

# MAINE STATE LEGISLATURE

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# 120th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2001

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Legislative Document

No. 1320

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S.P. 404

In Senate, March 5, 2001

**An Act Relating to the Office of Substance Abuse and the Licensing of  
Substance Abuse Personnel.**

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

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator McALEVEY of York.  
Cosponsored by Representative BLANCHETTE of Bangor.

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

2  
3       **Sec. 1. 5 MRSA §12004-A, sub-§41**, as amended by PL 1999, c.  
4 687, Pt. B, §1, is further amended to read:

6           **41.** State Board           \$35/Day           32-MRSA-§6201  
7 of Alcohol and Drug                                   5 MRSA §20086  
8 Counselors

10       **Sec. 2. 5 MRSA §20003, sub-§8**, as enacted by PL 1989, c. 934,  
11 Pt. A, §3, is amended to read:

12           **8. Director.** "Director" means an associate commissioner of  
13 the Department of Mental Health, Mental Retardation and Substance  
14 Abuse Services, who is appointed by the commissioner to serve as  
15 the Director of the Office of Substance Abuse.

18       **Sec. 3. 5 MRSA c. 521, sub-c. VI** is enacted to read:

20                                   **SUBCHAPTER VI**

22                                   **ALCOHOL AND DRUG COUNSELORS**

24                                   **ARTICLE I**

26                                   **GENERAL PROVISIONS**

28       **§20080. State Board of Alcohol and Drug Counselors**

30           The State Board of Alcohol and Drug Counselors within the  
31 Department of Mental Health, Mental Retardation and Substance  
32 Abuse Services, as established by section 12004-A, subsection 41,  
33 shall carry out the purposes of this subchapter.

34       **§20081. Definitions**

36           As used in this subchapter, unless the context otherwise  
37 indicates, the following terms have the following meanings.

40           **1. Board.** "Board" means the State Board of Alcohol and Drug  
41 Counselors.

42           **2. College-level course.** "College-level course" means any  
43 education class or program that includes at least 15 contact  
44 hours per credit.

46           **3. Consumer of alcohol and drug counseling services.**  
47 "Consumer of alcohol and drug counseling services" means a person  
48 affected by or recovering from alcoholism or other drug abuse.

2           4. Department. "Department" means the Department of Mental  
Health, Mental Retardation and Substance Abuse Services.

4           5. Nonprovider. "Nonprovider" means an individual who  
neither is presently nor has been any of the following for the  
6           past 3 years:

8           A. An alcohol and drug counselor;

10          B. An administrator or board member of a facility or  
12          program that provides alcohol and drug counseling services;  
            or

14          C. The spouse of any of those persons listed in paragraphs  
16          A and B.

18          6. Licensed alcohol and drug counselor. "Licensed alcohol  
and drug counselor" means an individual who provides the service  
of professional alcohol and drug counseling to the public for a  
20          fee, monetary or otherwise, and who meets the criteria  
established in sections 20089-A and 20089-C for a licensed  
22          alcohol and drug counselor.

24          7. Inactive alcohol and drug counselor. "Inactive alcohol  
and drug counselor" means a licensed or registered alcohol and  
26          drug counselor who registers with the board for a leave from the  
field for a period not to exceed 2 years. Inactive alcohol and  
28          drug counselors are not required to take the written or oral  
examinations nor provide documentation of continuing education  
30          during the period they have abstained from practice. Inactive  
alcohol and drug counselors must notify the board for license  
32          renewal prior to resuming their practice.

34          8. Alcohol and drug counseling services. "Alcohol and drug  
counseling services" are those counseling services offered for a  
36          fee, monetary or otherwise, as part of the treatment and  
rehabilitation of persons abusing alcohol or other drugs. The  
38          purpose of alcohol and drug counseling services is to help  
individuals, families and groups confront and resolve problems  
40          caused by the abuse of alcohol or other drugs. Alcohol and drug  
counseling services are the 12 core functions defined by rule of  
42          the board.

44          9. Registered alcohol and drug counselor. "Registered  
alcohol and drug counselor" means a practitioner who provides the  
46          service of professional alcohol and drug counseling to the public  
for a fee, monetary or otherwise, who does not engage in private  
48          practice and who meets the criteria established in sections  
20089-A and 20089-B for a registered alcohol and drug counselor.

50

2  
3 **§20082. Reporting**

4 By August 1st of each year, the board shall submit to the  
5 commissioner for the preceding fiscal year ending June 30th, an  
6 annual report of its operations and financial position, together  
7 with such comments and recommendations as the board considers  
8 essential. The commissioner shall maintain the board's funds in  
9 a separate account and shall provide the board with a quarterly  
10 accounting of its revenues and expenses. When submitting any  
11 budget request to the Legislature, the department and the  
12 Governor shall provide that any funds for the board be listed in  
13 a separate account.

14 **§20083. Licensing**

15 A person may not, unless specifically exempted by this  
16 subchapter, practice as an alcohol and drug counselor or profess  
17 to the public to be, or assume or use the title or designation  
18 of, "inactive alcohol and drug counselor," "licensed alcohol and  
19 drug counselor" or "registered alcohol and drug counselor" or the  
20 abbreviation "I.A.D.C.," "L.A.D.C." or "R.A.D.C." or any other  
21 title, designation, words, letters or device tending to indicate  
22 the person is licensed or registered, unless that person is  
23 licensed or registered with and holds a current and valid license  
24 or certificate of registration from the board. A person who  
25 offers or gives alcohol and drug counseling services for  
26 compensation in violation of this section must be punished, upon  
27 adjudication, by a fine of not less than \$50 and not more than  
28 \$500 for each such offense.

29 **§20084. Exemptions**

30  
31  
32 1. Peer groups; self-help. This subchapter may not be  
33 construed to prevent any person from engaging in or offering  
34 substance abuse services such as self-help, sponsorship through  
35 alcoholics or narcotics anonymous groups or other uncompensated  
36 substance abuse assistance.

37  
38 2. Government and school employees. This subchapter may  
39 not be construed to apply to the activities and services of an  
40 employee or other agent of a recognized academic institution; a  
41 federal, state, county or local government institution, a program  
42 agency or facility; or a school committee, school district,  
43 school approved for attendance purposes pursuant to Title 20-A,  
44 section 2901, school board or board of trustees, if the  
45 individual is performing those activities solely within the  
46 agency or under the jurisdiction of that agency and if a license  
47 granted under this subchapter is not a requirement for employment.  
48

2 3. Clergy. This subchapter may not be construed to apply  
to the activities and services of any priest, rabbi, member of  
4 the clergy, Christian Science healer or minister of the gospel of  
any religious denomination when performing counseling services as  
6 part of religious duties and in connection with a specific  
synagogue or church of any religious denomination.

8 4. Interns. This subchapter may not be construed to apply  
to the activities and services of a student, intern or trainee in  
10 substance abuse counseling pursuing a course of study in  
counseling in a regionally accredited institution of higher  
12 education or training institution, if those activities are  
14 performed under supervision and constitute a part of the  
supervised course of study.

16 5. Other licensed professionals. This subchapter may not  
be construed to prevent a person licensed in the field of  
18 medicine, psychology, nursing, social work or professional  
counseling who is qualified to provide substance abuse counseling  
20 services by virtue of the requirements for that profession from  
engaging in or offering substance abuse counseling services if  
22 such a person does not profess to be providing the service of a  
substance abuse counselor as the sole professional service  
24 rendered by that person. These professionals may not be required  
26 to obtain additional certification in order to provide substance  
abuse counseling services as permitted by this subsection.

28 **§20085. Registration required**

30 1. Alcohol and drug counselor. A person who performs or  
offers to perform alcohol and drug counseling services for a fee,  
32 monetary or otherwise, and who professes to be an alcohol and  
drug counselor is required to submit evidence of the  
34 qualifications to practice and must be registered or licensed in  
accordance with this subchapter.

36 2. Evidence of qualifications. An individual who is  
providing the service of alcohol and drug counseling to the  
38 public for a fee, monetary or otherwise, and who is not employed  
in a program certified or licensed by the State is required to  
40 submit evidence of the qualifications to practice and must be  
42 licensed as a licensed alcohol and drug counselor as provided in  
this subchapter. An individual who is providing the service of  
44 alcohol and drug counseling to the public for a fee, monetary or  
otherwise, and who is employed in a program certified or licensed  
46 by the State must be registered or be licensed pursuant to this  
subchapter.

48 **ARTICLE II**

**STATE BOARD OF ALCOHOL AND DRUG COUNSELORS**

**§20086. Appointment; terms; vacancies**

**1. Membership.** The State Board of Alcohol and Drug Counselors, as established by section 12004-A, subsection 41, consists of 9 members. Seven members are appointed by the Governor. One member must be the director or a designee. One member, appointed by the Chancellor of the University of Maine System, must be a member of the university faculty involved in the training of substance abuse or alcohol and drug counselors. Of these 9 members, 5 members must be licensed alcohol and drug counselors and 2 members must be public members. Members must represent a broad geographic distribution of the State.

**2. Term of office.** Appointments are for 3-year terms. Appointments of members must comply with Title 32, section 60.

**§20087. Removal of board members**

A board member may be removed by the Governor for cause.

**§20088. Meetings; elections; quorum**

The board shall meet at least once a year to conduct business and elect officers. Additional meetings may be held as necessary to conduct the business of the board, and may be convened at the call of the chair or a majority of the board members. Six members of the board constitute a quorum for all purposes.

The board shall elect a chair and such officers as determined necessary to carry out the business of the board. The board shall keep such records and minutes as are necessary to the ordinary dispatch of its functions.

**§20089. Powers and duties of board**

The board has the following powers and duties in addition to all other powers and duties imposed by this subchapter.

**1. Set standards.** The board shall administer and enforce this subchapter, set forth education and examination standards and evaluate the qualifications for licensure. Any standards of eligibility set by the board must be clearly defined, measurable and written in accordance with accepted standards and be available to the public upon request.

**2. Adopt criteria.** The board, in cooperation with the office, may design and adopt an examination or other suitable

2 criteria for establishing a candidate's knowledge, skill and  
3 experience in alcohol and drug counseling. Any criteria adopted  
4 by the board for establishing a candidate's knowledge, skill and  
5 experience in alcohol and drug counseling must be clearly  
6 defined, have an established baseline scoring procedure that is  
7 objectively measured, be in writing and be available to the  
8 public upon request.

9  
10 3. Registration and standards. The board may register and  
11 set standards of practice for all persons practicing as alcohol  
12 and drug counselors who are working in the State. Any standards  
13 set by the board for practice for alcohol and drug counselors  
14 working in the State must be clearly defined, measurable and  
15 written in accordance with accepted standards and available to  
16 the public upon request. Educational background must be a  
17 consideration in any licensing or registration standards adopted  
18 by the board.

19  
20 4. Rules. The board may adopt such rules and establish such  
21 advisory committees as the board considers necessary and proper  
22 to carry out this subchapter. Rules must be adopted in  
23 accordance with the procedures established in chapter 375,  
24 subchapter II and are routine technical rules as defined in  
25 chapter 375, subchapter II-A.

26 5. Complaints. The board shall investigate, or cause to be  
27 investigated, all complaints made to it and all cases of  
28 noncompliance with or other violation of this subchapter or any  
29 rules adopted by the board.

30  
31 6. Hearings. Hearings must be conducted by the board to  
32 assist with investigations, to determine whether grounds exist  
33 for suspension, revocation or denial of registration or licensure  
34 or as otherwise considered necessary to the fulfillment of its  
35 responsibilities under this subchapter.

36  
37 The board may not refuse to renew registration or licensure for  
38 any reason other than failure to pay a required fee unless it has  
39 afforded the licensee an opportunity for an adjudicatory  
40 hearing. The board shall hold an adjudicatory hearing at the  
41 written request of any person who is denied registration or  
42 licensure without a hearing for any reason other than failure to  
43 pay a required fee, as long as the request for hearing is  
44 received by the board within 30 days of the applicant's receipt  
45 of written notice of the denial of application, the reasons for  
46 the denial of application and the applicant's right to request a  
47 hearing. Hearings must be conducted in conformity with chapter  
48 375, subchapter IV, to the extent applicable. The board may  
49 subpoena witnesses, records and documents in any hearing it  
50 conducts.





2 counseling in such a manner as to safeguard the interests of the  
3 public; and

4 2. **Abstinence from drugs and alcohol.** Have abstained from  
5 the active abuse of alcohol or any other drug that in the  
6 judgment of the board has been or could have been detrimental to  
7 the applicant's performance or competency as an alcohol and drug  
8 counselor. It is strongly recommended that applicants have  
9 abstained for at least the 2-year period immediately preceding  
10 the date on which application is made. In considering an  
11 applicant for registration, the board may not consider a history  
12 of previous alcoholism or drug addiction as an essential  
13 qualification nor disqualification for registration or licensure.

14 **§20089-B. Eligibility requirements for registration**

15  
16 An individual may not practice as an alcohol and drug  
17 counselor for a fee, monetary or otherwise, unless that  
18 individual is licensed pursuant to this subchapter or registers  
19 with the board. Each individual who is not licensed and who  
20 engages in alcohol and drug counseling shall register with the  
21 board every 2 years. Each individual who registers shall fill  
22 out a form designed by the board. A person registered to provide  
23 alcohol and drug counseling services may not practice without  
24 supervision or engage in private practice.

25  
26 The board may issue a license to practice as a registered  
27 alcohol and drug counselor upon the affirmative vote of 6 members  
28 of the board to any applicant who has met the eligibility  
29 requirements set forth in section 20089-A.

30  
31 An applicant who is not issued a license or a certificate of  
32 registration may again apply for registration after a period of  
33 not less than 6 months from the date of the last denial.

34  
35 **§20089-C. Eligibility requirements for qualification as**  
36 **licensed alcohol and drug counselor**

37  
38 1. **Licensed alcohol and drug counselor.** The board shall  
39 issue a license to practice as a licensed alcohol and drug  
40 counselor upon the affirmative vote of at least 6 members of the  
41 board to any applicant who has satisfactorily met the following  
42 minimal requirements:

43  
44 A. Met the eligibility requirements set forth in section  
45 20089-A;

46  
47 B. Obtained a passing grade, as established by the board,  
48 on the written and oral examinations the board has  
49 prescribed by its rules;  
50

2           C. Obtained at least an associate's degree in an  
4           appropriate social science field from an accredited  
6           institution or program approved by the board with a  
          concentration of course work in the 12 core functions  
          defined by rule of the board;

8           D. Completed a minimum of 4,000 supervised direct client  
10          service hours in the 12 core functions defined by rule of  
12          the board. This work experience may be gained in any  
14          supervised activity, including volunteer work or student  
          placement, that relates to the core functions described in  
          the board's licensing examination; and

16          E. Provided documentation of experience with a wide range  
18          of clients, in a wide range of treatment settings while  
          working independently.

20          2. Other qualifications. An individual who has obtained a  
22          master's degree in counseling, substance abuse or a related field  
24          and who can document 1,000 hours of direct service to clients  
26          with problems related to substance abuse is eligible to apply for  
          licensure and must be licensed in accordance with this  
          subchapter. The board may adopt rules to recognize exceptional  
          education or experience that qualifies an applicant to apply for  
          licensure.

28          **§20089-D. Application**

30          A person registered by the board as a registered substance  
32          abuse counselor prior to September 1, 1987 is automatically  
          licensed as a licensed alcohol and drug counselor.

34          A person registered by the board as a registered substance  
36          abuse counselor, provisional or not registered by the board but  
38          who is providing the primary service of professional alcohol and  
40          drug counseling to the public and who is not employed in a  
          program certified or licensed by the State prior to the effective  
          date of this section shall comply with the requirements of  
          section 20085, subsection 2, by July 1, 2002.

42          **§20089-E. Application; membership fees**

44          Application for registration as a registered alcohol and  
46          drug counselor or for licensure as a licensed alcohol and drug  
48          counselor must be on forms prescribed and furnished by the board.  
          The director may establish by rule fees for purposes authorized  
          under this subchapter in amounts that are reasonable and  
50          necessary for their respective purposes, except that the fee for  
          any one purpose may not exceed \$200 annually. Rules adopted

2 pursuant to this section are routine technical rules as defined  
3 in Title 5, chapter 375, subchapter II-A.

4 **§20089-F. Examinations**

6 The board shall make reasonable arrangements for written and  
7 oral examinations to be held at times and places necessary to  
8 accommodate those persons applying to take the examinations. The  
9 examinations must be graded using established written baseline  
10 scores for failure or passage, be based on accepted alcohol and  
11 drug counseling criteria and include measurable and clearly  
12 defined procedures for grading the results and issuing a pass or  
13 fail decision. Decisions on all examinations, oral and written,  
14 must be in writing and include a grade, a summary of the criteria  
15 for the grade and an explanation of the procedure for  
16 reexamination or appeal. Notice of the examination results must  
17 be forwarded to the applicants within 15 days of the date on  
18 which the examination was conducted. The board may use fees  
19 generated from examinations to pay examination evaluators.

20 **ARTICLE IV**

22 **SUSPENSION AND REVOCATION**

24 **§20089-G. Suspension and revocation**

26 The board may suspend or revoke a license or certificate of  
27 registration pursuant to section 10004. In addition, the board  
28 may refuse to issue or renew or the District Court may suspend,  
29 revoke or refuse to renew a license or certificate of  
30 registration on any of the following grounds:

32 1. **Fraud or deceit.** The practice of fraud or deceit in  
33 obtaining a license or a certificate of registration under this  
34 subchapter or in connection with services rendered as an alcohol  
35 and drug counselor;

37 2. **Active abuse.** Active abuse of alcohol or any other drug  
38 that in the judgment of the board is detrimental to the  
39 performance or competence of an alcohol and drug counselor;

41 3. **Mental incompetence.** A legal finding of mental  
42 incompetence;

44 4. **Aiding and abetting misrepresentation.** Aiding or  
45 abetting a person not duly licensed or registered as an alcohol  
46 and drug counselor in representing that person as a licensed  
47 alcohol and drug counselor or registered alcohol and drug  
48 counselor in this State;

2           5. Unprofessional conduct or negligence. Gross negligence,  
3 incompetence, misconduct or violation of the code of ethics  
4 established by the board in the performance of alcohol and drug  
5 counseling services;

6           6. Criminal conviction. Subject to the limitations of  
7 chapter 341, conviction of a Class A, B or C crime or of a crime  
8 which, if committed in this State, would be punishable by one  
9 year or more of imprisonment;

10           7. Incompetence in the practice of counseling.  
11 Incompetence in the practice of counseling such as engaging in  
12 conduct that evidences a lack of ability or fitness to discharge  
13 the duty owed by the counselor to a client or engaging in conduct  
14 that evidences a lack of knowledge or inability to apply  
15 principles or skills to carry out the practice for which that  
16 person is licensed, certified or registered; or

17           8. Valid cause. Any other valid cause including violation  
18 of any provision of this subchapter or rule of the board.

19           **§20089-H. Issuance after denial, suspension or revocation**

20           An individual whose license or registration has been denied,  
21 suspended or revoked may apply to the board for licensure,  
22 registration or certification reinstatement one year after the  
23 date of the board's original action. A competence review is a  
24 condition of reinstatement. The board shall determine the nature  
25 of this review and adopt rules.

26           **§20089-I. Expiration and renewal**

27           A license or registration under this subchapter expires  
28 annually on November 30th or at such other time as the  
29 commissioner may designate. Licensure or registration may be  
30 renewed upon written application, the approval of the board and  
31 the payment of the fee provided. Before a license or  
32 registration may be renewed, the applicant must present evidence  
33 of continued professional learning and training of a type  
34 acceptable to the board. At a minimum, applicants for renewal  
35 must document the successful completion of at least 50 hours of  
36 continuing education, as defined by the board, within 2 years.

37           Licensure or registration may be renewed up to 90 days after  
38 the date of expiration upon payment of a late fee in addition to  
39 the renewal fee. A person who submits an application for renewal  
40 more than 90 days after the license renewal date is subject to  
41 all requirements governing new applicants under this subchapter,  
42 except that the board may in its discretion, giving due  
43 consideration to the protection of the public, waive examination  
44

2 if that renewal application is made within 2 years from the date  
4 of that expiration or if the applicant is a registered inactive  
6 alcohol and drug counselor. The board is responsible for mailing  
8 notification of the date of expiration of a license or a  
certificate of registration to any licensed alcohol and drug  
counselor, inactive alcohol and drug counselor or registered  
alcohol and drug counselor not later than 30 days prior to the  
date of expiration.

10 **§20089-J. Reciprocity**

12 The board may waive examination for applicants who are  
14 recognized by other credentialing bodies as having met  
16 qualifications and standards determined by the board to be  
equivalent to those set forth in this subchapter.

18 **§20089-K. Treatment of minors**

20 A person licensed under this subchapter who renders  
22 counseling services to a minor for the treatment of problems  
24 associated with the abuse of drugs or alcohol is under no  
26 obligation to obtain the consent of that minor's parent or  
28 guardian or to inform that parent or guardian of that treatment.  
30 This section may not be construed to prohibit the licensed person  
rendering that treatment from informing that parent or guardian.  
For the purposes of this section "abuse of drugs" means the use  
of drugs solely for their stimulant, depressant or hallucinogenic  
effect upon the higher functions of the central nervous system  
and not as a therapeutic agent recommended by a practitioner in  
the course of medical treatment.

32 **Sec. 4. 32 MRSA c. 81, as amended, is repealed.**

34 **Sec. 5. 34-B MRSA §1204, sub-§2, ¶C, as amended by PL 1995, c.**  
36 **691, §3, is further amended to read:**

38 **C. The commissioner shall appoint the following officials**  
**to serve at the commissioner's pleasure:**

- 40 (1) Associate Commissioners;
- 42 (2) Superintendent, Augusta Mental Health Institute;
- 44 (3) Superintendent, Bangor Mental Health Institute;
- 46 (4) Superintendent, Pineland Center;
- 48 (5) Director, Mental Retardation Facility;
- 50 (6) Director, Elizabeth Levinson Center;

- 2 (7) Assistant to the Commissioner for Public  
Information;  
4  
6 (8) Assistant to the Commissioner;  
8 (10) Regional Directors, who shall report directly to  
the commissioner; and  
10 (11) Director, Office of Substance Abuse, who must be  
an associate commissioner of the department.  
12

14 The Director of the Office of Substance Abuse must be  
reviewed by the joint standing committee of the Legislature  
16 having jurisdiction over human resource matters prior to  
taking office.

18 **Sec. 6. Transition.** Members of the State Board of Alcohol and  
Drug Counselors within the Department of Professional and  
20 Financial Regulation continue to serve as members of the State  
Board of Alcohol and Drug Counselors in the Department of Mental  
22 Health, Mental Retardation and Substance Abuse Services as  
established in this Act until the expiration of their respective  
24 terms as specified in the Maine Revised Statutes, Title 32,  
section 6208-A, subsection 2.

26  
28 **Sec. 7. Revisor's review; cross-references.** The Revisor of  
Statutes shall review the Maine Revised Statutes and include in  
the errors and inconsistencies bill submitted to the Second  
30 Regular Session of the 120th Legislature pursuant to Title 1,  
section 94 any sections necessary to correct and update any  
32 cross-references in the statutes to provisions of law repealed in  
this Act.  
34

36 **SUMMARY**

38 This bill moves the operation of the State Board of Alcohol  
and Drug Counselors from the Department of Professional and  
40 Financial Regulation to the Office of Substance Abuse, which is  
part of the Department of Mental Health, Mental Retardation and  
42 Substance Abuse Services. Current board members would continue  
to serve their respective current terms on the board. This bill  
44 also changes the position of Director of the Office of Substance  
Abuse to an associate commissioner of the Department of Mental  
46 Health, Mental Retardation and Substance Abuse Services.