

MAINE STATE LEGISLATURE

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(New Draft of S.P. 483, L.D. 1465)

FIRST REGULAR SESSION

ONE HUNDRED AND ELEVENTH LEGISLATURE

Legislative Document

No. 1618

S.P. 561

In Senate, May 16, 1983

Reported by Senator Diamond of Cumberland from the Committee on Audit and Program Review and printed under Joint Rule 2.

Original bill presented by Senator Diamond of Cumberland. Cosponsored by Representative Rolde of York.

JOY J. O'BRIEN, Secretary of the Senate

STATE OF MAINE

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

AN ACT to Standardize the Disciplinary
Proceedings of Health Profession Licensing
Boards.

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

Sec. 1. 32 MRSA §64, as repealed and replaced by PL 1977, c. 694, §536, is repealed.

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

§64-A. Disciplinary actions

1. Disciplinary proceedings and sanctions. The board shall investigate a complaint, on its own motion or upon receipt of a written complaint filed with the board, regarding noncompliance with or violation of this chapter or of any rules adopted by 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. The licensee shall
5 respond within 30 days. If the licensee's response
6 to the complaint satisfies the board that the com-
7 plaint does not merit further investigation or ac-
8 tion, the matter may be dismissed, with notice of the
9 dismissal to the complainant, if 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 the board finds that the factual basis of the com-
22 plaint is true and is of sufficient gravity to
23 warrant further action, it may take any of the fol-
24 lowing actions it deems appropriate:

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

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

1 C. If the board concludes that modification or
2 nonrenewal of the license might be in order, the
3 board shall hold an adjudicatory hearing in ac-
4 cordance with the provisions of the Maine Admin-
5 istrative Procedure Act, Title 5, chapter 375,
6 subchapter IV; or

7 D. If the board concludes that suspension or
8 revocation of the license is in order, the board
9 shall file a complaint in the Administrative
10 Court in accordance with Title 4, chapter 25.

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

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

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

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

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

36 E. Incompetence in the practice for which he is
37 licensed. A licensee shall be deemed incompetent
38 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 evidences 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. Unprofessional conduct. A licensee shall be
10 deemed to have engaged in unprofessional conduct
11 if he violates any standard of professional
12 behavior which has been established in the prac-
13 tice for which the licensee 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. The licensee shall
2 respond within 30 days. If the licensee's response
3 to the complaint satisfies the board that the com-
4 plaint does not merit further investigation or ac-
5 tion, the matter may be dismissed, with notice of the
6 dismissal to the complainant, if 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 the board finds that the factual basis of the com-
19 plaint is true and is of sufficient gravity to
20 warrant further action, it may take any of the fol-
21 lowing actions it deems appropriate:

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

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

39 C. If the board concludes that modification or
40 nonrenewal of the license might be in order, the
41 board shall hold an adjudicatory hearing in ac-
42 cordance with the provisions of the Maine Admin-

1 Administrative Procedure Act, Title 5, chapter 375,
2 subchapter IV; or

3 D. If the board concludes that suspension or
4 revocation of the license is in order, the board
5 shall file a complaint in the Administrative
6 Court in accordance with Title 4, chapter 25.

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

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

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

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

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

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

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

1 (2) Engaged in conduct which evidences 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. Unprofessional conduct. A licensee shall be
6 deemed to have engaged in unprofessional conduct
7 if he violates any standard of professional
8 behavior which has been established in the prac-
9 tice for which the licensee 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 chiropra-
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. The licensee shall
12 respond within 30 days. If the licensee's response
13 to the complaint satisfies the board that the com-
14 plaint does not merit further investigation or ac-
15 tion, the matter may be dismissed, with notice of the
16 dismissal to the complainant, if 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 the board finds that the factual basis of the com-
29 plaint is true and is of sufficient gravity to
30 warrant further action, it may take any of the fol-
31 lowing actions it deems appropriate:

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

40 B. In consideration for acceptance of a volun-
41 tary surrender of the license, negotiate stipu-

1 lations, including terms and conditions for rein-
2 statement, which ensure protection of the public
3 health and safety and which serve to rehabilitate
4 or educate the licensee. These stipulations shall
5 be set forth only in a consent agreement signed
6 by the board, the licensee and the Attorney
7 General's office;

8 C. If the board concludes that modification or
9 nonrenewal of the license might be in order, the
10 board shall hold an adjudicatory hearing in ac-
11 cordance with the provisions of the Maine Admin-
12 istrative Procedure Act, Title 5, chapter 375,
13 subchapter IV; or

14 D. If the board concludes that suspension or
15 revocation of the license is in order, the board
16 shall file a complaint in the Administrative
17 Court in accordance with Title 4, chapter 25.

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

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

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

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

39 D. Aiding or abetting the practice of a dental
40 profession by a person not duly licensed under

1 this chapter and who represents himself to be so;

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

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

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

13 F. Unprofessional conduct. A licensee shall be
14 deemed to have engaged in unprofessional conduct
15 if he violates any standard of professional
16 behavior which has been established in the prac-
17 tice for which the licensee is licensed;

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

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

27 I. Engaging in false, misleading or deceptive
28 advertising.

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

31 E. The filling of prescriptions of a licensed
32 and registered dentist by any person or persons,
33 association, corporation or other entity, for the
34 construction, reproduction or repair of pros-
35 thetic dentures, bridges, plates or appliances to
36 be used or worn as substitutes for natural teeth,
37 provided that such person or persons, associa-
38 tion, corporation or other entity shall not

1 solicit nor advertise, directly or indirectly, by
2 mail, card, newspaper, pamphlet, radio or other-
3 wise, to the general public to construct, repro-
4 duce or repair prosthetic dentures, bridges,
5 plates or other appliances to be used or worn as
6 substitutes for natural teeth; and

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

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

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

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

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

38 §1082. Qualifications

39 Before receiving a certificate to practice den-
40 tistry in this State, a person shall be at least 18

1 years of age, ~~of good moral character~~ and shall be a
2 graduate of or have a diploma from an acceptable den-
3 tal college, school or dental department of a univer-
4 sity approved by the board.

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

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

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

11 §1096. Qualifications

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

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

22 §1099. Reciprocity

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

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

1 §1100. Use of former employers' lists; scope of
2 duties

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

20 No dentist may permit any dental hygienist oper-
21 ating under his supervision to perform any operation
22 other than that permitted under section 1095.

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

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

28 5. Additional prohibitions. No denturist may:

29 A. Hold himself out or permit himself to be
30 represented as a licensed dentist;

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

36 C. Perform a task beyond his competence; or

37 D. Administer, dispense or prescribe any medica-
38 tion or controlled substance.

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

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

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

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

27 §2105-A. Disciplinary actions

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

34 The board shall notify the licensee of the content of
35 a complaint filed against the licensee as soon as
36 possible, but in no event later than within 60 days
37 of receipt of this information. The licensee shall
38 respond within 30 days. If the licensee's response
39 to the complaint satisfies the board that the com-
40 plaint does not merit further investigation or ac-
41 tion, the matter may be dismissed, with notice of the
42 dismissal to the complainant, if any.

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

12 If the board finds that the factual basis of the com-
13 plaint is true and is of sufficient gravity to
14 warrant further action, it may take any of the fol-
15 lowing actions it deems appropriate:

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

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

33 C. If the board concludes that modification or
34 nonrenewal of the license might be in order, the
35 board shall hold an adjudicatory hearing in ac-
36 cordance with the provisions of the Maine Admin-
37 istrative Procedure Act, Title 5, chapter 375,
38 subchapter IV; or

39 D. If the board concludes that suspension or
40 revocation of the license is in order, the board
41 shall file a complaint in the Administrative
42 Court in accordance with Title 4, chapter 25.

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 nursing by
23 a person not duly licensed under this chapter and
24 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 evidences 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. Unprofessional conduct. A licensee shall be
37 deemed to have engaged in unprofessional conduct
38 if he violates any standard of professional
39 behavior which has been established in the prac-
40 tice for which the licensee 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 any rule
9 adopted by the board; or

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

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

13 Sec. 23. 32 MRSA §2251, sub-§1, as amended by PL
14 1965, c. 206, §4, is repealed.

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

17 Sec. 25. 32 MRSA §2417, sub-§2, as enacted by PL
18 1973, c. 788, §156, is repealed.

19 Sec. 26. 32 MRSA §2419, sub-§1, as enacted by PL
20 1975, c. 563, §2, is amended to read:

21 1. Diagnostic drugs. The use of diagnostic drugs
22 is permitted only by an optometrist who has obtained
23 a diagnostic drug license under section 2427 or who
24 has passed the examination under section 2422 after
25 October 1, 1975.

26 Sec. 27. 32 MRSA §2423, sub-§4, as repealed and
27 replaced by PL 1977, c. 694, §596, is amended to
28 read:

29 4. Default. In case of default in payment of any
30 license renewal fees by any registered optometrist,
31 his certificate shall expire. A license may be
32 renewed up to 60 days after the date of expiration
33 upon payment of a late fee established by the board
34 in an amount not to exceed the annual renewal fee in
35 addition to the renewal fee.

36 Sec. 28. 32 MRSA §2427, first ¶, as enacted by
37 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. 29. 32 MRSA §2431, as repealed and replaced
6 by PL 1977, c. 694, §598, is repealed.

7 Sec. 30. 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. The licensee shall
19 respond within 30 days. If the licensee's response
20 to the complaint satisfies the board that the com-
21 plaint does not merit further investigation or ac-
22 tion, the matter may be dismissed, with notice of the
23 dismissal to the complainant, if 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 the board finds that the factual basis of the com-
36 plaint is true and is of sufficient gravity to
37 warrant further action, it may take any of the fol-
38 lowing actions it deems appropriate:

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;

18 C. If the board concludes that modification or
19 nonrenewal of the license might be in order, the
20 board shall hold an adjudicatory hearing in ac-
21 cordance with the provisions of the Maine Admin-
22 istrative Procedure Act, Title 5, chapter 375,
23 subchapter IV; or

24 D. If the board concludes that suspension or
25 revocation of the license is in order, the board
26 shall file a complaint in the Administrative
27 Court in accordance with Title 4, chapter 25.

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

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

38 B. Habitual intemperance in the use of alcohol
39 or the habitual use of narcotic or hypnotic or
40 other substances the use of which has resulted or
41 may result in the licensee performing his duties

1 in a manner which endangers the health or safety
2 of his patients;

3 C. A professional diagnosis of a mental or
4 physical condition which has resulted or may
5 result in the licensee performing his duties in a
6 manner which endangers the health or safety of
7 his patients;

8 D. Aiding or abetting the practice of optometry
9 by a person not duly licensed under this chapter
10 and who represents himself to be so;

11 E. Incompetence in the practice for which he is
12 licensed. A licensee shall be deemed incompetent
13 in the practice if the licensee has:

14 (1) Engaged in conduct which evidences a
15 lack of ability or fitness to discharge the
16 duty owed by the licensee to a client or
17 patient or the general public; or

18 (2) Engaged in conduct which evidences a
19 lack of knowledge, or inability to apply
20 principles or skills to carry out the prac-
21 tice for which he is licensed;

22 F. Unprofessional conduct. A licensee shall be
23 deemed to have engaged in unprofessional conduct
24 if he violates any standard of professional
25 behavior which has been established in the prac-
26 tice for which the licensee is licensed;

27 G. Subject to the limitations of Title 5, chap-
28 ter 341, conviction of a crime which involves
29 dishonesty or false statement or which relates
30 directly to the practice for which the licensee
31 is licensed, or conviction of any crime for which
32 incarceration for one year or more may be
33 imposed;

34 H. Any violation of this chapter or any rule
35 adopted by the board;

36 I. Engaging in false, misleading or deceptive
37 advertising;

1 J. Practicing in or on premises where any mate-
2 rials other than those necessary to render opto-
3 metric services are dispensed to the public;

4 K. Practicing under a name other than that given
5 in the certificate. Licensees practicing in
6 association with other licensed optometrists or
7 physicians, as authorized by section 2434, may,
8 with the approval of the board, practice under a
9 name adopted to denote this association if the
10 names of all optometrists and physicians so asso-
11 ciated are stated as they appear on each
12 individual's license whenever the association
13 name is used;

14 L. Representing one's self to the public as
15 something other than an optometrist, by which
16 shall be meant as an optician, eye physician or
17 by any other designation which would confuse the
18 nature of one's licensed practice. The following
19 titles shall be considered lawful:

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

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

22 (3) John Doe, Optometrist;

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

24 (5) Doctor John Doe, Optometrist;

25 M. Engaging in house to house solicitation for
26 the purpose of fitting, selling or peddling spec-
27 tacles, eyeglasses or lenses, or in anyway other-
28 wise peddling optometric services;

29 N. Maintaining more than one office in which to
30 practice optometry without the prior written
31 approval of the board;

32 O. Failure to display a diagnostic drug license
33 issued under section 2427; or

34 P. Splitting or dividing any fee with any person
35 not an associate in conformance with section
36 2434, or giving or accepting any rebate from an
37 optician or ophthalmic dispenser.

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

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

5 Sec. 33. 32 MRSA §2434, first ¶, as enacted by
6 PL 1973, c. 788, §156, is amended to read:

7 An optometrist shall practice only in an indi-
8 vidual capacity under his own name or in association
9 with a licensed practitioner of optometry or of
10 another of the healing arts and sciences. The follow-
11 ing shall be deemed unauthorized associations subject
12 to the sanctions of section ~~2431~~ 2431-A:

13 Sec. 34. 32 MRSA §2435, as enacted by PL 1973,
14 c. 788, §156, is amended to read:

15 §2435. Corporate practice of optometry

16 No registered optometrist, under this chapter,
17 ~~shall~~ may associate himself in any way with any
18 person not a registered optometrist nor any copart-
19 nership, firm or corporation for the promotion of any
20 commercial practice for profit or division of profit
21 which enables any such person, copartnership, firm or
22 corporation to engage, either directly or indirectly,
23 in the practice of optometry in this State. Any
24 ~~optometrist registered under this chapter guilty of~~
25 ~~such conduct or violation of this section shall be~~
26 ~~punished by having his certificate and registration~~
27 ~~to practice optometry in this State suspended or~~
28 ~~revoked. No certificate of registration shall be sus-~~
29 ~~pended or revoked for any of the foregoing causes~~
30 ~~unless the person accused has been given at least 10~~
31 ~~days' notice in writing of the charge against him and~~
32 ~~afforded a public hearing before the board.~~

33 Sec. 35. 32 MRSA §2571, as enacted by PL 1973,
34 c. 374, §1, is amended to read:

35 §2571. Registration; qualifications; fees

36 Any person, before engaging in the practice of
37 osteopathic medicine in this State, shall make appli-
38 cation for a certificate to the board, on a form pre-

1 scribed by it. ~~Said~~ The application shall be filed
2 with the secretary of the board at least 60 days
3 before the date of examination together with a fee of
4 \$125. The applicant shall present a diploma granted
5 by an osteopathic college or university accredited by
6 the American Osteopathic Association having the power
7 to grant a D.O. degree. Applicants graduating from an
8 osteopathic college or university having the power to
9 grant a D.O. degree shall present evidence of having
10 completed an internship of at least 12 months in a
11 hospital conforming to the minimal standards for ac-
12 creditation by the American Osteopathic Association,
13 or the equivalency, as determined by the board. All
14 applicants ~~must present a certificate of good moral~~
15 ~~character and such other~~ shall provide such reason-
16 able and proper facts as the board in its application
17 may require. The board at its discretion may permit
18 an applicant who is otherwise qualified to be exam-
19 ined during his internship, a certificate of licen-
20 sure to be withheld until successful completion of
21 his internship.

22 Sec. 36. 32 MRSA §2572, as enacted by PL 1973,
23 c. 374, §1, is amended to read:

24 §2572. Examination, reexamination; endorsement;
25 temporary registration

26 Applicants shall be examined in whole or in part
27 in writing and shall be thorough in such subjects as
28 the board may deem necessary, including osteopathic
29 theories and methods, to determine the competency of
30 the candidate to practice osteopathic medicine and
31 surgery in the State ~~of Maine~~. If ~~such~~ the examina-
32 tion is passed in a manner satisfactory to the board,
33 the board shall issue to the ~~said~~ applicant a certifi-
34 cate granting him the right to practice osteopathic
35 medicine in this State. If ~~such~~ the applicant fails
36 to pass ~~such~~ the examination, he ~~or she~~ shall be
37 entitled to one reexamination within one year there-
38 after upon payment of a fee of \$100. Osteopathic
39 physicians who have been certified by the National
40 Board of Osteopathic Examiners or have been strictly
41 examined and thereafter licensed to practice
42 osteopathic medicine in another state, which has
43 equivalent licensing requirements as Maine, may be
44 licensed to practice osteopathic medicine in this

1 State upon the payment of \$100 and the substantiation
2 to the board of an earned D.O. degree, and the li-
3 cense obtained in such other state and satisfactory
4 evidence of good moral character. The board may at
5 its discretion require an examination of any such
6 applicant.

7 Sec. 37. 32 MRSA §2591, as amended by PL 1977,
8 c. 694, §§599 and 600, is repealed.

9 Sec. 38. 32 MRSA §2591-A is enacted to read:

10 §2591-A. Disciplinary actions

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

17 The board shall notify the licensee of the content of
18 a complaint filed against the licensee as soon as
19 possible, but in no event later than within 60 days
20 of receipt of this information. The licensee shall
21 respond within 30 days. If the licensee's response
22 to the complaint satisfies the board that the com-
23 plaint does not merit further investigation or ac-
24 tion, the matter may be dismissed, with notice of the
25 dismissal to the complainant, if any.

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

37 If the board finds that the factual basis of the com-
38 plaint is true and is of sufficient gravity to
39 warrant further action, it may take any of the fol-
40 lowing actions it deems appropriate:

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;

18 C. If the board concludes that modification or
19 nonrenewal of the license might be in order, the
20 board shall hold an adjudicatory hearing in ac-
21 cordance with the provisions of the Maine Admin-
22 istrative Procedure Act, Title 5, chapter 375,
23 subchapter IV; or

24 D. If the board concludes that suspension or
25 revocation of the license is in order, the board
26 shall file a complaint in the Administrative
27 Court in accordance with Title 4, chapter 25.

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

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

38 B. Habitual intemperance in the use of alcohol
39 or the habitual use of narcotic or hypnotic or
40 other substances the use of which has resulted or
41 may result in the licensee performing his duties

1 in a manner which endangers the health or safety
2 of his patients;

3 C. A professional diagnosis of a mental or
4 physical condition which has resulted or may
5 result in the licensee performing his duties in a
6 manner which endangers the health or safety of
7 his patients;

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

11 E. Incompetence in the practice for which he is
12 licensed. A licensee shall be deemed incompetent
13 in the practice if the licensee has:

14 (1) Engaged in conduct which evidences a
15 lack of ability or fitness to discharge the
16 duty owed by the licensee to a client or
17 patient or the general public; or

18 (2) Engaged in conduct which evidences a
19 lack of knowledge, or inability to apply
20 principles or skills to carry out the practice
21 for which he is licensed;

22 F. Unprofessional conduct. A licensee shall be
23 deemed to have engaged in unprofessional conduct
24 if he violates any standard of professional
25 behavior which has been established in the practice
26 for which the licensee is licensed;

27 G. Subject to the limitations of Title 5, chapter
28 341, conviction of a crime which involves
29 dishonesty or false statement or which relates
30 directly to the practice for which the licensee
31 is licensed, or conviction of any crime for which
32 incarceration for one year or more may be
33 imposed;

34 H. Any violation of this chapter or any rule
35 adopted by the board;

36 I. Engaging in false, misleading or deceptive
37 advertising;

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

3 K. The revocation, suspension or denial of the
4 individual's license in any other state or ter-
5 ritory of the United States or any foreign coun-
6 try; or

7 L. Division of professional fees not based on
8 actual services rendered.

9 Sec. 39. 32 MRSA §2592, as amended by PL 1977,
10 c. 694, §601, is repealed.

11 Sec. 40. 32 MRSA §2594-D, sub-§1, as amended by
12 PL 1977, c. 694, §602, is repealed and the following
13 enacted in its place:

14 1. Grounds for discipline. A physician's assis-
15 tant shall be subject to the sanction of section
16 2591-A, if he:

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

19 B. Has performed otherwise than at the direction
20 of and under the supervision of a physician li-
21 icensed by the board; and

22 C. Has been delegated and performed a task
23 beyond his competence.

24 Sec. 41. 32 MRSA §2855, as repealed and replaced
25 by PL 1971, c. 282, §8, is repealed.

26 Sec. 42. 38 MRSA §2856, as repealed and replaced
27 by PL 1981, c. 426, is repealed.

28 Sec. 43. 32 MRSA §2856-A is enacted to read:

29 §2856-A. Disciplinary actions

30 1. Disciplinary proceedings and sanctions. The
31 board shall investigate a complaint, on its own
32 motion or upon receipt of a written complaint filed
33 with the board, regarding noncompliance with or
34 violation of this chapter or of any rules adopted by
35 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. The licensee shall
5 respond within 30 days. If the licensee's response
6 to the complaint satisfies the board that the com-
7 plaint does not merit further investigation or ac-
8 tion, the matter may be dismissed, with notice of the
9 dismissal to the complainant, if 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 requeste
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 the board finds that the factual basis of the com-
22 plaint is true and is of sufficient gravity to
23 warrant further action, it may take any of the fol-
24 lowing actions it deems appropriate:

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

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

1 C. If the board concludes that modification or
2 nonrenewal of the license might be in order, the
3 board shall hold an adjudicatory hearing in ac-
4 cordance with the provisions of the Maine Admin-
5 istrative Procedure Act, Title 5, chapter 375,
6 subchapter IV; or

7 D. If the board concludes that suspension or
8 revocation of the license is in order, the board
9 shall file a complaint in the Administrative
10 Court in accordance with Title 4, chapter 25.

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

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

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

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

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

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

38 (1) Engaged in conduct which evidences a
39 lack of ability or fitness to discharge the

1 duty owed by the licensee to a client or
2 patient or the general public; or

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

7 F. Unprofessional conduct. A licensee shall be
8 deemed to have engaged in unprofessional conduct
9 if he violates any standard of professional
10 behavior which has been established in the prac-
11 tice for which the licensee is licensed;

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

19 H. Any violation of this chapter or of the phar-
20 macy laws of the State of any rule adopted by the
21 board; or

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

24 3. Crime in course of business. If any regis-
25 tered pharmacist is convicted in state or federal
26 court of a crime which is committed during the course
27 of his duties as a registered pharmacist or committed
28 by him through the use of the pharmacy in which he is
29 employed, or which he owns or operates, and which
30 demonstrates his unfitness to practice as a pharma-
31 cist, including, but not limited to, convictions for
32 defrauding the Medicaid program, and for illegally
33 distributing prescription drugs, he is subject to the
34 following action by the Administrative Court.

35 A. A pharmacist convicted of such a crime, if it
36 is punishable by a maximum term of imprisonment
37 of less than one year, shall have his registra-
38 tion and certificate suspended for a minimum
39 period of 120 days.

1 B. A pharmacist convicted of such a crime, if it
2 is punishable by a maximum term of imprisonment
3 equal to or exceeding one year, shall have his
4 registration and certificate suspended for a min-
5 imum period of one year, and may have his regis-
6 tration and certificate revoked and be perma-
7 rently barred from reapplying for registration,
8 notwithstanding Title 5, sections 5301 to 5304.

9 Sec. 44. 32 MRSA §2901, last ¶, as amended by PL
10 1971, c. 282, §13, is repealed and the following
11 enacted in its place:

12 The board shall make such rules, consistent with
13 the law, as may be necessary to carry out the purpose
14 of and enforce this section. The permit to operate
15 a pharmacy shall be subject to the disciplinary pro-
16 ceedings and grounds in section 2856-A.

17 Sec. 45. 32 MRSA §2903, as amended by PL 1979,
18 c. 28, §4, is further amended to read:

19 §2903. Renewals; fees

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

38 Sec. 46. 32 MRSA §3270-C, sub-§1, as amended by
39 PL 1977, c. 694, §607, is repealed and the following
40 enacted in its place:

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

3 A. Held himself out or permitted himself to be
4 represented as a licensed physician;

5 B. Performed otherwise than at the direction and
6 under the supervision of a physician licensed by
7 the board;

8 C. Been delegated and performed a task beyond
9 his competence; and

10 D. Administered, dispensed or prescribed any
11 controlled substance otherwise than as authorized
12 by law.

13 Sec. 47. 32 MRSA §3271, 2nd ¶, as amended by PL
14 1971, c. 622, §117-C, is further amended to read:

15 Each of the applicants must be 18 years of age
16 ~~and of good moral character.~~ The board at its dis-
17 cretion may permit an applicant who is otherwise
18 qualified to be examined during his internship, the
19 certificate of licensure to be withheld until the
20 successful completion of his internship.

21 Sec. 48. 32 MRSA §3273, as amended by PL 1979,
22 c. 345, §3, is further amended to read:

23 §3273. Reexamination

24 Any applicant who fails the examination may be
25 reexamined by the board upon payment of a fee of ~~§135~~
26 \$50 plus the current cost of the examination.

27 Sec. 49. 32 MRSA §3279, last ¶, as enacted by PL
28 1971, c. 591, §1, is amended to read:

29 A certificate, issued under this section or the
30 right of any visiting medical instructor to practice
31 without examination in this State, may be revoked for
32 any one of the reasons stated in section ~~3282~~ 3282-A,
33 and in addition thereto if any intern or hospital
34 resident violates the limitations placed upon his
35 temporary education certificate or in the case of the
36 visiting medical instructor who performs medical

1 procedures which are not a part of a course of
2 instruction as provided in this section, the tempo-
3 rary educational certificate or the right of the
4 visiting medical instructor may be revoked in accor-
5 dance with the procedures set forth in this chapter.

6 Sec. 50. 32 MRSA §3280, first ¶, as amended by
7 PL 1981, c. 616, §2, is further amended to read:

8 On or before the first day of July, 1966, and on
9 or before the first day of July of every even-
10 numbered year thereafter, every physician licensed
11 under this chapter shall apply to the Board of Regis-
12 tration in Medicine for a certificate of biennial
13 registration on forms provided by ~~said~~ the board. On
14 or before the first day of July, 1982, and on or
15 before the first day of July of every even-numbered
16 year thereafter, any applicant actively practicing
17 medicine in the State shall include satisfactory evi-
18 dence to the board that, in the preceding 2 years,
19 the applicant has completed a course of continuing
20 medical education as prescribed in the rules and
21 regulations of the board. The registration fee for
22 residents of this State and for nonresidents shall in
23 no event exceed the sum of \$100. This section shall
24 not apply to interns or residents registered under
25 section 3279 nor shall it apply to those holding
26 temporary certificates for practice in hospitals or
27 camps as provided in section 3277. ~~Said~~ The registra-
28 tion fees provided for under this section shall not
29 be required of any physician who is 70 years of age
30 on the first day of July of the year for which rereg-
31 istration is made, although the requirement of rereg-
32 istration as provided for shall apply without regard
33 to age.

34 Sec. 51. 32 MRSA §3280, sub-§1, as enacted by PL
35 1977, c. 388, §7, is amended to read:

36 1. Cause. There exists no cause, as set forth in
37 section ~~3282~~ 3282-A, which may be considered grounds
38 for suspension or revocation of a license; and

39 Sec. 52. 32 MRSA §3282, as amended by PL 1979,
40 c. 619, §1, is repealed.

1 Sec. 53. 32 MRSA §3282-A is enacted to read:

2 §3282-A. Disciplinary actions

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

9 The board shall notify the licensee of the content of
10 a complaint filed against the licensee as soon as
11 possible, but in no event later than within 60 days
12 of receipt of this information. The licensee shall
13 respond within 30 days. If the licensee's response
14 to the complaint satisfies the board that the com-
15 plaint does not merit further investigation or ac-
16 tion, the matter may be dismissed, with notice of the
17 dismissal to the complainant, if any.

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

29 If the board finds that the factual basis of the com-
30 plaint is true and is of sufficient gravity to
31 warrant further action, it may take any of the fol-
32 lowing actions it deems appropriate:

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 stipu-
3 lations, including terms and conditions for rein-
4 statement, 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;

10 C. If the board concludes that modification or
11 nonrenewal of the license might be in order, the
12 board shall hold an adjudicatory hearing in ac-
13 cordance with the provisions of the Maine Admin-
14 istrative Procedure Act, Title 5, chapter 375,
15 subchapter IV; or

16 D. If the board concludes that suspension or
17 revocation of the license is in order, the board
18 shall file a complaint in the Administrative
19 Court in accordance with Title 4, chapter 25.

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

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

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

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

- 1 D. Aiding or abetting the practice of medicine
2 by a person not duly licensed under this chapter
3 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 evidences 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. Unprofessional conduct. A licensee shall be
16 deemed to have engaged in unprofessional conduct
17 if he violates any standard of professional
18 behavior which has been established in the prac-
19 tice for which the licensee 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;
- 29 I. Engaging in false, misleading or deceptive
30 advertising;
- 31 J. Prescribing narcotic or hypnotic or other
32 drugs listed as controlled substances by the Drug
33 Enforcement Administration for other than accept-
34 ed therapeutic purposes; or
- 35 K. Failure to report to the secretary of the
36 board a physician licensed under this chapter for
37 addiction to alcohol or drugs or for mental ill-
38 ness in accordance with Title 24, section 2505,

1 except when the impaired physician is or has been
2 a patient of the licensee.

3 Sec. 54. 32 MRSA §3283, as repealed and replaced
4 by PL 1979, c. 619, §2, is repealed.

5 Sec. 55. 32 MRSA §§3287 and 3288, as enacted by
6 PL 1971, c. 591, §1, are repealed.

7 Sec. 56. 32 MRSA §3651, first ¶, as amended by
8 PL 1979, c. 61, §3, is further amended to read:

9 Except as otherwise provided in this chapter, any
10 person before engaging in the practice of podiatry
11 shall be examined as to his qualifications. Each
12 applicant shall, at least 60 days before the date of
13 his examination, present to the secretary of the
14 Board of Registration in Medicine an application for
15 a license to practice podiatry on a form prescribed
16 by the examiners and containing satisfactory proof
17 that ~~said~~ the applicant is at least 18 years of age,
18 ~~of good moral character~~ and that he has received a
19 certificate of graduation from a legally incorpo-
20 rated, regular established school of podiatry, recog-
21 nized by the Council of Education of the American
22 Podiatry Association, having a minimum requirement of
23 not less than 4 consecutive years of 8 months each of
24 scholastic attendance, nor shall ~~such~~ the applicant
25 be entitled to registration and certificate unless
26 ~~such~~ the applicant shall have had, prior to the
27 beginning of his course in podiatry, as a minimum re-
28 quirement, a 2-year course in a legally recognized
29 college of the liberal arts or of the sciences.

30 Sec. 57. 32 MRSA §3654, first ¶, is amended to
31 read:

32 Any podiatrist ~~of good moral character~~ licensed
33 to practice podiatry in a state maintaining a stan-
34 dard equal to that maintained by this State may, upon
35 making application to the secretary of the Board of
36 Registration in Medicine, be licensed to practice
37 podiatry in this State without examination, upon pay-
38 ment of the required fee and the presentation ~~of~~
39 ~~satisfactory evidence of good moral character~~ and of
40 his license to practice podiatry in such other state,
41 provided such other state extends the same privilege

1 to persons licensed to practice podiatry in this
2 State.

3 Sec. 58. 32 MRSA §3655, as amended by PL 1981,
4 c. 25, is repealed.

5 Sec. 59. 32 MRSA §3655-A is enacted to read:

6 §3655-A. Disciplinary actions

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

13 The board shall notify the licensee of the content of
14 a complaint filed against the licensee as soon as
15 possible, but in no event later than within 60 days
16 of receipt of this information. The licensee shall
17 respond within 30 days. If the licensee's response
18 to the complaint satisfies the board that the com-
19 plaint does not merit further investigation or ac-
20 tion, the matter may be dismissed, with notice of the
21 dismissal to the complainant, if any.

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

33 If the board finds that the factual basis of the com-
34 plaint is true and is of sufficient gravity to
35 warrant further action, it may take any of the fol-
36 lowing actions it deems appropriate:

37 A. With the consent of the licensee, enter into
38 a consent agreement which fixes the period and
39 terms of probation best adapted to protect the

1 public health and safety and to rehabilitate or
2 educate the licensee. A consent agreement may be
3 used to terminate a complaint investigation, if
4 entered into by the board, the licensee and the
5 Attorney General's office;

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

15 C. If the board concludes that modification or
16 nonrenewal of the license might be in order, the
17 board shall hold an adjudicatory hearing in ac-
18 cordance with the provisions of the Maine Admin-
19 istrative Procedure Act, Title 5, chapter 375,
20 subchapter IV; or

21 D. If the board concludes that suspension or
22 revocation of the license is in order, the board
23 shall file a complaint in the Administrative
24 Court in accordance with Title 4, chapter 25.

25 2. Grounds for discipline. The board may sus-
26 pend or revoke a license pursuant to Title 5, section
27 10004. The following shall be grounds for an action
28 to refuse to issue, modify, suspend, revoke or refuse
29 to renew the license of a person licensed under this
30 chapter:

31 A. The practice of fraud or deceit in obtaining
32 a license under this chapter or in connection
33 with service rendered within the scope of the li-
34 cence issued;

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

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

1 STATEMENT OF FACT

2 The new draft standardizes the disciplinary pro-
3 ceedings of, and sanctions available to, health
4 profession licensing boards. It enacts for each board
5 a uniform section describing proceedings, sanctions
6 and basic grounds for discipline. It repeals most
7 other statutory sections that contradict or duplicate
8 the uniform sections, but does not eliminate grounds
9 for discipline except for a few archaic or unenforce-
10 able ones.

11 This new draft makes several technical correc-
12 tions in the bill and clarifies several errors in the
13 statutes.

14 Sections 1 and 2 apply to the Board of Licensure
15 of Administrators of Medical Care Facilities other
16 than Hospitals.

17 Sections 3 to 5 apply to the statutes on chiro-
18 practic.

19 Sections 6 to 19 apply to the statutes on den-
20 tistry.

21 Sections 20 to 23 apply to the statutes on nurs-
22 ing.

23 Sections 24 to 34 apply to the statutes on optom-
24 etry.

25 Sections 35 to 40 apply to the statutes on
26 osteopathic medicine.

27 Sections 41 to 45 apply to the statutes on phar-
28 macy.

29 Sections 46 to 55 apply to the statutes on medi-
30 cine.

31 Sections 56 to 59 apply to the statutes on podia-
32 try.

33 3751050983