

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

No. 1580

H.P. 1124

House of Representatives, March 18, 1997

An Act to Improve Allopathic and Osteopathic Physician Oversight.

Reference to the Committee on Business and Economic Development suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative BUCK of Yarmouth.
Cosponsored by Senator RAND of Cumberland and
Representative VOLENIK of Brooklin.

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

2
4 **Sec. 1. 32 MRSA §2561**, as amended by PL 1993, c. 600, Pt. A, §169, is further amended to read:

6 **§2561. Membership; qualifications; tenure; vacancies**

8 The Board of Osteopathic Licensure, as established by Title
10 5, section 12004-A, subsection 29, and in this chapter called the
12 "board," consists of 9 members appointed by the Governor. These
14 members must be residents of this State. ~~Six~~ Four of these
16 members must be graduates of a legally chartered college of
18 osteopathic medicine or university having the power to confer
20 degrees in osteopathic medicine and must be, at the time of
22 appointment, actively engaged in the practice of the profession
24 of osteopathic medicine in the State for a period of at least 5
26 years, and ~~3~~ 5 of these members must be public members. None of
the members representing the interests of consumers may be
members of or associated with or have a financial interest in a
health care provider or profession. Consumer groups may submit
nominations to the Governor for the members to be appointed to
represent the ~~interest~~ interests of consumers. A full term of
appointment is for 5 years. Appointment of members must comply
with section 60. A member of the board may be removed from
office for cause by the Governor.

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

30 **1. Disciplinary proceedings and sanctions.** The board shall
32 investigate a complaint, on its own motion, upon motion of the
ombudsman established in section 3263-A or upon receipt of a
34 written complaint filed with the board, regarding noncompliance
36 with or violation of this chapter or of rules adopted by the
board.

38 The board shall notify the licensee of the content of a complaint
40 filed against the licensee as soon as possible, but, absent
unusual circumstances justifying delay, not later than ~~60~~ 30 days
42 from receipt of this information. The licensee shall respond
44 within 30 days. If the licensee's response to the complaint
satisfies the board that the complaint does not merit further
46 investigation or action, the matter may be dismissed, with a
written record of the reasons that the board declined further
investigation of the complaint to be added to the licensee's file
and notice of the dismissal sent to the complainant, if any. The
complainant, if any, or the ombudsman may appeal any decision by
the board to an Administrative Court.

2 If, in the opinion of the board, the factual basis of the
4 complaint is or may be true, and the complaint is of sufficient
6 gravity to warrant further action, the board may request an
8 informal conference with the licensee. The board shall provide
10 the licensee, the ombudsman and the complainant, if any, with
12 adequate notice of the conference and of the issues to be
discussed. The conference must be conducted in executive session
of the board, pursuant to Title 1, section 405, unless otherwise
requested by the licensee. Statements made at the conference may
not be introduced at a subsequent formal hearing unless all
parties consent.

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

18 A. With the consent of the licensee, enter into a consent
20 agreement that fixes the period and terms of probation best
22 adapted to protect the public health and safety and to
24 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;

26 B. In consideration for acceptance of a voluntary surrender
28 of the license, negotiate stipulations, including terms and
30 conditions for reinstatement, that ensure protection of the
32 public health and safety and that 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;

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

40 D. If Notwithstanding Title 4, section 1151, Title 5,
42 section 10004 and Title 10, section 8003, subsection 5, if
44 the board concludes that suspension or revocation of the
license is in order, the board shall file-a-complaint-in-the
Administrative-Court-in-accordance-with-Title-4,-chapter-25
take action upon violation of any of the standards in
subsection 2.

46 **Sec. 3. 32 MRSA §3263**, as amended by PL 1993, c. 600, Pt. A,
48 §198, is further amended to read:

50 **§3263. Appointment; vacancies; compensation**

2 The Board of Licensure in Medicine, as established by Title
4 5, section 12004-A, subsection 24, and in this chapter called the
6 "board," consists of ~~10~~ 11 individuals who are residents of this
8 State, appointed by the Governor. ~~Three~~ Six individuals must be
10 representatives of the public and represent the interests of
12 consumers. None of the members representing the interests of
14 consumers may be members of or associated with or have a
16 financial interest in a health care provider or profession.
18 Consumer groups may submit nominations to the Governor for the
20 members appointed to represent the interests of consumers. Seven
22 Five individuals must be graduates of a legally chartered medical
24 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. Four individuals are appointed to
 the board for 6-year terms on or before July 1st of every
 uneven-numbered year, except that on every 3rd uneven-numbered
 year beginning in 1999 3 individuals are appointed. Any vacancy
 in the board must be filled by the appointment of an equally
 qualified person who will hold office during the unexpired term.
 Appointment of members must comply with section 60. A member of
 the board may be removed from office for cause by the Governor.

26 Members of said ~~the~~ board ~~shall-be~~ are compensated according
28 to the provisions of Title 5, chapter 379. If the fees to be
30 collected under any of the provisions of this chapter are
32 insufficient to pay the salaries and expenses provided by this
 section, the members of said ~~the~~ board ~~shall-be~~ are entitled to
 only a pro rata payment for salary in any years in which such
 fees are insufficient.

34 **Sec. 4. 32 MRSA §3263-A** is enacted to read:

36 §3263-A. Ombudsman

38 1. Appointment; qualifications; removal. The Governor
40 shall appoint an ombudsman to serve on the staff of the Board of
42 Licensure in Medicine as an advocate for consumers of medical
44 care and services. The person selected as ombudsman must have at
46 least 5 years of experience in consumer advocacy. The term of
48 office for the ombudsman is 6 years. Compensation for the
 ombudsman is paid by the Board of Licensure in Medicine. The
 Governor may remove the ombudsman from office for malfeasance,
 misfeasors, nonfeasance or other good cause after delivering
 written notice to the ombudsman of the reasons for that removal
 and providing the ombudsman with an opportunity to appear before
 the board and show cause why the ombudsman should not be removed.

50

2 **2. Duties.** The ombudsman shall:

4 A. Serve as an advocate for consumers of medical care who
6 have filed complaints with the board by assisting them in
8 the presentation of their complaints, by tracking and
10 monitoring the board's action on complaints, by informing
12 complainants about actions the board has taken and by
14 monitoring board procedures to ensure that consumers receive
16 fair treatment;

18 B. Inform the public about the role of the board;

20 C. Collect public evaluations of individual physicians or
22 the medical profession and establish a public repository for
24 those evaluations with the board.

26 D. Furnish to the public, on request, information about
28 physician discipline, including any past or current
30 disciplinary action, any voluntary surrendering of a
32 physician's license and any other restriction placed on a
34 physician's practice.

36 **3. Toll-free telephone number.** The board shall maintain a
38 toll-free telephone number to facilitate communication between
40 the ombudsman and consumers of medical care.

42 **4. Establishment of program.** The board shall establish a
44 program that is coordinated by the ombudsman to inform physicians
46 and medical students about the role and policies of the board.

48 **Sec. 5. 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, upon motion of the
 ombudsman established in section 3263-A, or upon receipt of a
 written complaint filed with the board, regarding noncompliance
 with or violation of this chapter or any 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 not later
 than ~~60~~ 30 days after receipt of this information. The licensee
 shall respond within 30 days. 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 a written record of the reasons that the board declined
 further investigation of the complaint to be added to the
 licensee's file and notice of the dismissal sent to the

complainant, if any. The complainant, if any, or the ombudsman may appeal any decision by the board to an Administrative Court.

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, the ombudsman and the complainant, if any, with adequate notice of the conference and the issues to be discussed. The complainant and the ombudsman may attend and. The complainant may be accompanied by legal counsel and one other individual. The conference must be conducted in 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 and present evidence germane to the complaint under review by the board, including patient records. Statements made at the conference may not be introduced at a subsequent formal hearing unless all parties consent. The complainant, the ombudsman, the licensee or either any of their representatives shall maintain the confidentiality of the conference.

When a complaint has been filed against a licensee and the licensee moves or has moved to another state, the board may shall report to the appropriate licensing board in that state the 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.

When an individual applies for a license under this chapter, the board may shall investigate the professional record of that individual, 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.

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

A. With the consent of the licensee, the board may enter into a consent agreement that fixes the period and terms of probation best adapted to protect the public health and 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.

2 B. In consideration for acceptance of a voluntary surrender
of the license, the board may negotiate stipulations,
4 including terms and conditions for reinstatement, that
ensure protection of the public health and safety and serve
6 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.

8
10 C. If the board concludes that modification or nonrenewal
of the license is in order, the board shall hold an
12 adjudicatory hearing in accordance with Title 5, chapter
375, subchapter IV.

14 D. ~~If Notwithstanding Title 4, section 1151, Title 5,~~
16 ~~section 10004 and Title 10, section 8003, subsection 5, if~~
the board concludes that suspension or revocation of the
license is in order, the board shall ~~file a complaint in the~~
18 ~~Administrative Court in accordance with Title 4, chapter 25~~
~~take action upon violation of any of the standards in~~
20 ~~subsection 2.~~

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

32 34 SUMMARY

36 This bill increases oversight of osteopathic and allopathic
doctors licensed to practice in this State. The bill increases
38 consumer representation from 3 to 5 on the Board of Osteopathic
Licensure and from 3 to 6 on the Board of Licensure in Medicine.
40 To strengthen physician oversight, the bill creates a position of
ombudsman to serve as an advocate for consumers of medical care
42 who have filed complaints against physicians. The ombudsman will
assist consumers in making and pursuing their complaints, in
44 educating them about the purpose of the board and in ensuring
that consumers get fair treatment before the board.