

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-SEVENTH LEGISLATURE

FIRST REGULAR SESSION
December 3, 2014 to July 16, 2015

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
OCTOBER 15, 2015

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

Augusta, Maine
2015

Sec. 7. 12 MRSA §6412, sub-§3, as amended by PL 2013, c. 468, §13, is further amended to read:

3. Process for suspension for failing to comply with monthly reporting. If the commissioner determines that a person who holds a license or certificate under this Part has failed to comply with a monthly reporting requirement established by rule pursuant to section 6173, the commissioner shall notify the person at the telephone number provided on the application for the license or certificate and by e-mail if an e-mail address is provided on the application by mailing the notice to the person at the last known address provided in the department's marine resources licensing and enforcement database, or by serving the notice in hand. If the license or certificate holder has not complied with the reporting requirements within 45 days after the commissioner has provided the notice, the commissioner shall mail a notice of suspension to the license or certificate holder. The notice is deemed received 3 days after the mailing. The notice must:

- A. Describe the information that the license or certificate holder is required to provide pursuant to this Part that the department has not received; and
- B. State that, unless all the information described in paragraph A is provided to the department or the license or certificate holder requests a hearing, the license or certificate will be suspended in 3 business days after the license or certificate holder's receipt of the notice.

If the license or certificate holder has not complied with the reporting requirements or requested a hearing within 3 business days after receipt of the notice, the commissioner shall suspend the license or certificate.

See title page for effective date.

**CHAPTER 173
S.P. 453 - L.D. 1271**

**An Act To Protect Patients
Who Need Eye Care**

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

Sec. 1. 32 MRSA §2411, sub-§§6 to 13 are enacted to read:

6. Contact lens. "Contact lens" means any lens placed directly on the surface of the eye, regardless of whether it is intended to correct a visual defect. "Contact lens" includes, but is not limited to, cosmetic, therapeutic and corrective lenses.

7. Dispense. "Dispense" means the act of furnishing a pair of ophthalmic or contact lenses to a patient.

8. Eye examination. "Eye examination" means an assessment of the ocular health and visual status of a patient that does not consist solely of objective refractive data or information generated by an automated testing device, including an autorefractor, in order to establish a medical diagnosis or for the determination of a refractive error.

9. Kiosk. "Kiosk" means automated equipment or an application designed to be used on a phone, computer or Internet-based device that can be used either in person or remotely to provide refractive data or information.

10. Ophthalmic lens. "Ophthalmic lens" means an optical instrument or device worn or used by an individual that has one or more lenses designed to correct or enhance vision addressing the visual needs of the individual wearer and commonly known as glasses or spectacles, including ophthalmic lenses that may be adjusted by the wearer to achieve different types or levels of visual correction or enhancement. "Ophthalmic lens" does not include an optical instrument or device not intended to correct or enhance vision or that is sold without consideration of the visual status of the individual who will use the optical instrument or device.

11. Provider. "Provider" means an individual licensed as an optometrist under this chapter or an individual licensed as an osteopathic or medical doctor under chapter 36 or 48, respectively, who has also completed a residency in ophthalmology.

Sec. 2. 32 MRSA §2417, sub-§4, ¶A-1, as enacted by PL 1993, c. 600, Pt. A, §146, is amended to read:

A-1. For ophthalmic lenses and contact lenses:

- (1) The prescription must contain all the information necessary to be properly dispensed;
- (2) The prescription must specify whether it is for contact lenses or ophthalmic lenses; ~~and~~
- (3) All prescriptions must include the name of the patient, date of prescription, name and office location of prescriber and an expiration date. A prescription may not contain an expiration date of more than 2 years from the date of the eye examination by the provider unless the prescription contains a statement made by the provider of the reasons why a longer time frame is appropriate based on the medical needs of the patient;
- (4) A person or entity may not dispense ophthalmic lenses or contact lenses to a patient without a valid prescription from a provider issued after an eye examination performed by the provider, except that a person or entity may dispense without a prescription spectacle lenses, solely for the correction of vision, that

are of uniform focus power in each eye of between plano and +3.25 diopters; and

(5) A prescription for ophthalmic lenses or contact lenses may not be made based solely on the diagnosis of a refractive error of the human eye as generated by a kiosk.

Sec. 3. 32 MRSA §2421, sub-§3 is enacted to read:

3. Operation of kiosks. The following provisions govern the operation of kiosks.

A. The ownership and operation of a kiosk, including use of a kiosk by a provider, must comply with section 2435.

B. In addition to the enforcement actions available to the board under section 2431-A, the board has the following powers of enforcement for violations of this chapter that relate in any way to kiosks, their use or the issuance of prescriptions arising out of their use. Nothing in this paragraph may be construed to apply to enforcement for violations by physicians who are governed by the Board of Licensure in Medicine or the Board of Osteopathic Licensure.

(1) A person or governmental entity that believes a violation of this chapter in relation to a kiosk has occurred or has been attempted may make an allegation of that fact to the board in writing.

(2) If, upon reviewing an allegation under subparagraph (1), the board determines there is a reasonable basis to believe a violation of this chapter or attempted violation of this chapter has occurred in relation to a kiosk, its use or the issuance of a prescription arising out of kiosk use, the board shall investigate.

(3) The board may hold adjudicatory hearings and administer oaths and order testimony to be taken at a hearing or by deposition conducted pursuant to Title 5, sections 9051 to 10005.

(4) The board may proceed with an action if the board determines that a violation in relation to a kiosk, its use or the issuance of a prescription arising out of kiosk use has occurred.

(5) The board is not required to wait until human harm has occurred to initiate an investigation under this subsection.

(6) The board, upon finding, after notice and an opportunity for a hearing, that a person has violated or has attempted to violate any requirement related to a kiosk, its use or the issuance of a prescription arising out of kiosk use, may impose an administrative fine of not

more than \$10,000 for each violation or attempted violation and may issue an order requiring reimbursement of the reasonable costs to the board of investigation and hearing.

(7) The board shall advise the Attorney General of the failure of a person to pay an administrative fine or reimburse costs of investigation and hearing imposed under this paragraph. The Attorney General may bring an action in a court of competent jurisdiction for the failure to pay any amount imposed under this paragraph.

(8) The board may request that the Attorney General file a civil action seeking an injunction or other appropriate relief to enforce this subsection. The court may impose on a person for violations of this subsection that relate in any way to a kiosk, its use or the issuance of a prescription arising out of kiosk use a fine of not more than \$20,000 for each violation or attempted violation. In addition, the Attorney General may bring an action to recover the reasonable costs of the investigation and hearing.

(9) The board may adopt rules to implement, administer and enforce this subsection. Rules adopted pursuant to this subparagraph are routine technical rules under Title 5, chapter 375, subchapter 2-A.

C. Nothing in this subsection prohibits the Attorney General from initiating an action without referral or request from the board if the Attorney General determines there is a reasonable basis to believe a violation or attempted violation of this subsection occurred.

D. It is neither a violation of this subsection nor grounds for professional discipline or liability for an optometrist to fill a prescription for a patient based in part on measurements obtained through a kiosk.

Sec. 4. 32 MRSA §3300-D is enacted to read:

§3300-D. Issuance of prescription for ophthalmic lenses

A physician licensed pursuant to section 3275 may not issue a prescription for ophthalmic lenses, as defined in section 2411, subsection 10, solely in reliance on a measurement of the eye by a kiosk, as defined in section 2411, subsection 9, without conducting an eye examination, as defined in section 2411, subsection 8.

See title page for effective date.