.

§ 2573. Temporary registration

An osteopathic physician in good repute who is a graduate of an accredited osteopathic college or university having the power to grant a D.O. degree, serving as a fellow, intern or resident physician or surgeon in a hospital in this State, shall register with the board and be issued a certificate by the board evidencing the right of such person to hold a temporary registration to practice only under hospital control. Such a certificate may not be issued for a period in excess of one year but may be renewed from time to time, not to exceed an aggregate of 5 years. The certificate shall be in a form prescribed by the board and may be revoked or suspended by the board with such suspension or revocation effective immediately when written notification from the board is received by the hospital. No examination shall be required for applicants for this temporary certificate. The fee for such certificate shall be the same as a reregistration fee for licensure for that year.

§ 2574. Locum tenens

An osteopathic physician having a D.O. degree from an American Osteopathic Association, accredited osteopathic college or university and of good repute may, at the discretion of the board, be given a temporary certificate to be effective for not more than 6 months after issuance, for the purpose of permitting such physician to serve as "locum tenens" for another osteopathic physician who is unable, because of illness or some other substantiated reason, to maintain his practice, thus fulfilling a need in that area for providing health services.

§ 2575. Camp physicians

Any osteopathic physician being a graduate of an accredited osteopathic college or university having the power to grant a D.O. degree, and is of good repute may, at the discretion of the board, make application for a temporary certificate to practice as a camp physician at a specified camp. He shall be entitled to practice only on the patients at said camp. The certificate shall be obtained each year. Applications for such temporary certificate shall be made in the same manner as for regular certificates. No examination shall be exacted from applicants for such temporary certificates. The fee shall be the same as the reregistration fee for licensure for that year.

§ 2576. Visiting instructors

A temporary visiting instructor's certificate may be granted an osteopathic physician who holds a current and valid license to practice osteopathic medicine or surgery in another state. This certificate entitles the osteopathic physician the right to practice in this State where he is performing osteopathic medical procedures as a part of a course or courses of instruction in continuing medical education in a hospital in this State. The annual fee for such temporary certificate shall be the same as the reregistration fee for licensure for that year. Such a temporary certificate may be revoked for any one of the reasons in section 2591.

SUBCHAPTER IV

CERTIFICATES

§ 2581. Certificates; annual reregistration; fees; reinstatement

Upon satisfactorily qualifying for licensure, the applicant shall be issued a certificate by the board, which has been dated and signed by its members and upon which the official seal of the board shall be affixed. Such certificate shall designate the holder as a physician licensed to practice osteopathic medicine in the State of Maine. Such certificates shall be publicly displayed at the person's principal place of practice.

Every osteopathic physician legally licensed to practice in this State, shall, on or before the first day of January of each year, pay to the secretary of the board a fee as stipulated by the board not to exceed \$25 for the renewal of his or her certificate to practice. In addition to the payment of such renewal fee, each licensee so applying for the renewal of his or her certificate shall, commencing for the year 1975 and thereafter, furnish to said board satisfactory evidence that he or she has attended in the year preceding at least 50 hours of educational programs devoted to continuing medical education approved by the board or 150 board approved hours of continuing medical education within a 3 year period. Said required education must be obtained from formalized programs of continuing medical education sponsored by recognized associations, colleges or universities, hospitals, institutes or groups approved by the board. A copy of the current approved list shall be available in the office of the secretary of the board. At least 40% of these credit hours must be osteopathic medical education approved in the rules and regulations established by the board. The board shall have the authority to adjudicate continuing medical education performance in situations of illness, hardship or military service upon written petition by the applicant. The secretary of said board shall send a written notice of the foregoing requirements to each such osteopathic physician, at least 60 days prior to each said January 1st, directed to the last known address of the licensee enclosing therewith proper blank forms for application for said renewal. If any licensee shall fail to furnish the board evidence of attendance at continuing medical educational programs, as approved by the board, and fails to pay the said renewal fee, he or she shall automatically forfeit his or her right to practice osteopathic medicine in this State and his or her license, therefore, shall be cancelled. The secretary of the board may reinstate him or her upon the presentation of satisfactory evidence of continuing medical education as outlined and approved by the board and upon payment of the renewal fee. Reregistration fees provided for under this section shall not be required of an osteopathic physician who is 70 or more years of age on the first day of January of the year in which the reregistration is made, although the requirements for continuing medical education provided for shall apply without regard to age.

Such certificate shall entitle a person to whom it is granted the privilege to practice osteopathic medicine in any county in this State, in all its branches as taught in American Osteopathic Association approved colleges and universities of osteopathic medicine with the right to use such drugs as are necessary in the practice of osteopathic medicine.

Any person to whom a certificate has been granted under this section shall designate himself or herself as an osteopathic physician either by the letters D.O. following his name or by the words "osteopathic physician" following or accompanying his name when the prefix Doctor or Dr. is used.

Any applicant not complying with reregistration requirements is entitled to be reinstated upon paying the reregistration fee for the given year and satisfying the board that he or she has paid all reregistration fees due at the time of his withdrawal, and no cause exists for revoking or suspending his or her license. The board shall have the right and the duty to determine the skill and competence of any osteopathic physician applying for a reinstatement who has not been engaged in the active practice of osteopathic medicine in this or some other state for a period in excess of one year from the date of his most recent reregistration in Maine.

SUBCHAPTER V

SUSPENSION AND REVOCATION

§ 2591. Complaints; investigations; hearings; censure; probation; suspension; revocation

1. Grounds. The following complaints or allegations, after investigation, shall be grounds for convening the board in order to hear the same and allow the accused to respond, and shall be considered grounds for censure, probation, suspension or revocation of a license:

- A. Conviction of a felony, as shown by a certified copy of a record of the court of conviction or other offense involving moral turpitude. The conviction of any offense in another state, territory or country, which if committed in this State would be deemed a felony shall be held to be a felony under this section without regard to its designation in such other state, territory or country;
- B. The obtaining of, or attempt to obtain, a license to practice osteopathic medicine by bribery or by fraudulent misrepresentations;
- C. Gross malpractice or the inability to practice osteopathic medicine with reasonable skill and safety. In enforcing this paragraph, the board shall, upon just cause shown, have authority to compel a physician to submit to a mental or physical examination to be conducted by physicians designated by the board, the report of such examination to be made to the board and to the physician involved and such examination to be at the expense of the board. Failure or refusal of the physician to submit to such an examination, when so directed by the board, shall constitute an admission of his inability to practice osteopathic medicine with reasonable skill and safety;
- D. Continued practice by a physician knowingly having a dangerous, infectious or contagious disease;
- E. Advertising by means of knowingly false or deceptive statements;
- F. Advertising, practicing or attempting to practice under the name other than one's own;

- G. Habitual drunkenness or addiction to the use of drugs ;
- H. Violation of the code of ethics promulgated under the rules and regulations of the Board of Osteopathic Examination and Registration and distributed at least once every 2 years to each licensee ;
- I. Upon the judicial determination of mental incompetency. However, a license suspended for this cause may be reinstated upon legal restoration of the individual whose license was so suspended ;
- J. Upon a determination by the board that a licensed osteopathic physician suffers from a mental or physical illness, defect, handicap or impairment which would prevent him from properly and competently performing the duties and functions of an osteopathic physician as defined in this chapter ;
- K. Violation of the rules and regulations of the Board of Osteopathic Examination and Registration adopted by it for the judicious conduct of its business and which shall not be inconsistent with this chapter ;
- L. The revocation or suspension or denial of the individual's osteopathic medical license in any other state or territory of the United States or any foreign country ;
- M. Upon a finding by the board that the individual is guilty of immoral or unprofessional conduct. Unprofessional conduct shall include any departure from, or failure to conform to the minimal standards of acceptable and prevailing osteopathic medical practice, without regard to the injury of a patient ; or the committing of any act contrary to honesty, whether the same is committed in the course of practice or not ;
- N. The violation of any statute or law in this State or any other state or territory of the United States, or any foreign country, which statute or law relates to the practice of osteopathic medicine ;
- O. Assisting, aiding, abetting or procuring the unlicensed practice of another ;
- P. The knowingly maintaining of professional connections or associations with any person who is in violation of the provision of this chapter or the rules and regulations of the board ;
- Q. Division of professional fees not based on actual services rendered.
2. —results. Upon the finding of any one or more of the causes enumerated above, the Board of Osteopathic Examination and Registration may :
- A. Censure ;
- B. Permanently withhold issuance of a license ;
- C. Suspend the license or restrict the practice of osteopathic medicine of any person licensed pursuant to this chapter for a period of up to 5 years.
- D. Revoke the license of any person licensed pursuant to this chapter ;

E. Require any person licensed pursuant to this chapter to submit to medical or other appropriate care, counselling or treatment;

F. In conjunction with paragraphs C and D, the board may make a finding of guilt and suspend imposition of a judgment and penalty, or it may impose such judgment and penalty and suspend the operation thereof and place the physician on probation, which order of probation may be vacated upon noncompliance;

G. Upon suspension or revocation of a license, the disciplined osteopathic physician shall deliver his certificate to the secretary either in person or by certified mail within 10 days.

SUBCHAPTER VI HEARINGS; APPEALS

§ 2592. Investigations; hearings; appeal; reinstatement

1. The board shall order investigations of all complaints and all allegations of noncompliance with or violations of this chapter. Upon completion of investigation by the secretary or other agents, all information gathered shall be presented to an adjudication committee of the board consisting of at least 3 board members. The adjudication committee may, following a majority vote, recommend a hearing before the full board. In the absence of such a recommendation, all information gathered and presented to the adjudication committee will be filed.

2. Upon recommendation of the adjudication committee, the board may meet within a reasonable time and accord the accused osteopathic physician a full hearing. Notice of the public hearing shall be served on the accused by certified mail, return receipt requested, not less than 21 days before the hearing. Said notice shall relate the time and place of the hearing as well as the written notice of the complaint or allegations. The accused may submit a written answer to the complaint at least 10 days before the hearing. Failure of the accused osteopathic physician to appear at the hearing or be represented by legal counsel shall be grounds for a finding of admission by the accused of any and all complaints or allegations against him and shall empower the board to take a disciplinary action, after the hearing, as provided in section 2596, subsection 2.

3. The accused shall have the right to present evidence, subpoena and present witnesses, books, records and documents, challenge and cross-examine same and be represented by legal counsel. All subpoenas shall issue through a Justice of the Peace upon notice to same by the accused practitioner stating name, location, and, in the case of subjects other than persons, the custody of subjects of the subpoenas.

The board has the right to prosecute its case through its private legal counsel, to present evidence, subpoena and present witnesses, books, records and documents and challenge and cross-examine same.

4. The board shall make and preserve records of all hearing transactions. The accused may procure a copy of such records upon payment of a nominal fee.

5. The board shall notify the accused in writing by certified mail of its final determination within 10 days.

6. Board determination resulting in suspension or revocation of a license requires the disciplined osteopathic physician to deliver up his certificate to the secretary of the board in person or by certified mail within 10 days of receipt of notice.

7. The accused shall have the right to appeal a final determination of the board to the Superior Court of the State of Maine within 10 days. Revocation or suspension of the practitioner's license may be stayed pending determination of the Superior Court only if the petitioner can show cause why said revocation or suspension should be stayed.

8. The board may reinstate a license under the following conditions:

A. Upon its own action;

B. Upon petition of the osteopathic physician when conditions of his or her suspension have been satisfied;

C. Upon petition of a disciplined osteopathic physician when evidence that the condition for revocation has been nullified or pardoned;

D. Upon petition of the disciplined osteopathic physician under unusual circumstances after expiration of no less than $\frac{1}{2}$ of the term of the suspension;

E. Upon satisfying the board in case of absence from active practice for a period in excess of 12 months, that satisfactory continuing medical education has been procured to insure reasonable skill and competence;

Upon reinstatement, the board shall record its motion in its minutes and forthwith deliver to said physician his certificate either in person or by certified mail.

§ 2593. Mental or physical examination of licensee licensed to practice in Maine

For the purpose of this chapter, every osteopathic physician shall, by so practicing, be deemed to have given his consent to a mental or physical examination when directed in writing by the board, and further to have waived all objections to the admissibility of the examining physicians' testimony or examination on the grounds that the same constitute privileged communication. Such examinations to be conducted by a qualified person from a list of 5 provided by the board.

§ 2594. Immunity of licensee rendering emergency care

No osteopathic physician licensed under this chapter, who, in the exercise of due care, renders emergency care at the scene of an accident shall be liable

for any civil damages as the result of acts or omissions by such a person in rendering emergency care.

§ 2595. Treatment of minors

Any person licensed under this chapter who, in the exercise of due care, renders medical care to a minor for treatment of venereal disease or of problems associated with the abuse of drugs is under no obligation to obtain the consent of a parent or a guardian, as applicable, or to inform such parent or guardian of such treatment. The licensed person rendering medical care to a minor for treatment of problems associated with the abuse of drugs may, at his discretion, within 48 hours from the initiation of treatment notify, or obtain consent from, the parent or guardian of such minor, as applicable, with respect to continuing treatments.

§ 2596. Osteopathic review committees

Any physician licensed under this chapter shall not be liable for civil damages as the result of his acts, omissions or decisions in connection with his duties as a member of a utilization review committee or as a member of a peer review committee.

§ 2597. Saving clause

This chapter shall have no application to the licensing or practice of allopathic physicians, dentists, chiropractors, optometrists, veterinarians, podiatrists or nurses.

Sec. 2. R. S., T. 32, c. 37, repealed. Chapter 37 of Title 32 of the Revised Statutes, as amended, is repealed.

STATEMENT OF FACT

The purpose of this bill is to revise standards and procedures within the osteopathic medical profession, no complete revision having been done for well over 20 years; add new provisions for further protection of the public by increased control of licensees and updating requirements for continuing medical education to qualify for annual reregistrations.