

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND EIGHTEENTH LEGISLATURE

SECOND REGULAR SESSION
January 7, 1998 to March 31, 1998

SECOND SPECIAL SESSION
April 1, 1998 to April 9, 1998

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 30, 1998

SECOND SPECIAL SESSION
NON-EMERGENCY LAWS IS
JULY 9, 1998

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

withheld under this paragraph may be withheld only from revenue from the sale of lifetime licenses to persons 65 years of age or older. This paragraph is repealed on July 1, 2010.

§7162. Lifetime privileges to be honored

A lifetime license issued under this subchapter is valid for the life of the license holder unless lawfully suspended or revoked by the commissioner for a violation of fish and wildlife laws under chapters 701 to 721. The Legislature may not otherwise act in any way to limit or end the right of a person holding a lifetime license to the lifetime enjoyment of all the rights and privileges authorized by that license.

§7163. Lifetime License Fund; establishment; management

The Lifetime License Fund, referred to in this section as the "fund," is established in the department to accept all revenue derived from the sale of lifetime licenses. The Treasurer of State shall administer the fund and shall invest the fund, subject to the limitations of this section, for growth and income in a manner consistent with the Treasurer of State's fiduciary responsibilities. Money in the fund may not be expended for any purpose except as provided in this subchapter.

1. Treasurer of State. The Treasurer of State shall contract with investment firms as necessary to manage the fund; may agree to the payment of reasonable management fees to those firms, using money in the fund; and may direct those firms to purchase or sell investment opportunities as necessary to prudently manage the fund. The Treasurer of State annually may reimburse the State for costs incurred to oversee the fund from earnings of the fund.

2. Commissioner. The commissioner may accept donations to the fund but may not use any principal or earnings of the fund except upon the approval of the Treasurer of State and for the purposes set forth in this subchapter.

3. Uses of the fund. Prior to July 1, 2010, the Treasurer of State continuously shall reinvest all earnings of the fund and may not authorize any payments from the fund or use any earnings of the fund, except those necessary to pay the costs of administering the fund. On July 1, 2010, and on July 1st of each year thereafter, the Treasurer of State shall transfer to the department an amount equal to 5 percent of the fund principal. Additional interest earned by the fund, if any, must be reinvested. All funds received from the department under this subchapter are subject to allocation by the Legislature.

4. Report. The Treasurer of State shall report quarterly to the commissioner and to the joint standing

committee of the Legislature having jurisdiction over inland fisheries and wildlife matters on the status of the fund, including the sources and amount of revenue deposited into the fund, interest earnings and payments from the fund.

See title page for effective date.

CHAPTER 680

H.P. 1124 - L.D. 1580

An Act to Improve Allopathic and Osteopathic Physician Oversight

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

PART A

Sec. A-1. 10 MRSA §8003, sub-§5, ¶E is enacted to read:

E. The bureau, office, board or commission may issue letters of guidance or concern to a licensee or registrant. Letters of guidance or concern may be used to educate, reinforce knowledge regarding legal or professional obligations and express concern over action or inaction by the licensee or registrant that does not rise to the level of misconduct sufficient to merit disciplinary action. The issuance of a letter of guidance or concern is not a formal proceeding and does not constitute an adverse disciplinary action of any form. Notwithstanding any other provision of law, letters of guidance or concern are not confidential. The bureau, office, board or commission may place letters of guidance or concern, together with any underlying complaint, report and investigation materials, in a licensee's or registrant's file for a specified amount of time, not to exceed 10 years. Any letters, complaints and materials placed on file may be accessed and considered by the bureau, office, board or commission in any subsequent action commenced against the licensee or registrant within the specified time frame. Complaints, reports and investigation materials placed on file are confidential.

PART B

Sec. B-1. 32 MRSA §2562, 3rd ¶, as amended by PL 1993, c. 600, Pt. A, §170, is further amended to read:

The board has the duty and the power to annually determine the salary of the secretary-treasurer, not to exceed \$6,000. The board has the power to employ, fix the salary of and prescribe the

duties of other personnel as the board considers necessary. The board shall utilize the consumer assistant position as provided in section 3269, subsection 15. The functions and expense of the consumer assistant position must be shared on a pro rata basis with the Board of Licensure in Medicine.

Sec. B-2. 32 MRSA §2591-A, sub-§1, as amended by PL 1993, c. 600, Pt. A, §181, is further amended to read:

1. Disciplinary proceedings and sanctions.

The board shall investigate a complaint, on its own motion or upon receipt of a written complaint filed with the board, regarding noncompliance with or violation of this chapter or of rules adopted by the board.

The board shall notify the licensee of the content of a complaint filed against the licensee as soon as possible, but, absent unusual circumstances justifying delay, not later than 60 days from receipt of this information. The licensee shall respond within 30 days. The board shall share the licensee's response with the complainant, unless the board determines that it would be detrimental to the health of the complainant to obtain the response. If the licensee's response to the complaint satisfies the board that the complaint does not merit further investigation or action, the matter may be dismissed, with notice of the dismissal to the complainant, if any.

If, in the opinion of the board, the factual basis of the complaint is or may be true, and the complaint is of sufficient gravity to warrant further action, the board may request an informal conference with the licensee. The board shall provide the licensee with adequate notice of the conference and of the issues to be discussed. The complainant may attend and may be accompanied by up to 2 individuals, including legal counsel. The conference must be conducted in executive session of the board, pursuant to Title 1, section 405, unless otherwise requested by the licensee. Before the board decides what action to take at the conference or as a result of the conference, the board shall give the complainant a reasonable opportunity to speak. Statements made at the conference may not be introduced at a subsequent formal hearing unless all parties consent.

When a complaint has been filed against a licensee and the licensee moves or has moved to another state, the board may report to the appropriate licensing board in that state the complaint that has been filed, other complaints in the licensee's record on which action was taken and disciplinary actions of the board with respect to that licensee.

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

records that the individual may have as a licensee in other states. The board may deny a license or authorize a restricted license based on the record of the applicant in other states.

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

A. With the consent of the licensee, enter into a consent agreement that fixes the period and terms of probation best adapted to protect the public health and safety and to rehabilitate or educate the licensee. A consent agreement may be used to terminate a complaint investigation, if entered into by the board, the licensee and the Attorney General's office;

B. In consideration for acceptance of a voluntary surrender of the license, negotiate stipulations, including terms and conditions for reinstatement, that ensure protection of the public health and safety and that serve to rehabilitate or educate the licensee. These stipulations may be set forth only in a consent agreement signed by the board, the licensee and the Attorney General's office;

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

D. If the board concludes that suspension or revocation of the license is in order, the board shall file a complaint in the Administrative Court in accordance with Title 4, chapter 25.

Sec. B-3. 32 MRSA §2591-A, sub-§2, as amended by PL 1993, c. 600, Pt. A, §181, is further amended by amending the first paragraph to read:

2. Grounds for discipline. The board may suspend or revoke a license pursuant to Title 5, section 10004. The following are grounds for an action to refuse to issue, modify, restrict, suspend, revoke or refuse to renew the license of an individual licensed under this chapter:

Sec. B-4. 32 MRSA §2591-A, sub-§2, ¶K, as amended by PL 1993, c. 600, Pt. A, §181, is repealed.

Sec. B-5. 32 MRSA §2591-A, sub-§2, ¶L, as amended by PL 1989, c. 291, §2, is further amended to read:

L. Division of professional fees not based on actual services rendered; ~~or~~

Sec. B-6. 32 MRSA §2591-A, sub-§2, ¶M, as enacted by PL 1989, c. 291, §3, is amended to read:

M. Failure to comply with the requirements of Title 24, section 2905-A; ~~or~~

Sec. B-7. 32 MRSA §2591-A, sub-§2, ¶N is enacted to read:

N. Revocation, suspension or restriction of a license to practice medicine or other disciplinary action; denial of an application for a license; or surrender of a license to practice medicine following the institution of disciplinary action by another state or a territory of the United States or a foreign country if the conduct resulting in the disciplinary or other action involving the license would, if committed in this State, constitute grounds for discipline under the laws or rules of this State.

PART C

Sec. C-1. 32 MRSA §3263, first ¶, as amended by PL 1993, c. 600, Pt. A, §198, is further amended to read:

The Board of Licensure in Medicine, as established by Title 5, section 12004-A, subsection 24, and in this chapter called the "board," consists of ~~40~~ 9 individuals who are residents of this State, appointed by the Governor. Three individuals must be representatives of the public. ~~Seven~~ Six individuals must be graduates of a legally chartered medical college or university having authority to confer degrees in medicine and must have been actively engaged in the practice of their profession in this State for a continuous period of 5 years preceding their appointments to the board. A full-term appointment is for 6 years. Appointment of members must comply with section 60. A member of the board may be removed from office for cause by the Governor.

Sec. C-2. 32 MRSA §3269, sub-§15, as amended by PL 1993, c. 600, Pt. A, §202, is further amended to read:

15. Adequacy of budget, fees and staffing. The budget submitted by the board to the Commissioner of Professional and Financial Regulation must be sufficient, if approved, to provide for adequate legal and investigative personnel on the board's staff and that of the Attorney General to assure that professional liability complaints described in Title 24, section 2607; and complaints regarding a section of this chapter can be resolved in a timely fashion. The board's staff must include one position staffed by an individual who is primarily a consumer assistant. The functions and expense of the consumer assistant position must be shared on a pro rata basis with the Board of Osteopathic Licensure. Within the limit set

by section 3279, the board shall charge sufficient licensure fees to finance this budget provision. The board shall submit legislation to request an increase in these fees should they prove inadequate to the provisions of this subsection.

Within the limit of funds provided to it by the board, the Department of the Attorney General shall make available to the board sufficient legal and investigative staff to enable all consumer complaints mentioned in this subsection to be resolved in a timely fashion; and

Sec. C-3. 32 MRSA §3280-A, sub-§3, ¶A, as enacted by PL 1993, c. 526, §2 and affected by §4, is amended to read:

A. The board may charge a license renewal application fee of not more than ~~\$265~~ \$310 to all applicants for license renewal who have not attained 70 years of age on the date renewal becomes due.

Sec. C-4. 32 MRSA §3282-A, sub-§1, as amended by PL 1993, c. 600, Pt. A, §218, is further amended to read:

1. Disciplinary proceedings and sanctions.

The board shall investigate a complaint, on its own motion or upon receipt of a written complaint filed with the board, regarding noncompliance with or violation of this chapter or any rules adopted by the board.

The board shall notify the licensee of the content of a complaint filed against the licensee as soon as possible, but not later than 60 days after receipt of this information. The licensee shall respond within 30 days. The board shall share the licensee's response with the complainant, unless the board determines that it would be detrimental to the health of the complainant to obtain the response. If the licensee's response to the complaint satisfies the board that the complaint does not merit further investigation or action, the matter may be dismissed, with notice of the dismissal to the complainant, if any.

If, in the opinion of the board, the factual basis of the complaint is or may be true and the complaint is of sufficient gravity to warrant further action, the board may request an informal conference with the licensee. The board shall provide the licensee with adequate notice of the conference and the issues to be discussed. The complainant may attend and may be accompanied by up to 2 individuals, including legal counsel ~~and one other individual.~~ The conference must be conducted in executive session of the board, pursuant to Title 1, section 405, unless otherwise requested by the licensee. Before the board decides what action to take at the conference or as a result of the conference, the board shall give the complainant a reasonable opportunity to speak. Statements made at

the conference may not be introduced at a subsequent formal hearing unless all parties consent. The complainant, the licensee or either of their representatives shall maintain the confidentiality of the conference.

When a complaint has been filed against a licensee and the licensee moves or has moved to another state, the board may report to the appropriate licensing board in that state the complaint that has been filed, other complaints in the physician's record on which action was taken and disciplinary actions of the board with respect to that physician.

When an individual applies for a license under this chapter, the board may investigate the professional record of that individual, including professional records that the individual may have as a licensee in other states. The board may deny a license or authorize a restricted license based on the record of the applicant in other states.

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

A. With the consent of the licensee, the board may enter into a consent agreement that fixes the period and terms of probation best adapted to protect the public health and safety and rehabilitate or educate the licensee. A consent agreement may be used to terminate a complaint investigation, if entered into by the board, the licensee and the Attorney General's office.

B. In consideration for acceptance of a voluntary surrender of the license, the board may negotiate stipulations, including terms and conditions for reinstatement, that ensure protection of the public health and safety and serve to rehabilitate or educate the licensee. These stipulations may be set forth only in a consent agreement signed by the board, the licensee and the Attorney General's office.

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

D. If the board concludes that suspension or revocation of the license is in order, the board shall file a complaint in the Administrative Court in accordance with Title 4, chapter 25.

The board shall require a licensee to notify all patients of the licensee of a probation or stipulation under which the licensee is practicing as a result of board disciplinary action. This requirement does not apply to a physician participating in an alcohol or drug

treatment program pursuant to Title 24, section 2505, a physician who retires following charges made or complaints investigated by the board or a physician under the care of a professional and whose medical practices and services are not reduced, restricted or prohibited by the disciplinary action.

Sec. C-5. 32 MRSA §3282-A, sub-§2, as amended by PL 1993, c. 600, Pt. A, §218, is further amended by amending the first paragraph to read:

2. Grounds for discipline. The board may suspend or revoke a license pursuant to Title 5, section 10004. The following are grounds for an action to refuse to issue, modify, restrict, suspend, revoke or refuse to renew the license of an individual licensed under this chapter:

Sec. C-6. 32 MRSA §3282-A, sub-§2, ¶K, as amended by PL 1989, c. 291, §4, is further amended to read:

K. Failure to report to the secretary of the board a physician licensed under this chapter for addiction to alcohol or drugs or for mental illness in accordance with Title 24, section 2505, except when the impaired physician is or has been a patient of the licensee; ~~or~~

Sec. C-7. 32 MRSA §3282-A, sub-§2, ¶L, as enacted by PL 1989, c. 291, §5, is amended to read:

L. Failure to comply with the requirements of Title 24, section 2905-A; or

Sec. C-8. 32 MRSA §3282-A, sub-§2, ¶M is enacted to read:

M. Revocation, suspension or restriction of a license to practice medicine or other disciplinary action; denial of an application for a license; or surrender of a license to practice medicine following the institution of disciplinary action by another state or a territory of the United States or a foreign country if the conduct resulting in the disciplinary or other action involving the license would, if committed in this State, constitute grounds for discipline under the laws or rules of this State.

Sec. C-9. Implementation of reduction in membership. The reduction in the number of medical graduates on the Board of Licensure in Medicine from 7 to 6 must be achieved by attrition. The first medical graduate appointment to expire after June 30, 1998 may not be filled.

Sec. C-10. Year 2000 report. On or before January 1, 2000, the Board of Licensure in Medicine, in conjunction with the Board of Osteopathic Licen-

sure, shall submit to the Legislature a report consisting of the following:

1. An assessment of the effectiveness of the consumer assistant position required pursuant to the Maine Revised Statutes, Title 32, section 3269, subsection 15, including the number of consumers assisted with respect to each board, the average length of time consumer complaints are open and consumer satisfaction survey responses; and

2. An assessment of the effectiveness of the alternative dispute resolution pilot program developed by rule pursuant to the Maine Revised Statutes, Title 5, section 8051, including the number and nature of complaints referred to alternative dispute resolutions and consumer and physician satisfaction survey responses.

PART D

Sec. D-1. 24 MRSA §2509, sub-§2, as enacted by PL 1977, c. 492, §3, is amended to read:

2. Reports dismissed without disciplinary action; removal and destruction. ~~Upon determination by~~ If the board that dismisses any report submitted to it is without merit without imposing disciplinary action, the report shall must be removed from the physician's individual historical record and destroyed, unless the report has been placed on file for a specified amount of time pursuant to Title 10, section 8003, subsection 5, paragraph E. Reports placed on file pursuant to Title 10, section 8003, subsection 5, paragraph E may only be removed and destroyed upon the expiration of the specified amount of filing time.

Sec. D-2. 24 MRSA §2509, sub-§6, as amended by PL 1991, c. 534, §1, is further amended to read:

6. Court action for amendment or destruction. A With the exception of orders of the board relating to disciplinary action, and reports placed on file for a specified amount of time pursuant to Title 10, section 8003, subsection 5, paragraph E, a physician has the right to seek through court action pursuant to the Maine Rules of Civil Procedure the amendment or destruction of any part of that physician's historical record in the possession of the board. When a physician initiates court action under this subsection, the board shall notify the persons who have filed complaints of the physician's request to amend these complaints or expunge them from the record. Notice to complainants must be sent to the last known address of the complainants. The notice must contain the name and address of the court to which a complainant may respond, the specific change in the complaint that the physician is seeking or the complaint that the physician seeks to expunge, and the length of time that the complainant has to respond to

the court. The board shall provide complainants with at least 60 days' notice from the date the notice is sent in which to respond.

Sec. D-3. 24 MRSA §2509, sub-§7, as repealed and replaced by PL 1991, c. 534, §2, is repealed.

Sec. D-4. 24 MRSA §2510, sub-§2-A is enacted to read:

2-A. Confidentiality of letters of guidance or concern. Letters of guidance or concern issued by the board pursuant to Title 10, section 8003, subsection 5, paragraph E, are not confidential.

PART E

Sec. E-1. Allocation. The following funds are allocated from Other Special Revenue to carry out the purposes of this Act.

1998-99

PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF

Board of Licensure in Medicine

Positions - Legislative Count	(1,000)
Personal Services	\$42,681
All Other	28,736
Capital Expenditures	15,250

Allocates funds for one additional Consumer Assistant position and operating costs necessary to establish a physician review process and for the net costs of replacing an eliminated board member with contracted services for the technical review of cases.

DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION TOTAL

\$86,667

See title page for effective date.