

MAINE STATE LEGISLATURE

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BUSINESS AND ECONOMIC DEVELOPMENT

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
118TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1124, L.D. 1580, Bill, "An Act to Improve Allopathic and Osteopathic Physician Oversight"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

PART A

Sec. A-1. 10 MRSA §8003, sub-§5, ¶E is enacted to read:

E. The bureau, office, board or commission may issue letters of guidance or concern to a licensee or registrant. Letters of guidance or concern may be used to educate, reinforce knowledge regarding legal or professional obligations and express concern over action or inaction by the licensee or registrant that does not rise to the level of misconduct sufficient to merit disciplinary action. The issuance of a letter of guidance or concern is not a formal proceeding and does not constitute an adverse disciplinary action of any form. Notwithstanding any other provision of law, letters of guidance or concern are not confidential. The bureau, office, board or commission may place letters of guidance or concern, together with any underlying complaint, report and investigation materials, in a licensee's or registrant's file for a specified amount of time, not to exceed 10 years. Any letters, complaints and materials placed on file may be accessed and considered by the bureau,

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office, board or commission in any subsequent action commenced against the licensee or registrant within the specified time frame. Complaints, reports and investigation materials placed on file are confidential.

PART B

Sec. B-1. 32 MRSA §2562, 3rd ¶, as amended by PL 1993, c. 600, Pt. A, §170, is further amended to read:

The board has 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 considers necessary. The board shall utilize the consumer assistant position as provided in section 3269, subsection 15. The functions and expense of the consumer assistant position must be shared on a pro rata basis with the Board of Licensure in Medicine.

Sec. B-2. 32 MRSA §2591-A, sub-§1, as amended by PL 1993, c. 600, Pt. A, §181, is further amended to read:

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 rules adopted by the board.

The board shall notify the licensee of the content of a complaint filed against the licensee as soon as possible, but, absent unusual circumstances justifying delay, not later than 60 days from receipt of this information. The licensee shall respond within 30 days. The board shall share the licensee's response with the complainant, unless the board determines that it would be detrimental to the health of the complainant to obtain the response. If the licensee's response to the complaint satisfies the board that the complaint does not merit further investigation or action, the matter may be dismissed, with notice of the dismissal to the complainant, if any.

If, in the opinion of the board, the factual basis of the complaint is or may be true, and the complaint is of sufficient gravity to warrant further action, the board may request an informal conference with the licensee. The board shall provide the licensee with adequate notice of the conference and of the issues to be discussed. The complainant may attend and may be accompanied by up to 2 individuals, including legal counsel. The conference must be conducted in executive session of the board, pursuant to Title 1, section 405, unless otherwise requested by

2 the licensee. Before the board decides what action to take at
3 the conference or as a result of the conference, the board shall
4 give the complainant a reasonable opportunity to speak.
5 Statements made at the conference may not be introduced at a
6 subsequent formal hearing unless all parties consent.

7 When a complaint has been filed against a licensee and the
8 licensee moves or has moved to another state, the board may
9 report to the appropriate licensing board in that state the
10 complaint that has been filed, other complaints in the licensee's
11 record on which action was taken and disciplinary actions of the
12 board with respect to that licensee.

13 When an individual applies for a license under this chapter, the
14 board may investigate the professional record of that individual,
15 including professional records that the individual may have as a
16 licensee in other states. The board may deny a license or
17 authorize a restricted license based on the record of the
18 applicant in other states.

19 If the board finds that the factual basis of the complaint is
20 true and is of sufficient gravity to warrant further action, it
21 may take any of the following actions it considers appropriate:

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

29 B. In consideration for acceptance of a voluntary surrender
30 of the license, negotiate stipulations, including terms and
31 conditions for reinstatement, that ensure protection of the
32 public health and safety and that serve to rehabilitate or
33 educate the licensee. These stipulations may be set forth
34 only in a consent agreement signed by the board, the
35 licensee and the Attorney General's office;

36 C. If the board concludes that modification or nonrenewal
37 of the license is in order, the board shall hold an
38 adjudicatory hearing in accordance with the provisions of
39 the ~~Maine Administrative Procedure Act~~, Title 5, chapter
40 375, subchapter IV; or

41 D. If the board concludes that suspension or revocation of
42 the license is in order, the board shall file a complaint in
43 the Administrative Court in accordance with Title 4, chapter
44 25.
45

2 **Sec. B-3. 32 MRSA §2591-A, sub-§2**, as amended by PL 1993, c.
4 600, Pt. A, §181, is further amended by amending the first
 paragraph to read:

6 **2. Grounds for discipline.** The board may suspend or revoke
8 a license pursuant to Title 5, section 10004. The following are
 grounds for an action to refuse to issue, modify, restrict,
10 suspend, revoke or refuse to renew the license of an individual
 licensed under this chapter:

12 **Sec. B-4. 32 MRSA §2591-A, sub-§2, ¶K**, as amended by PL 1993,
14 c. 600, Pt. A, §181, is repealed.

16 **Sec. B-5. 32 MRSA §2591-A, sub-§2, ¶L**, as amended by PL 1989,
 c. 291, §2, is further amended to read:

18 L. Division of professional fees not based on actual
20 services rendered; ~~e~~

22 **Sec. B-6. 32 MRSA §2591-A, sub-§2, ¶M**, as enacted by PL 1989,
 c. 291, §3, is amended to read:

24 M. Failure to comply with the requirements of Title 24,
26 section 2905-A; or

28 **Sec. B-7. 32 MRSA §2591-A, sub-§2, ¶N** is enacted to read:

30 N. Revocation, suspension or restriction of a license to
32 practice medicine or other disciplinary action; denial of an
34 application for a license; or surrender of a license to
36 practice medicine following the institution of disciplinary
38 action by another state or a territory of the United States
40 or a foreign country if the conduct resulting in the
42 disciplinary or other action involving the license would, if
44 committed in this State, constitute grounds for discipline
46 under the laws or rules of this State.

PART C

48 **Sec. C-1. 32 MRSA §3263, first ¶**, as amended by PL 1993, c.
 600, Pt. A, §198, is further amended to read:

 The Board of Licensure in Medicine, as established by Title
5, section 12004-A, subsection 24, and in this chapter called the
"board," consists of ~~10~~ 9 individuals who are residents of this
State, appointed by the Governor. Three individuals must be

representatives of the public. Seven ~~Six~~ individuals must be graduates of a legally chartered medical college or university having authority to confer degrees in medicine and must have been actively engaged in the practice of their profession in this State for a continuous period of 5 years preceding their appointments to the board. A full-term appointment is for 6 years. Appointment of members must comply with section 60. A member of the board may be removed from office for cause by the Governor.

Sec. C-2. 32 MRSA §3269, sub-§15, as amended by PL 1993, c. 600, Pt. A, §202, is further amended to read:

15. Adequacy of budget, fees and staffing. The budget submitted by the board to the Commissioner of Professional and Financial Regulation must be sufficient, if approved, to provide for adequate legal and investigative personnel on the board's staff and that of the Attorney General to assure that professional liability complaints described in Title 24, section 2607, and complaints regarding a section of this chapter can be resolved in a timely fashion. The board's staff must include one position staffed by an individual who is primarily a consumer assistant. The functions and expense of the consumer assistant position must be shared on a pro rata basis with the Board of Osteopathic Licensure. Within the limit set by section 3279, the board shall charge sufficient licensure fees to finance this budget provision. The board shall submit legislation to request an increase in these fees should they prove inadequate to the provisions of this subsection.

Within the limit of funds provided to it by the board, the Department of the Attorney General shall make available to the board sufficient legal and investigative staff to enable all consumer complaints mentioned in this subsection to be resolved in a timely fashion; and

Sec. C-3. 32 MRSA §3280-A, sub-§3, ¶A, as enacted by PL 1993, c. 526, §2 and affected by §4, is amended to read:

A. The board may charge a license renewal application fee of not more than \$265 ~~§310~~ to all applicants for license renewal who have not attained 70 years of age on the date renewal becomes due.

Sec. C-4. 32 MRSA §3282-A, sub-§1, as amended by PL 1993, c. 600, Pt. A, §218, is further amended to read:

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

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2 with or violation of this chapter or any rules adopted by the board.

4 The board shall notify the licensee of the content of a complaint
6 filed against the licensee as soon as possible, but not later
8 than 60 days after receipt of this information. The licensee
10 shall respond within 30 days. The board shall share the
12 licensee's response with the complainant, unless the board
14 determines that it would be detrimental to the health of the
complainant to obtain the response. If the licensee's response
to the complaint satisfies the board that the complaint does not
merit further investigation or action, the matter may be
dismissed, with notice of the dismissal to the complainant, if
any.

16 If, in the opinion of the board, the factual basis of the
18 complaint is or may be true and the complaint is of sufficient
20 gravity to warrant further action, the board may request an
22 informal conference with the licensee. The board shall provide
24 the licensee with adequate notice of the conference and the
26 issues to be discussed. The complainant may attend and may be
28 accompanied by up to 2 individuals, including legal counsel and
30 one--other--individual. The conference must be conducted in
32 executive session of the board, pursuant to Title 1, section 405,
unless otherwise requested by the licensee. Before the board
decides what action to take at the conference or as a result of
the conference, the board shall give the complainant a reasonable
opportunity to speak. Statements made at the conference may not
be introduced at a subsequent formal hearing unless all parties
consent. The complainant, the licensee or either of their
representatives shall maintain the confidentiality of the
conference.

34 When a complaint has been filed against a licensee and the
36 licensee moves or has moved to another state, the board may
38 report to the appropriate licensing board in that state the
40 complaint that has been filed, other complaints in the
physician's record on which action was taken and disciplinary
actions of the board with respect to that physician.

42 When an individual applies for a license under this chapter, the
44 board may investigate the professional record of that individual,
46 including professional records that the individual may have as a
licensee in other states. The board may deny a license or
authorize a restricted license based on the record of the
applicant in other states.

48 If the board finds that the factual basis of the complaint is
50 true and is of sufficient gravity to warrant further action, it
may take any of the following actions it determines appropriate.

COMMITTEE AMENDMENT

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

10 B. In consideration for acceptance of a voluntary surrender
12 of the license, the board may negotiate stipulations,
14 including terms and conditions for reinstatement, that
16 ensure protection of the public health and safety and serve
to rehabilitate or educate the licensee. These stipulations
may be set forth only in a consent agreement signed by the
board, the licensee and the Attorney General's office.

18 C. If the board concludes that modification or nonrenewal
20 of the license is in order, the board shall hold an
22 adjudicatory hearing in accordance with Title 5, chapter
375, subchapter IV.

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

28 The board shall require a licensee to notify all patients of the
30 licensee of a probation or stipulation under which the licensee
32 is practicing as a result of board disciplinary action. This
34 requirement does not apply to a physician participating in an
36 alcohol or drug treatment program pursuant to Title 24, section
2505, a physician who retires following charges made or
complaints investigated by the board or a physician under the
care of a professional and whose medical practices and services
are not reduced, restricted or prohibited by the disciplinary
action.

38 **Sec. C-5. 32 MRSA §3282-A, sub-§2**, as amended by PL 1993, c.
40 600, Pt. A, §218, is further amended by amending the first
42 paragraph to read:

44 **2. Grounds for discipline.** The board may suspend or revoke
46 a license pursuant to Title 5, section 10004. The following are
48 grounds for an action to refuse to issue, modify, restrict,
suspend, revoke or refuse to renew the license of an individual
licensed under this chapter:

50 **Sec. C-6. 32 MRSA §3282-A, sub-§2, ¶K**, as amended by PL 1989,
c. 291, §4, is further amended to read:

2 K. Failure to report to the secretary of the board a
3 physician licensed under this chapter for addiction to
4 alcohol or drugs or for mental illness in accordance with
5 Title 24, section 2505, except when the impaired physician
6 is or has been a patient of the licensee; or

8 **Sec. C-7. 32 MRSA §3282-A, sub-§2, ¶L**, as enacted by PL 1989,
9 c. 291, §5, is amended to read:

10 L. Failure to comply with the requirements of Title 24,
11 section 2905-A; or

14 **Sec. C-8. 32 MRSA §3282-A, sub-§2, ¶M** is enacted to read:

16 M. Revocation, suspension or restriction of a license to
17 practice medicine or other disciplinary action; denial of an
18 application for a license; or surrender of a license to
19 practice medicine following the institution of disciplinary
20 action by another state or a territory of the United States
21 or a foreign country if the conduct resulting in the
22 disciplinary or other action involving the license would, if
23 committed in this State, constitute grounds for discipline
24 under the laws or rules of this State.

26 **Sec. C-9. Implementation of reduction in membership.** The
27 reduction in the number of medical graduates on the Board of
28 Licensure in Medicine from 7 to 6 must be achieved by attrition.
29 The first medical graduate appointment to expire after June 30,
30 1998 may not be filled.

32 **Sec. C-10. Year 2000 report.** On or before January 1, 2000, the
33 Board of Licensure in Medicine, in conjunction with the Board of
34 Osteopathic Licensure, shall submit to the Legislature a report
35 consisting of the following:

36 1. An assessment of the effectiveness of the consumer
37 assistant position required pursuant to the Maine Revised
38 Statutes, Title 32, section 3269, subsection 15, including the
39 number of consumers assisted with respect to each board, the
40 average length of time consumer complaints are open and consumer
41 satisfaction survey responses; and

44 2. An assessment of the effectiveness of the alternative
45 dispute resolution pilot program developed by rule pursuant to
46 the Maine Revised Statutes, Title 5, section 8051, including the
number and nature of complaints referred to alternative dispute

resolutions and consumer and physician satisfaction survey responses.

PART D

Sec. D-1. 24 MRSA §2509, sub-§2, as enacted by PL 1977, c. 492, §3, is amended to read:

2. **Reports dismissed without disciplinary action; removal and destruction.** ~~Upon--determination--by~~ If the board that dismisses any report submitted to it is--without--merit without imposing disciplinary action, the report shall must be removed from the physician's individual historical record and destroyed, unless the report has been placed on file for a specified amount of time pursuant to Title 10, section 8003, subsection 5, paragraph E. Reports placed on file pursuant to Title 10, section 8003, subsection 5, paragraph E may only be removed and destroyed upon the expiration of the specified amount of filing time.

Sec. D-2. 24 MRSA §2509, sub-§6, as amended by PL 1991, c. 534, §1, is further amended to read:

6. **Court action for amendment or destruction.** A With the exception of orders of the board relating to disciplinary action, and reports placed on file for a specified amount of time pursuant to Title 10, section 8003, subsection 5, paragraph E, a physician has the right to seek through court action pursuant to the Maine Rules of Civil Procedure the amendment or destruction of any part of that physician's historical record in the possession of the board. When a physician initiates court action under this subsection, the board shall notify the persons who have filed complaints of the physician's request to amend these complaints or expunge them from the record. Notice to complainants must be sent to the last known address of the complainants. The notice must contain the name and address of the court to which a complainant may respond, the specific change in the complaint that the physician is seeking or the complaint that the physician seeks to expunge, and the length of time that the complainant has to respond to the court. The board shall provide complainants with at least 60 days' notice from the date the notice is sent in which to respond.

Sec. D-3. 24 MRSA §2509, sub-§7, as repealed and replaced by PL 1991, c. 534, §2, is repealed.

Sec. D-4. 24 MRSA §2510, sub-§2-A is enacted to read:

2-A. Confidentiality of letters of guidance or concern.
Letters of guidance or concern issued by the board pursuant to Title 10, section 8003, subsection 5, paragraph E, are not confidential.

PART E

Sec. E-1. Allocation. The following funds are allocated from Other Special Revenue to carry out the purposes of this Act.

1998-99

**PROFESSIONAL AND FINANCIAL REGULATION,
DEPARTMENT OF**

Board of Licensure in Medicine

Positions - Legislative Count	(1,000)
Personal Services	\$42,681
All Other	28,736
Capital Expenditures	15,250

Allocates funds for one additional Consumer Assistant position and operating costs necessary to establish a physician review process and for the net costs of replacing an eliminated board member with contracted services for the technical review of cases.

**DEPARTMENT OF PROFESSIONAL AND
FINANCIAL REGULATION
TOTAL**

\$86,667'

Further amend the bill by inserting at the end before the summary the following:

FISCAL NOTE

1998-99

APPROPRIATIONS/ALLOCATIONS

Other Funds	\$86,667
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REVENUES

Other Funds	\$105,000
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2 The Board of Licensure in Medicine, affiliated with the
3 Department of Professional and Financial Regulation, will require
4 an additional Other Special Revenue allocation of \$76,057 in
5 fiscal year 1998-99 for one additional Consumer Assistant
6 physician and associated operating costs necessary to implement a
7 physician oversight process. In addition, the annual savings of
8 \$1,390 in compensation and expenses realized from the elimination
9 of one board member will be offset by an additional annual
10 expense of \$12,000 that will be incurred by the board to obtain
11 technical expertise to review cases that were previously
12 conducted by the eliminated physician member of the board,
13 thereby requiring an additional net Other Special Revenue
14 allocation of \$10,610 in fiscal year 1998-99. The total
15 estimated Other Special Revenue allocations required to fund the
16 full-year costs will be approximately \$102,000 annually beginning
17 in fiscal year 1999-2000. The board's increased costs will be
18 offset by the assumption of approximately 25% of the costs for
19 the physician oversight process through a transfer of funds by
20 the Board of Osteopathic Licensure and by an increase in license
21 renewal application fees that will result in an annual increase
22 in dedicated revenues of \$105,000 beginning in fiscal year
1998-99.

24 This bill may increase the number of civil suits filed in
25 the court system. The additional workload and administrative
26 costs associated with the minimal number of new cases filed can
27 be absorbed within the budgeted resources of the Judicial
28 Department. The collection of additional filing fees may also
29 increase General Fund revenue by minor amounts.'

32 SUMMARY

34 The committee amendment replaces the bill.

36 This amendment implements the recommendations of a study
37 group formed under the direction of the Joint Standing Committee
38 on Business and Economic Development.

40 Part A amends the laws relating to the powers of any bureau,
41 office, board or commission within or affiliated with the
42 Department of Professional and Financial Regulation giving those
43 entities the authority to issue letters of guidance or concern
44 that do not constitute adverse disciplinary action and giving
45 those entities the power to place letters of concern or guidance,
46 together with any underlying complaint, report or investigation
47 materials, on file for a specified amount of time, not to exceed
48 10 years.

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2 Part B amends the laws relating to the Board of Osteopathic
3 Licensure. The amendment requires the board to utilize and fund
4 a consumer assistant position in conjunction with the Board of
5 Licensure in Medicine. It requires the board to share physician
6 complaint responses with complainants unless such information
7 would be detrimental to the patient, allows complainants to
8 attend and speak at informal conferences, allows the board more
9 flexibility in working with other states regarding complaints and
10 professional records and allows the board to similarly restrict a
11 physician whose license has been restricted by another
12 jurisdiction.

13
14 Part C amends the laws relating to the Board of Licensure in
15 Medicine. The amendment reduces the size of the board through
16 attrition from 7 physicians and 3 public members to 6 physicians
17 and 3 public members. It requires the board to report on the
18 effectiveness of the consumer assistant position shared with the
19 Board of Osteopathic Licensure and on the effectiveness of
20 alternative dispute resolution processes developed by rule under
21 existing authority. The amendment requires the board to share
22 physician complaint responses with complainants unless that
23 information is detrimental to the patient and allows the board to
24 similarly restrict a physician whose license has been restricted
25 by another jurisdiction. Finally, Part C increases the ceiling
26 for the license renewal application fee from \$265 to not more
27 than \$310.

28 Part D amends certain provisions of the Maine Health
29 Security Act. It clarifies that reports placed on file for a
30 specified amount of time may be removed and destroyed only after
31 the expiration of that specified time. The amendment also
32 clarifies that letters of guidance or concern are not
33 confidential.

34 Part E adds an allocation section.

36 The amendment also adds a fiscal note to the bill.