

MAINE STATE LEGISLATURE

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126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 1373

S.P. 480

In Senate, April 9, 2013

An Act To Update the Polygraph Examiner Licensing Laws

Submitted by the Department of Public Safety pursuant to Joint Rule 204.

Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.

A handwritten signature in black ink, appearing to read "D M Grant".

DAREK M. GRANT
Secretary of the Senate

Presented by Senator HASKELL of Cumberland.
Cosponsored by Senator: BURNS of Washington.

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

2 **Sec. 1. 5 MRSA §12004-A, sub-§50** is enacted to read:

3 **50.**

4 Polygraph Examiners Board

Not Authorized

32 MRSA §7371

5 **Sec. 2. 22 MRSA §3477, sub-§1, ¶A**, as amended by PL 2011, c. 291, §2 and c.
6 657, Pt. W, §5, is further amended to read:

7 A. While acting in a professional capacity:

8 (1) An allopathic or osteopathic physician;

9 (2) A medical resident or intern;

10 (3) A medical examiner;

11 (4) A physician's assistant;

12 (5) A dentist, dental hygienist or dental assistant;

13 (6) A chiropractor;

14 (7) A podiatrist;

15 (8) A registered or licensed practical nurse;

16 (9) A certified nursing assistant;

17 (10) A social worker;

18 (11) A psychologist;

19 (12) A pharmacist;

20 (13) A physical therapist;

21 (14) A speech therapist;

22 (15) An occupational therapist;

23 (16) A mental health professional;

24 (17) A law enforcement official, corrections officer or other person holding a
25 certification from the Maine Criminal Justice Academy;

26 (18) Emergency room personnel;

27 (19) An ambulance attendant;

28 (20) An emergency medical technician or other licensed medical service
29 provider;

30 (21) Unlicensed assistive personnel;

31 (22) A humane agent employed by the Department of Agriculture, Conservation
32 and Forestry;

- 1 (23) A clergy member acquiring the information as a result of clerical
- 2 professional work except for information received during confidential
- 3 communications;
- 4 (24) A sexual assault counselor;
- 5 (25) A family or domestic violence victim advocate;
- 6 (26) A naturopathic doctor;
- 7 (27) A respiratory therapist;
- 8 (28) A court-appointed guardian or conservator; ~~or~~
- 9 (29) A chair of a professional licensing board that has jurisdiction over mandated
- 10 reporters; or
- 11 (30) A polygraph examiner;

12 **Sec. 3. 22 MRSA §4011-A, sub-§1, ¶A**, as amended by PL 2009, c. 211, Pt. B,
13 §18 and PL 2011, c. 657, Pt. W, §5, is further amended to read:

- 14 A. When acting in a professional capacity:
- 15 (1) An allopathic or osteopathic physician, resident or intern;
- 16 (2) An emergency medical services person;
- 17 (3) A medical examiner;
- 18 (4) A physician's assistant;
- 19 (5) A dentist;
- 20 (6) A dental hygienist;
- 21 (7) A dental assistant;
- 22 (8) A chiropractor;
- 23 (9) A podiatrist;
- 24 (10) A registered or licensed practical nurse;
- 25 (11) A teacher;
- 26 (12) A guidance counselor;
- 27 (13) A school official;
- 28 (14) A youth camp administrator or counselor;
- 29 (15) A social worker;
- 30 (16) A court-appointed special advocate or guardian ad litem for the child;
- 31 (17) A homemaker;
- 32 (18) A home health aide;
- 33 (19) A medical or social service worker;

- 1 (20) A psychologist;
2 (21) Child care personnel;
3 (22) A mental health professional;
4 (23) A law enforcement official;
5 (24) A state or municipal fire inspector;
6 (25) A municipal code enforcement official;
7 (26) A commercial film and photographic print processor;
8 (27) A clergy member acquiring the information as a result of clerical
9 professional work except for information received during confidential
10 communications;
11 (28) A chair of a professional licensing board that has jurisdiction over mandated
12 reporters;
13 (29) A humane agent employed by the Department of Agriculture, Conservation
14 and Forestry;
15 (30) A sexual assault counselor;
16 (31) A family or domestic violence victim advocate; ~~and~~
17 (32) A school bus driver or school bus attendant; and
18 (33) A polygraph examiner;

19 **Sec. 4. 32 MRSA c. 85**, as amended, is repealed.

20 **Sec. 5. 32 MRSA c. 86** is enacted to read:

21 **CHAPTER 86**
22 **POLYGRAPH EXAMINERS ACT**
23 **SUBCHAPTER 1**
24 **GENERAL PROVISIONS**

25 **§7351. Short title**

26 This chapter may be known and cited as "the Polygraph Examiners Act."

27 **§7352. Definitions**

28 As used in this chapter, unless the context otherwise indicates, the following terms
29 have the following meanings.

30 **1. Board.** "Board" means the Polygraph Examiners Board established under Title 5,
31 section 12004-A, subsection 50.

32 **2. Commissioner.** "Commissioner" means the Commissioner of Public Safety.

1 D. Inform the subject of an examination of the examination results on request at the
2 completion of the examination; and

3 E. Provide within a reasonable time information requested by the board as the result
4 of a formal complaint to the board alleging a violation of this chapter.

5 **2. Prohibitions.** A polygraph examiner or an intern may not:

6 A. Aid or abet another to violate this chapter or a rule adopted under this chapter;

7 B. Allow the person's license issued under this chapter to be used by an unlicensed
8 person in violation of this chapter;

9 C. Make a material misstatement in an application for the issuance or renewal of a
10 license;

11 D. Make a misrepresentation or false promise or cause the printing of a false or
12 misleading advertisement to directly or indirectly obtain business;

13 E. Conduct an examination without the informed consent of the subject of the
14 examination;

15 F. Administer a polygraph examination to a minor without the written consent of a
16 parent of the minor or the minor's legal guardian;

17 G. Make a false report concerning an examination for polygraph examination
18 purposes; and

19 H. Commit a criminal offense, including, but not limited to, an offense that directly
20 relates to the duties and responsibilities of a polygraph examiner.

21 **3. Mandatory reporting.** A polygraph examiner shall:

22 A. Inform each subject of an examination, prior to the commencement of any part of
23 a polygraph examination, that any information disclosed by the subject of an
24 examination to the polygraph examiner that requires that a report be made to the
25 Department of Health and Human Services pursuant to Title 22, section 3477 or
26 4011-A will be reported to that department; and

27 B. Report any information that must be reported to the Department of Health and
28 Human Services pursuant to Title 22, section 3477 or 4011-A if a subject of an
29 examination discloses any information to the polygraph examiner that requires that
30 such a report be made.

31 **4. Disciplinary action.** A person who fails to comply with this section is subject to
32 disciplinary action pursuant to section 7388.

33 **§7362. Minimum polygraph instrument requirements**

34 **1. Minimum instrument requirements.** An instrument must record visually,
35 permanently and simultaneously a subject's cardiovascular, respiratory and electrodermal
36 patterns. An instrument used by a polygraph examiner may also record patterns of other
37 physiological changes.

1 **POLYGRAPH EXAMINERS BOARD**

2 **§7371. Polygraph Examiners Board**

3 **1. Members.** The Polygraph Examiners Board consists of 5 members appointed by
4 the Governor, as follows:

5 A. Two licensed polygraph examiner members who are polygraph examiners for a
6 state, county or municipal law enforcement agency;

7 B. Two licensed polygraph examiner members who are polygraph examiners in a
8 commercial field; and

9 C. One member who represents the public.

10 **2. Residency.** A member of the board must have been a resident of this State for at
11 least 2 years immediately preceding the date of appointment.

12 **3. Active engagement.** Except for the member of the board who represents the
13 public, a member of the board must be actively engaged as a polygraph examiner on the
14 date of appointment to the board.

15 **4. Employment.** No 2 board members may be employed by the same employer.

16 **5. Meetings.** The board shall meet as needed, but at least twice annually.

17 **6. Terms.** Board members serve 3-year terms.

18 **7. Vacancies.** If a vacancy occurs on the board, the Governor shall appoint a
19 successor to fill the unexpired term.

20 **8. Chair.** The board shall select from among its members a chair to serve for a
21 2-year term.

22 **9. Staff.** The department shall provide staffing necessary to administer the work of
23 the board.

24 A. Staff of the department provided pursuant to this subsection are authorized to
25 review and approve applications for licensure or renewal in accordance with criteria
26 established in statute or in rules adopted by the board.

27 B. Licensing decisions made by staff under paragraph A may be appealed to the
28 board.

29 **§7372. Board authority; powers and duties**

30 **1. General authority.** In addition to the authority otherwise conferred to the board,
31 unless expressly prohibited by this chapter or otherwise modified or conditioned under
32 this chapter, the board may take one or more actions under Title 10, section 8003,
33 subsection 5, paragraphs A-1 to F and Title 10, section 8003, subsection 5-A, paragraphs
34 A to G.

1 Armed Forces, a federal investigative agency or a law enforcement agency
2 immediately preceding the date of application;

3 C. Is a graduate of a board-approved polygraph examiner course and has
4 satisfactorily completed at least 6 months of a polygraph examiner internship; and

5 D. Has passed an examination approved by the board to determine the person's
6 competency for a license.

7 **2. Examination.** The board shall provide for an examination for licensure under this
8 chapter to be administered as needed, but at least at 3-month intervals.

9 **§7383. Nonresident applicant for license**

10 **1. Consent to action.** In addition to meeting all other requirements for a license, an
11 applicant for the issuance or renewal of a polygraph examiner license who is not a
12 resident of this State must file with the board an irrevocable consent to have:

13 A. An action against the applicant filed in a court in a county or municipality of the
14 state in which:

15 (1) The plaintiff resides; or

16 (2) A part of the transaction out of which the alleged cause of action arose
17 occurred; and

18 B. Process in the action under paragraph A served on the applicant by leaving 2
19 copies of the process with the board. Service of process in the manner described
20 under this paragraph is binding for all purposes.

21 **2. Copy to applicant.** The board shall immediately send by registered or certified
22 mail a copy of the process under subsection 1, paragraph B to the applicant at the address
23 shown on board records.

24 **§7384. Applicant with out-of-state license**

25 The board may grant a license to an applicant who holds a valid license from another
26 state that has license requirements substantially equivalent to or more stringent than those
27 of this State.

28 **§7385. Continuing education**

29 A polygraph examiner shall participate in continuing education programs as required
30 by rules of the board.

31 **§7386. License holder information**

32 A polygraph examiner or intern shall notify the board in writing of a change in the
33 polygraph examiner's or intern's principal business location or residential location not
34 later than the 30th day after the date the change is made.

1 **§7387. Display of license**

2 A polygraph examiner or intern shall prominently display the polygraph examiner's
3 or intern's license or a copy of the license at the polygraph examiner's or intern's place of
4 business or place of internship, as appropriate.

5 **§7388. License denial and disciplinary action**

6 **1. Disciplinary action.** The board may take action under subsection 2 against an
7 applicant or license holder who violates any of the provisions of section 7361, subsection
8 1 or 2 or who is determined by a licensed, qualified medical doctor to be medically
9 incapacitated or otherwise unable to conduct polygraph examinations.

10 **2. Forms of discipline.** If the board determines that action against an applicant or
11 license holder is allowed under subsection 1, the board may impose the forms of
12 discipline described in Title 10, section 8003, subsection 5-A, paragraph B.

13 **3. Jurisdiction; payment of penalties.** The board's jurisdiction to suspend or
14 revoke a polygraph examiner license is concurrent with that of the District Court. Civil
15 penalties must be paid to the Treasurer of State.

16 **4. Hearing required in certain actions.** A nonconsensual disciplinary action taken
17 under authority of this chapter other than denial or nonrenewal of a license may be
18 imposed only after a hearing conforming to the requirements of Title 5, chapter 375,
19 subchapter 4 and is subject to judicial review exclusively in the Superior Court in
20 accordance with Title 5, chapter 375, subchapter 7.

21 **5. Appeal.** A nonconsensual revocation of a polygraph examiner license taken under
22 authority of this chapter, upon appeal within the time frames provided in Title 5, section
23 11002, subsection 3, is subject to de novo judicial review exclusively in District Court.

24 **6. Hearing upon request.** The board shall hold a hearing conforming to the
25 requirements of Title 5, chapter 375, subchapter 4 at the written request of any person
26 who is denied an initial or renewal license without a hearing for any reason other than
27 failure to pay a fee, if the request for hearing is received by the board within 30 days of
28 the applicant's receipt of written notice of the denial of the application, the reasons for the
29 denial and the applicant's right to request a hearing.

30 **7. Subpoena.** The board may subpoena witnesses, records and documents in any
31 adjudicatory hearing it conducts.

32 **8. Costs of record production in appeals.** In the event of appeal to Superior Court
33 from any form of discipline imposed pursuant to this chapter, including denial or
34 nonrenewal of a license, the board may assess the applicant making the appeal for the
35 costs of transcribing and reproducing the administrative record.

36 **§7389. Surrender of license**

37 A licensee whose license is suspended or revoked by the board shall immediately
38 surrender the license to the board.

