

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 1393

H.P. 966

House of Representatives, April 1, 1991

Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 24.

Reference to the Committee on Business Legislation suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

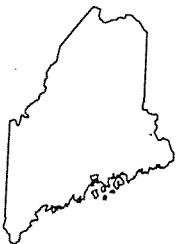
EDWIN H. PERT, Clerk

Presented by Representative LEBOWITZ of Bangor.
Cosponsored by Representative GURNEY of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-ONE

**An Act Increasing the Membership of the Nursing Home Administrators
Licensing Board and Clarifying the Penalty for Unlicensed Practice.**



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

2 Sec. 1. 32 MRSA §61, as amended by PL 1985, c. 233, §3, is
4 further amended to read:

6 **§61. Requirement for license**

8 No medical care facility other than a hospital may operate
10 except under the supervision of a licensed administrator and no
12 person may be an administrator of a medical care facility other
14 than a hospital unless he that person is the holder of a current
16 administrator's license or a temporary permit issued pursuant to
18 this chapter.

20 Sec. 2. 32 MRSA §62, sub-§1, as enacted by PL 1969, c. 350, is
22 amended to read:

24 1. **Administrator.** "Administrator" means an individual who
26 is charged with and has responsibility for the general
28 administration of a facility other than a hospital whether or not
30 such individual has an ownership interest in such home and
32 whether or not his that individual's functions and duties are
34 shared with one or more other individuals.

36 Sec. 3. 32 MRSA §63-A, as amended by PL 1989, c. 503, Pt. B,
38 §119, is further amended to read:

40 **§63-A. Board established; membership and organization**

42 1. **Membership.** The Nursing Home Administrators Licensing
44 Board, as established by Title 5, section 12004-A, subsection 23,
46 shall ~~consist~~ consists of 7 ~~8~~ members appointed by the Governor.
48 The members shall ~~shall~~ must be citizens of the United States and
50 residents of this State. One member shall ~~shall~~ must be a hospital
administrator with not less than 5 years of active practice in
the State as a hospital administrator. One member shall ~~shall~~ must be
a registered nurse with not less than 5 years of active practice
in nursing homes in the State. Two members shall ~~shall~~ must be
representatives of the public. Three members shall ~~shall~~ must be
administrators of nursing homes with not less than 5 years of
active experience in the State. One member must be an
administrator of an intermediate care facility for the mentally
retarded with not less than 5 years of active practice in that
capacity.

46 2. **Terms.** Appointments shall ~~be~~ are for 3-year terms,
48 except that the terms of no more than 3 members shall ~~may~~ may expire
50 in any calendar year and appointments for terms of less than 3
years may be made in order to comply with this limitation. No
person may be eligible to serve more than 3 consecutive full
terms, provided that for this purpose only a period actually

2 served which exceeds 1/2 of the 3-year term ~~shall-be-deemed is~~
3 considered a full term. Upon expiration of a member's term, he
4 that member shall serve until his a successor is appointed and
5 qualified. The successor's term ~~shall-be is~~ for 3 years from the
6 date of expiration, regardless of the date of appointment. Any
7 vacancy occurring prior to the expiration of the specified term
8 shall must be filled by appointment for the unexpired term. A
9 member may be removed by the Governor for cause.

10 **3. Meetings; chair; quorum.** The board shall meet at least
11 once a year to conduct its business and to elect a ~~chairman~~
12 chair. Additional meetings shall must be held as necessary to
13 conduct the business of the board, and may be convened at the
14 call of the ~~chairman~~ chair or of a majority of the board
15 members. ~~Four~~ Five members of the board shall constitute a
16 quorum for all purposes.

17 **4. Compensation.** Members of the board shall--be are
18 compensated according to the provisions of Title 5, chapter 379.

19 **5. Employees.** With the advice of the board, the
20 commissioner may appoint, subject to the Civil Service Law, such
21 employees as ~~may-be~~ necessary to carry out this chapter. Any
22 person so employed shall must be located in the department and
23 under the administrative and supervisory direction of the
24 commissioner.

25 **6. Fees.** All fees received by the board shall must be paid
26 to the Treasurer of State to be used for carrying out this
27 chapter. Any balance of these fees shall may not lapse, but
28 shall must be carried forward as a continuing account to be
29 expended for the same purposes in the following fiscal years.

30 **7. Reports; budget.** Not later than August 1st of each
31 year, the board shall submit to the commissioner a report of its
32 transactions of the preceding fiscal year ending June 30th, and
33 shall transmit to him the commissioner a complete statement of
34 all receipts and expenditures of the board, attested by affidavit
35 of its ~~chairman~~ chair. The board shall submit to the
36 commissioner its budgetary requirements in the same manner as is
37 provided in Title 5, section 1665.

38 **Sec. 4. 32 MRSA §63-B, sub-§6,** as enacted by PL 1985, c. 233,
39 §6, is amended to read:

40 **6. Hearings.** Hearings may be conducted by the board to
41 assist with investigations, to determine whether grounds exist
42 for suspension, revocation or denial of a license, or as
43 otherwise deemed determined necessary to the fulfillment of its
44 responsibilities under this chapter. The board shall may not
45 refuse to renew a license for any reason other than failure to

2 pay a required fee, unless it has afforded the licensee an
3 opportunity for an adjudicatory hearing. The board shall hold an
4 adjudicatory hearing at the written request of any person who is
5 denied a license without a hearing for any reason other than
6 failure to pay a required fee, provided that the request for
7 hearing is received by the board within 30 days of the
8 applicant's receipt of written notice of the denial of his the
9 application, the reason for the denial and his the applicant's
10 right to request a hearing. Hearings shall must be conducted in
11 conformity with the Maine Administrative Procedure Act, Title 5,
12 chapter 375, subchapter IV, to the extent applicable. The board
13 may subpoena witnesses, records and documents in any hearing it
14 conducts.

15 **Sec. 5. 32 MRSA §64-A, sub-§2**, as enacted by PL 1983, c. 378,
16 §2, is amended to read:

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

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

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

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

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

37 **E.** Incompetence in the practice for which he that person is
38 licensed. A licensee ~~shall--be--deemed~~ is considered
39 incompetent in the practice if the licensee has:

40 (1) Engaged in conduct which evidences a lack of
41 ability or fitness to discharge the duty owed by the
42 licensee to a client or patient or the general public;
43 or
44

2 (2) Engaged in conduct which evidences a lack of
4 knowledge, or inability to apply principles or skills
6 to carry out the practice for which he that person is
licensed;

8 F. Unprofessional conduct. A licensee ~~shall-be-deemed is~~
8 considered to have engaged in unprofessional conduct if he
10 that person violates any standard of professional behavior
12 which has been established in the practice for which the
licensee is licensed;

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

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

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

24 **Sec. 6. 32 MRSA §66**, as enacted by PL 1985, c. 233, §6, is
26 repealed and the following enacted in its place:

28 **§66. Enforcement**

30 **1. Injunction.** The State may bring an action in Superior
32 Court to enjoin any person from violating this chapter,
regardless of whether proceedings have been or may be instituted
34 in the Administrative Court or whether criminal proceedings have
been or may be instituted.

36 **2. Criminal penalty.** Any person who operates a medical
care facility other than a hospital without holding a current
38 license as an administrator or a temporary permit issued pursuant
to this chapter commits a Class E crime.

40 **STATEMENT OF FACT**

42 This bill:

44 1. Increases the membership of the Nursing Home
46 Administrators Licensing Board to include one member who is an
administrator of an intermediate care facility for the mentally
48 retarded. The board feels that this is a special category of
expertise with a significant enough clientele to warrant
50 representation;

2 2. Makes operating a medical care facility other than a
3 hospital without holding a nursing home administrator's license a
4 Class E crime. Currently, there is no specific penalty for this
5 offense; and

6
7 3. Amends gender-specific language to conform with the
8 Maine Revised Statutes, Title 1, section 71, subsection 7-A.