

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

SECOND SPECIAL SESSION
September 5, 1996 to September 7, 1996

ONE HUNDRED AND EIGHTEENTH LEGISLATURE

FIRST REGULAR SESSION
December 4, 1996 to March 27, 1997

FIRST SPECIAL SESSION
March 27, 1997 to June 20, 1997

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 26, 1997

FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 19, 1997

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1997

Sec. 14. 32 MRSA §13781, as enacted by PL 1987, c. 710, §5, is amended by inserting after the 2nd paragraph the following:

If a written prescription issued by a practitioner in this State does not contain the box described in this section, a pharmacist may substitute a generic and therapeutically equivalent drug for the drug specified on the prescription if the substituted drug is distributed by a business entity doing business in the United States that is subject to suit and the service of legal process in the United States and the price of the substituted drug does not exceed the price of the drug specified by the practitioner, unless a practitioner has handwritten on the prescription form, along with the practitioner's signature, "dispense as written," "DAW," "brand," "brand necessary" or "brand medically necessary."

Sec. 15. 32 MRSA §13782-A is enacted to read:

§13782-A. Price disclosure

1. Price disclosure required. A pharmacist or pharmacy technician employed by a drug outlet shall disclose upon the request of any person making an inquiry in person or by telephone the price of any brand or generic drug sold by that drug outlet.

2. Information required for price disclosure. In order to have sufficient information to disclose a prescription price, a pharmacist or pharmacy technician may ask the person making the inquiry for the following information:

- A. The brand or generic name of the medication;
- B. The dose or strength of the medication, if applicable; or
- C. The quantity of the medication.

3. Information not provided. If the inquiring person can not provide some or all of the information in subsection 2 and this information is necessary for the requested price to be determined, then the pharmacist or pharmacy technician may contact the prescribing practitioner in order to obtain the necessary information prior to disclosing the prescription price.

Sec. 16. 32 MRSA §13783, as enacted by PL 1987, c. 710, §5, is repealed.

Sec. 17. 32 MRSA §13795, sub-§1, ¶E, as enacted by PL 1995, c. 175, §1, is amended to read:

- E. Other valid, tamper-resistant, photographic identification as provided in rules adopted by the ~~Board of Commissioners of the Profession of Pharmacy~~ board pursuant to section 13722, sub-

section 1, paragraph A and in accordance with Title 5, chapter 375.

Sec. 18. Allocation. The following funds are allocated from Other Special Revenue to carry out the purposes of this Act.

	1997-98	1998-99
PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF		
Division of Licensing and Enforcement		
All Other	\$12,000	\$12,000
Allocates funds for the regulation of pharmacy technicians by the Board of Commissioners of the Profession of Pharmacy.		

Sec. 19. Maine Revised Statutes amended; revision clause. Wherever in the Maine Revised Statutes the words "Board of Commissioners of the Profession of Pharmacy" appear or reference is made to those words, they are amended to read and mean "Maine Board of Pharmacy," and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

See title page for effective date.

CHAPTER 246

H.P. 1051 - L.D. 1468

An Act to Amend the Maine Veterinary Practice Act of 1975

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

Sec. 1. 32 MRSA c. 71-A is amended by repealing the chapter headnote and enacting the following in its place:

CHAPTER 71-A

MAINE VETERINARY PRACTICE ACT

Sec. 2. 32 MRSA §4852, as enacted by PL 1975, c. 477, §4, is amended to read:

§4852. Short Title

This chapter ~~shall be~~ is known and may be cited as the "Maine Veterinary Practice Act ~~of 1975.~~"

Sec. 3. 32 MRSA §4853, sub-§4-A, as enacted by PL 1993, c. 404, Pt. A, §5, is amended to read:

4-A. Direct supervision. "Direct supervision" means any time when a supervisor is on the premises ~~and is~~ or quickly and easily available.

Sec. 4. 32 MRSA §4853, sub-§7, as enacted by PL 1975, c. 477, §4, is repealed and the following enacted in its place:

7. Practice of veterinary medicine. "Practice of veterinary medicine" means:

A. The diagnosis, treatment, correction, change, relief or prevention of animal disease, deformity, defect, injury or other physical or mental condition, including the prescription or administration of a drug, medicine, biologic, apparatus, application, anesthetic or other imaging, therapeutic or diagnostic technique or nutritional substance or technique on, for or to any animal, including, but not limited to, acupuncture, dentistry, homeopathic or chiropractic procedures, physical or massage therapy, surgery including cosmetic surgery, implanting of microchips or similar devices or any manual, mechanical, biological or chemical procedure used for pregnancy testing or correcting sterility or infertility;

B. The removal of an embryo from an animal for the purposes of transferring that embryo into another female animal or the processing or cryopreserving of that embryo. The practice of veterinary medicine does not include the removal of an embryo from the person's own animal;

C. The representation directly or indirectly of an ability and willingness to perform an act included in paragraph A; and

D. The use of any titles, word or abbreviations of letters in a manner or under circumstances that induce the belief that the person using them is legally authorized and qualified to perform any act included in paragraph A. That use is prima facie evidence of the intention to represent oneself as engaged in the practice of veterinary medicine.

Sec. 5. 32 MRSA §4853, sub-§7-A, as enacted by PL 1983, c. 48, §1, is amended to read:

7-A. Relief veterinary service. "Relief veterinary service" means the practice of veterinary medicine in Maine on a temporary basis by a qualified veterinarian not licensed to practice in this State for the purpose of substituting for a Maine-licensed veterinarian at a specified location during ~~his~~ the licensee's absence or period of incapacitation.

Sec. 6. 32 MRSA §4853, sub-§10, as enacted by PL 1975, c. 477, §4, is amended to read:

10. Veterinary medicine. "Veterinary medicine" includes veterinary surgery, obstetrics, dentistry and all other branches or specialties of veterinary medicine including all aspects of the "practice of veterinary medicine" under subsection 7.

Sec. 7. 32 MRSA §4854, as amended by PL 1993, c. 600, Pt. A, §251, is further amended to read:

§4854. State Board of Veterinary Medicine

The State Board of Veterinary Medicine, as established by Title 5, section 12004-A, subsection 42, within the Department of Professional and Financial Regulation, consists of 6 members, appointed by the Governor, 5 of whom must be licensed veterinarians who are residents of this State and graduates of a veterinary school and who have been licensed to practice veterinary medicine in the State for the 5 years preceding their appointment and one member who must be a representative of the public. At least 30 days before the appointment of a licensed Maine veterinarian to the board, the State Veterinary Medical Association shall forward to the Governor for consideration the names of 3 or more qualified veterinarians. ~~The term of office of each present member of the board expires as provided. One new member to be appointed to the board shall serve a 3 year term. One new member to be appointed to the board shall serve a 4 year term. The public member to be appointed to the board shall serve a 5 year term. After the initial appointments, members~~ Members are appointed for 5-year terms. Appointments of members must comply with section 60. A person may not serve on the board who is, or has been during the 2 years preceding appointment, a trustee or a member of the faculty or advisory board of a veterinary school.

Sec. 8. 32 MRSA §4855, as amended by PL 1995, c. 397, §§62 and 63, is further amended to read:

§4855. Officers

The board shall organize annually by electing a ~~president~~ chair, a secretary who need not be a member of the board and any other officers as may be determined necessary. ~~The secretary board shall maintain the correspondence of the board, and keep a record of all proceedings, including the disposition of all applications for license or registration as veterinary technicians, and keep a register of all persons currently licensed by the board or registered as a veterinary technician.~~ All board records must be open to public inspection during regular office hours.

Sec. 9. 32 MRSA §4856, as enacted by PL 1975, c. 477, §4, is amended to read:

§4856. Meetings

The board shall meet at least once a year at a time and place fixed by the board. Other meetings may be called by the ~~president~~ chair by giving notice as required by rule. A majority of the board constitutes a quorum.

Sec. 10. 32 MRSA §4859, sub-§3, as amended by PL 1979, c. 291, §2, is further amended to read:

3. After hearing, adopt, amend or repeal rules. After hearing, adopt, amend or repeal rules ~~and regulations~~ in accordance with the ~~Maine Administrative Procedure Act, Title 5, section 8051, et. seq. chapter 375, subchapter II,~~ necessary to carry into effect this chapter. These rules ~~and regulations~~ shall must be made in accordance with the purpose and intent of the law and the standards set forth in this chapter and shall include, but are not limited to, rules ~~and regulations~~ concerning misconduct, fraud, advertising, standards of competency, personal conduct, standards of sanitation for the operation of veterinary hospitals, associations with other veterinarians and unprofessional conduct.

Sec. 11. 32 MRSA §4859, sub-§4, as amended by PL 1995, c. 502, Pt. H, §33, is further amended to read:

4. Establish schedule of fees. Establish a schedule of fees for the licensing ~~and registration~~ of veterinarians and registration of veterinary technicians. The board shall set the fees in an amount not to exceed \$150 for veterinarians and \$75 for veterinary technicians.

Sec. 12. 32 MRSA §4859, sub-§§5 and 8, as enacted by PL 1975, c. 477, §4, are amended to read:

5. Conduct investigations. Conduct investigations of alleged violations of this chapter and the rules ~~and regulations~~ adopted thereunder.

8. Bring proceedings. Bring proceedings in the courts for the enforcement of this chapter or any rules ~~and regulations~~ made pursuant thereto.

Sec. 13. 32 MRSA §4861, first ¶, as enacted by PL 1975, c. 477, §4, is amended to read:

Any person desiring a license to practice veterinary medicine in this State shall make written application to the board. The application shall must show that the applicant is ~~a citizen of the United States or Canada, or an applicant for citizenship,~~ a graduate of a veterinary school recognized and approved by the American Veterinary Medical Association and by the board, a person of good moral character and such

other information and proof as the board may require. The application shall must be accompanied by a fee in the amount established by the board.

Sec. 14. 32 MRSA §4861, as amended by PL 1983, c. 48, §§4 and 5, is further amended by adding after the first paragraph a new paragraph to read:

An applicant who is not a graduate of a school of veterinary medicine accredited by the American Veterinary Medical Association must possess a certificate issued by the Educational Commission for Foreign Veterinary Graduates or a Certificate of Qualification issued by the Canadian Veterinary Medical Association, unless the applicant is applying for licensure by endorsement and at the time the applicant became licensed in the state, province or territory from which the applicant is applying, an Educational Commission for Foreign Veterinary Graduates certificate was not required by this State.

Sec. 15. 32 MRSA §4861, 2nd ¶, as amended by PL 1979, c. 291, §5, is further amended to read:

If the board determines that the applicant possesses the proper qualifications, it shall admit the applicant to the next examination, ~~or if the applicant is eligible for a license without examination under subsection 2, the board may forthwith grant him a license.~~ If an applicant is found not qualified to take the examination ~~or for a license without examination,~~ the secretary of the board shall immediately notify the applicant in writing of such a finding and the grounds therefor. An applicant found unqualified may request a hearing on the question of ~~his~~ the applicant's qualifications under the procedure set forth in Title 5, ~~Chapter~~ chapter 375, subchapter IV.

Sec. 16. 32 MRSA §4861, sub-§1, as amended by PL 1983, c. 48, §4, is further amended to read:

1. Examinations. The board shall hold at least one examination during each year and may hold such additional examinations as are necessary. The secretary shall give public notice of the time and place for each examination reasonably in advance of the date set for the examination. A person desiring to take an examination shall make application at least 45 days before the date of the examination.

The preparation, administration and grading of examinations ~~shall be~~ is governed by ~~regulations~~ rules prescribed by the board.

After each examination, the secretary shall notify each examinee of the result of ~~his~~ the examination, and the board shall issue a certificate to each person successfully completing the examination. The secretary shall record the certificate and issue a license upon payment

of the license fee. Any person failing an examination ~~shall~~ must be admitted to any subsequent examination on payment of the application fee.

Sec. 17. 32 MRSA §4861, sub-§2, as enacted by PL 1975, c. 477, §4, is repealed and the following enacted in its place:

2. Oral or practical examination. At its discretion, the board may orally or practically examine any person qualifying for licensure under this section. The examination may cover laws and rules relating to the practice of veterinary medicine.

Sec. 18. 32 MRSA §4861, sub-§5 is enacted to read:

5. Licensure by endorsement. The board shall grant a license by endorsement to a veterinarian who:

A. Has submitted a complete application;

B. Has paid the application and license fees established by the board;

C. Is licensed in good standing in another state, United States territory or province of Canada or, if an applicant does not meet the definition of good standing, as established by the board, the applicant shall provide, to the satisfaction of the board, that the applicant is qualified for licensure in the State and may practice under the restrictions and limitations on that license, and those limitations, if any, may include conditions of probation before the issuance of a license;

D. Has passed the National Board of Examination and the Clinical Competency Test as prepared under the authority of the National Board of Examination Committee for Veterinary Medicine or its predecessor organization, the National Board of Veterinary Medical Examiners or a subsequent national licensing examination prepared under the authority of the National Board of Examination Committee for Veterinary Medicine or the American Association of Veterinary State Boards, or an equivalent examination as established by the board unless, at the time the applicant became licensed in the state, province or territory from which the applicant is applying, the National Board Examination, Clinical Competency Test or subsequent examination prepared under the authority of the National Board of Examination Committee for Veterinary Medicine was not required in this State in which case the applicant need only have passed whatever national licensing examinations were required of entry level licensees in the State at the time;

E. Has actively practiced clinical veterinary medicine for 3,000 hours during the 3 years preceding application; and

F. Has successfully completed an examination established by the board, covering the laws and rules pertaining to the practice of veterinary medicine in the State.

Sec. 19. 32 MRSA §4862, as enacted by PL 1975, c. 477, §4, is amended to read:

§4862. Status of persons currently licensed

Any person holding a valid license to practice veterinary medicine in this State on the date this chapter becomes effective ~~shall~~ must be recognized as a licensed veterinarian and ~~shall be~~ is entitled to retain this status so long as ~~he~~ the licensee complies with this chapter, including annual renewal of the license within 30 days of notification ~~of its being due.~~

Sec. 20. 32 MRSA §4863, as amended by PL 1991, c. 509, §25, is further amended to read:

§4863. License renewal

All licenses expire annually on ~~December 31st, or other~~ such date as the commissioner may designate, and may be renewed ~~by registration~~ with the board ~~and~~ by payment of a renewal fee established by the board. At least 30 days prior to the annual renewal date, the Department of Professional and Financial Regulation shall mail a notice to each ~~licensed veterinarian licensee and registrant~~ that the license ~~or registration~~ will expire on the renewal date and provide a renewal application form for reregistration. ~~The department shall issue a renewal certificate to all persons registering under this chapter.~~

Licenses may be ~~renewed~~ reinstated up to 90 days after the date of expiration upon payment of a late fee of \$10 in addition to the renewal fee. A person who submits an application for renewal more than 90 days after the license renewal date is subject to all requirements governing new applicants under this chapter, except that the board may, giving due consideration to the protection of the public, waive examination if that renewal application is made within 2 years from the date of the expiration. In addition, the board may levy penalties for nonrenewal.

By rule the board may waive the payment of the registration renewal fee of a licensed veterinarian during the period when that veterinarian is on active duty with any branch of the Armed Services of the United States, not to exceed the longer of 3 years or the duration of a national emergency.

Sec. 21. 32 MRSA §4864, first ¶, as repealed and replaced by PL 1977, c. 694, §641, is amended to read:

The board on its own motion or upon complaint made to it, may hold a hearing to determine whether or not violations of this chapter or the standards for the practice of veterinary medicine adopted by the board have been violated. Hearings conducted under this section ~~shall be considered~~ are "adjudicatory proceedings" and ~~shall~~ must be conducted in accordance with the provisions of Title 5, chapter 375, subchapter IV. The board ~~shall have~~ has the authority to issue subpoenas subject to the provisions of Title 5, section 9060. If the board considers a licensee has committed any of the acts set forth in this section, it shall either report its findings to the Attorney General for prosecution in the Administrative Court for suspension or revocation in accordance with Title 4, chapter 25, or place the licensee on probation for a certain period of time during which the licensee shall file periodic affidavits of ~~his~~ the licensee's practice in accordance with the standards set by the board, or censure, by letter, the licensee. The following acts are grounds for disciplinary action by the board or for revocation or suspension by the Administrative Court:

Sec. 22. 32 MRSA §4864, sub-§11, as enacted by PL 1975, c. 477, §1, is amended to read:

11. Unprofessional conduct. Unprofessional conduct, as defined in the rules ~~and regulations~~ of the board, ~~which shall include~~ includes, but is not limited to, the following:

- A. Advertising in any manner considered by the board to be false, misleading or otherwise deemed unprofessional;
- B. Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of veterinary medicine;
- C. Refusing to divulge to the board upon demand, the means, method, device or instrumentality used in the treatment of a disease, injury, ailment or infirmity of any animal; or
- D. Fraud or dishonesty in the application or reporting of any test for disease in animals or making a false report of any contagious or infectious disease;

Sec. 23. 32 MRSA §4864, sub-§12, as amended by PL 1979, c. 291, §9, is further amended to read:

12. Unauthorized associations. A veterinarian ~~shall may~~ practice only in an individual capacity under ~~his~~ that veterinarian's own name or in association with a licensed practitioner of veterinary medicine or

professional association. The following ~~shall be~~ are deemed unauthorized associations:

- A. Association for the joint practice of veterinary medicine with any person, corporation or partnership not licensed to practice veterinary medicine;
- B. Knowingly aiding and abetting in the practice of veterinary medicine any person not licensed to practice in this State;
- C. The lending, leasing or in any other manner placing of one's certificate of registration or license at the disposal of or in the service of any other person not licensed to practice veterinary medicine in this State; and
- D. The continuance of a veterinarian directly or indirectly in the employ of or in association with any veterinarian after knowledge that such veterinarian is engaged in the violation of the provisions of this chapter; or

Sec. 24. 32 MRSA §4865-A, sub-§10, as amended by PL 1993, c. 404, Pt. A, §12, is further amended to read:

10. Unprofessional conduct. Unprofessional conduct, as defined in the rules ~~and regulations~~ of the board, ~~which shall include~~ includes, but is not limited to, the following:

- A. Knowingly making any false or fraudulent statement, written or oral, in connection with the treatment or care of animals as defined in section 4866;
- B. Refusing to divulge to the board upon demand, the means, method, device or instrumentality used in the treatment of a disease, injury, ailment or infirmity; or
- C. Fraud or dishonesty in the application or reporting of any test for disease in animals, or making a false report of any contagious or infectious disease or while performing any other duties of a registered veterinary technician.

Sec. 25. 32 MRSA §4866, as amended by PL 1993, c. 404, Pt. A, §13, is further amended by repealing the section headnote and inserting in its place the following:

§4866. Duties of veterinary technicians and animal health assistants

Sec. 26. 32 MRSA §4866, first ¶, as enacted by PL 1993, c. 404, Pt. A, §13, is amended to read:

An animal health assistant may, under the direct supervision of a licensed veterinarian or a registered

veterinary technician, perform duties of an animal health care nature. The duties do not include diagnosing, making prognoses, performing surgery, ~~reading or interpreting~~ laboratory tests or prescribing or initiating treatment.

Sec. 27. 32 MRSA §4871, sub-§2, as enacted by PL 1975, c. 477, §4, is amended to read:

2. Adopt rules. Adopt ~~regulations~~ rules, when ~~deemed~~ determined necessary, that require veterinarians in this State to present evidence to the board that they have complied with the requirements of continuing education for relicensure.

Sec. 28. 32 MRSA §4872, as amended by PL 1979, c. 291, §12, is further amended to read:

§4872. Disposal of abandoned animals

Any veterinarian may dispose of any animal ~~he~~ the veterinarian has reason to believe has been abandoned in ~~his~~ the veterinarian's establishment, ~~provided he shall give if the veterinarian gives~~ notice of ~~his~~ the veterinarian's intention to do so to the owner at ~~his~~ the owner's last known address by registered or certified mail, return receipt requested and ~~shall allow~~ allows a period of 5 days to elapse after the receipt is returned before disposing of such animal; but if the owner ~~cannot~~ can not be located at ~~such that~~ address, the veterinarian shall give ~~such the~~ notice by publication in a newspaper having a circulation in the town in which ~~such the~~ owner was last known to reside, and shall allow a period of 10 days to elapse after ~~such the~~ publication before disposing of ~~such the~~ animal. The animal ~~shall be deemed~~ is considered abandoned if the owner was not located by registered mail or notice by publications and did not reply in person or by mail within the time periods outlined stating ~~his~~ the owner's intent to claim the animal.

See title page for effective date.

CHAPTER 247

H.P. 1292 - L.D. 1837

An Act to Authorize Shellfish Management Committees to Determine Fees for Clam Licenses

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

Sec. 1. 12 MRSA §6671, sub-§3-A, ¶B, as amended by PL 1991, c. 784, §6, is further amended to read:

B. A shellfish conservation ordinance may fix license fees. The fee for a ~~resident license~~ may

~~not exceed \$200 and the fee for a nonresident license may be not more than exceed~~ not exceed twice the resident fee.

Sec. 2. 12 MRSA §6671, sub-§4, ¶B, as repealed and replaced by PL 1991, c. 390, §5, is amended to read:

B. Any ordinance proposed by a municipality or unorganized territory under this section must be approved in writing by the commissioner prior to its adoption, except that the commissioner may not withhold approval based on the amount of license fees specified in an ordinance.

See title page for effective date.

CHAPTER 248

H.P. 998 - L.D. 1390

An Act to Protect the Voting Rights of Stalking Victims

Mandate preamble. This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, two thirds of all of the members elected to each House have determined it necessary to enact this measure.

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

Sec. 1. 21-A MRSA §22, as enacted by PL 1985, c. 161, §6, is repealed and the following enacted in its place:

§22. Records and documents are public; exception for ballots and voter address

1. Public records. All lists, books, documents and records required to be prepared by or filed with a public official are public records. Public records are open to public inspection during regular business hours under proper protective regulations made by the official charged with their custody.

2. Ballots. Ballots are not public records and may be inspected only in accordance with this Title.

3. Address of registered voter. Notwithstanding subsection 1 and Title 1, section 408, if a registered voter submits to the registrar a signed statement that the voter has good reason to believe that the physical safety of the voter or a member of the voter's family residing with the voter would be jeopardized if