

# MAINE STATE LEGISLATURE

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**LAWS**  
OF THE  
**STATE OF MAINE**

AS PASSED BY THE  
ONE HUNDRED AND THIRTEENTH LEGISLATURE  
FIRST REGULAR SESSION

December 3, 1986 to June 30, 1987

Chapters 1-542

PUBLISHED BY THE REVISOR OF STATUTES  
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1987

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**PUBLIC LAWS**

OF THE

**STATE OF MAINE**

AS PASSED AT THE  
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ONE HUNDRED AND THIRTEENTH LEGISLATURE  
1987

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profit, which is engaged in providing acute, restorative, rehabilitative, maintenance, preventive or health promotion services through professional nursing and at least one other therapeutic service, such as physical therapy, occupational therapy, speech pathology, home health aides, nurse assistants, medical social work and nutritionist services, either directly or through contractual agreement, in a client's place of residence. This term does not apply to any sole practitioner providing private duty nursing services or other restorative, rehabilitative, maintenance, preventive of health promotion services in a client's place or residence. In addition, this term does not apply to hospitals, skilled nursing facilities or intermediate care facilities providing in-home services exempt from licensure under section 2147, subsection 10.

Sec. 2. 22 MRSA §2147, sub-§10, as amended by PL 1985, c. 189, §2, is further amended to read:

10. Facilities licensed pursuant to chapter 405. Hospitals, intermediate care facilities, skilled nursing facilities or other facilities licensed pursuant to chapter 405 when the services are provided to clients residing in those facilities, or to 6 or fewer clients at any one time in their homes under a plan of care approved by the department or its designee when it is documented in the patient's record that the licensed home health care agency or agencies serving the patient's area:

A. Have indicated that they are unable to provide those services; or

B. Agree that the plan of care is an acceptable plan.

The plan of care must meet standards for staff qualifications and supervision consistent with the standards required of licensed home health care providers;

Effective September 29, 1987.

## CHAPTER 487

S.P. 606 — L.D. 1796

### AN ACT to Allow Increased Participation of State Employees in the Electoral Process.

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

5 MRSA §7056, sub-§3, as enacted by PL 1985, c. 785, Pt. B, §38, is amended to read:

3. Candidacy for elective office. No officer or employee in the classified service of this State may be a candidate for elective office in a partisan public election other than for a local office. This subsection shall not be construed as to prohibit any such officer or employee of the State from being a candidate in any election if none of the candidates is to be nominated or elected at that election as representing a party, any of whose candidates

for presidential elector received votes in the last preceding election at which presidential electors were selected. Law enforcement officers shall continue to be subject to departmental rules regarding procedures on candidacy.

Effective September 29, 1987.

## CHAPTER 488

S.P. 365 — L.D. 1100

### AN ACT to License Acupuncturists.

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

Sec. 1. 5 MRSA §12004, sub-§1, ¶A, sub-¶(2-A) is enacted to read:

(2-A)	<u>Acupuncture Licensing Board</u>	<u>Expenses Only</u>	<u>32 MRSA §12406</u>
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Sec. 2. 10 MRSA §8001, as repealed and replaced by PL 1985, c. 737, Pt. A, §21, and as amended by PL 1985, c. 819, Pt. A, §15, is repealed and the following enacted in its place:

§8001. Department; organization

There is created and established the Department of Professional and Financial Regulation, in this chapter referred to as the "department," to regulate financial institutions, insurance companies, commercial sports, grantors of consumer credit and to license and regulate professions and occupations. The department shall be composed of the following bureaus, boards and commissions:

Banking, Bureau of;

Consumer Credit Protection, Bureau of;

Insurance, Bureau of;

Athletic Commission, Maine;

Pilotage Commission, Maine State;

Real Estate Commission;

Running Horse Racing Commission, State;

Arborist Examining Board;

Auctioneers, Board of Licensing of;

Barbers, State Board of;

Commercial Driver Education, Board of;

Dietetic Practice, Board of Registration of;

Electricians' Examining Board;  
Foresters, State Board of Registration for Professional;  
Funeral Service, State Board of;  
Geologists and Soil Scientists, State Board of Certification for;  
Hearing Aid Dealers and Fitters, Board of;  
Manufactured Housing Board;  
Nursing Home Administrators Licensing Board;  
Occupational Therapy Practice, Board of;  
Oil and Solid Fuel Board;  
Physical Therapy, Board of Examiners in;  
Plumbers' Examining Board;  
Psychologists, State Board of Examiners of;  
Radiologic Technology Board of Examiners;  
Respiratory Care Practitioners, Board of;  
Social Worker Registration, State Board of;  
Speech Pathology and Audiology, Board of Examiners on;  
Substance Abuse Counselors, Board of Registration of;  
Veterinary Board; and  
Acupuncture Licensing Board.

Sec. 3. 32 MRSA c. 113 is enacted to read:

#### CHAPTER 113

#### ACUPUNCTURISTS

#### SUBCHAPTER I

#### GENERAL PROVISIONS

#### §12401. Acupuncture Licensing Board

The Acupuncture Licensing Board within the Department of Professional and Financial Regulation as established by Title 5, section 12004, subsection 1, paragraph A, shall carry out the purposes of this chapter.

#### §12402. Objective

The objective of this chapter is to establish the Acupuncture Licensing Board which will establish and ensure high professional standards among professionals

who provide services and will encourage and promote quality treatment for their clients.

#### §12403. Definitions

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

1. Acupuncture. "Acupuncture" means the insertion of fine metal needles through the skin at specific points on or near the surface of the body, with or without the application of electric current, with or without the application of heat to the needles, skin, or both, and with or without the palpitation of specific points on the body. The practice of acupuncture is based on traditional oriental theories and serves to normalize physiological function, treat certain diseases and dysfunctions of the body, prevent or modify the perception of pain and promote health and well-being.

2. Person. "Person" means any individual, firm, partnership, corporation or other association or organization.

#### §12404. Licensure; penalty

1. Licensure required. No person may practice acupuncture or represent himself to the public as an acupuncturist in this State unless that person holds a current and valid license from the board.

2. Penalty. Any person who practices acupuncture in violation of subsection 1 is guilty of a Class E crime.

#### §12405. Exception

This chapter does not apply to any person who is licensed to practice any healing art or science and who is practicing acupuncture in the course of that practice and within the scope of that license.

#### SUBCHAPTER II

#### ACUPUNCTURE LICENSING BOARD

#### §12406. Establishment and compensation

1. Membership. There is within the Department of Professional and Financial Regulation the Acupuncture Licensing Board as established in Title 5, chapter 379. The board shall consist of 5 members appointed by the Governor. The Governor shall make the initial appointments to the board no later than 60 days after the effective date of this section and shall inform the Commissioner of Professional and Financial Regulation. The commissioner shall call the first meeting of this board for a date no more than 30 days after his notification. Three members shall be licensed acupuncturists, one member shall be a licensed, practicing medical or osteopathic doctor and one member shall be a member of the public who is not licensed to practice any healing art

or science and who is not an acupuncturist. Until such time as a licensing procedure is in place, persons who meet the qualifications for licensing may be appointed in lieu of the licensed board members.

2. Terms of office. Appointments shall be for 3-year terms, except that no more than 2 members' terms may expire 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 full consecutive terms, provided that for this purpose only a period actually served which exceeds 1/2 of the 3-year term shall be deemed a full term. Upon expiration of a member's term, he shall serve until his successor is qualified and appointed. The successor's term shall be 3 years from the date of the expiration, regardless of the date of his appointment. Any vacancy occurring prior to the expiration of the specified term shall be filled by appointment for the unexpired term.

3. Qualifications. Members of the board shall be residents of this State and shall be trustworthy and competent to fulfill the responsibilities imposed by this chapter. Each board member, other than the public member and the practicing physician, shall have been engaged in the active practice of acupuncture for a minimum of 3 years prior to appointment.

The Governor may remove any member for cause.

4. Vacancy. Any vacancy in the board shall be filled by appointment of a person, as qualified as the board member he replaces, to hold office for the unexpired term.

5. Compensation and expenses. Members of the board shall be compensated according to the provisions of Title 5, chapter 379, provided that expenses do not exceed the fees collected by the board. If the fees to be collected under this chapter are insufficient to pay the expenses provided by this section, the board members shall be entitled to a pro rata payment in any years in which such fees are insufficient.

6. Organization and meetings. The board shall annually elect a chairman and a secretary from its membership. The secretary shall keep full and complete records of its proceedings and accounts, which shall be open to public inspection at all reasonable times.

The board shall meet at least once a year to conduct its business and elect its officers. Additional meetings shall be held as necessary to conduct the business of the board and may be convened at the call of the chairman or a majority of the board members.

Three members shall constitute a quorum for the transaction of board business, except that when only 3 members are present, one of them must be a nonacupuncturist member in order for the board to conduct any business.

The board shall adopt a seal for its use. The seal and

records shall be kept at the Department of Professional and Financial Regulation.

#### §12407. Powers and duties of the board

The board shall have the following powers and duties in addition to all other powers and duties otherwise set forth in this chapter.

1. Registration and standards. The board shall certify and set standards of practice for acupuncturists. The board shall evaluate the qualifications and supervise the certification of applicants under this chapter. The board shall adopt standards no less stringent than those established by the National Commission for the Certification of Acupuncturists. The board shall adopt requirements for continuing education as a condition of license renewal.

2. Rules. The board, in accordance with procedures established by the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter II, may adopt such rules as may reasonably be necessary for the proper performance of its duties and the administration of this chapter.

3. Hearings. Hearings may be conducted by the board to assist with investigations, to determine whether grounds exist for suspension, revocation or denial or registration or as otherwise deemed necessary to the fulfillment of its responsibilities under this chapter.

The board shall not refuse to renew registration for any reason other than failure to pay a required fee, unless it has afforded the applicant an opportunity for an adjudicatory hearing. The board shall hold an adjudicatory hearing at the written request of any person who is denied registration without a hearing for any reason other than failure to pay a required fee, provided that the request for hearing is received by the board within 30 days of the applicant's receipt of written notice of denial of the application, the reasons therefore and his right to request a hearing. Hearings shall be conducted in conformity with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV, to the extent applicable. The board may subpoena witnesses, records and documents in any hearing it conducts.

4. Complaints. The board shall investigate, or cause to be investigated, all complaints made to it and all cases of noncompliance with this chapter.

5. Contracts. The board may enter into contracts to carry out its responsibilities under this chapter.

6. Budget. No later than May 1st of each year, the board shall submit to the commissioner for his review and recommendation a proposed budget for each of the next 2 fiscal years.

7. Reporting. No later than August 1st of each year, the board shall submit to the commissioner an annual report of its operations and financial position for the

preceding fiscal year ending June 30th, together with such comments and recommendations as the board deems essential.

### SUBCHAPTER III

#### LICENSING REQUIREMENTS

##### §12408. Eligibility requirements for acupuncturists

To be eligible to apply for a license to practice acupuncture, an applicant shall:

1. Age limit. Be at least 21 years of age; and
2. Qualifications. Have met education and experience requirements as established by the board. Such requirements shall include the following:
  - A. A baccalaureate degree from an accredited institution of higher learning;
  - B. A minimum of 1,000 hours of classroom instruction in acupuncture and related subjects at an institution approved by the board;
  - C. A minimum of 300 hours of clinical experience in the field of acupuncture; and
  - D. Certification by the National Commission for the Certification of Acupuncturists or passage of a written examination administered by the board.

An applicant who possesses a current, valid license to practice acupuncture from another state with requirements at least equal to these requirements shall be issued a certificate of licensing by the board.

Except, as provided in this subchapter, any person currently practicing acupuncture in the State upon the effective date of this section shall comply with the requirements of this section within one year of the effective date in order to continue in the practice of acupuncture.

##### §12409. Certificate of licensing

1. Licensed acupuncturist. The board shall issue a certificate of licensing upon the affirmative vote of at least 3 members of the board to an applicant who has satisfactorily met the following minimal requirements:

- A. Met the eligibility requirements set forth in section 12408; and
- B. Met any other reasonable criteria the board may prescribe by its rules.

##### §12410. Fees

1. Application. Application for licensing as an acupuncturist shall be on forms prescribed and furnished by the board. The application fee shall be set by the

board by rule, shall be nonrefundable and shall be in amounts which are reasonable and necessary for their respective purposes.

2. Registration. A certificate for a licensed acupuncturist shall be in effect for 2 years. The certificate fee shall be established by the board in an amount not to exceed \$250 biennially.

Fees for initial and renewal licenses shall be set so that total fee receipts do not exceed the amount projected as necessary to properly cover the expenses of performing the duties imposed upon the board.

3. Deposit of fees. All fees received by the board shall be paid to the Treasurer of State to be used for carrying out this chapter. Any balance of fees shall not lapse, but shall be carried forward as a continuing account to be expended for the same purposes in the following fiscal years.

##### §12411. Reapplication

Any applicant who is not issued a license as an acupuncturist may again apply for licensing after a period of not less than 6 months from the date of the last denial.

##### §12412. Application for renewal

1. Requirements. Prior to the expiration of a certificate of licensing, renewal application may be made by the certificate holder who shall pay a biennial renewal fee, which shall not exceed the initial registration fee, and who shall submit satisfactory proof of having completed continuing education requirements adopted by the board as a condition of renewal.

2. Late renewal. Application for renewal may be made no earlier than 30 days prior to the date of expiration. Application made past the date of expiration, but no more than 90 days past the date of expiration, shall pay a \$10 late fee in addition to the renewal fee. Any application received more than 90 days past the expiration date shall be subject to all requirements covering new applicants under this chapter.

### SUBCHAPTER IV

#### SUSPENSION AND REVOCATION

##### §12413. Suspension and revocation

The board may suspend or revoke a certificate of licensing pursuant to Title 5, section 10004. In addition, the board may refuse to issue or renew or the Administrative Court may suspend, revoke or refuse to renew a certificate of licensing on any of the following grounds:

1. Fraud or deceit. The practice of fraud or deceit in obtaining a certificate under this chapter or in connection with services rendered as an acupuncturist;

2. Mental incompetency. A legal finding of mental incompetency;

3. Aiding and abetting misrepresentation. Aiding or abetting a person, not duly licensed under this chapter, in representing himself as an acupuncturist;

4. Unprofessional conduct or negligency. Any gross negligence, incompetency or misconduct in the performance of acupuncture;

5. Criminal conviction. Subject to the limitations of Title 5, chapter 341, conviction of a Class A, Class B or Class C crime or of a crime which, if committed in this State, would be punishable by one year or more of imprisonment; or

6. Good cause. Any other good cause, relevant to qualifications to practice.

**Sec. 4. Allocation.** The following funds are allocated from Other Special Revenue Funds to carry out the purposes of this Act.

	<u>1987-88</u>	<u>1988-89</u>
<u>PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF</u>		
<u>Acupuncture Licensing Board</u>		
All Other	\$3,000	\$2,000
Effective September 29, 1987.		

## CHAPTER 489

H.P. 644 — L.D. 867

### AN ACT to Regulate the Profession of Accounting.

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

Sec. 1. 32 MRSA c. 58, as amended, is repealed.

Sec. 2. 32 MRSA c. 113 is enacted to read:

#### CHAPTER 113

#### PRACTICE OF PUBLIC ACCOUNTANCY

#### SUBCHAPTER I

#### GENERAL PROVISIONS

#### §12201. Definitions

As used in this section, unless the context indicates otherwise, the following terms have the following meanings.

1. Board. "Board" means the Board of Accountancy established under Title 5, section 12004, subsection 1, or its predecessor under prior law.

2. Certificate. "Certificate" means a certificate as "certified public accountant" issued under section 12227 or corresponding provisions of prior law, and a certificate as "public accountant" issued under section 12239 or corresponding provisions of prior law, or a corresponding certificate as a certified public accountant issued after examination under the law of any other state.

3. Commissioner. "Commissioner" means the Commissioner of Professional and Financial Regulation.

4. Department. "Department" means the Department of Professional and Financial Regulation.

5. Firm. "Firm" means a sole proprietorship, a corporation or a partnership.

6. Licensee. "Licensee" means a person who holds a valid permit issued by the board under section 12251, or a firm which holds a valid permit issued by the board under section 12252.

7. Permit. "Permit" means a permit as granted by the board to practice public accountancy as provided under sections 12251 and 12252.

8. Practice of or practicing public accountancy. "Practice of or practicing public accountancy" means the following combined activities by a person or firm:

A. Representing to the public that he or it is a licensee; and

B. Performing or offering to perform, for a client or potential client, services involving the use of accounting or auditing skills.

Accounting or auditing skills include the issuance of reports on financial statements, management advisory or consulting services, the preparation of tax returns and the furnishing of advice on tax matters.

9. Quality review. "Quality Review" means a study, appraisal or review of one or more aspects of the professional work of a person or firm in the practice of public accountancy, by a person or persons who hold certificates and who are not affiliated with the person or firm being reviewed.

10. Report on financial statements. "Report on financial statements" means any form of language which:

A. States or implies assurance as to the reliability of any financial statements; and

B. States or implies that an audit, review or compilation has been performed.