Maine Board of
Licensure in Medicine

Program Evaluation Report

As Required by the Government Evaluation Act
(3 M.R.S. § 955)

Submitted to the

Joint Standing Committee on Health Coverage, Insurance and Financial Services

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MAINE BOARD OF LICENSURE IN MEDICINE

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MAINE BOARD OF LICENSURE IN MEDICINE

Board Overview

The Maine Board of Licensure in Medicine (Board) serves and protects the public by performing regulatory activities regarding allopathic physicians and physician assistants, including licensing (verifying training, education and credentials), examining (jurisprudence examination on Maine laws and rules), auditing (completion of continuing medical education), complaint investigation, discipline, guidance, rulemaking, guidelines and education (electronic newsletters and sponsoring specific continuing medical education).

Mission Statement

The mission of the Board of Licensure in Medicine is to safeguard the health, welfare, safety and lives, of the people of Maine by ensuring that the public is served by competent, ethical and honest practitioners.

History and Organization

The Board was created in 1895. Since that time, the Board has undergone multiple changes and incarnations. At present, the Board is composed of 10 members, all of whom are appointed by the Governor and generally serve 6 year terms: 6 physician members, each of whom must be a graduate of a legally chartered medical school and be engaged in the active and continuous practice of medicine in Maine for at least 5 years preceding their appointment; 1 physician assistant member, who must be a graduate of an approved physician assistant graduate program and be engaged in active and continuous practice in Maine for at least 5 years preceding her/his appointment; and 3 public members who have no financial interest in the practice of medicine and have never held a license to practice medicine. The Board is affiliated with the Department of Professional and Financial Regulation (PFR) and works closely with the Commissioner

of PFR. A current list of Board members can be found in **Attachment A**.

Staffing and Composition

The Board's current permanent position count is 9 employees: 1 executive director; 1 assistant executive director; 2 licensure specialists; 1 complaint coordinator; 1 investigative secretary; 1 consumer assistance specialist; 1 medical director; and 1 administrative secretary. In addition, the Board contracts with the Office of Attorney General for attorney and investigative services. The Board also employs two temporary employees through the Capitol Clubhouse to perform various duties, including reception, scanning and filing.

The Board emphasizes continuing staff professional development, training and education, including through the following agencies:

- Council on Licensure, Enforcement & Regulation (CLEAR)
- Federation of State Medical Boards (FSMB)
- Federation of Associations of Regulatory Boards (FARB)
- International Association of Medical Regulatory Authorities (IAMRA)
- Maine Association of Medical Staff Services (MeMASS)
- National Association of Medical Staff Services (NAMASS)
- College coursework

The staff is highly motivated and dedicated to quality licensing, regulation and public service.

Board Funding Source

The Board is funded entirely through dedicated revenue sources, which consist of a combination of licensing, examination, assessment, and filing fees paid by the regulated physicians and physician assistants.

The Board contributes significantly to the General Fund through periodic transfers of Other Special Revenue funds, including funding for future Maine physicians.

A. Enabling or Authorizing Law

The Board is enabled or authorized through the following sections of Maine law:

Title 32 M.R.S. Chapter 48 establishes the Board as well as its powers and duties, including:

- **32 M.R.S. § 3263** establishes the Board, its composition, and terms of appointment;
- **32 M.R.S. § 3264** requires Board members to take the constitutional oath of office;
- **32 M.R..S § 3265** establishes the officers of the Board, their terms, duties, and the minimum meeting requirements;
- **32 M.R.S. § 3267** establishes the quorum (majority) required for Board meetings;
- **32 M.R.S. § 3268** authorizes Board members to administer oaths;
- **32 M.R.S. § 3269** establishes the duties and powers of the Board.

Title 5 M.R.S. § 12004-A defines occupational and professional licensing boards, their primary responsibilities and powers and defines "public member."

Title 10 M.R.S. § 8001-A establishes that the Board is affiliated with the Department of Professional and Financial Regulation.

Title 10 M.R.S. § 8003(5) provides the Board with supplemental authority, including:

- **10 M.R..S § 8003(5)(A-1)** to impose a warning, reprimand or censure; a license suspension of up to 90 days per violation; a license revocation; a fine of up to $1500 per violation; probation with conditions;
- **10 M.R.S. § 8003(5)(B)** to enter into a consent agreement with a licensee/applicant;

- **10 M.R.S. § 8003(5)(C)** to require applicants to answer questions, require licensees to complete continuing education, deny a license for non-compliance with a consent agreement or Board order, issue "inactive" licenses, and delegate authority to staff;
- **10 M.R.S. § 8003(5)(D)** to require surrender of license;
- **10 M.R.S. § 8003(5)(E)** to issue letters of guidance or concern.

32 M.R.S. Chapter 125 enacted the Interstate Medical Licensure Compact.

B. Description of Programs

The Board of Licensure in Medicine is a state administrative agency established by the Legislature to license and regulate allopathic physicians and physician assistants in Maine. The Governor has statutory appointment authority to fill the 10 board member positions. The Board has the authority to employ staff to implement its functions and objectives.

The Board is established for the sole purpose of protecting the public by licensing only qualified allopathic physicians and physician assistants and by investigating and adjudicating complaints to prevent harm to the public.

Board staff is responsible for all regulatory and administrative functions associated with state regulation of allopathic physicians and physician assistants. The Board's regulatory functions include: licensing; complaint investigation; rule making; and education. The Board's two primary regulatory functions - licensing and complaint investigation – are implemented with equal priority by Board staff.

Program Goal: To ensure that regulated individuals within the practice of medicine or surgery who require a license provide safe services to the public and conduct themselves in an ethical manner.

Program Objective: To license physicians and physician assistants who meet minimum state requirements, regulate licensee conduct through examination, education, letters of guidance, and enforcement of standards of practice and conduct, and imposition of discipline, when warranted.

Regulatory Functions

1. Licensing:

Program Objective: To expediently and efficiently license professionals who meet minimum state requirements for licensure and registration as physicians and physician assistants.

Four full-time staff, with the advice and counsel of the Board's assistant attorney general, are

responsible for processing the license applications of allopathic physicians and physician assistants in Maine. Physicians applying for licensure include U.S. educated and foreign educated individuals. To verify identity, education, and post-graduate training, the Board staff use the Federation Credentials Verification Service ("FCVS") of the Federation of State Medical Boards ("FSMB"). The FCVS obtains and confirms original source information from U.S. medical schools and graduate residency programs, as well as from the Educational Commission for Foreign Medical Graduates ("ECFMG"), which verifies the identity, education, and training of foreign medical school graduates. The FCVS also performs a query of the National Practitioner Data Bank ("NPDB") for all applicants for initial licensure. The NPDB maintains a data base of physicians and physician assistants who have had medical malpractice settlements or adverse action taken by a licensing board or health care entity with regard to the individual's license, employment or privileges. Information regarding the FSMB, the FCVS and the NPDB may be found at:

- FSMB: https://www.fsmb.org/
- FCVS: https://www.fsmb.org/fcvs/
- NPDB: https://www.npdb.hrsa.gov/

In addition, the Board – working in conjunction with the FCVS and FSMB – has developed a "Uniform Application" for use by physician and physician assistant applicants. The uniform application is available online on the Board's website, together with licensing FAQs (qualifications for licensure and how to apply): https://www.maine.gov/md/.

A copy of the Licensing FAQs can be found at **Attachment B**.
A copy of the Physician Licensing Flowchart can be found at **Attachment C**.
A copy of the Physician Assistant Licensing Flowchart can be found at **Attachment D**.

Board staff assemble the application files, send them for review by the Board Secretary (if required), approve/issue licenses to applicants for licensure with no negative information, randomly audit applicants to confirm completion of continuing medical education, and issue administrative citations for incorrect or inaccurate information on applications for licensure. Applicants for licensure who are deemed by the Board not to qualify may be offered the opportunity to withdraw their application or be afforded the opportunity for a hearing before the Board. Currently, the Board maintains license records for over 7,500 active physician and physician assistant licensees.

Licensing Unit Initiatives

Since the previous GEA report, the Licensing Unit recommended, and the Board implemented, the following initiatives to improve and streamline the licensing process:

- Updated Board rules regarding licensure of physicians and physician assistants to allow staff to issue licenses upon completion of the application file and where there are no disqualifying issues, thereby expediting licensure.

- Adopted the FCVS for confirmation of identity and credentials of applicants.

- In coordination with the FSMB, developed a Uniform Application for virtually all categories of licensure.

- In coordination with the FSMB and FCVS developed a pilot project to include NPDB reports in applicant profiles.

- Updated and moved license applications and license renewal applications online.

- Updated the Maine jurisprudence examination regarding Maine laws and rules as they pertain to the practice of medicine and moved it online.

- Developed an online Maine jurisprudence examination study guide.

- Developed a uniform registration form, which can be downloaded from the Board's website, for physician assistants, which can also be used as a plan of supervision.

- Developed the ability to link physician assistants to either allopathic or osteopathic physicians.

- Developed the ability of applicants and licensees to access licensing services online at any time, including:

    - Updating their contact information;
    - Printing out a copy of their license;
    - Applying for licensure/re-licensure;
    - Checking the status of their license or application.

- Improved the ability of applicants for licensure to view the status of their applications online, including identification of information received and information still needed.

- Developed email renewal notifications to licensees using licensee email contact information.

- Updated the Licensure FAQs online.

- Developed the Emeritus License category for retired physicians who do not practice clinical medicine but want to maintain licensure.

- Worked with the American Board of Medical Specialties (ABMS) to ensure licensees holding Administrative Medicine Licenses were permitted to retain their National Board Certifications.

- Developed protocols for implementing the Interstate Medical Licensure Compact.

Licensing Unit Initiatives Impact

These improved systems have enabled the Board, in general, to issue a greater number of

licenses in a briefer period of time, which is important given the trend of increasing applications. The following are some statistics regarding the number of licenses issued each year during the previous 10 years:

MD Licenses (all license types) issued per year	PA Licenses issued per year
2008 – 758 2009 – 683 2010 – 726 2011 – 739 2012 – 799 2013 – 863 2014 – 864 2015 – 812 2016 – 927 2017 – 956 2018 – 1080	2008 – 38 2009 – 42 2010 – 59 2011 – 62 2012 – 57 2013 – 65 2014 – 64 2015 – 81 2016 – 86 2017 – 100 2018 - 121

In 2017, the Board issued 518 new Permanent Medical Licenses. In 2018, the Board issued 854 new Permanent Medical Licenses – an increase of 225 initial Permanent License applications. Despite this increase in the number of initial applications, the overall average of processing time for all license applications decreased by 18.4 days since 2012.

On average, since 2012 the Licensing Unit has reduced the processing time for all types of applications for licensure from 72.63 days to 54.23 days. *This average includes applications that are submitted that do not have negative information or discrepancies and applications that do have negative information or discrepancies that delay processing*. Examples of the negative information or discrepancies that delay the processing of an application – sometimes for many months - include:

- Discrepancies regarding credentials
- History of significant medical malpractice (e.g. death, wrong site surgery)
- History of discipline by other jurisdiction(s)
- History of medical issues that may affect ability to practice safely
- Certain criminal convictions
- Negative references
- History of termination of employment or privileges for issues related to competency or professionalism
- Failure to disclose information on the application
- Incorrectly answering questions on the application
- Failure to provide additional information when requested

Applications with negative information or discrepancies are provided to the Board Secretary for review. The Board Secretary may choose to instruct Board staff to issue the

license or refer the application to the Board for review at its regularly scheduled monthly meeting. Unfortunately, delays by applicants or licensees in addressing negative information or discrepancies may skew the Licensing Unit's overall average processing time of applications - including those applications that do not contain negative information or discrepancies. Applications without any negative information or discrepancies, which account for the vast majority of applications, are routinely processed between 1-30 days of receipt.

The Licensing Unit also processes applications through the Interstate Medical Licensure Compact ("IMLC").

- "Compact Licenses" are Maine licenses the Board issues to qualified physicians who have been issued a Maine medical license using the compact process. Applicants for licensure through the compact are issued the same license as any other applicant (Permanent Medical License). The license is renewed through the Compact.

- "Letters of Qualification" are letters issued by the Board or another state medical board that is a member of the compact verifying that the applicant meets the qualifications of the compact and can use their existing medical license to obtain additional licenses through the compact.

- Applicants using the expedited compact licensure process must undergo an FBI criminal background check, which was facilitated by the Maine State Bureau of Identification (SBI) and a contractor who provides fingerprinting collection. The Board staff utilizes a dedicated and secured computer to access criminal history information, which it views but does not copy or download.

- Application fees are made payable to the Interstate Medical Licensure Compact Commission, which then forwards the fees to the state board issuing the license.

- The Board's assistant executive director is the Board's designated Commissioner to the Compact Commission, which administers the compact and promulgated rules for the process of issuing license through the compact.

- The Board issued the first "compact license" on 1/10/18. Since that time, the Board has received 130 requests for licensure through the compact and has issued 128 licenses (2 are pending).

- The Board issued its first "letter of qualification" on 3/19/18. Since that time, the Board has received 54 requests for "letters of qualification" - 44 of which have been granted, 4 of which were denied, and 6 of which are pending.

The Licensing Unit daily speaks telephonically with and communicates by email with applicants for licensure and re-licensure who may have questions regarding the Board's licensing processes. The Board's Licensing Unit regularly receives emails and letters from applicants and licensees expressing appreciation for Board staffs' professionalism and assistance.

2. Complaint Investigation & Monitoring:

Program Objective: To efficiently, objectively and diligently investigate and resolve complaints against physicians and physician assistants licensed by the Board, and actively monitor licensees when required.

Complaint Investigation Process

Four full-time staff, with the advice and counsel of an assistant attorney general and the assistance of an attorney general detective, are responsible for the investigation of complaints filed with or initiated by the Board. The Board's complaint coordinator supervises the unit, which is composed of a consumer assistance specialist, medical director, and investigative secretary. The complaint investigative process is based upon the one employed by the Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, and is designed to balance the need to safeguard the due process rights of licensees who may be the subject of a complaint against the public's right to know about unethical or unsafe conduct of licensees and receive notification of the disposition of complaints. A copy of the Board's Complaint Process Flowchart can be found at **Attachment E**.

The Board receives a complaint or information that may cause it to initiate a complaint in a number of ways:

- From the public (e.g. patients, patients' relatives);
- From other licensees (e.g. reports by physicians, physician assistants, pharmacists, etc.);
- From health care entities (e.g. reports of employment or privilege termination based upon concerns about competency or professionalism); and
- From other state or federal agencies (e.g. other state medical boards; law enforcement; FSMB Disciplinary Alerts; NPDB Reports).

Complaints are docketed and processed by the unit once received. Complaints may be submitted to the Board in a number of ways:

- In writing by mail;
- Online via a complaint form available on the Board's website (https://www.maine.gov/md/discipline/file-complaint.html);
- By email; or
- Telephonically recorded (and transcribed) if the individual requires accommodation due to vision or other physical disability that impairs the ability to file a written complaint.

Upon receipt of a complaint, the unit sends a letter acknowledging receipt of the complaint to the individual complainant, together with an informational brochure regarding the Board's complaint and investigative process. A copy of the brochure can is available on

the Board's website (https://www.maine.gov/md/resources/forms.html) and be found at **Attachment F**. When indicated by the circumstances, the unit's consumer assistance specialist contacts the complainant to assist in clarifying:

- The nature and scope of the complaint;
- The identity of the physician or physician assistant against whom the complaint is directed;
- The identify of other health care providers or facilities involved in the patient's care; and
- The relevant times and dates of treatment.

In general, the unit sends the complaint to the licensee within 7 days of receipt, together with a cover letter indicating that a response is required within thirty (30) days of receipt of the complaint and an informational brochure concerning the Board's complaint and investigative process. A copy of the brochure provided to licensees is available on the Board's website (https://www.maine.gov/md/resources/forms.html) and can be found at **Attachment G**. The unit's investigative secretary interacts daily with licensees and attorneys regarding complaints, the complaint process, and due dates for responses to complaints. Typically, licensees or their attorneys request a 30-day extension to respond to a complaint due to the need to assemble and review all relevant medical documentation. Requests for further extensions of time to respond are granted only for "extreme circumstances."

FAQs regarding the Board's complaint and investigative process are also available on the Board's website: https://www.maine.gov/md/discipline/discipline-faqs.html. A copy of those FAQs can be found at **Attachment H**.

Responses received from licensees to complaints are provided to the complainants if they are permitted access to the health care information of the patient and providing the response will not be "detrimental to the health of the complainant." See 32 M.R.S. § 3282-A(1). The complainant may submit a reply to the response within 10 days. Whenever a reply raises additional issues not raised in the initial complaint, it is provided to the licensee for an opportunity for further response.

Complaints against licensees are reviewed and investigated by the unit with the assistance of the Board's assistant attorney general. The unit conducts regular meetings regarding complaint investigations, including determining what medical records to obtain and from what sources and for what time frames, and whether to obtain an outside expert review regarding medical care and treatment. The unit's medical director reviews the complaint file to ensure all relevant medical records related to the complaint are included in the file. The extent of the unit's investigation depends upon the nature of the complaint and the complexity of the medical care. For example, a complaint that focuses upon a licensee's failure to listen (i.e. rudeness) during a single patient visit may require less investigative measures than one that alleges inappropriate prescribing to multiple patients.

Once a complaint investigative file is complete, it is placed on a monthly Board meeting agenda for review. Complaint reviews occur during public (open) sessions of the Board by de-identifying the licensee and the patient (unless there is a likelihood that the public would somehow discern the identity of the patient or physician due to the circumstances). When

necessary, and pursuant to the advice of the Board's assistant attorney general, the Board may go into executive session to review a complaint. Under such circumstances, the patient and the physician and their attorneys may be present for the Board's executive session review.

In general, following review the Board has the authority to take any of the following actions regarding a complaint:

- Dismiss a complaint;
- Dismiss a complaint and issue a letter of guidance or concern;
- Invite the licensee and complainant to attend an informal conference;
- Offer the licensee a consent agreement that resolves the complaint;
- Schedule a complaint for an adjudicatory hearing.

Complaints are dismissed when the Board determines there is no violation of a Board statute or rule or a professional code of ethics. The Board issues letters of guidance to educate or reinforce knowledge or professional obligations. The Board invites a licensee/complainant to an informal conference when there may be more information that can be obtained. Informal conferences are required to be conducted in executive session (unless otherwise requested by the licensee) and both the licensee and complainant and their attorneys may be present. The Board enters into consent agreements with the agreement of the licensee and Office of Attorney General that resolve complaint investigations. The Board holds adjudicatory hearings when unable to resolve a complaint by consent agreement or other means.

The Board, with the approval of the Attorney General, contracts with a hearing officer to provide it with legal counsel and regulate the course of adjudicatory hearings. The hearing officer assists the Board by conducting pre-hearing conferences to identify/clarify issues, identify potential witnesses, and review potential exhibits. The hearing officer administers oaths to witnesses, rules on evidentiary objections, and prepares a draft decision and order for the Board to review based upon the findings made by the Board. Decisions issued by the Board are appealable to District or Superior Court.

Reporting and Posting of Adverse Actions

All finalized adverse actions (consent agreements, license surrenders, decisions) are posted on the Board's website: https://www.maine.gov/md/discipline/adverse-licensing-actions.html. In addition, the adverse action is linked to the specific licensee, and may be found when looking up a licensee using the Board's "Find a licensee in our database" feature. The Board reports all finalized adverse actions to the FSMB and NPDB data bases, which provide reports regarding the adverse action to all jurisdictions where the individual is licensed or seeking licensure.

2008 to 2018 Complaint Data

Each year, the Board files an annual report with the Legislature regarding the number and nature of complaints processed by the Board. The following table captures some of the data from those reports:

Year	No. of Complaints	No. of Discipline	Basis for Discipline	Average Days to Closure
2008	Filed: 205 Total Pending: 271 (Includes complaints carried forward)	28	52% Substance Misuse 17% Incompetence 14% Unprofessional Conduct 10% Fraud 7% Lack of practice	171.86
2009	Filed: 224 Total Pending: 319	22	44% Unprofessional Conduct 18% Substance Misuse 14% Fraud 14% Incompetence 5% Unlicensed Practice 5% Reciprocal Action	162.20
2010	Filed: 259 Total Pending: 351	15	46% Substance Misuse 33% Unprofessional Conduct 7% Lack of Practice 7% Fraud 7% Incompetence	172.14
2011	Filed: 210 Total Pending: 324	17	44% Unprofessional Conduct 25% Substance Misuse 19% Incompetence 6% Fraud 6% Lack of Practice	178.17
2012	Filed: 193 Total Pending: 284	20	35% Substance Misuse 35% Unprofessional Conduct 25% Incompetence 5% License Denial	174.83
2013	Filed: 182 Total Pending: 261	23	39% Unprofessional Conduct 35% Substance Misuse 13% Incompetence 4.3% Fraud 4.3% Lack of Practice 4.3% License Surrender	159.68
2014	Filed: 181 Total Pending: 257	13	54% Unprofessional Conduct 16% Substance Misuse 15% Incompetence 15% Reciprocal Action	153.39
2015	Filed: 136 Total Pending: 219	16	37% Substance Misuse 25% Unprofessional Conduct 19% Incompetence 19% Fraud	195.41

2016	Filed: 172 Total Pending: 230	31	39% Unprofessional Conduct 18% Substance Misuse 18% Incompetence 14% Fraud 11% Law/Rule Violation	197.76
2017	Filed: 177 Total Pending: 259	27	31% Fraud 23% Unprofessional Conduct 19% License Surrender 11% Law/Rule Violation 8% Incompetence 4% Substance Misuse 4% Sexual Misconduct	191.78
2018	Filed: 214 Total Pending: 307	23	31% Unprofessional Conduct 22% Substance Misuse 18% License Surrender 4% Fraud 4% Sexual Misconduct	156.25

This information indicates that between 2008 and 2018:

- The Board received on average 195 complaints annually. This figure does not include the number of complaints that were carried forward from the previous years.

- The average number of pending investigations of complaints annually was 280.

- The average number of days from the receipt of a complaint to closure of a complaint was 173.95 (approximately 5.76 months). Factors that contribute to the length of time that a complaint remains open include:

    - The nature and complexity of the complaint
    - Obtaining necessary medical records
    - Locating an outside medical expert reviewer
    - Obtaining an outside medical expert review report
    - Additional follow-up investigation, including questions posed to the licensee
    - Willingness of the licensee to voluntarily complete continuing medical education relevant to the complaint prior to final review
    - Scheduling adjudicatory hearings

- The two main types of complaints that led to discipline involved either substance misuse or unprofessional conduct. The Board has taken measures to address these two issues:

1. Substance Misuse.

The Board has developed protocols with the Medical Professionals Health Program ("MPHP"), which provides information and resources to licensees with mental health or substance misuse issues. The Board annually provides $35,000 to the MPHP for providing such services, and for overseeing the treatment and monitoring of licensees required to participate in the MPHP by the Board. In addition, the Board encourages its licensees through various means (e.g. the Board's website, jurisprudence examination, applications for licensure, electronic newsletters) to seek appropriate treatment with the MPHP before an issue arises that comes to the Board's attention.

2. Unprofessional Conduct.

Unprofessional conduct comes in many forms including poor communication, failure to follow proper procedures for prescribing controlled drugs, and even unprofessional social media postings. To address these issues, the Board has developed both rules and guidelines, which are available on the Board's website and pushed out to licensees via the Board's electronic newsletter:

- Chapter 21 Use of Controlled Substances for Treatment of Pain
- Guidelines for Use of Chaperones
- Communication Guidelines
- Copy and Paste Guidelines (for electronic medical records)
- Informed Consent Guidelines
- Medical Professionalism and Social Media

Compliance Monitoring

Board consent agreements or decision and orders that place probationary conditions, limitations or restrictions on licensees are monitored for compliance by the complaint coordinator. Monitoring compliance may include ensuring: receipt of medical reports; completion of medical education; use of chaperone; no prescribing of opiates; no use of illegal substances (toxicological testing). Failure to comply with monitoring may lead to further adverse action. The complaint coordinator provides the Board with monthly monitoring reports.

Complaint Investigative Unit Initiatives

In the previous four years, the following changes have been made to the Complaint Investigative Unit and implemented by the Board to improve the complaint and investigative process:

- Cross-training. All members of the unit have cross-trained, contributing to uninterrupted workflow during co-worker absences, knowledge retention, and higher quality public service.

- Complaint Coordinator. This position was created in 2016 to oversee the management

of the Unit and to tighten up monitoring of licensees under consent agreements or Board orders, including providing monthly monitoring reports to the Board.

- Move-It. Since 2015, the Board meeting materials, including complaint and investigative information, have been electronically uploaded to a secure website. Board members download the material from the secure website onto Board-issued laptop computers, which they bring to the monthly meetings.

- Developed an "Outside Expert Review" packet that provides guidance to medical experts who agree to provide reviews of cases for the Board.

- Updated the "Discipline FAQs" on the Board's website, to include links to the FSMB national physician/physician assistant "docinfo" data base that allows the public to determine all of the jurisdictions where a physician/physician assistant is or was licensed.

- Developed a "Co-Complainant" form to assist those individuals who file complaints against licensees for treatment of others such as a spouse, friend, or relative.

- Expanded the role of the medical director in on-going complaint investigations, including review of disciplinary alerts issued by the FSMB, reports issued by the NPDB, and mandated reports received by the Board pursuant to Title 24 M.R.S. §§ 2505 & 2506.

The Complaint and Investigations Unit is highly motivated, professional and interacts daily (telephonically and by email) with licensees, attorneys, complainants, health care systems, the MPHP, and other state and federal agencies.

3. Rulemaking: The Board is authorized to set standards for licensing and practice and to adopt rules. The rules adopted by the Board are routine technical rules. During the previous 4 years, the Board has endeavored to enact – whenever possible – joint rules with other licensing boards regarding the same subject area:

   - Chapter 1, Rule Regarding Physicians
   - Chapter 2, Joint Rule Regarding Physician Assistants (joint rule with Board of Osteopathic Licensure)
   - Chapter 4, Rules for the Issuance of Citations
   - Chapter 5, Rules for Collaborative Drug Therapy Management (joint rule with Board of Pharmacy)
   - Chapter 6, Telemedicine Standards of Practice (joint rule with Board of Osteopathic Licensure)
   - Chapter 10, Sexual Misconduct (joint rule with Board of Osteopathic Licensure)
   - Chapter 21, Use of Controlled Substances for Treatment of Pain (joint rule with Board of Nursing, Board of Osteopathic Licensure)

The Board's executive director in consultation with the Board's medical director, assistant attorney general, and the Board's administrative assistant coordinate proposed rule updates for

the Board to ensure adherence to rulemaking requirements set forth in the Maine Administrative Procedure Act. Rule updates may be based upon new or emerging issues (e.g. collaborative drug therapy, telemedicine) or changes to national medical ethical standards (e.g. sexual misconduct involving "key third parties").
The Board is currently undertaking two rule making initiatives:

- Chapter 21, Use of Controlled Substances for Treatment of Pain (joint rule making endeavor with Board of Nursing, Board of Osteopathic Licensure, and Board of Podiatric Medicine). This proposed update would include exemptions for certain categories of patients, including those in hospice care.

- Chapter 12, Office Based Opioid Treatment (joint rule making endeavor with the Board of Nursing and Board of Osteopathic Licensure). This proposed rule would establish minimum standards for providing office based opioid treatment.

Education: The Board educates its licensees in a number of ways regarding applicable Maine laws and rules:

Jurisprudence Examination

The Board developed an online jurisprudence examination for all new applicants for Maine licensure and all applicants for renewal every 4 years. The jurisprudence examination includes laws and rules applicable to the following subjects: The organization, membership, and powers and duties of the Board; Licensing and registration; Complaints and discipline; Prescribing controlled substances (to include the use of the prescription monitoring program (PMP)); Mandated reporting and notifications (child abuse and neglect); Patient access to medical records; Telemedicine; and the Medical Professionals Health Program (health and wellness).

To assist licensees, the Board also created an online study guide that tracks the subject matter of the jurisprudence examination.
https://www.maine.gov/md/licensure/docs/Exam%20Study%20Guide%2007_08_15.pdf
Applicants must attain a passing score of 75 or more.

Electronic Newsletter

The Board developed an electronic newsletter, which is emailed to all licensees three times a year and also posted on its website: https://www.maine.gov/md/board-information/newsletters.html. The newsletter provides updates to licensees regarding new laws (mandated reporting, use of PMP, opioid prescribing, duty to warn, etc.); proposed and newly adopted rules; changes to Board membership, leadership or staff; upcoming continuing medical education courses; licensee notification requirements; medical issues such as Alzheimer's Disease; and adverse licensing and disciplinary actions.

Maine Quality Counts/Qualidigm

The Board contracts with Maine Quality Counts/Qualidigm to create online modules regarding new laws enacted in Maine. Examples include modules on opioid prescribing; office

based opioid treatment; duty to warn; and death with dignity. The modules are designed to provide licensees with education regarding emerging laws affecting medical practice.

Financial Management of Dedicated Revenue: The Board's assistant executive director, in coordination with the service center (DAFS), is responsible for the financial management of the Board, including preparation of the biennial budget information based on historical data specific to each program; monitoring incoming dedicated revenue from license fees; analyzing trends in revenue streams and recommending fee adjustments to the executive director. Fee adjustments are made through the APA rulemaking process.

Public Accessibility: The Board's website is a multi-purpose public information tool that allows licensees to serve themselves by: reviewing Licensing FAQs; taking the jurisprudence examination online; submitting online initial license applications and online renewals of their licenses; updating their contact information; requesting a copy of their license (which is then emailed to them); reviewing the laws, rules, policies, and guidelines of the Board; reviewing the minutes of Board meetings; reviewing the adverse actions taken by the Board; and reviewing the Board's electronic newsletters. The Board's website also allows licensees, employers and the public to check the license status of a physician or physician assistant, obtain disciplinary information about a licensee, and download relevant statutes, rules, policies and guidelines. Public licensing information can be accessed online at https://www.pfr.maine.gov/ALMSOnline/ALMSQuery/SearchIndividual.aspx?Board=376. Recently, the licensing renewal process has been streamlined. An applicant whose application is approved receives an email notification that the license has been activated in the Agency Licensing Management System (ALMS). The licensee may then print the license, thus avoiding any delay traditionally associated with the printing and mailing of a license. In addition, licensees are notified by email 60 days prior to the expiration of their licenses that they are due to renew their licenses, which may be accomplished online.

Public Accountability: The Freedom of Access Law (1 M.R.S. §401-410) ensures that, with limited exceptions, all licensing board meetings are open to the public and that deliberations of boards are a matter of public record. However, Title 10 M.R.S. §8003-B provides that all complaints and investigative records of the Board remain confidential during the pendency of an investigation, and that confidential patient information remains confidential after closure of the complaint. In addition, Title 24 M.R.S. § 2510 provides that certain information received by the Board shall, with limited exceptions, remain confidential and not be subject to public disclosure. The Board's executive director responds to Freedom of Access (FOAA) requests from members of the public and the media. A recently enacted law required the Board to adopt new protocols for processing requests under the FOAA. A copy of those new protocols can be found at **Attachment I**.

C. Organizational Structure

The Board is affiliated with the Department of Professional and Financial Regulation and is composed of 10 members appointed by the Governor. The Board leadership consists of a Chair and a Secretary, each of whom are elected by the Board every two years.

The Board employs 9 fulltime staff and 2 part-time staff, including an executive director who is responsible for administering the program. The Board staff is organized into two major sections: licensing and complaint investigations. An organizational chart can be found at **Attachment J**.

D. Repealed, P.L. 2013 c. 307

E. Financial Summary

The Board's financial summary can be found at **Attachment K**.

F. Repealed, P.L. 2013, c. 307

G. Areas of Coordination with Other State and Federal Agencies

The Board maintains close working relationships with multiple state and federal agencies, sometimes sharing overlapping authority and/or enforcement responsibility.

Office of the Governor and Department of the Secretary of State
The Board shares a common database with the Governor's Office and the Secretary of State's Office containing board member information. The Board coordinates with the SOS regarding all rulemaking initiatives.

Department of Professional and Financial Regulation
The Board is affiliated with the Department of Professional and Financial Regulation (PFR), and works closely with the Commissioner regarding financial issues, leadership development training, and joint rulemaking with Boards within PFR.

The Office of the Attorney General

The Attorney General's Office provides legal counsel, an assistant attorney general, to the Board and Board staff. In addition, the Attorney General's Office provides investigational services to the Board from an AG detective.

Department of Health and Human Services

The Board obtains information from or exchanges information with various agencies within the Maine Department of Health and Human Services, including the Maine CDC, Medical Marijuana Program, Prescription Monitoring Program, and the Division of Licensing & Regulatory Services, Medical Facilities Unit.

Department of Public Safety

The Board coordinates with the Department of Public Safety, State Bureau of Identification regarding criminal background checks for physicians seeking medical licensure through the Interstate Medical Licensing Compact.

Maine Board of Osteopathic Licensure, Board of Nursing, Board of Pharmacy

The Board works closely with these three boards on matters of common interest, including proposing and adopting joint rules regarding prescribing of controlled drugs and sexual misconduct. In addition, the boards regularly refer complaints and/or investigative information to one another when indicated.

Maine Health Data Organization

The Board works closely with the Maine Health Data Organization (MHDO), creating "minimum data set" questions for physicians on applications for licensure and re-licensure, and sharing that data with MHDO and other organizations concerned with identifying the number, specialty, location, and practice of physicians in Maine.

U.S. Drug Enforcement Administration

The Board shares/exchanges investigatory information and adverse actions with the United States Department of Justice and Drug Enforcement Administration.

The United States Veterans Administration

The Board shares/exchanges information with the United States Veterans Administration regarding ongoing and completed complaint investigations involving Maine-licensed physicians working at VA hospitals.

Other State Medical Licensing Boards/Commissions

The Board is a member of the Federation of State Medical Boards ("FSMB"), a nonprofit organization that supports medical licensing boards in the United States and its territories. The Board regularly coordinates with medical licensing boards of other jurisdictions where a licensee under investigation may also have a license to practice medicine.

H. Constituencies

The Board serves the public at large, including more than 7,500 licensees, as well as applicants for licensure and patients seeking information about the Board's complaint process. Additionally, the Board works with a number of professional associations at the state and national level, including:

- Federation of State Medical Boards
- Federation Credentials Verification Service
- Education Commission on Foreign Medical Graduates
- Interstate Medical Licensing Compact Commission
- International Association of Medical Regulatory Agencies
- American Board of Medical Specialties

- National Association of Medical Staff Services
- Maine Medical Association
- Maine Association of Physician Assistants
- Maine Association of Medical Staff Services
- Medical Professionals Health Program

I. Alternative Delivery Systems

In coordination with InforME and the Federation of State Medical Boards, the Board has made use of information technology to assist the public and Board staff. In the past ten years, this cooperative effort has resulted in:

- Online complaint forms that can be emailed to the Board
- Online initial licensing, to include development of a Uniform Application
- Online license renewal services, to include the ability to print a renewed license (current rates of online license renewal exceed 90%)
- Email notification to licensees regarding upcoming licensure renewal with a link to the Board's website
- Issuance of laptop computers to Board members dedicated to use for downloading meeting materials and use at monthly meetings
- Use of MOVE-IT, a secure website, to which Board meeting materials are uploaded for access, viewing, and downloading by Board members
- Development of an electronic newsletter that is emailed to all licensees three times a year

J. Emerging Issues

There are a number of emerging issues that may affect the Board and its constituencies:

1. *Merger/Consolidation of the Board of Licensure in Medicine and the Board of Osteopathic Licensure*

During a previous GEA review in 2003, consideration was given to merge or consolidate Maine's two medical licensing boards: The Board of Licensure in Medicine and the Board of Osteopathic Licensure. At that time, both medical boards and the respective allopathic and osteopathic associations opposed merging the two medical boards. At present, there are only 14 states where there are two separate medical and osteopathic boards: Arizona; California; Florida; Maine; Minnesota; Nevada; New Mexico; Oklahoma; Pennsylvania; Tennessee; Utah; Vermont; Washington; and West Virginia.

The Maine Board of Licensure in Medicine supports the merger or consolidation of Maine's two medical licensing boards. There are various models of consolidated medical boards throughout

the country, including those with committees with designated and distinct functions such as complaint investigation and hearing adjudication. A consolidation could involve a virtually wholesale merger into a single Commission or a merger that is based upon proportional representation of the regulated licensees.

Merging the 2 Maine medical boards may potentially:

a. Eliminate redundancy in licensing and regulating physician assistants in Maine. Because there are two medical licensing boards in Maine, physician assistants must choose which board they want to be licensed with. Prior to 2015, physician assistants in Maine were required to be licensed by both boards if they were going to be supervised by an allopathic physician and an osteopathic physician. In addition, each medical board had its own set of rules for physician assistants, including different requirements for supervision and scope of practice. In 2015, PFR Commissioner Anne Head, the 2 medical boards, and stakeholders drafted changes to both medical board statutes (that were enacted into law) to create uniform requirements for physician assistant licensure and registration, and to require the adoption of joint rules regarding supervision and scope of practice.

b. Eliminate redundancy in licensing and regulating physicians in Maine. At present there are two medical boards that license and regulate physicians in Maine, each with its own staff, its own laws, and its own rules:

    - The Board of Osteopathic Licensure: Staff: 2
    - The Board of Licensure in Medicine: Staff: 9

c. Provide additional personnel and resources to the Board of Osteopathic Licensure that it does not currently have, including:

    - Additional investigative staff
    - Additional licensing staff
    - An Electronic Newsletter

d. Provide a greater pool of Board members that would allow for the organization of standing committees to perform separate investigative and adjudicatory functions without the need for the entire board to convene.

e. Provide for uniform rules regarding physicians (other than existing joint rules) such as for Telemedicine and Unprofessional Conduct.

2. *The Adjudicatory Hearing Process*

The Board conducts adjudicatory hearings pursuant to the Maine Administrative Procedure Act.

The Challenges

The current process for conducting adjudicatory hearings merits review and consideration of statutory changes for the following reasons:

a. The physician and physician assistant members of the Board are in active clinical practice with full-time positions providing medical care. The Board meets at least once per month, and then on additional dates when necessary to conduct an adjudicatory hearing. Scheduling additional hearing dates for members in active clinical practice and with patients who depend upon them presents a significant challenge. At times, it results in a choice to cancel or reschedule patient care (including surgeries) or not attend the adjudicatory hearing. Adjudicatory hearings with complex medical issues, multiple expert witnesses, and thousands of pages of exhibits may take several days to complete. Given the Board members' patient schedules, this may result in a hearing that is scheduled over several months, especially as the law requires 6 members (a majority) in order to hold an adjudicatory hearing. The current process results in the delay of scheduling adjudicatory hearings and the final resolution of those complaints.

b. The Board both investigates and adjudicates complaints filed against physicians and physician assistants. While permitted under existing law, this dual role has constantly led to licensees and their attorneys raising allegations of bias and prejudgment in any subsequent adjudicatory hearing.

c. The Board is represented by an assistant attorney general who both provides it with legal advice and counsel and prosecutes cases in front of the Board during adjudicatory hearings. While permitted under existing law and the unique power of the Office of Attorney General, this dual role has constantly led to licensees and their attorneys raising allegations of bias by the Board in favor of its assigned assistant attorney general. It is not unusual for the assigned assistant attorney general to provide legal advice and counsel to the Board and then prosecute a case in front of the Board in the same meeting.

Possible Solutions

The following proposed changes are designed to address concerns regarding scheduling and timely completion of adjudicatory hearings as well as allegations of bias and prejudgment and claims of undue influence of the assistant attorney general.

a. Change the Board's statute to create standing committees with separate authority to investigate and adjudicate. Each committee would have separate and distinct functions with independent authority to take final action. For example, the investigative committee would have authority to investigate complaints, dismiss complaints without merit, offer a consent agreement to resolve a complaint, and refer a complaint to the hearing committee. The hearing committee would have the authority to adjudicate a complaint, including issuing a decision or approving a consent agreement.

b. Change the Board's statute to permit an independent hearing officer to conduct the adjudicatory hearing and prepare a written recommended decision and order for the Board, together with a record of the hearing (transcripts, exhibits, etc.). A number of State agencies already employ this model.

3. *Aging Physicians*

The Federation of State Medical Boards (FSMB) recently published the 2018 census of actively licensed physicians in the United States.[1] The census shows that the number of physicians over age 60 who still practice medicine continues to grow. Today 30% of actively licensed physicians in the U.S. are age 60 or older. Maine's physician population mirrors this trend.

A number of articles have appeared in medical and regulatory journals regarding the aging of physicians and its potential impact upon physical and cognitive abilities, and, therefore, clinical competency and patient safety. The issue of aging physicians and its potential effect on patient safety raises a number of difficult questions:

- Is there an age at which a physician should no longer practice clinical medicine?
- Should physicians have mandatory retirement ages as do other professions such as airline pilots, air traffic controllers, and FBI agents?
- Since studies have shown a decline in cognitive abilities for all persons after age 50, should physicians undergo cognitive evaluation and testing and, if so, at what age?

Other professionals such as airline pilots are required to undergo regular assessments of their mental and physical health, which reflects a "proactive" approach to ensuring current competency and the safety of the public. In contrast, with limited exceptions, licensing and regulatory agencies employ a "reactive" approach with regard to physician assessment following a patient complaint or a report by a health care provider or healthcare entity that has concerns regarding a physician's ability to competently care for patients.

Because of the potential for significant patient harm, some entities are advocating for and, in some cases, taking a more "proactive" approach to this issue. In 2015 the Council on Medical Education (CME) of the American Medical Association (AMA) issued a report which stated that a physician has a "professional duty to continually assess his or her own physical and mental health" and called for the development of formal "guidelines/standards for monitoring and assessing" aging physicians' competency.[2] In 2016 the American College of Surgeons (ACS) issued a statement recognizing the fact that surgeons "are not immune to age-related decline in physical and cognitive skills," and supporting the "objective assessment of fitness" of an aging surgeon in lieu of a mandatory retirement age. [3] The ACS statement recommended that "starting at age 65-70, surgeons undergo voluntary and confidential baseline physical examination and visual testing by their personal physician," encouraged surgeons to "voluntarily assess their

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[1] Young A, Chaudhry HJ, Pei X, Arnhart K, Dugan M, Steingard S. FSMB *Census of Licensed Physicians in the United States, 2018. Journal of Medical Regulation*, Vol. 105, No. 2:7-23, 2019. Available at https://www.fsmb.org/siteassets/advocacy/publications/2018census.pdf.

[2] American Medical Association, *Competency and the Aging Physician, Report 5 of the Council on Medical Education* (A-15). Chicago, Il: AMA, 2015. Available at https://www.cppph.org/wp-content/uploads/2016/02/AMA-Council-on-Medical-Education-Aging-Physician-Report-2015.pdf.

[3] American College of Surgeons Board of Governors Physician Competency and Health Workgroup, Statement on the Aging Surgeon, *Bull Am Coll Surg* 2016, 101(1): 42-43. Available at https://www.facs.org/about-acs/statements/80-aging-surgeon.

neurocognitive function using confidential online tools," and reminded them to disclose any concerning findings. This proactive approach by the AMA and the ACS relies primarily upon voluntary action by physicians. However, physicians who are already cognitively impaired are less likely to recognize the need for an evaluation or to self-limit their practice. In addition, studies have shown that a significant percentage of physicians who are aware of a colleague's competency issues do not report them to the relevant authorities. In addition, a 2017 article in the Journal of the American Medical Association Surgery recommended that "the most promising and feasible next step is to move from voluntary to mandatory programs to assess the wellness and competence of physicians at a certain age."[4]

Some hospital systems are already mandating that physicians undergo health and cognitive screenings upon reaching a certain age. The University of Virginia Health System requires physicians to undergo a physical and mental screening upon reaching the age of 70, and upon reaching the age of 75 to undergo the screening every 2 years. Other hospital systems that have imposed similar requirements include: Driscoll Children's Hospital in Texas, Stanford Hospitals and Clinics in California, Cooper University Health Care in New Jersey, and the University of Pittsburg Medical Center Health Care System. Opponents of the screenings assert that they are unnecessary and discriminatory. Proponents of the screening argue that they verify the physicians' health and competency and act to allay any concerns of patient advocates.

The Board is aware of the aging of Maine physicians and the issues surrounding it. The Board's mission is to protect the public, and it is studying this issue and ways to be more "proactive" in identifying physicians whose physical and/or cognitive abilities may pose a risk to the delivery of safe patient care. Recently, the Board adopted new guidelines for physician re-entry to medical practice.[5] The new guidelines identify the steps that physicians should take in order to return to medical practice, including older physicians who may have previously retired. In addition, the Board is considering whether or not a physical and mental health screening would be appropriate when physicians reach a certain age. Like the AMA and ACS, the Board encourages all physicians to continually assess their physical and mental health and report to the Board physicians who may be impaired, incompetent or unprofessional. The Board also encourages physicians to be cognizant of the effects that age may have on themselves and their colleagues and their ability to safely practice medicine.

4. *Physician Assistants*

In 2015 the Board of Licensure in Medicine and the Board of Osteopathic Licensure were involved in developing statutory changes to their laws in order to create uniform criteria requirements for licensure and registration and to allow physician assistants to be licensed by either medical board and work under the supervision of either an allopathic or osteopathic physician. Prior to that time, physician assistants were required to be licensed by the allopathic board if she was being supervised by an allopathic physician and licensed by the osteopathic board if she was being supervised by an osteopathic physician. This led to significant issues for

[4] Dellinger E P, Pellegrini C, Gallagher T, *The Aging Physician and the Medical Profession, A Review*, JAMA Surg. doi: 10.1001, 2017. Available at https://www.ncbi.nlm.nih.gov/pubmed/28724142.

[5] http://www.maine.gov/md/laws-statutes/policies.html

physician assistants, including the need to be licensed by both boards if working under an allopath and an osteopath. In 2016, the Board of Licensure in Medicine and Board of Osteopathic Licensure adopted a joint rule regarding the licensure and registration of physician assistants and adopted uniform application and registration forms. Today, physician assistants may be licensed by either the Board of Licensure in Medicine or the Board of Osteopathic Licensure and work under the supervision of an allopath or an osteopath.

At the end of the last legislative session, a bill was introduced (L.D. 1660) that would have drastically amended the Board's statute and given physician assistants, who are educated and trained to work under physician supervision, the ability to practice independently. A copy of LD 1660 can be found at **Attachment L**. The Board of Licensure in Medicine and the Board of Osteopathic Licensure submitted written comments regarding LD 1660, which can be found at **Attachment M**. While the Board recognizes the significant contributions that physician assistants make as a member of the health care team, it does not support independent practice for physician assistants. The Board has discussed a number of possible changes to its statute regarding physician assistants, which it has conveyed to the stakeholders for L.D. 1660. A copy of the draft changes can be found at **Attachment N**. The draft changes would delineate 3 separate spheres within which physician assistants could practice in Maine:

1. The existing model with a "practice agreement" (which would replace the "plan of supervision"). This would apply to PAs who: (a) Do not practice within a "health care system" defined by the statute; and (b) Do not apply for or qualify to practice in collaboration with a physician in "primary care" as defined by the statute. The physician assistants in this category would include those who practice a specialty in a private medical practice setting.

2. PAs who work within a "health care system" – which would require only a "practice notification." As the vast majority of physician assistants are employed within healthcare systems, this draft change is intended to reduce the financial and administrative burden and cost to both PAs and health care systems.

3. PAs who apply and qualify to work pursuant to a "collaborative agreement" in "primary care" as defined by the statute. This would allow qualified PAs to practice primary care in collaboration with a physician or physicians. This draft change is intended to: (a) Permit qualified PAs to work in collaboration with physicians when providing primary care; (b) Increase access to care in rural areas of Maine.

These proposed statutory changes, which are based in part upon a relatively new law and rule in New Mexico, would reduce the administrative burden on physician assistants, supervising/collaborative physicians, and health care systems, and allow for a measured increase in autonomy for qualified physician assistants in primary care.

5. *National Licensing Compacts*

In 2017 Maine adopted the Interstate Medical Licensure Compact (IMLC). Currently, the IMLC has been adopted by 29 states, the District of Columbia, and Guam. The IMLC allows the Board to issue expedited licenses to qualified physicians from other states and to issue letters of qualification for physicians licensed in Maine seeking licensure in another state under the IMLC.

In order to qualify for an expedited license under the IMLC, a physician applicant must meet each of the following criteria:

- Is a graduate of a medical school accredited by the Liaison Committee on Medical Education or the American Osteopathic Association's Commission on Osteopathic College Accreditation, or its successor, or a medical school listed in the International Medical Education Directory database or its successor;
- Passed each component of the United States Medical Licensing Examination or the Comprehensive Osteopathic Medical Licensing Examination within 3 attempts or a predecessor examination accepted by a state member board as an equivalent examination for licensure purposes;
- Successfully completed graduate medical education approved by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association;
- Holds specialty certification or a time-unlimited specialty certificate recognized by the American Board of Medical Specialties or the American Osteopathic Association's Bureau of Osteopathic Specialists;
- Possesses a full and unrestricted license to engage in the practice of medicine issued by a member board;
- Has never been convicted or received adjudication, deferred adjudication, community supervision or deferred disposition for any offense by a court of appropriate jurisdiction;
- Has never held a license authorizing the practice of medicine and been subjected to discipline by a licensing agency in any state, federal or foreign jurisdiction, excluding any action related to nonpayment of fees related to a license;
- Has never had a controlled substance license or permit suspended or revoked by a state or the United States Drug Enforcement Administration; and
- Is not under active investigation by a licensing agency or law enforcement authority in any state, federal or foreign jurisdiction.

In order to qualify, physicians must complete a criminal background check. The Board, in consultation with the Department of Public Safety, State Bureau of Identification (SBI), has established protocols for receiving and reviewing criminal history record information, which is highly confidential. Maine physicians who apply to the Board for a “letter of qualification” submit their fingerprints to a vendor, who then forwards them to the SBI for a national criminal background check. The results of the criminal background check are forwarded to the Board via a dedicated and secure computer to which only the executive director and assistant executive director have access. No criminal history record information is downloaded, copied or retained by the Board.

As the IMLC continues to expand, the Board expects to be issuing expedited licenses and letters of qualification on a more regular basis. Thus far, the Board has issued 61 letters of qualification, and issued 166 expedited licenses under the IMLC.

The Board expects that this same type of model may be used to expedite the licensing of physician assistants and would be supportive of such a measure. Board staff will be attending a conference in Washington D.C. in October that concerns this issue.

6. *Criminal Background Checks*

Many states require a Federal Bureau of Investigation (FBI) criminal background check prior to initial licensure. With the exception of licensing compacts like the IMLC, Maine does not. Applicants for licensure are asked whether they have a history of criminal arrests or convictions, but the Board does not have the authority to perform a criminal background check to verify the information provided by the applicant. This issue becomes more important with the increasing portability of the licensee population. The Board receives numerous applications for licensure from physicians who provide locum tenens (temporary) work in Maine. Physicians with criminal histories in other states who do not disclose that history on their applications for licensure will not be detected by the Board unless information is received from some other source. Criminal history information may be evidence of dishonesty or mental health issues or substance misuse issues, which could pose a risk to Maine patients. As a result, some consideration should be given to requiring an FBI criminal background check for all applicants for licensure.

K. Information Specifically Requested by Committee

None requested.

L. Comparison of Related Federal Laws and Regulations

Not applicable.

M. Collecting, Managing and Using Personal Information

The Board collects personal information in a variety of ways as part of its function in licensing applicants for licensure and investigating complaints. “Personal information" includes but is not limited to addresses, telephone numbers, dates of birth, social security numbers, and medical information. The Board staff is aware of the confidentiality of this information and its proper use in fulfilling its operations. Confidential personal information regarding licensees is not posted on the Board’s website. Licensees have the option of providing a work or other contact address and telephone number for posting online. Board staff do not disclose or release social security numbers to the public.

The Board staff interacts with other State and federal agencies who may be authorized to have access to personal information. Board staff consult with its assistant attorney general regarding any questions about releasing or sharing this information. All requests for information under the Maine Freedom of Access Act (FOAA) are reviewed by the Board’s executive director in consultation with the Board’s assistant attorney general. The executive director assembles the requested information, and reviews and redacts/removes confidential personal information from the information including:

- Social security numbers
- DEA registration numbers
- Dates of birth

- Medical information
- Birth, marriage, divorce documents
- Signatures

The Legislature recently amended the Board's statute to require, with some limited exceptions, notification to any licensee regarding a request for her information from the Board pursuant to FOAA. As a result, the Board has developed a protocol for implementing the new law. A copy of that protocol can be found at **Attachment I**.

N. List of Reports, Applications and Other Paperwork

The Board provides an annual report to the Legislature.
The Board maintains a number of applications and forms that are available online for use by its constituents, including:

- Licensing
  - Uniform application for physician licensure (Emergency, Permanent, Camp, Administrative, Telemedicine, Educational certificate)
  - Volunteer physician license
  - Temporary physician license
  - Physician renewal application
  - Physician Reinstatement
  - Uniform application for physician assistant licensure
  - Physician Assistant Registration
  - Physician Assistant renewal application
- Complaint Investigation
  - Complaint Form
  - Medical Release Form
  - Mandated Reporter Form

The forms are available on the Board's website: https://www.maine.gov/md/.

O. List of Reports Required by the Legislature

None required.

P. List of Organizational Units and Programs

See **Attachment J**.

Q. Statutory Provisions Requiring Legislative Review

There are a number of statutes affecting the Board of Licensure in Medicine and its processes that merit Legislative review:

1. **Title 10 M.R.S. § 8003(5)** grants the Board the authority to revoke a license but requires any

Board revocation to be reviewed in the District Court after a hearing *de novo*. In essence, this means that a licensee is afforded two separate evidentiary hearings before his/her license could be revoked. This results in an unnecessary duplication of time, effort and expense. The Board rarely revokes a license (it has done so only 3 times in the past 10 years), and when it does so the circumstances underlying such revocation are exceptionally grievous. Judicial review of any action by the Board other than license revocation, including the denial of licensure and suspension, occurs in the Superior Court and based upon the record of the proceedings before the Board. The Board recommends that this section of Title 10 be amended to reflect the same standard of review for revocation actions by licensing boards within the Department of Professional and Financial Regulation – Superior Court based upon the agency record. A draft amendment may be found at **Attachment O**.

2. **Title 24 M.R.S. § 2505** mandates that physicians and physician assistants report to the Board of Licensure in Medicine any physician or physician assistant where there is "reasonable knowledge of acts of the physician or physician assistant amounting to gross or repeated medical malpractice, misuse of alcohol, drugs or other substances that may result in the physician's or the physician assistant's performing services in a manner that endangers the health or safety of patients, professional incompetence, unprofessional conduct or sexual misconduct identified by board rule." Physicians and physician assistants who make mandated reports under this law are afforded immunity from civil suit pursuant to Title 24 M.R.S. § 2511.

   The statute *permits but does not mandate* that other health care providers such as nurses, pharmacists, physical therapists, social workers, psychologists, professional counselors make such a report to the Board of Licensure in Medicine. As a result, these other health care professionals are not afforded the immunity under Title 24 M.R.S. § 2511 for making a permissive report. Amending the statute to mandate reporting by these other health care professionals serves the dual purpose of encouraging reports to the Board and providing immunity from civil suit for so doing. A draft amendment can be found at **Attachment P**.

3. **Title 24 M.R.S. § 2506** mandates that a healthcare provider or entity provide specific information to the Board of Licensure in Medicine (Board) within 60 days of certain events. However, it does not require the healthcare provider or entity to provide all of the relevant information associated with that event until requested by the Board. Thus, the statute requires that the Board formally request all relevant information, an unnecessary additional step that delays the Board's investigation as it always requests the additional relevant information. A draft amendment eliminating this extra and unnecessary step can be found at **Attachment Q**.

4. **Title 24 M.R.S. § 2510** provides for confidentiality and exceptions to confidentiality of information provided to the Board pursuant to 24 M.R.S. §§ 2505 & 2506. It also eliminates the claim of "physician-patient" privilege in complaints filed with the Board. However, under Maine law the "physician-patient" privilege has been expanded to "health care professional" which includes licensed physicians, licensed physician assistants, and licensed nurse practitioners. (See Rule 503 of the Maine Rules of Evidence). Therefore, this section should be amended to reflect current Maine law. A draft amendment can be found at **Attachment R**.

5. **Title 32 Chapter 48: Board of Licensure in Medicine.** The Board is committed to submitting statutory changes for review to the 130th Legislature. The Board's enabling statute could use a comprehensive review and update. While the statute has been amended over the years, it has not been comprehensively updated. For example:

    a. **M.R.S. § 3270** defines the practice of medicine and surgery, requires a license to practice medicine or surgery, and provides criminal penalties for doing so without a license. The definition of the "practice of medicine or surgery" could be updated to reflect more current definitions and exceptions (e.g. medical students, active duty military, etc.). An example of an updated definition and exceptions can be found at **Attachment S**.

    b. **Title 32 M.R.S. § 3282-A(1)** identifies the Board's authority to investigate and take action with regard to complaints. The Board's statute should be amended to allow the Board to establish separate standing committees for complaint investigation and adjudicatory hearings. Such an amendment would address the following issues identified above in "Emerging Issues":

        - The physician and physician assistant members of the Board are in active clinical practice with full-time positions providing medical care. The Board meets at least once per month, and then on additional dates when necessary to conduct an adjudicatory hearing. Scheduling additional hearing dates for members in active clinical practice and with patients who depend upon them presents a significant challenge. At times, it results in a choice to cancel or reschedule patient care (including surgeries) or not attend the adjudicatory hearing. Adjudicatory hearings with complex medical issues, multiple expert witnesses, and thousands of pages of exhibits may take several days to complete. Given the Board members' patient schedules, this may result in a hearing that is scheduled over several months, especially as the law requires 6 members (a majority) in order to hold an adjudicatory hearing.

        - The Board both investigates and adjudicates complaints filed against physicians and physician assistants. While permitted under existing law, this dual role has constantly led to licensees and their attorneys raising allegations of bias and prejudgment in any subsequent adjudicatory hearing.

        - The Board is represented by an assistant attorney general who both provides it with legal advice and counsel and prosecutes cases in front of the Board during adjudicatory hearings. While permitted under existing law and the unique power of the Office of Attorney General, this dual role has constantly led to licensees and their attorneys raising allegations of bias by the Board in favor of its assigned assistant attorney general. It is not unusual for the assigned assistant attorney general to provide legal advice and counsel to the Board and then prosecute a case in front of the Board in the same meeting.

In addition, the Board's statute should include the authority to refer a complaint to the District Court, authority that exists in other affiliated board statutes (e.g. Board of Dental Practice, Board of Nursing). An example of an update to this section of the Board's statute can be found at **Attachment T**.

ATTACHMENT A

Board of Licensure in Medicine: Current Board Members

Name	Specialty	Expiration of Term
Louisa Barnhart, M.D., Chair	Psychiatry/Family Practice	06/30/21
Peter J. Sacchetti, M.D., Secretary	Internal Medicine	06/30/19
Susan Dench	Public Member	06/30/22
Tim Fox, MD	Emergency Medicine	06/30/20
Maroulla S. Gleaton, M.D.	Ophthalmology	06/30/19
Christopher R. Ross, P.A.-C	Physician Assistant/ Family Practice	06/30/19
Emory E. Liscord, M.D.	Emergency Medicine	06/30/21
Brad E. Waddell, M.D.	General Surgery	06/30/23
Lynne M. Weinstein	Public Member	06/30/22
Miriam Wetzel, Ph.D	Public Member	06/30/21

ATTACHMENT B

License FAQ

What types of professions does the Board license?

The Board licenses allopathic medical doctors (MDs) and physician assistants (PAs).

How can one check to see if an individual is licensed with the Board?

The Board's website (http://www.maine.gov/md/) includes a link entitled "Find a Licensee in our Database". Click on the link and then enter the individual's name or license number and click on "search." Key point:

- If a physician or physician assistant is not licensed with the Board of Licensure in Medicine, he/she may be licensed with the Maine Board of Osteopathic Licensure, which maintains a similar database of licensees: http://www.maine.gov/osteo/.

What are the basic qualifications for a license?

Physicians who are applying for a permanent medical license must, in general, meet the following:

- Graduate from an approved medical school
- Successfully complete all components of the national licensing examinations within the proscribed timeframe
- Meet ONE of the following:
  - Successfully complete 36 months of ACGME-approved graduate medical education; or
  - Possess current certification with the American Board of Medical Specialties
- Successfully pass the Board jurisprudence examination
- Pay all applicable fees
- Have no grounds to deny licensure pursuant to 32 M.R.S. § 3282-A(2) http://legislature.maine.gov/statutes/32/title32sec3282-A.html.

Physician Assistants who are applying for a permanent medical license must, in general, meet the following:

- Graduate from a physician assistant program approved by the Board
- Successfully pass the national certifying examination administered by the NCCPA
- Successfully pass the Board jurisprudence examination
- Pay all applicable fees
- Have no grounds to deny licensure pursuant to 32 M.R.S. § 3282-A(2) http://legislature.maine.gov/statutes/32/title32sec3282-A.html.

Can International Medical School Graduates apply for a Maine medical license?

Yes. The Board licenses international medical school graduates (IMGs). To qualify for a Maine medical license, an IMG must:

- Graduate from a medical school listed by the World Health Organization
- Obtain a permanent certificate from the Educational Commission on Foreign Medical Graduates (EFFMG). For more information regarding the ECFMG visit: https://www.ecfmg.org/.
- Successfully complete all components of the national licensing examinations within the proscribed timeframe
- Meet ONE of the following:
    - Successfully complete 36 months of ACGME-approved graduate medical education; or
    - Possess current certification with the American Board of Medical Specialties; or
    - Be granted a waiver by the Board of the 36 month of ACGME-approved graduate medical education for "exceptional circumstances" pursuant to Title 32 M.R.S. § 3271(6). http://legislature.maine.gov/statutes/32/title32sec3271.html
- Successfully pass the Board jurisprudence examination
- Pay all applicable fees
- Have no grounds to deny licensure pursuant to 32 M.R.S. § 3282-A(2) http://legislature.maine.gov/statutes/32/title32sec3282-A.html

Can the Board grant a waiver of the time and attempt requirements of the national licensing examination?

Yes. An applicant may apply to the Board for a waiver of the time and attempt limits for the USMLE. The Board may grant a waiver based upon unusual or extenuating circumstances as determined by the Board in its sole discretion.

Is a license application confidential?

No. With limited exceptions, applications and the information contained therein is a public record for the purposes of the Maine Freedom of Access Law (1 M.R.S. § 401 et seq.). Public records are required by law to be provided upon request. Examples of information that is exempt from this requirement include confidential medical information and social security numbers. For more information regarding the Maine Freedom of Access Law visit the following website: https://www.maine.gov/foaa/.

What are the licensing fees?

A list of the various licensing fees can be found at: MD Licensure.

Are license fees refundable in the event an applicant does not qualify for licensure?

No. First, filing an application requires work and research by Board staff. Second, the Board operates solely from the fees obtained during the licensing and re-licensing process. Licensing fees are essential to the continued operation of the Board. That is why it is important to review and understand the qualifications for licensure BEFORE applying.

How does the Board verify medical education, graduate medical education, and passage of national medical examinations?

The Board utilizes the Federation Credential Verification Service (FCVS) of the Federation of State Medical Boards (FSMB). The FCVS verifies identity, medical education, graduate medical education, and examination history. In addition, the FCVS obtains verification of medical school and examination history for International Medical School Graduates (IMGs) from the ECFMG. For more information regarding the FCVS visit: https://www.fsmb.org/fcvs/.

Is the Board a member of the Interstate Medical Licensure Compact (IMLC)?

Yes. More information regarding the IMLC may be obtained at: https://imlcc.org/. Physician applicants to Maine may obtain an expedited medical license pursuant to the IMLC if they meet the following criteria:

- Graduate from an accredited medical school, or a school listed in the International Medical Education Directory.
- Successful completion of ACGME or AOA accredited graduate medical education.
- Passed each component of the USMLE, COMLEX-USA, or equivalent in no more than three attempts.
- Hold a current specialty certification or time-unlimited certification by an ABMS or AOABOS board.
- Must not have any history of disciplinary actions against a medical license.
- Must not have any criminal history.
- Must not have any history of controlled substance actions against a medical license.
- Must not currently be under investigation.
- Physicians licensed in Maine who are interested in obtaining a license in another state through the IMLC must submit fingerprints or other biometric-based information for the purpose of obtaining criminal history record information from the Federal Bureau of Investigation (FBI) and the agency responsible for retaining Maine's criminal records. Physicians may register for fingerprinting online at https://me.ibtfingerprint.com/. Physicians who do not register, will not be able to have their fingerprints taken. There is a one-time fee for this process. A letter of Qualification will not be issued by the Board until the results of the criminal background check have been received.

Are there different types of physician medical licenses?

Yes. A list of the different types of licenses is available on the Board's website and identified in the Chapter 1 Rule Regarding Physicians. Certain types of licenses do not

allow a physician to practice clinical medicine. For more information please see the Chapter 1 Rule Regarding Physicians at: MD rules & statutes.

Are there different types of physician assistant licenses?

Yes. Physician Assistants may have either a clinical or a non-clinical license. Physician Assistants who have a non-clinical license are not able to render any medical services because they do not have a plan of supervision registered with the Board. For more information please see the Joint Rule Regarding Physician Assistants at: MD rules & statutes.

How does one start the license application process?

First, apply to establish a physician or physician assistant profile with the FCVS: https://www.fsmb.org/fcvs/. Applicants for the following licenses are exempt from this requirement:

- Temporary Residency Certificates
- Youth Camp Licenses
- Telemedicine Consultative Registration

Second, complete the Uniform Application (UA) through the FCVS: https://www.fsmb.org/uniform-application/.

Third, successfully complete the Board's jurisprudence examination.

Fourth, complete the State of Maine Addendum ("Addendum") to the UA. Applicants will receive an email giving them access to the Addendum, which must completed and submitted to the Board with the application fees. Please note that license applications will not be processed until the Board receives the application fees. Applicants may use a credit card to pay the fees online or mail a check to the Board.

Fifth, submit an affidavit with an appropriately notarized photograph.

What is the jurisprudence examination?

The jurisprudence examination consists of Maine-specific laws and regulations regarding the practice of medicine. It must be successfully completed upon initial licensure and every four (4) years thereafter. The examination covers topics such as:

- Mandated Reporting of Suspected Child Abuse: https://www.maine.gov/dhhs/ocfs/mandated-reporters.shtml.

- The Maine Prescription Monitoring Program: http://www.maine.gov/dhhs/samhs/osa/data/pmp/prescriber.htm.

- Requirements regarding Opioid Prescribing: https://www.maine.gov/dhhs/samhs/osa/data/pmp/rules.htm. MD rules & statutes

How does one prepare for and take the jurisprudence examination?

An online study guide (PDF) is available to applicants.

Applicants complete the jurisprudence examination online: https://www1.maine.gov/cgi-bin/online/licensing/menu_display.pl.

What is the passing score for the jurisprudence examination?

75.

What happens if an applicant fails the jurisprudence examination?

If an applicant fails to attain a score of seventy-five (75) on the jurisprudence examination, the applicant will be required to re-take the examination on paper and score 100% or he/she may be required to appear for an interview before a committee of the Board.

How long does it take to obtain a license?

It depends on the type of license applied for, whether the applicant has an existing profile with the FCVS, and whether the application includes any negative information. In general, applications are processed within the following timeframes:

- Permanent, Temporary, Administrative – 45-90 days
- Emergency, Emeritus and Compact – 48 hours
- Educational, Camp, Volunteer – 1-2 weeks

How can one check on the status of an application?

Applicants may check the Board's website for updates regarding their applications using the "Check the Status of My Application" feature: http://www.maine.gov/md/. Using this feature, applicants type in their names and click on "search." Key points:

- If the applicant's name does not appear, then the Board has not received the application.
- If the applicant's name does appear along with the word "Pending", then the Board has received the application but a license has not yet been issued.
- A "checklist" identifies what information has and has not been received by the Board. Applicants should review the checklist prior to contacting Board staff regarding the status of their applications.

What happens to applications containing negative information?

Applications with negative information, once complete, are reviewed by the Board during one of its monthly meetings. Following review, the Board may: issue the license, request additional information, or preliminarily deny the license.

Once a license is issued, how is it delivered?

Licenses are emailed to the email address provided by the applicant/licensee. The applicant/licensee can then download and print a copy of the license. Key points:

- The email with the license will come from the following address: noreply@maine.gov.
- Applicants should check their "spam" and "junk" email folders if the "checklist" indicates that a license was issued but they have not received the email.
- Applicants should ensure that the Board staff has their most up-to-date email address.

When does a license expire?

In general, licenses are issued for a two-year period. However, the length of the initial license depends upon when the application is received and the applicant's date of birth. Key points:

- The licenses of individuals born in even-numbered years expires on the last day of the month of their birth in an even-numbered year.
- The licenses of individuals born in odd-numbered years expires on the last day of the month of their birth in an odd-numbered year.
- Individuals who are issued an initial license that expires less than six (6) months following its issuance pay only a pro-rated renewal fee of $150 (as opposed to $500).
- Upon renewal, the license will expire in two (2) years on last day of the month of the individual's month of birth.

What is the process for renewing a license?

As professionals, licensees are responsible for knowing when their licenses expire. The expiration date is tied directly to their date and year of birth, and appears on the license itself. 60 days prior to the expiration of the license, the Board will email a notice of upcoming expiration and need to renew to the email address provided by the applicant/licensee. No further notices will be provided. Key points:

- Licensees should ensure their email address on file with the Board is current and updated. Licensees can update their contact information – including email address – online by going to the Board's website (http://www.maine.gov/md/) and clinking on the link "Update My Contact Information."
- Licenses are renewed online by going to the Board's website and clicking on the link "Renew My License."

- Some licensees will need to complete the jurisprudence examination as part of the renewal process, and will be prompted to do so. Unless prompted, applicants are not required to complete the jurisprudence examination.
- Some licensees will be prompted to provide evidence of the completion of 40 hours of Category 1 CME. The Board randomly audits each month 10% of the renewal applicants for CME. Unless prompted, applicants are not required to provide evidence of CME.

What happens if a renewal application is not received by the Board prior to the expiration date on a license?

The license expires and the individual may not practice medicine or render medical services in Maine.

If a license expires, can it be re-activated?

Yes. An individual may file an online application to renew his/her medical license for up to 90 days following the expiration of the license, including a $100 late fee.

What happens if a license is not renewed 90 days after it expires?

The license lapses. Individuals whose licenses have lapsed must file a reinstatement application with the Board. If a license has been lapsed for more than five (5) years, the individual must file a new application for licensure.

What are the continuing medical educational (CME) requirements?

Information regarding the Board's CME requirements (PDF), key points:

- Applicants for initial licensure do not need to submit proof of CME.
- Licensees are required to complete CME:
  - **Physicians** are required to complete 40 hours of Category 1 CME, including 3 hours of CME regarding opioid prescribing, during each renewal cycle.
  - **Physician Assistants** are 100 hours of CME, including 40 hours of Category 1 CME and 3 hours of CME regarding opioid prescribing, during each renewal cycle.
- CME requirements for renewal may be prorated depending upon the expiration date of the initial license (i.e. if the initial license was issued for less than the full 2 years).

Is proof of CME completion required to be submitted with a renewal application?

Only if the applicant is prompted to provide it pursuant to a random audit.

Where can one find information regarding opioid CME?

The Board's website includes links to resources regarding prescribing, including free

opioid CME: prescribing resources.

Does Maine have its own DEA?

No. Licensees who will be prescribing controlled drugs should contact the U.S. Drug Enforcement Administration, JFK Federal Building, Room E-400, 15 New Sudbury Street, Boston, MA 02203-0131, Phone (617) 557-2200 or toll-free at 888-272-5174, or on the web at https://www.dea.gov/ to notify the DEA about their Maine license and to obtain a federal DEA registration.

Does Maine have resources for applicants and licensees who may have mental health or substance misuse issue?

Yes. The Board, together with other professional licensing boards, helps to fund the Medical Professionals Health Program (MPHP). Information regarding the MPHP can be found at: https://www.mainemphp.org/.

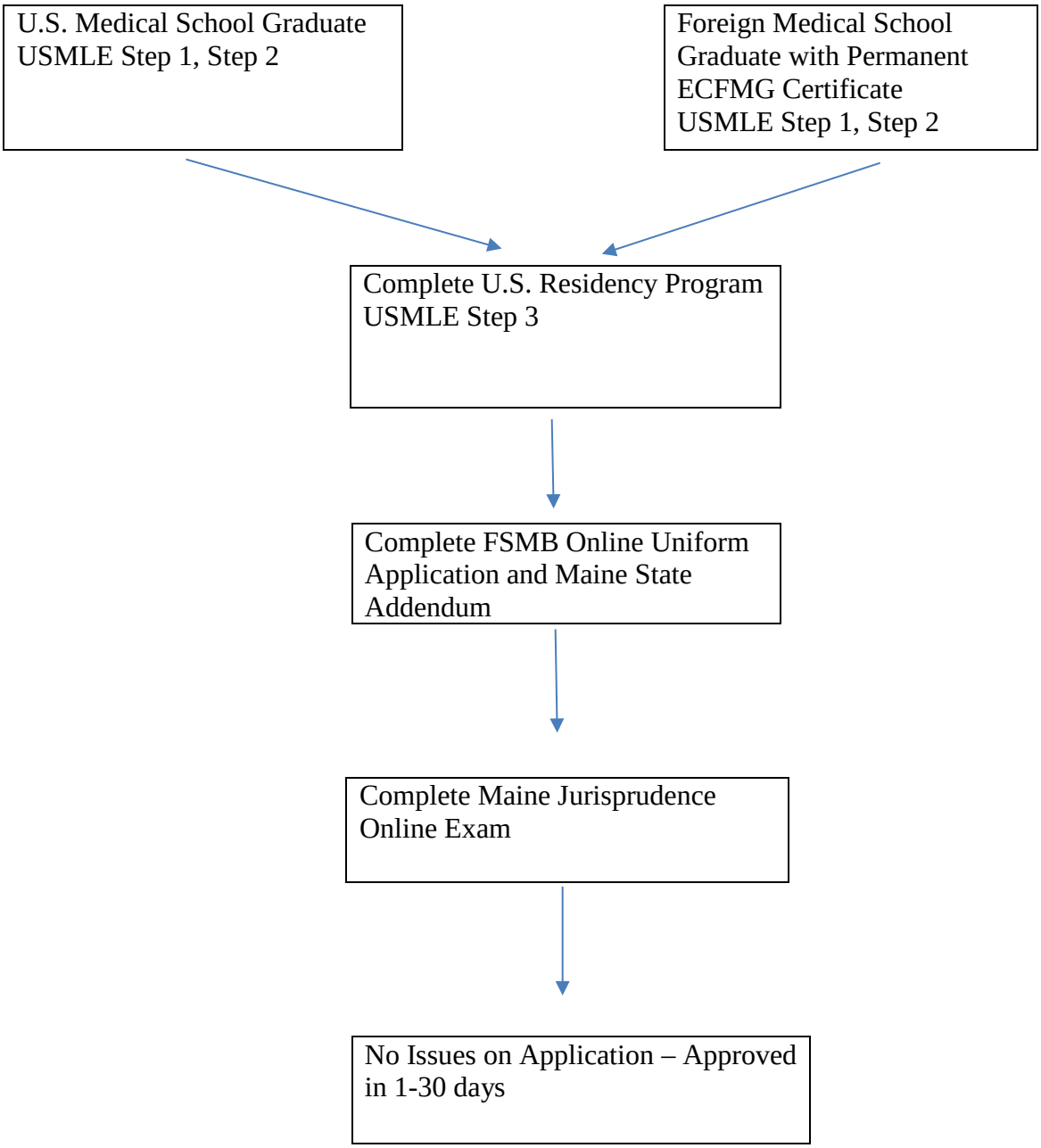
What if one has other questions about the Board's licensing process that aren't answered here?

The Board's Licensure Specialists may be contacted during business hours (8:00 am to 4:00 pm EST).

- Last Name A-L Tracy Morrison: tracy.a.morrison@maine.gov. 207-287-3602
- Last Name M-Z Elena Crowley: Elena.I.Crowley@maine.gov. 207-287-3782

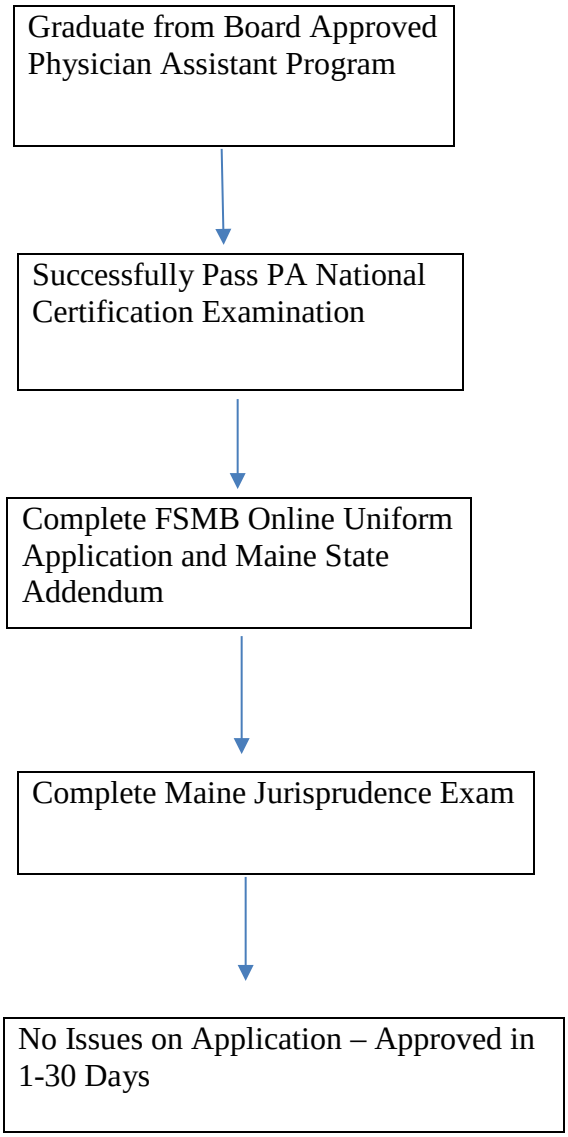
ATTACHMENT C

Physician Licensing Flowchart



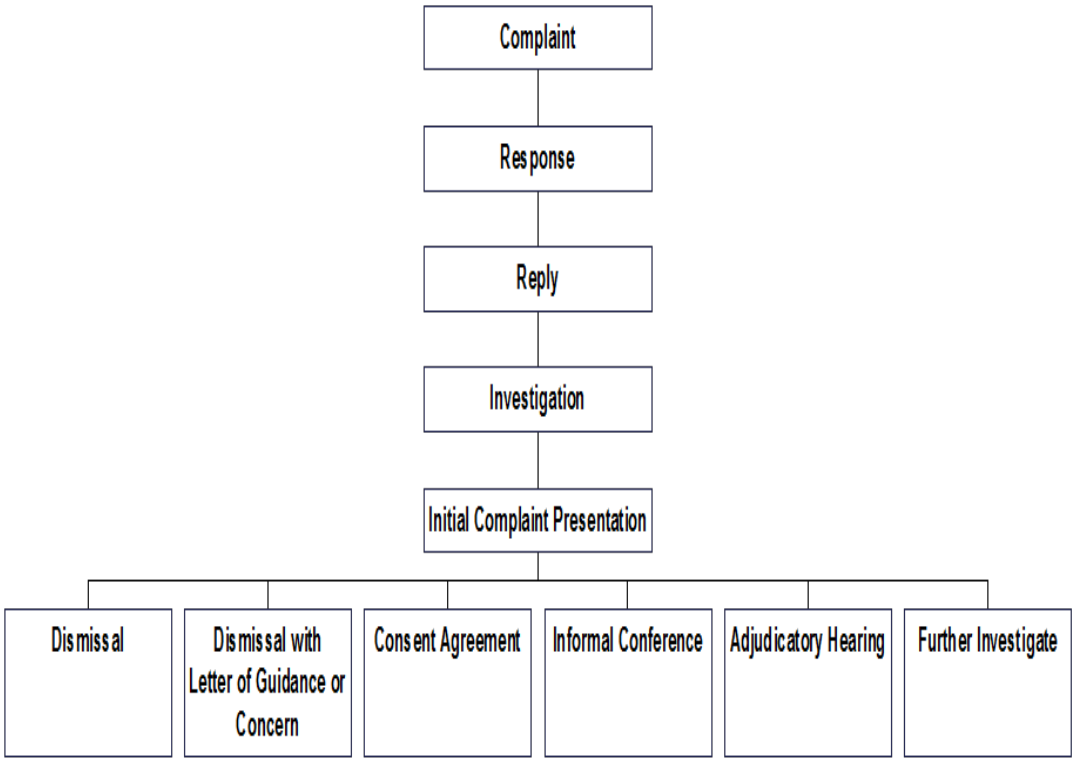
ATTACHMENT D

Physician Assistant Licensing Flowchart



ATTACHMENT E

Complaint Process Flowchart



ATTACHMENT F

Board vs. Malpractice:

Differences between disciplinary and malpractice actions are significant.

- Boards may discipline a licensee for incompetence, but cannot provide money to the complainant to pay for any harm that was done.
- In a malpractice action in a court, a judge or a jury may award money damages to the complainant if the physician is found to be negligent.

Locate Physicians, Administrative, Licensing, & Disciplinary Information:

- Online at:

MD

http://www.docboard.org/me/me_home.htm

DO

http://www.maine.gov/osteo/

- By Contacting the Consumer Assistant Toll Free in Maine at (888) 365-9964

Contact Us:

Board of Licensure in Medicine

137 State House Station, Augusta ME 04333

Phone (207) 287-3601 Fax (207) 287-6590

TTY/TB: 1-800-437-1220

http://www.docboard.org/me/me_home.htm

Board of Osteopathic Licensure

142 State House Station, Augusta ME 04333

Phone (207) 287-2480 Fax (207) 287-3015

TTY/TB: 1-800-437-1220

http://www.maine.gov/osteo/

Consumer Assistant

Phone (207) 287-3608 or

Toll Free in Maine (888) 365-9964

TTY/TB: 1-800-437-1220

Other Professional Licensing Boards

Dept. of Professional & Financial Regulation

Licensing & Enforcement Division

Phone (207) 624-8603 Fax (207) 624-8637

Consumer's Guide

to the Licensing, Regulating & Disciplining of Physicians in Maine

Maine Boards of Medical & Osteopathic Licensure

"For the protection of the health, safety and welfare of the public"

Board History:

For over 100 years, it has been Maine law that a physician must be licensed to practice medicine in our State. Through licensure, the State ensures that all practicing physicians have an appropriate level of education and training and that they abide by recognized standards of professional conduct.

Board Functions:

Protect the public by:

- Licensing Physicians & Physician Assistants
- Investigating Complaints, Providing Guidance, or Imposing Discipline
- Providing information to the Public

Licensure Qualifications:

- Education and Training requirements
- Comprehensive written examination
- Good professional ethics and practices
- Renewal of license every two years including participation in Continuing Medical Education (CME)
- Verification of all information provided to ensure credentials

How to File a Complaint:

Anyone may file a complaint. It must be in writing or by e-mail. Either a letter or a complaint form may be used. Forms are available online or by calling.

The Consumer Assistant, (888) 365-9964, is available to answer questions and guide you through the process

Complaint Process:

Upon receipt, the Board sends a copy of the complaint to the licensee. The licensee has 30 days to respond in writing. A copy of this response is provided to the complainant, unless doing so would jeopardize their health.

The complaint, response, and investigative materials are reviewed approximately 3 months after receipt of the complaint.

Based on its review the Board determines if grounds for disciplinary action exist.

- If no, the complaint is closed. *See Possible Results of a Complaint*
- If yes, the complaint remains open pending further Board action. *See Possible Results of a Complaint*

The complainant is notified of the outcome in writing.

Some Grounds for Discipline:

- Alcohol/Substance Abuse
- Conviction of a Crime
- Fraud & deceit in obtaining a license
- Inappropriate Prescribing
- Incompetence or Unprofessional Conduct
- Violation of Law, Rule, or Board Order

Possible Results of a Complaint:

- Closure with no action
- Closure with a Letter of Guidance (non-disciplinary)
- Disciplinary Action which may include:

warning; censure; reprimand; fine; education; specific conditions of probation; Consent Agreement; suspension; or loss of license.

The Boards Cannot Help With:

- Other Health Care Professionals (e.g. RN, LCSW, DDS, DMD, PT)
- Hospitals, Clinics, or Nursing Homes
- Medical Malpractice
- Billing or Fee Disputes

Additional Information Regarding the Board Complaint Process

Maine Board of Licensure in Medicine

"For the protection of the health, safety and welfare of the public"

137 State House Station, Augusta ME 04333
Phone (207) 287-3608 Fax (207) 287-6590
TTY/TB: 1-800-437-1220
http://www.maine.gov/md

Confidentiality

With limited exceptions, Maine law makes complaints and investigative records confidential (not accessible to the general public) during the pendency of an investigation. In addition, the law makes patient/client treatment records confidential.

Complaint Review

The Medical Board meets on the 2nd Tuesday of every month. During these meetings, the Board reviews many complaints. As a result, it has established the following process in order to both manage the volume of complaints and ensure ability to attend and observe the complaint review:

Continued on back

Complaint Review Continued

Identify and take note of the complaint (CR) number on any correspondence you receive from the Board.

The agenda for each Board meeting will be posted on the Board's web site at least 6 days prior to the meeting. The complaints that will be reviewed by the Board will appear on each agenda under their respective complaint (CR) numbers. To learn which complaints will be discussed, go to: http://www.docboard.org/me/administrative/dw_meetings.htm. No Internet? Call the Consumer Assistance Specialist at (207) 287-3608 to check your complaint status.

If it is your intent to attend, prior notification to the Board staff is strongly suggested. Please be sure to appear at the Board's office and sign in using the CR number no later than 9:00 a.m. on the day of the meeting. If you are late, the Board may have already reviewed the complaint.

Please remember that the law may allow you to be present and listen to the Board's discussion, but does not permit you to participate. Anyone attempting to intervene or otherwise disrupt the Board's review and/or discussion will be asked to leave.

ATTACHMENT G

Public Release of Information:

With limited exceptions:

The complaint process is confidential and should not be made part of the patient's medical record.

If the complaint is dismissed, information that there was a complaint and its dismissal is only publicly available from the Board upon request.

If a Letter of Guidance is issued it remains in the licensee's file for up to 10 years and is available to the public upon request.

If a disciplinary action was taken a press release is issued and the disciplinary document is posted on the Board's website.

Do's and Don'ts:

- DO respond within 30 days
- DO provide a complete, factual, straightforward response.
- DO provide any records or other information requested with your response.
- DO attempt to answer all the concerns voiced in the complaint.
- DO speak with an attorney if you have legal questions.
- DO check the Board website if you have questions about Rules or Statutes.
- DO NOT speak with Board members.
- DO NOT ignore a complaint.
- DO NOT wait until the last minute and request an extension.
- DO NOT withhold facts or records.

If you have questions or suggestions, please contact Timothy Terranova (207) 287-6930 or Maureen Lathrop at (207) 287-3603. They would be happy to speak with you.

Complaint Review:

In order to maintain confidentiality, the Board conducts its review of a complaint in executive session. However, the law, with some exceptions, allows most complainants, licensees who are the subject of a complaint, and/or their attorneys to be present and observe the Board's review of a complaint.

The Board meets on the second Tuesday of every month. The agenda for each Board meeting will be posted on the Board's website at least 6 days prior to the meeting. The complaints for review appear on each agenda under their respective complaint (CR) numbers. To learn which complaints will be discussed, go to: www.maine.gov/md. If you do not have internet access, you may contact the Board at (207) 287-3601

If you would like to attend, prior notification to the Board staff is strongly suggested. Please be sure to appear at the Board's office and sign in no later than 9:00 a.m. on the day of the meeting. If you're late, the Board may have already reviewed the complaint.

Please remember that the law allows you to be present and listen to the Board's discussion, but does not permit you to participate. Anyone attempting to intervene or otherwise disrupt the Board's review and/or discussion will be asked to leave.

Board of Licensure in Medicine

137 State House Station, Augusta ME 04333
Phone (207) 287-3601 Fax (207) 287-6590
TTY users call Maine relay 711
http://www.maine.gov/md

Licensee's Guide to the Complaint Process

Maine Board of Licensure in Medicine

"For the protection of the health, safety and welfare of the public"

Board Duties:

Maine law states that physicians and physician assistants must be licensed to practice medicine in our State. Through licensure, the State ensures that all practitioners have an appropriate level of education and training and that they abide by recognized standards of professional conduct.

As part of the Board's duties it evaluates licensee performance and must, by law, investigate all complaints and reports. Complaints and reports are received from:

- Patients / Family Members / Concerned Citizens
- Licensees and Other Professionals
- Hospitals
- Federation of State Medical Boards
- National Practitioner Data Bank
- Federal or State Agencies
- Malpractice Carriers

Certain reports from licensees and hospitals are mandated under 24 M.R.S.A. 2505 - 2506. When the Board receives such a report it starts an investigation and determines if a complaint should be issued. Normally the licensee is not formally notified unless the Board issues a complaint. If no complaint is issued then the investigation is closed.

Complaint Process:

Upon receipt of a complaint, the Board sends a copy of the complaint to the licensee. (Per statute the Board has 60 days to notice the licensee.) The licensee has 30 days to respond in writing. A copy of this response is provided to

Complaint Process (cont):

the complainant. If you believe doing so would seriously jeopardize the patient's health, please contact Board staff for instructions.

The complaint, response, and investigative materials are generally reviewed by the Board about 4 weeks after receipt of your response.

Based on its review the Board determines if possible grounds for disciplinary action exist.

- If no, the complaint is dismissed or dismissed with a Letter of Guidance (LOG). LOG's allow the Board to express concern or guidance intended to improve professional performance and possibly prevent further complaints before the Board. LOG's are **not** disciplinary.
- If yes, the complaint remains open pending further Board action, such as:

Further investigation:

Normally takes 3 to 9 months. The Board completes the investigation as quickly as possible.

Informal Conference:

When the Board has questions after reviewing the complaint it may request an Informal Conference with the licensee. This is a chance for the Board to have a discussion with both the complainant and the licensee.

Licensee's are welcome to have an attorney present, but the Conference is informal and the Board expects to engage with the licensee, not the attorney.

Complaint Process (cont):

Adjudicatory Hearing::

If the Board determines there may be grounds for discipline it may order an Adjudicatory Hearing. If an Adjudicatory Hearing is ordered, the Board strongly recommends that the licensee:

Consult with an attorney.

- The Licensee and complainant are notified of the Board's action in writing.

Some Grounds for Discipline:

- Fraud or Deceit in Obtaining a License
- Habitual Substance Abuse
- Sexual Misconduct
- Incompetence or Unprofessional Conduct
- Conviction of a Crime
- Violation of Law, Rule, or Board Order
- Inappropriate Prescribing
- Disciplinary Action by Another State
- Failure to Report an Impaired Physician

Disciplinary Actions include:

warning; reprimand; censure; fine(s); cost of hearing; education; probation with conditions; suspension; revocation or modification of license.

Confidentiality:

With limited exceptions, Maine law makes complaints and investigative records confidential (not accessible to the general public) during the pendency of an investigation. In addition, the law makes patient/client treatment records confidential.

ATTACHMENT H

Discipline Frequently Asked Questions

Why should I file a complaint against a licensee?

The Board is composed of six physicians, one physician assistant, and three public representatives, all of whom are appointed by the governor. They are committed to protecting the health, welfare, and safety of the public by licensing only competent and qualified physicians and physician assistants, and investigating concerns raised by both the public and other credentialing/licensing agencies about licensee conduct. The Board has taken many actions regarding its licensees, including both non-disciplinary and disciplinary actions. For a list of disciplinary actions see the Board's adverse actions page (Click here to view Adverse Actions). Investigating complaints and taking corrective measures is one way that the Board protects the public.

What types of individuals/entities does the Board have authority to investigate?

The Board licenses medical doctors (MD) and physician assistants (PA), and may only investigate matters related to specific individual MDs or PAs who are or were licensed by the Board. It is not permitted by law to investigate clinics, home healthcare entities, health centers or hospitals, osteopathic physicians, podiatrists, chiropractors, naturopathic doctors, dentists, nurses, or physical therapists. If you wish to file a complaint against a hospital/clinic/home healthcare entity/health center or other licensed healthcare professional, please follow the links below:

- Hospitals/clinics/home health care entities: https://www.maine.gov/dhhs/dlc/complaint/index.shtml
- Nursing Home Administrators Licensing Board: https://www.maine.gov/pfr/professionallicensing/professions/nursing_home/license_types.html
- Board of Osteopathic Licensure: https://www.maine.gov/osteo/
- Board of Licensure of Podiatric Medicine: https://www.maine.gov/pfr/professionallicensing/professions/podiatrists/index.html
- Board of Chiropractic Licensure: https://www.maine.gov/pfr/professionallicensing/professions/chiropractors/index.html
- Board of Complimentary Healthcare Providers: https://www.maine.gov/pfr/professionallicensing/professions/complementary/naturopathic_doctor.html
- Board of Dental Practice: https://www.maine.gov/dental/
- Board of Nursing: https://www.maine.gov/boardofnursing/

Can I file a complaint against a physician or physician assistant who works at a Veterans Administration (VA) Hospital?

If the physician or physician assistant is licensed by the Board, then you may file a complaint with the Board. Physicians and physician assistants who work at a VA hospital are required to hold a valid license in at least one state, so are not necessarily licensed with the Board. You may verify whether a physician or physician assistant is licensed by the Board by going to the following link: https://www.pfr.maine.gov/ALMSOnline/ALMSQuery/SearchIndividual.aspx?Board=376

If you have a concern about the care that you received from a physician or physician assistant who works at a VA and is not licensed by the Board, you may contact the VA at: https://www.va.gov/health/patientadvocate/. In addition, you may file a complaint against the physician or physician assistant in the state in which he/she holds a license. Click here to go to http://www.docinfo.org/ to determine in which state(s) the physician or physician assistant is licensed. This is a search engine hosted by the Federation of State Medical Boards (FSMB) using information provided by all states.

What kind of things can I complain about?

The Board may only discipline licensees for violating its statutes or rules. Grounds for discipline include:

- Impairment of ability to practice due to substance misuse or due to a physical or mental illness
- Fraud, deceit or misrepresentation in the practice of medicine
- Unprofessional conduct
- Incompetence
- Conviction of certain crimes
- Inappropriate prescribing
- Sexual misconduct
- Violation of any Board rule

Examples of things that are not grounds for discipline include:

- Billing disputes
- Insurance issues
- Disputes about disability compensation or insurance reimbursement
- Requests for monetary compensation
- Requests for assistance with medical malpractice lawsuits

May I file a complaint on behalf of a patient?

Yes. Anyone may file a complaint. However, you will not receive a copy of the licensee's response or the patient's medical records unless you are the patient's "personal representative" and authorized to access the patient's medical information. Maine law defines "personal representative" to include:

- A patient's legal guardian as appointed by a court

- A patient's agent under a power of attorney for health care
- A patient's agent under a durable power of attorney that includes the authority to make healthcare decisions
- A deceased patient's personal representative as appointed by the Probate Court
- A minor patient's parent, legal guardian, or guardian ad litem

The Board is unable to assist you in becoming a personal representative. You can consult an attorney about obtaining a power of attorney form or becoming a personal representative or guardian. More information regarding legal guardianship through the court system may be found at:

- State of Maine Judicial Branch: http://www.courts.maine.gov/citizen_help/probate_matters.html
- Maine Probate Court: https://www.maineprobate.net/welcome/
- Maine Department of Health and Human Services: https://www.maine.gov/dhhs/oads/aps-guardianship/guardianship.html

The Board does not have power of attorney forms. However, power of attorney for health care forms may be obtained from the following:

- The Maine Hospital Association: http://www.themha.org/policy-advocacy/Issues/End-of-Life-Care/advdirectivesform.aspx
- The Maine Medical Association: https://www.maine.gov/dhhs/oads/aps-guardianship/documents/advdirectivesform.pdf
- Maine Department of Health and Human Services: https://www.maine.gov/dhhs/oads/aps-guardianship/documents/advdirectivesform.pdf

Can I file an anonymous complaint?

The Board strongly discourages anonymous complaints. Anonymous complaints are difficult to investigate, and requests for your identity to remain confidential will not necessarily be honored. However, there are instances where the Board may initiate its own complaint if sufficient evidence of misconduct is provided in an anonymous complaint and it is corroborated by other independently obtained evidence.

What information do I need to include in my complaint?

Complaints must be written or submitted online. Either way, there is basic information that is required with your complaint:

- Name of the physician or physician assistant
- Name and contact information of the individual filing the complaint
- The patient's name, date or birth, mailing address and telephone number

- A description of the actions or inactions prompting the complaint, including the location where it occurred
- The approximate dates for the actions/inactions prompting the complaint

How do I file a complaint against a Medical Doctor (MD) or Physician Assistant (PA)?

Click here to open our email complaint form. You may use this electronic form (PDF) to file a complaint against a provider.

What happens after my complaint is filed? What is the Board's complaint process?

- Upon receipt of a complaint, the Board assigns a number to track it.
- The Board sends a copy of the complaint to the licensee.
- The licensee must respond in writing to the complaint within thirty days, unless the licensee requests and is granted an extension for good cause.
- Upon receipt of the response, the Board sends a copy of the licensee's response to the complainant unless:
  - It determines that providing the response would be detrimental to the health of the complainant; or
  - It determines that the complainant is not a "personal representative" of the patient and not entitled to access the patient's medical information.
- The complainant, if entitled to receive the licensee's response, may submit a reply to the Board within ten days.
- During the course of the investigation, the Board obtains the medical and other records relevant to the investigation, and may conduct interviews.
- Once the investigation is complete, the complaint is reviewed by the Board at one of its regularly scheduled monthly meetings. Following review, the Board may take any of the actions described below, request additional investigation, or schedule the matter for an Informal Conference.

What is an Informal Conference?

An Informal Conference is a means by which the Board gathers additional information and clarification about a complaint. It is a meeting with the licensee and the complainant (if he/she chooses to attend), during which the Board members question the licensee and complainant regarding issues related to the complaint. During an Informal Conference, the licensee may be represented by legal counsel, and the complainant may be accompanied by two individuals, including legal counsel. The law requires Informal Conferences to be closed to the general public, and statements made during an Informal Conference are confidential.

What happens after an Informal Conference?

The Board takes further action regarding the complaint (please see below).

How long does the complaint process take?

There is no set time limit. The length of the review process varies with the complexity of the complaint and the specific investigative requirements of the complaint. Some complaints are processed quickly, while others may take months. However, the Board strives to conduct an initial review of the complaint within 90 days of receiving it.

What are the possible outcomes of my complaint?

- Dismissal as no violation of Board statutes or rules
- Dismissal with a Letter of Guidance or Concern (non-disciplinary)
- Disciplinary Action

May I be present when the Board reviews my complaint?

Yes. The monthly meetings of the Board are open to the public. A certain portion of the meetings are dedicated to reviewing complaints. However, here are a number of important things to know:

- Complaints are confidential during the investigative process, and licensee names are not used during the Board review
- The medical information reviewed by the Board is confidential, and patient names are not used during the Board review
- The Board uses the complaint number when referring to a specific complaint
- The complainant and licensee may be present and listen to the Board's discussion during review, but the law does not permit them to participate in any way
- Each of the Board members is provided with a copy of the complaint materials prior to the date it is scheduled for review
- Discussion of a particular complaint may be brief, depending on its nature and complexity

Will I be informed about the outcome of the complaint?

Yes. The Board will inform you in writing about the outcome of the complaint, even if you were not entitled to receive the licensee’s response or access the patient’s medical information.

If the Board dismisses the complaint, can I appeal that decision to a court?

You must consult with a private attorney regarding this issue as the Board is unable to provide legal advice.

If the Board dismisses the complaint, can I request that the Board reconsider its decision?

Yes. However, the Board will not reconsider its decision (or the complaint) unless new and

relevant information regarding the complaint is provided to the Board with the request for reconsideration. The Board's investigation and complaint process is designed to ensure that the Board has all relevant information regarding the complaint at the time it is reviewed. Therefore, reconsideration of a decision to dismiss (or the complaint) is extremely rare.

If the Board dismisses my complaint, can I provide consumer feedback?

Yes. You can submit your feedback to the Board's Consumer Assistant Specialist, Savannah Okoronkwo at savannah.okoronkwo@maine.gov, and it will be provided to the Board at the following month's Board meeting. Although the Board appreciates, and reviews, all feedback it does not respond.

What is the Board's disciplinary process?

If the Board determines that the complaint may involve violations of Board statutes or rules which should result in discipline, it may take any of the following actions:

- Schedule the complaint for an adjudicatory hearing before the Board
- Offer a consent agreement to the licensee
- Refer the complaint to the District Court

What is a consent agreement?

A consent agreement is a written agreement entered into between the Board, the licensee, and the Office of Attorney General that imposes discipline or adverse licensing action upon a licensee or applicant for licensure.

What is an adjudicatory hearing?

An adjudicatory hearing is similar to a trial that is conducted by the Board, which is generally open to the public (some portions may be closed to protect health care information). A hearing officer presides over the hearing and assists the Board. The licensee may be represented by an attorney or present his/her own case. The State is represented by an assistant attorney general who prosecutes the complaint. The hearing is similar to a civil trial: evidence, witnesses, and arguments are presented by both sides. At the conclusion of the hearing the Board determines if there is sufficient evidence that the licensee violated Board statutes or rules, and any discipline. If the Board finds the licensee did not commit any violations, the case will be dismissed or dismissed with a Letter of Guidance. If the Board finds the licensee committed one or more of the violations, it will determine what sanctions to impose.

What types of disciplinary action can the Board take?

The law provides the Board with the authority to impose a range of sanctions, which depends upon the facts and circumstances of each case and includes:

- Warning
- Censure
- Reprimand
- Civil monetary penalty
- Additional medical education
- Probation with conditions
- License restriction(s)
- Suspension
- Loss or Denial of License

Can the Board provide me with monetary assistance?

No. The Board may discipline a licensee for violating its statutes or rules, but it cannot provide money nor order a licensee to pay money to a complainant to pay for any harm that was done.

Where can I find information on Doctors who have been disciplined?

Click here to go to our Adverse Actions page. An adverse licensing action may be either modifications or conditions attached to a license at the time it is issued or the discipline of an already existing license.

How can I check the licensing status of a Doctor licensed in Maine?

Click here to go to the https://www.pfr.maine.gov/ALMSOnline/ALMSQuery/SearchIndividual.aspx?Board=376. This is where you can search for a Physician or Physician Assistant by license or name.

How can I check the status of a Doctor licensed elsewhere in the US?

Click here to go to the AIM Nationwide Physician Search page. This has a search engine for all participating State Medical Boards and links to non-participating State Medical Boards.

Click here to go to http://www.docinfo.org/. This is a search engine hosted by the Federation of State Medical Boards (FSMB) using information provided by all states.

What if I have other questions about the Board of Licensure in Medicine's disciplinary processes that aren't answered here.

You can contact the Board's Consumer Assistant, Savannah Okoronkwo at (207)287-3608 or toll-free in Maine at 888-365-9964 during business hours.

ATTACHMENT I

Freedom of Access Act Request Protocol

Introduction

Effective 09/19/2019 the boards of medicine, osteopathic licensure, and nursing will have to implement the enacted law "An Act to Protect Licensing Information of Medical Professionals" (See attached). The law requires that upon receipt of a request for all or part of the record of an applicant or licensee, the boards shall:

1. Redact information that is not public;

2. Acknowledge receipt of the request and provide a description of the review process, including an explanation that all or part of the record may be withheld if the board finds that disclosure of all or part of the redacted record creates a potential risk to the applicant's/licensee's personal safety or the personal safety of any 3rd party; and

3. Contemporaneously notify the applicant/licensee at the last address on file with the board explaining that:

    a. A request for their information has been made; and

    b. That prior to providing the requested information:

        i. The board will redact non-public information;

        ii. The applicant/licensee may review the redacted information prior to it being provided to the requester;

        iii. The applicant/licensee has 10 business days (excluding weekends and holidays) from the date the board sends the notice to request the opportunity to review the redacted record;

        iv. If the applicant/licensee makes a timely request to review the redacted information, the board shall send a copy of the redacted information to the applicant/licensee for their review;

        v. The applicant/licensee may petition the board to withhold the release of all or part of a record based upon the potential risk to the applicant/licensee's personal safety or the personal safety of any 3rd party if the record is disclosed. The petition must be filed with the board within 10 business days (excluding weekends and holidays) after the board sends the applicant/licensee the redacted record and must include an explanation of the potential safety risks associated with disclosure of the information and a list of items requested to be withheld;

vi. The board shall notify the applicant/licensee of its decision regarding any petition to withhold information within 60 days of receiving the petition; and

vii. If the applicant/licensee disagrees with the board's decision, he/she may file a petition in the Superior Court to enjoin the board from releasing the information.

FOAA Protocol

1. Upon receipt of a FOAA request from anyone other than the applicant/licensee for the record of an applicant/licensee, the board shall send the attached FOAA Acknowledgment Form Letter to the requester and the attached FOAA Informational Form Letter to the applicant/licensee.

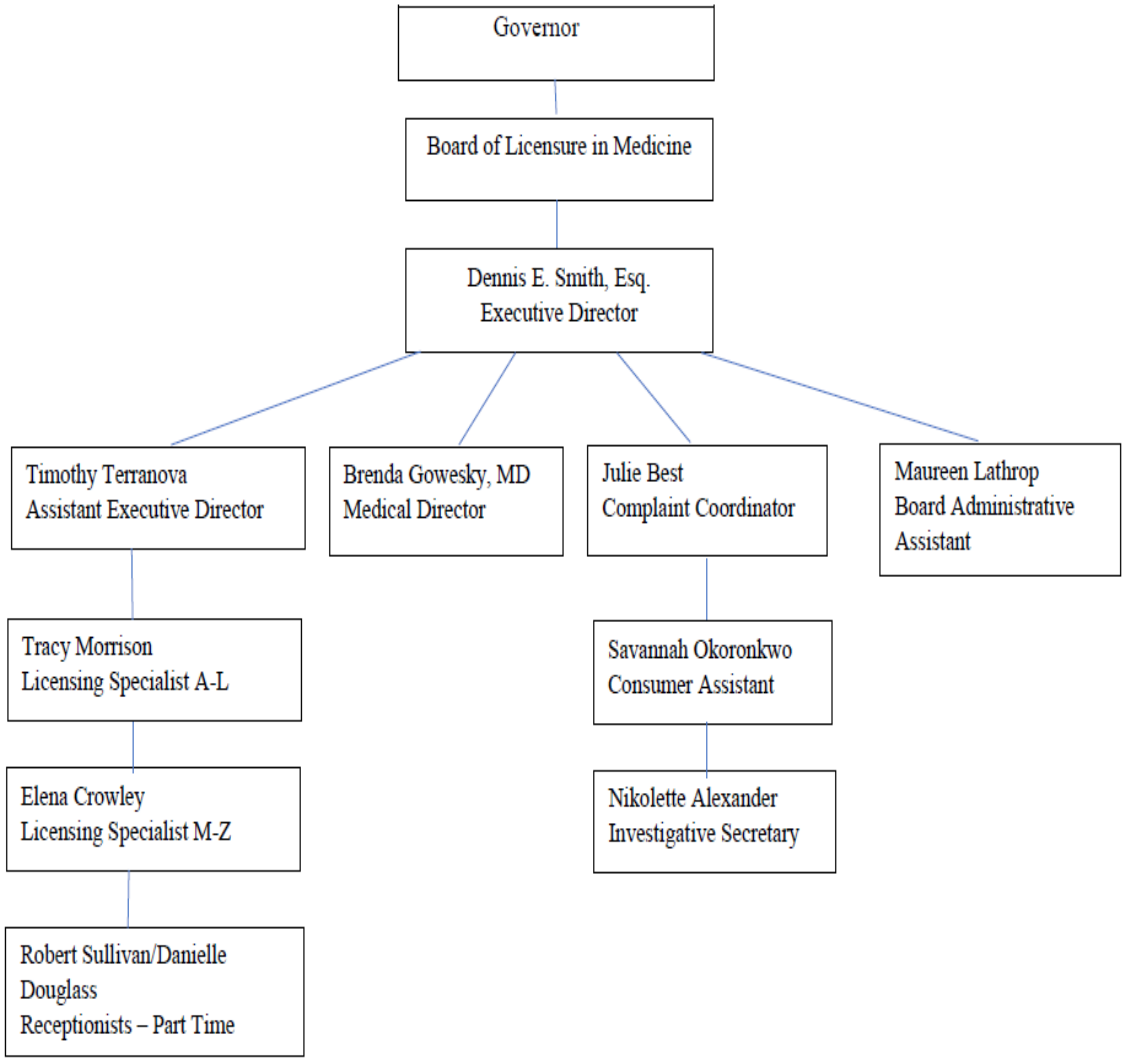
2. If a timely request is received from the applicant/licensee to review the redacted information, it will be sent to them for review using the FOAA Request Review Form Letter.

3. If a timely and sufficient (including explanation) petition to withhold information is received from the applicant/licensee, it will be placed on the board agenda for review and action. Following review and action, the board will issue a FOAA Decision.

4. If the board does not receive a timely request to review the redacted record or petition to withhold information, the board will provide the information to the requester. If a petition has been filed with the board, the board will provide the information to the requester 10 business days after the board has notified the applicant/licensee of its decision so long as the board has not been notified that a Superior Court action to enjoin the release of the information has been filed.

ATTACHMENT J

Board of Licensure in Medicine



ATTACHMENT K

Board Financial Summary

PROGRAM: **BOARD OF MEDICINE (0376)**
FUNDING SOURCE: **Dedicated Revenue**

	FISCAL YEAR	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
ALLOCATED	PERSONAL SERVICES	$885,224	$911,541	$850,526	$861,114	$914,240	$955,089	$941,342	$940,540	$989,991	$943,128
	ALL OTHER	$696,973	$756,481	$757,662	$728,777	$759,575	$741,892	$783,155	$747,023	$755,688	$750,197
	TOTAL	**$1,582,197**	**$1,668,022**	**$1,608,188**	**$1,589,891**	**$1,673,815**	**$1,696,981**	**$1,724,497**	**$1,687,563**	**$1,665,679**	**$1,693,325**
EXPENDED											
	PERSONAL SERVICES	$814,386	$767,479	$845,374	$838,804	$869,239	$859,007	$752,006	$826,088	$891,332	$899,477
	ALL OTHER	$640,754	$686,571	$579,343	$521,984	$599,095	$569,322	$562,204	$555,306	$578,270	$652,730
	TOTAL	**$1,455,140**	**$1,454,050**	**$1,424,717**	**$1,352,787**	**$1,468,334**	**$1,428,329**	**$1,314,210**	**$1,381,394**	**$1,469,602**	**$1,552,207**

**Allocated includes funds allotted by Financial Order*

ATTACHMENT L

129th MAINE LEGISLATURE

FIRST REGULAR SESSION-2019

Legislative Document **No. 1660**

S.P. 537 In Senate, April 30, 2019

An Act To Improve Access to Physician Assistant Care

Reference to the Committee on Health Coverage, Insurance and Financial Services suggested and ordered printed.

DAREK M. GRANT

Secretary of the Senate

Presented by Senator SANBORN, L. of Cumberland. Cosponsored by Representative STEWART of Presque Isle and Senators: CLAXTON of Androscoggin, DOW of Lincoln, GRATWICK of Penobscot, President JACKSON of Aroostook, Representatives: BROOKS of Lewiston, MASTRACCIO of Sanford, MEYER of Eliot, PERRY of Calais.

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

Sec. 1. 32 MRSA §2561, as amended by PL 2013, c. 101, §1, is further amended to read:

§2561. Membership; qualifications; tenure; vacancies

The Board of Osteopathic Licensure, as established by Title 5, section 12004-A, subsection 29, and in this chapter called the "board," consists of ~~10~~ 11 members

appointed by the Governor. Members must be residents of this State. Six members must be graduates of a school or college of osteopathic medicine approved by the American Osteopathic Association and must be, at the time of appointment, actively engaged in the practice of the profession of osteopathic medicine in the State for a period of at least 5 years. ~~One member~~ Two members must be ~~a~~ physician ~~assistant~~ assistants licensed under this chapter who ~~has~~ have been actively engaged in ~~that member's~~ the profession of physician assistant in this State for at least 5 years preceding appointment to the board. Three members must be public members. Consumer groups may submit nominations to the Governor for the members to be appointed to represent the interest of consumers. A full term of appointment is for 5 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. 2. 32 MRSA §2594-A, as amended by PL 2013, c. 33, §1, is repealed and the following enacted in its place:

§2594-A. Physician assistants

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

A. "Competent" means possessing the requisite cognitive, noncognitive and communicative qualities to perform effectively within a scope of practice while adhering to professional and ethical standards.

B. "Insurer" has the same meaning as in Title 24-A, section 4 and includes any 3rd-party payor.

C. "Physician" means a person licensed as a physician under this chapter or chapter 48.

D. "Physician assistant" means a person licensed under section 2594-E or 3270-E.

E. "Practice agreement" means an agreement between a physician assistant who owns a practice and a physician that states the physician will be available to the physician assistant for collaboration or consultation.

F. "Prescription or legend drug" has the same meaning as in section 13702-A, subsection 30 and includes schedule II to schedule V drugs or other substances under the federal Controlled Substances Act of 1970, 21 United States Code, Section 812.

G. "Primary care" means regular appointments, wellness care and general health care provided by a health care professional or provider with whom the patient has initial

contact for a health issue, not including an urgent care or emergency health issue, and by whom the patient may be referred to a specialist.

2. Scope of practice. A physician assistant may provide any medical service for which the physician assistant has been prepared by education, training and experience and is competent to perform, including, but not limited to:

A. Medical services, including, but not limited to:

(1) Obtaining a comprehensive health history and performing a physical examination;

(2) Evaluating, diagnosing and managing a health condition and providing medical treatment for that condition;

(3) Ordering, performing and diagnosing a diagnostic study or therapeutic treatment;

(4) Educating a patient on health promotion and disease prevention;

(5) Providing medical consultation upon request;

(6) Writing a medical order regarding the treatment of a health condition of a patient, including prescribing a prescription or legend drug, procedure, patient instructions or a standing order that can be exercised by another health care professional or provider when a predetermined condition has been met; and

(7) Surgical services;

B. Obtaining informed consent from a patient or other authorized individual;

C. Supervising the performance of or delegating or assigning therapeutic or diagnostic measures to other medical personnel;

D. Certifying the health or disability of a person required by a local, state or federal entity or program;

E. Authenticating a document with the physician assistant's signature, certification, stamp, verification, affidavit or endorsement if the document may be authenticated by a physician's signature, certification, stamp, verification, affidavit or endorsement;

F. Ordering or prescribing a nonpharmacological intervention as a therapeutic regimen, including durable medical equipment, nutrition, a blood or blood product or diagnostic support service, including home health care, placement in a hospice or physical or occupational therapy;

G. Services in a health care facility or program, including a hospital, nursing facility, assisted living facility or hospice; and

H. If the physician assistant is registered with the federal Department of Justice, Drug Enforcement Administration, prescribing, dispensing, ordering, administering and procuring a medical device or a prescription or legend drug, including requesting, receiving, signing for and distributing to a patient a professional sample of a prescription or legend drug.

3. Dispensing drugs. Except for distributing a professional sample of a prescription or legend drug under subsection 2, paragraph H, a physician assistant who dispenses a prescription or legend drug pursuant to subsection 2, paragraph H:

A. Shall comply with all relevant federal regulations and state rules; and

B. May only dispense the prescription or legend drug when:

(1) A pharmacy service is not reasonably available;

(2) Dispensing the drug is in the best interests of the patient; or

(3) An emergency exists.

4. Consultation or collaboration. A physician assistant shall, as indicated by a patient's condition, the education, competencies and experience of the physician assistant

and the standards of care, consult with, collaborate with or refer the patient to an appropriate physician or other health care professional. The level of consultation or collaboration under this subsection is determined by the practice setting, including a physician employer, physician group practice, private practice or the credentialing and privileging systems of a health care facility. A physician must be accessible to the physician assistant at all times for consultation. Consultation or collaboration may be achieved electronically or through telecommunication.

5. Practice agreement. A physician assistant who owns a part or all of a medical practice that does not include a physician as a partner shall enter into and maintain a practice agreement with at least one physician. Consultation under the practice agreement may occur through electronic means and does not require the physical presence of the physician at the time or place that the medical services are provided. The practice agreement must be kept on file at the main location of the physician assistant's practice and be made available to the board or the board's representative upon request.

6. Primary care provider. Notwithstanding any other provision of law to the contrary, a physician assistant may be considered a primary care provider if the physician assistant is practicing in a medical specialty required for a physician to be a primary care provider.

7. Immunity providing medical services during an emergency or disaster. A physician assistant or person with a current compatible license from another jurisdiction or credentialed as a physician assistant by a federal employer that provides voluntary and gratuitous medical services during a state, county or municipal disaster under Title 37-B, chapter 13 or other emergency requiring medical services is not liable for civil damages for any personal injuries that may result from acts or omissions that may constitute ordinary negligence. This subsection does not apply to:

A. Medical services provided in the ordinary course of the physician assistant's scope of practice or employment;

B. An emergency that occurs in the physician assistant's practice or place of employment; or

C. Acts or omissions that constitute gross, willful or wanton negligence.

8. Payment for services; insurer requirements. Payment by an insurer for a medical service within the physician assistant's scope of practice provided by a physician assistant to an enrollee of a plan of the insurer must be made when ordered or performed in the same manner as if the service were ordered or performed by a physician and be based on the service provided, not the health professional or provider who performed the service. An insurer shall authorize a competent physician assistant to bill the insurer and receive direct payment for a medically necessary service the physician assistant provides to a client of the insurer and identify the physician assistant as the medical service provider in the billing and claims process for payment of the service. An insurer may not impose on a physician assistant a practice, education or collaboration requirement that is inconsistent with or more restrictive than required by state law or board or agency rules.

Sec. 3. 32 MRSA §2594-E, as amended by PL 2017, c. 288, Pt. A, §33, is further amended to read:

§2594-E. Licensure of physician assistants

1. License required. A physician assistant may not render medical services ~~under the supervision of an osteopathic physician or an allopathic physician pursuant to a plan of supervision~~ until the physician assistant has applied for and obtained from either the Board of Osteopathic Licensure or the Board of Licensure in Medicine:

A. A license, which must be renewed biennially with the board that issued the initial license~~; a~~nd.

~~B. A certificate of registration.~~

~~Applications~~ An application for licensure ~~and certificate of registration~~ as a physician assistant must be ~~made to the board that licenses the physician assistant's primary supervising physician at the time the applications for initial licensure and certificate of registration are filed. A physician assistant who applies for licensure without a designated primary supervising physician may submit the application~~ submitted to either the Board of Osteopathic Licensure or the Board of Licensure in Medicine. A license granted by either the Board of Osteopathic Licensure or the Board of Licensure in Medicine authorizes the physician assistant to render medical services under ~~the supervision of an osteopathic or allopathic physician regardless of which board issued the license to the physician assistant~~ section 2594-A or 3270-A.

2. Qualification for licensure. The board may issue to an individual a license to practice as a physician assistant under the following conditions:

A. A license may be issued to an individual who:

(1) Graduated from a physician assistant program approved by the board;

(2) Passed a physician assistant national certifying examination administered by the National Commission on Certification of Physician Assistants or its successor organization;

(3) Demonstrates current clinical competency;

(4) Does not have a license or certificate of registration that is the subject of disciplinary action such as probation, restriction, suspension, revocation or surrender;

(5) Completes an application approved by the board; and

(6) Pays an application fee of up to ~~$250~~ $300; and

~~(7) Passes an examination approved by the board.~~

B. No grounds exist as set forth in section 2591-A to deny the application.

~~**3. Certificate of registration.** A physician assistant may not render medical services until issued a certificate of registration by the board. The board may issue a certificate of registration to a physician assistant under the following requirements:~~

~~A. The physician assistant shall:~~

~~(1) Submit an application on forms approved by the board. The application must include:~~

~~(a) A written statement by the proposed supervising physician taking responsibility for all medical activities of the physician assistant; and~~

~~(b) A written statement by the physician assistant and proposed supervising physician that a written plan of supervision has been established; and~~

~~(2) Pays an application fee of up to $50.~~

~~B. A proposed supervising physician must hold an active license to practice medicine in the State and be in good standing.~~

4. Delegation by physician assistant. A physician assistant may delegate medical acts to a medical assistant or another person employed by the physician assistant or by an employer of the physician assistant ~~as long as that delegation is permitted in the plan of supervision established by the physician assistant and the supervising p~~physician.

5. Rules. The Board of Osteopathic Licensure is authorized to adopt rules regarding the ~~training and~~ licensure and practice of physician assistants ~~and the agency relationship between the physician assistant and the supervising physic~~ian. These rules, which must be adopted jointly with the Board of Licensure in Medicine, may pertain to, but are not limited to, the following matters:

A. Information to be contained in the application for a license ~~and certificate of registrati~~on;

~~B. Information that is required on the application for a certificate of registration filed by the proposed supervising physician;~~

C. ~~Training and education~~ Education requirements ~~and scope of permissible clinical medical procedures of~~ for the physician assistant ~~and the manner and methods by which the supervising physician must supervise the physician assistant's medical s~~ervices;

~~D. Scope of practice for physician assistants, including prescribing of controlled drugs;~~

~~E. Requirements for written plans of supervision;~~

F. Requirements for a physician assistant to notify the board regarding certain circumstances, including but not limited to any change in address, ~~any change in the identity or address of the physician assistant's employer or in the physician assistant's employment status, any change in the identity or address of the supervising physician,~~ the permanent departure of the physician assistant from the State, any criminal convictions of the physician assistant and any discipline by other jurisdictions of the physician assistant;

~~G. Issuance of temporary physician assistant licenses and temporary registration of physician assistants;~~

H. Appointment of an advisory committee for continuing review of the physician assistant ~~program and~~ rules. The physician assistant ~~member~~ members of the board pursuant to section 2561 must be ~~a member~~ members of the advisory committee;

I. Continuing education requirements as a precondition to continued licensure or licensure renewal;

J. Fees for the application for an initial physician assistant license, which may not exceed ~~$250~~ $300; and

~~K. Fees for an initial certificate of registration, which may not exceed $100;~~

~~L. Fees for transfer of the certificate of registration by a physician assistant from one supervising physician to another, which may not exceed $50; and~~

M. Fees for the biennial renewal of a physician assistant license in an amount not to exceed $250.

Sec. 4. 32 MRSA §3263, first ¶, as amended by PL 2013, c. 101, §5, 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 ~~10~~ 11 individuals who are residents of this State, appointed by the Governor. Three individuals must be representatives of the public. 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. ~~One individual~~ Two individuals must be ~~a~~ physician ~~assistant~~ assistants licensed under this chapter who ~~has~~ have been actively engaged in the practice of ~~that individual's~~ the profession of physician assistant in this State for a continuous period of 5 years preceding appointment to the board. A full-term appointment is for 6 years. Appointment of members must comply with Title 10, section 8009. A member of the board may be removed from office for cause by the Governor.

Sec. 5. 32 MRSA §3270-A, as amended by PL 2013, c. 33, §2, is repealed and the following enacted in its place:

§3270-A. Physician assistants

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

A. "Competent" means possessing the requisite cognitive, noncognitive and communicative qualities to perform effectively within a scope of practice while adhering to professional and ethical standards.

B. "Insurer" has the same meaning as in Title 24-A, section 4 and includes any 3rd-party payor.

C. "Physician" means a person licensed as a physician under this chapter or chapter 36.

D. "Physician assistant" means a person licensed under section 2594-E or 3270-E.

E. "Practice agreement" means an agreement between a physician assistant who owns a practice and a physician that states the physician will be available to the physician assistant for collaboration or consultation.

F. "Prescription or legend drug" has the same meaning as in section 13702-A, subsection 30 and includes schedule II to schedule V drugs or other substances under the federal Controlled Substances Act of 1970, 21 United States Code, Section 812.

G. "Primary care" means regular appointments, wellness care and general health care provided by a health care professional or provider with whom the patient has initial contact for a health issue, not including an urgent care or emergency health issue, and by whom the patient may be referred to a specialist.

2. Scope of practice. A physician assistant may provide any medical service for which the physician assistant has been prepared by education, training and experience and is competent to perform, including, but not limited to:

A. Medical services, including, but not limited to:

(1) Obtaining a comprehensive health history and performing a physical examination;

(2) Evaluating, diagnosing and managing a health condition and providing medical treatment for that condition;

(3) Ordering, performing and diagnosing a diagnostic study or therapeutic treatment;

(4) Educating a patient on health promotion and disease prevention;

(5) Providing medical consultation upon request;

(6) Writing a medical order regarding the treatment of a health condition of a patient, including prescribing a prescription or legend drug, procedure, patient instructions or a standing order that can be exercised by another health care professional or provider when a predetermined condition has been met; and

(7) Surgical services;

B. Obtaining informed consent from a patient or other authorized individual;

C. Supervising the performance of or delegating or assigning therapeutic or diagnostic measures to other medical personnel;

D. Certifying the health or disability of a person required by a local, state or federal

entity or program;

E. Authenticating a document with the physician assistant's signature, certification, stamp, verification, affidavit or endorsement if the document may be authenticated by a physician's signature, certification, stamp, verification, affidavit or endorsement;

F. Ordering or prescribing a nonpharmacological intervention as a therapeutic regimen, including durable medical equipment, nutrition, a blood or blood product or diagnostic support service, including home health care, placement in a hospice or physical or occupational therapy;

G. Services in a health care facility or program, including a hospital, nursing facility, assisted living facility or hospice; and

H. If the physician assistant is registered with the federal Department of Justice, Drug Enforcement Administration, prescribing, dispensing, ordering, administering and procuring a medical device or a prescription or legend drug, including requesting, receiving, signing for and distributing to a patient a professional sample of a prescription or legend drug.

3. Dispensing drugs. Except for distributing a professional sample of a prescription or legend drug under subsection 2, paragraph H, a physician assistant who dispenses a prescription or legend drug pursuant to subsection 2, paragraph H:

A. Shall comply with all relevant federal regulations and state rules; and

B. May only dispense the prescription or legend drug when:

(1) A pharmacy service is not reasonably available;

(2) Dispensing the drug is in the best interests of the patient; or

(3) An emergency exists.

4. Consultation or collaboration. A physician assistant shall, as indicated by a patient's condition, the education, competencies and experience of the physician assistant and the standards of care, consult with, collaborate with or refer the patient to an appropriate physician or other health care professional. The level of consultation or collaboration under this subsection is determined by the practice setting, including a physician employer, physician group practice, private practice or the credentialing and privileging systems of a health care facility. A physician must be accessible to the physician assistant at all times for consultation. Consultation or collaboration may be achieved electronically or through telecommunication.

5. Practice agreement. A physician assistant who owns a part or all of a medical practice that does not include a physician as a partner shall enter into and maintain a practice agreement with at least one physician. Consultation under the practice agreement may occur through electronic means and does not require the physical

presence of the physician at the time or place that the medical services are provided. The practice agreement must be kept on file at the main location of the physician assistant's practice and be made available to the board or the board's representative upon request.

6. Primary care provider. Notwithstanding any other provision of law to the contrary, a physician assistant may be considered a primary care provider if the physician assistant is practicing in a medical specialty required for a physician to be a primary care provider.

7. Immunity providing medical services during an emergency or disaster. A physician assistant or person with a current compatible license from another jurisdiction or credentialed as a physician assistant by a federal employer that provides voluntary and gratuitous medical services during a state, county or municipal disaster under Title 37-B, chapter 13 or other emergency requiring medical services is not liable for civil damages for any personal injuries that may result from acts or omissions that may constitute ordinary negligence. This subsection does not apply to:

A. Medical services provided in the ordinary course of the physician assistant's scope of practice or employment;

B. An emergency that occurs in the physician assistant's practice or place of employment; or

C. Acts or omissions that constitute gross, willful or wanton negligence.

8. Payment for services; insurer requirements. Payment by an insurer for a medical service within the physician assistant's scope of practice provided by a physician assistant to an enrollee of a plan of the insurer must be made when ordered or performed in the same manner as if the service were ordered or performed by a physician and be based on the service provided, not the health professional or provider who performed the service. An insurer shall authorize a competent physician assistant to bill the insurer and receive direct payment for a medically necessary service the physician assistant provides to a client of the insurer and identify the physician assistant as the medical service provider in the billing and claims process for payment of the service. An insurer may not impose on a physician assistant a practice, education or collaboration requirement that is inconsistent with or more restrictive than required by state law or board or agency rules.

Sec. 6. 32 MRSA §3270-E, as amended by PL 2017, c. 288, Pt. A, §34, is further amended to read:

§3270-E. Licensure of physician assistants

1. License required. A physician assistant may not render medical services ~~under the supervision of an osteopathic physician or an allopathic physician pursuant to a plan of supervision~~ until the physician assistant has applied for and obtained from either the Board of Licensure in Medicine or the Board of Osteopathic Licensure:

A. A license, which must be renewed biennially with the board that issued the initial license~~; a~~nd.

~~B. A certificate of registration.~~

~~Applications~~ An application for licensure ~~and certificate of registration~~ as a physician assistant must be ~~made to the board that licenses the physician assistant's primary supervising physician at the time the applications for initial licensure and certificate of registration are filed. A physician assistant who applies for licensure without a designated primary supervising physician may submit the application~~ submitted to either the Board of Osteopathic Licensure or the Board of Licensure in Medicine. A license granted by either the Board of Osteopathic Licensure or the Board of Licensure in Medicine authorizes the physician assistant to render medical services under ~~the supervision of an allopathic or osteopathic physician regardless of which board issued the license to the physician assistant~~ section 2594-A or 3270-A.

2. Qualification for licensure. The board may issue to an individual a license to practice as a physician assistant under the following conditions:

A. A license may be issued to an individual who:

(1) Graduated from a physician assistant program approved by the board;

(2) Passed a physician assistant national certifying examination administered by the National Commission on Certification of Physician Assistants or its successor organization;

(3) Demonstrates current clinical competency;

(4) Does not have a license or certificate of registration that is the subject of disciplinary action such as probation, restriction, suspension, revocation or surrender;

(5) Completes an application approved by the board; and

(6) Pays an application fee of up to ~~$250~~ $300; and

~~(7) Passes an examination approved by the board; and~~

B. No grounds exist as set forth in section 3282-A to deny the application.

~~3. Certificate of registration.~~ ~~A physician assistant may not render medical services until issued a certificate of registration by the board. The board may issue a certificate of registration to a physician assistant under the following requirements:~~

~~A. The physician assistant shall:~~

~~(1) Submit an application on forms approved by the board. The application must include:~~

~~(a) A written statement by the proposed supervising physician taking responsibility for all medical activities of the physician assistant; and~~

~~(b) A written statement by the physician assistant and proposed supervising physician that a written plan of supervision has been established; and~~

~~(2) Pays an application fee of up to $50.~~

~~B. A proposed supervising physician must hold an active license to practice medicine in the State and be in good standing.~~

4. Delegation by physician assistant. A physician assistant may delegate medical acts to a medical assistant or another person employed by the physician assistant or by an employer of the physician assistant ~~as long as that delegation is permitted in the plan of supervision established by the physician assistant and the supervising p~~physician.

5. Rules. The Board of Licensure in Medicine is authorized to adopt rules regarding the ~~training and~~ licensure and practice of physician assistants ~~and the agency relationship between the physician assistant and the supervising physician~~. These rules, which must be adopted jointly with the Board of Osteopathic Licensure, may pertain to, but are not limited to, the following matters:

A. Information to be contained in the application for a license ~~and certificate of registrati~~on;

~~B. Information that is required on the application for a certificate of registration filed by the proposed supervising physician;~~

C. ~~Training and education~~ Education requirements ~~and scope of permissible clinical medical procedures of~~ for the physician assistant ~~and the manner and methods by which the supervising physician must supervise the physician assistant's medical~~

~~s~~services;

~~D. Scope of practice for physician assistants, including prescribing of controlled drugs;~~

~~E. Requirements for written plans of supervision;~~

F. Requirements for a physician assistant to notify the board regarding certain circumstances, including but not limited to any change in address, ~~any change in the identity or address of the physician assistant's employer or in the physician assistant's employment status, any change in the identity or address of the supervising physician,~~ the permanent departure of the physician assistant from the State, any criminal convictions of the physician assistant and any discipline by other jurisdictions of the physician assistant;

~~G. Issuance of temporary physician assistant licenses and temporary registration of physician assistants;~~

H. Appointment of an advisory committee for continuing review of the physician assistant ~~program and~~ rules. The physician assistant ~~member~~ members of the board pursuant to section ~~2561~~ 3263 must be ~~a member~~ members of the advisory committee;

I. Continuing education requirements as a precondition to continued licensure or licensure renewal;

J. Fees for the application for an initial physician assistant license, which may not exceed ~~$250~~ $300; and

~~K. Fees for an initial certificate of registration, which may not exceed $100;~~

~~L. Fees for transfer of the certificate of registration by a physician assistant from one supervising physician to another, which may not exceed $50; and~~

M. Fees for the biennial renewal of a physician assistant license in an amount not to exceed $250.

Sec. 7. 34-B MRSA §3801, sub-§4-B, as enacted by PL 2009, c. 651, §5, is amended to read:

4-B. Medical practitioner. "Medical practitioner" or "practitioner" means a licensed physician, ~~registered~~ licensed physician assistant, certified psychiatric clinical nurse specialist, certified nurse practitioner or licensed clinical psychologist.

Sec. 8. Transition. The license of a physician assistant under the Maine Revised Statutes, Title 32, section 2594-E or section 3270-E that is current and not the subject of disciplinary action on the effective date of this Act remains valid.

SUMMARY

This bill makes the following changes to the laws governing the licensing and scope of practice of physician assistants.

1. It increases the membership of the Board of Osteopathic Licensure and the Board of Licensure in Medicine from 10 to 11 members by changing the number of members on each board who are physician assistants from 1 member to 2 members.

2. It establishes provisions for the scope of practice, insurance coverage of services and immunity from liability for providing volunteer medical services during emergencies

or disasters and clarifies that physician assistants are primary care providers when practicing in a medical specialty required for a physician to be a primary care provider.

3. It removes registration and physician supervisory requirements.

4. It establishes requirements for physician assistant collaboration and consultation with physicians and other health care professionals.

5. It changes the initial licensing fee from $250 to $300.

6. It provides a transition provision for physician assistant licenses that are current and not subject to disciplinary action.

ATTACHMENT M

Janet T. Mills
GOVERNOR

STATE OF MAINE

BOARD OF LICENSURE IN MEDICINE
137 STATE HOUSE STATION
AUGUSTA, ME
04333-0137

BOARD OF OSTEOPATHIC LICENSURE
142 STATE HOUSE STATION
AUGUSTA, ME
04333-0142

May 8, 2019

Senator Heather Sanborn, Chair
Representative Denise Tepler, Chair
Committee on Health Coverage, Insurance and Financial Services
100 State House Station
Augusta, ME 04333

Re: LD 1660 – *"An Act to Improve Access to Physician Assistant Care"*

Dear Senator Sanborn and Representative Tepler:

The Maine Board of Licensure in Medicine licenses and regulates allopathic physicians and physician assistants in Maine. The Maine Board of Osteopathic Licensure licenses and regulates osteopathic physicians and physician assistants in Maine. Each board is composed of 10 members: 6 physicians who actively practice medicine; 1 physician assistant who actively renders medical services; and 3 public members. The boards' mission is to protect the public by ensuring its licensees are ethical, professional and competent. Each fulfills this mission by licensing, regulating, and educating physician and physician assistants.

Before commenting directly regarding LD 1660, please consider the following:

- The boards fully appreciate and support the valuable contributions that physician assistants make in healthcare delivery in Maine.

- In 2015 the statutes regarding physician assistants of the Board of Licensure in Medicine and the Board of Osteopathic Licensure were amended to require a single license, registration with one of the boards, and the promulgation of a joint (uniform) physician assistant rule. Both the statutory changes and the joint rule involved input from the stakeholders, including representatives of the boards, legal counsel, the MMA and MEAPA. Regrettably, prior to the introduction of LD 1660, no input was solicited from either of the medical licensing boards.

- In November 2019, the boards will be submitting program evaluation reports to your Committee pursuant to the Government Evaluation Act (GEA). Those reports will include recommendations for statutory changes, which could include the subject matter of LD 1660. Should this Committee desire, a group of stakeholders could convene – as it did in 2015 – to consider changes to the physician assistant laws and rules.

On behalf of the boards, we offer the following comments and questions regarding LD 1660:

1. LD 1660 Converts Physician Assistants in Maine from Dependent Practitioners into Independent Practitioners.

   a. Paradigm Shift. The current bill represents a significant paradigm shift for the regulation and oversight of physician assistants in Maine. For decades, physician assistants in Maine have practiced under the supervision of a physician or group of physicians who delegate certain medical services to be provided by physician assistants. Under the existing model and current law:

      - Physician assistants may only perform those medical services allowed (delegated) by their supervising physician(s) pursuant to a written plan of supervision.
      - The supervising physician(s) are legally responsible for any medical services rendered by a physician assistant under their supervision.
      - The supervising physician is responsible for ensuring that the physician assistant only performs those medical services that the physician assistant is educated, trained, and competent to perform.
      - The supervising physician is required to perform twice yearly reviews of the physician assistant's care and treatment of patients – which ensures competent care and treatment.

   LD 1660 would:

   - Permit physician assistants to provide any medical services they judge to be sufficiently trained and educated to perform, including "surgical services."
   - Eliminate physician supervision of physician assistants.
   - Eliminate physician evaluation or assessment of physician assistant care and treatment of patients.

   In other words, the bill eliminates a significant piece of physician oversight, responsibility, and review of physician assistant care and scope of practice.

   b. Healthcare System vs. Solo Practice. The potential risks associated with passage of the bill will likely vary depending upon the physician assistant's employment. For physician assistants (like any other health care provider) working within a large healthcare system (e.g. MaineHealth, Northern Light, etc.), this bill may not pose as significant a risk to the public because there will likely continue to be physician oversight, review, and evaluation of physician assistants. Healthcare systems have their own requirements for employment and privileges. Healthcare systems also have training and continuing education programs, and will likely ensure that the services provided by any of their

employees is within their scope of practice, education and training. The most significant risk will be for physician assistants who own and operate their own practices, and whom define their own scope of practice.

c. Physicians/Physician Assistants/Advanced Nurse Practitioners. In considering whether to allow physician assistants to become independent practitioners, it is important to note that physician assistants do not have any post-graduate training requirement – unlike physicians or advanced nurse practitioners. Here is a snapshot of the education and training for each:

- Physicians: 4 years doctorate level degree from a medical school (2 years classroom/2 years clinical); minimum 3 years residency training in medical specialty (many specialties exceed 6 years of training – such as surgery).

- Advanced Nurse Practitioners: 4 years nursing school (BSN); 2-year master degree (MSN); minimum 2 years clinical supervision by a physician in a specific medical specialty.

- Physician Assistants: 2-year master degree (1-year classroom/ 1-year clinical); no residency or post-graduate training.

The probable reason that there is no post-graduate training for physician assistants is because traditionally physician assistants work under a supervising physician who provides the additional necessary training and oversight. In light of this fact, should physician assistants desiring to practice independently be required – like physicians and advanced nurse practitioners – to complete 2 years of clinical supervision under a physician? **Without such a requirement, LD 1660 would permit a new physician assistant graduate to practice independently without any additional training or oversight.**

2. LD 1660 Repeals Physicians' Ability to Delegate Medical Acts to Anyone and Their Legal Liability for Doing So. The bill repeals and replaces sections of each boards' law that allow physicians to delegate medical acts to physician assistants and medical assistants or support staff and that make physicians legally liable for any acts they delegate. Those sections provide:

§2594-A. ASSISTANTS

Nothing contained in this chapter may be construed to prohibit an individual from rendering medical services if these services are rendered under the supervision and control of a physician and if the individual has satisfactorily completed a training program approved by the Board of Osteopathic Licensure. Supervision and control may not be construed as requiring the personal presence of the supervising and controlling physician at the place where these services are rendered, unless a physical presence is necessary to provide patient care of the same quality as provided by the physician. Nothing in this chapter may be construed as prohibiting a physician from delegating to the physician's employees or support staff certain activities relating to medical care and

treatment carried out by custom and usage when these activities are under the direct control of the physician. The physician delegating these activities to employees or support staff, to program graduates or to participants in an approved training program is legally liable for the activities of those individuals, and any individual in this relationship is considered the physician's agent. Nothing contained in this section may be construed to apply to registered nurses acting pursuant to chapter 31. [2013, c. 33, §1 (AMD).]

When the delegated activities are part of the practice of optometry as defined in chapter 34-A, then the individual to whom these activities are delegated must possess a valid license to practice optometry in Maine or otherwise may perform only as a technician within the established office of a physician and may act solely on the order of and under the responsibility of a physician skilled in the treatment of eyes as designated by the proper professional board and without assuming evaluation or interpretation of examination findings by prescribing corrective procedures to preserve, restore or improve vision.

§3270-A. ASSISTANTS

This chapter may not be construed to prohibit an individual from rendering medical services if these services are rendered under the supervision and control of a physician or surgeon and if that individual has satisfactorily completed a training program approved by the Board of Licensure in Medicine and a competency examination determined by this board. Supervision and control may not be construed as requiring the personal presence of the supervising and controlling physician at the place where these services are rendered, unless a physical presence is necessary to provide patient care of the same quality as provided by the physician. This chapter may not be construed as prohibiting a physician or surgeon from delegating to the physician's or surgeon's employees or support staff certain activities relating to medical care and treatment carried out by custom and usage when the activities are under the control of the physician or surgeon. The physician delegating these activities to employees or support staff, to program graduates or to participants in an approved training program is legally liable for the activities of those individuals, and any individual in this relationship is considered the physician's agent. This section may not be construed to apply to registered nurses acting pursuant to chapter 31. [2013, c. 33, §2 (AMD).]

When the delegated activities are part of the practice of optometry as defined in chapter 34-A, then the individual to whom these activities are delegated must possess a valid license to practice optometry in Maine, or otherwise may perform only as a technician within the established office of a physician, and otherwise acting solely on the order of and under the responsibility of a physician skilled in the treatment of eyes as designated by the proper professional board, and without assuming evaluation or interpretation of examination findings by prescribing corrective procedures to preserve, restore or improve vision. [1993, c. 600, Pt. A, §205 (AMD).]

Repealing these sections in their entirety would result in a significant loss of authority and legal responsibility of physicians in general, and is a reflection of the lack of collaboration and consultation by the physician assistant association with interested parties – including the licensing boards that regularly administer these laws.

3. Specific Comments and Questions Regarding LD 1660:

   a. It would add a physician assistant member to the Board so that there are 2 physician assistants.

      Comment: There is a 6-1 ratio of licensed physicians to physician assistants in Maine. The current physician to physician assistant ratio on the boards is 6-1. While the addition of another physician assistant member would not affect the quorum, it does not reflect the actual ratio of licensees.

   b. It would create a "definitions" section that includes the term "competent."

      Comment: The existing joint chapter 2 physician assistant rule requires that the supervising physician ensure that the physician assistant does not attempt to perform medical services outside of the physician assistant's competency and training. Since the law will be removing the supervising physician, who will be making this determination? The physician assistant herself? The boards will not be able to make this determination in advance because physician assistants do not complete residency programs, which provide prima facie evidence of competency. This represents a significant safety issue to the public – the lack of a residency program or post-graduate training. PA's with a lot of clinical experience may not pose as great a risk – but this law would allow a new graduate without any practice to open and operate a medical practice without supervision or oversight.

   c. It would create a "scope of practice" that heretofore has been defined by the PA's supervising physician and the joint chapter 2 physician assistant rule. The "scope of practice" would include "surgical services" – a term that is not defined in the bill.

      Comment: It could mean anything from lancing a boil to neurosurgery. Physicians who specialize in surgery complete 4 years of medical school (2 years classroom/2 years clinical) and a minimum of 6 years in residency. Physicians who practice internal medicine/family medicine (primary care) complete a minimum of 3 years residency – in order to perform minor surgeries. Again – PAs do not complete any type of residency program and typically act as "first assistants" to physicians during surgery.

   d. It would give physician assistants the discretion about whether or not to "consult" with or "collaborate" with a physician.

      Comment: In medicine the term "consultation" means less of a connection than "collaboration." Physicians may consult with an expert or colleague on a case. The term "collaboration" implies an on-going team-based type practice. In addition, the "level" of consultation or collaboration is not defined.

e. It would require the PAs who own a part or all of a medical practice that does not include a physician as a "partner" to enter into a "practice agreement."

Comment: It does not define the term or purpose of the "practice agreement." It is unclear whether the Board would be able to promulgate rules regarding the substance of these practice agreements, including whether there would be any review of the PAs competency in providing care. Finally, this section of the bill does not mention "collaboration" and employs only the term "consult."

f. It creates immunity for providing medical services during an emergency.

Comment: This language is unnecessary as other laws cover this issue. See Title 24 M.R.S. § 2904 ("Immunity from Civil Liability for Volunteer Activities").

g. It eliminates the requirement that PAs complete the State of Maine jurisprudence examination prior to licensure.

Comment: The jurisprudence examination is required to be passed by both PAs and all physicians prior to licensure. It is used as an educational tool for applicants regarding applicable Maine specific laws and rules as they affect the practice of medicine. The jurisprudence examination covers a variety of topics including: licensure and registration; complaints and investigations; prescribing controlled substances; mandated reporting and notifications (e.g. child sexual abuse and neglect); medical records; telemedicine; and the Medical Professionals Health Program (for anyone needing assistance). A study guide is available for the jurisprudence examination, and both the examination and study guide are available online. Eliminating this requirement for PAs does not make sense.

h. It eliminates the ability of the Board to issue temporary licenses to PAs.

Comment: The boards issue temporary PA licenses to new graduates who have taken but not received the results of their national board examination (NCCPA). Why the bill eliminates this avenue to temporary licensure is unknown. PAs who are issued temporary licenses do not have to apply for a permanent license. Once the boards receive proof of passage of the NCCPA examination, the boards convert the temporary license to a permanent license.

Thank you for the opportunity to provide these comments and question regarding LD 1660. We would be happy to answer any questions you may have at the work session.

Sincerely,

Dennis E. Smith, Esq.
Executive Director
Board of Licensure in Medicine

Susan E. Strout
Executive Secretary
Board of Osteopathic Licensure

ATTACHMENT N

Proposed Amendment to PA Statute (Underlined)

Maine Revised Statutes

Title 32: PROFESSIONS AND OCCUPATIONS

Chapter 48: BOARD OF LICENSURE IN MEDICINE

§3270-E. LICENSE AND REGISTRATION OF PHYSICIAN ASSISTANTS

1. **License and registration required.** Unless otherwise provided by this section, a physician assistant may not render medical services under the supervision of an osteopathic physician or an allopathic physician pursuant to a practice agreement until the physician assistant has applied for and obtained from either the Board of Licensure in Medicine or the Board of Osteopathic Licensure:

A. A license, which must be renewed biennially with the board that issued the initial license; and [2015, c. 242, § 5 (NEW).]

B. A certificate of registration. [2015, c. 242, § 5 (NEW).]

Applications for licensure and certificate of registration as a physician assistant may be submitted to either the Board of Osteopathic Licensure or the Board of Licensure in Medicine. A license granted by either the Board of Osteopathic Licensure or the Board of Licensure in Medicine authorizes the physician assistant to render medical services pursuant to a practice agreement under the supervision of an allopathic or osteopathic physician regardless of which board issued the license to the physician assistant.

[2015, c. 242, § 5 (NEW) .]

2. **Qualification for licensure.** The board may issue to an individual a license to practice as a physician assistant under the following conditions:

A. A license may be issued to an individual who:

(1) Graduated from a physician assistant program approved by the board;

(2) Passed a physician assistant national certifying examination administered by the National Commission on Certification of Physician Assistants or its successor organization;

(3) Demonstrates current clinical competency;

(4) Does not have a license or certificate of registration that is the subject of disciplinary action such as probation, restriction, suspension, revocation or surrender;

(5) Completes an application approved by the board;

(6) Pays an application fee of up to $250; and

(7) Passes an examination approved by the board; and [2015, c. 242, § 5 (NEW).]

B. No grounds exist as set forth in section 3282-A to deny the application. [2015, c. 242, § 5 (NEW).]

[2015, c. 242, § 5 (NEW) .]

3. **Certificate of registration.** A physician assistant may not render medical services until issued a certificate of registration by the board. The board may issue a certificate of registration to a physician assistant under the following requirements:

A. Physician assistants seeking authorization to practice in any practice setting other than a health care system shall, in conjunction with a primary supervising physician, submit a practice agreement and the

appropriate fee for board approval. A primary supervising physician must hold an active unrestricted license to practice medicine in this State and be in good standing.

B. Physician assistants seeking authorization to practice within a health care system with a single privileging and credentialing body shall, in conjunction with the health care system, file a practice notification and appropriate fee with the board.

C. A certificate of registration automatically terminates if:

1. The physician assistant's license expires; or

2. The board receives notification from the physician assistant, primary supervising physician or the health care system that the physician assistant is no longer practicing within that setting.

D. A physician assistant must have a practice agreement or practice notification for each practice site.

E. A physician assistant, primary supervising physician, and health care system shall notify the board in writing within ten (10) days of the physician assistant's termination of employment under a practice agreement or practice notification.

4. **Practice Agreements.** Unless otherwise specified, for all practice settings other than a health care system, a proposed practice agreement shall be completed on a form provided by the board and shall be accompanied by a fee of up to $50.

A. The proposed practice agreement shall include:

1. A description of the qualifications of the primary supervising physician(s) and the physician assistant;

2. The scope of practice of the primary supervising physician(s) and the physician assistant; and

3. The location(s) where the physician assistant will practice.

5. **Practice Notifications.** Physician assistants who seek authorization to practice in a health care system shall, in conjunction with the health care system, file a practice notification with the board. The practice notification shall be completed on a form provided by the board and shall be accompanied by a fee of up to $50.

A. The practice notification shall include:

1. The full name, license number, public mailing address, telephone number, and email address of the physician assistant;

2. The name and address of each location within the health care system where the physician assistant will practice pursuant to the practice notification;

3. The name, job title, email address and contact information of the health care system representative who is responsible for executing the practice notification and ensuring compliance with the provisions of this Chapter and board rules;

4. Certification by the physician assistant and the health care system that:

a. The physician assistant shall practice under the supervision of physicians who are licensed in good standing the State;

b. The physician assistant shall practice in conformity with the physician assistant's training and experience and in accord with the delineation of privileges granted to the physician assistant by the health care system;

c. The physician assistant and the health care system shall within ten (10) days notify the board in writing upon the cessation of the physician assistant's practice at the health care system; and

d. The physician assistant and hospital shall comport with all license limitations or restrictions imposed by the board.

B. If a physician assistant's license is conditioned, restricted, limited or otherwise sanctioned by the board, the board may require the physician assistant to practice at a health care system pursuant to a practice agreement.

C. Upon receipt of a completed practice notification and the appropriate fee, the board may issue the physician assistant a certificate of registration authorizing the physician assistant to practice in the identified health care system locations.

6. **Physician Responsibility**. Physicians working with physician assistants pursuant to practice agreements or practice notifications shall:

A. Observe, direct and evaluate the physician assistant's care and treatment;

B. Delegate only those medical acts to the physician assistant that are within the physician's scope of practice and within the physician assistant's education, training, experience, and delineation of hospital privileges.

C. Be available to the physician assistant for consultation and collaboration of patient care.

7. **Collaborative Practice in Primary Care**.

A. Definitions:

1. "Collaboration" means the process by which a licensed physician and a licensed and registered physician assistant jointly contribute to the health care and treatment of patients provided that:

a. Each collaborator performs actions for which he/she is licensed and is otherwise authorized to perform; and

b. The collaboration shall not be construed to require the physical presence of the licensed physician at the time and place services are rendered by the collaborating physician assistant unless required by the standard of care.

2. "Collaborating physician" means a physician who holds a current unrestricted license, and does not assume the legal responsibility for the health care rendered by the collaborating physician assistant.

3. "Collaborating physician assistant" means a physician assistant who holds a current unrestricted license and certificate of registration and assumes the legal responsibility for all health care rendered to patients pursuant to collaborative practice in primary care.

4. "Primary care" means healthcare services provided by a physician, physician assistant, or advanced nurse practitioner who typically acts as the first contact and principal point of continuing care for patients and coordinates other specialist care or services that the patient may require. Primary care specialties are combined internal medicine and pediatrics, family medicine, general internal medicine, geriatrics (gerontology), general obstetrics and gynecology and general pediatrics.

B. Physician assistants engaging in collaborative practice in primary care must have current medical malpractice insurance coverage.

C. Qualifications.

1. Graduate from a physician assistant program approved by the board;

2. Is currently certified by the national commission on certification of physician assistants ("NCCPA");

3. Practices primary care as defined by this Chapter;

4. Has completed three (3) years of clinical practice in primary care as a licensed physician assistant under the supervision of a licensed physician;

5. Have engaged in the active clinical practice of primary care as a physician assistant during the 24 months immediately preceding the application to practice collaboratively;

6. Maintains a policy of medical malpractice liability insurance;

7. Has a current unrestricted licensed to practice as a physician assistant; and

8. Demonstrates current clinical competency.

D. Application. Physician assistants seeking approval for collaborative practice in primary care shall submit the required application fees and the following documentation:

1. A completed application;

2. Two letters of recommendation from physicians licensed to practice in the United States who have personal knowledge of the physician assistant's current competency to practice primary care;

3. Verification of good standing in all jurisdictions where the physician assistant has been licensed to practice;

4. Verification of three (3) years of clinical practice in primary care as a physician assistant;

5. Verification of active clinical practice in primary care as a physician assistant during the 24 months immediately preceding application;

5. Verification of current medical malpractice liability insurance;

6. An acknowledgment that the physician assistant is legally liable for all medical services rendered during collaborative practice in primary care.

E. Upon receipt of a complete application and the appropriate fee, the board may issue the physician assistant a registration authorizing the physician assistant to practice collaboratively with a physician in primary care.

8. **Delegation by physician assistant.** A physician assistant may delegate medical acts to a medical assistant when those medical acts related to medical care and treatment carried out by custom and usage and the activities are under the control of the physician assistant unless the delegation is prohibited by the physician assistant's supervising physician or health care system.

[2015, c. 242, §5 (NEW) .]

9. **Rules.** The Board of Licensure in Medicine is authorized to adopt rules regarding the training and licensure of physician assistants and the agency relationship between the physician assistant and the supervising physician. These rules, which must be adopted jointly with the Board of Osteopathic Licensure, may pertain to, but are not limited to, the following matters:

A. Information to be contained in the application for a license and certificate of registration; [2015, c. 242, §5 (NEW).]

B. Information that is required on the application for a certificate of registration filed by the proposed supervising physician; [2015, c. 242, §5 (NEW).]

C. Training and education requirements and scope of permissible clinical medical procedures of the physician assistant and the manner and methods by which the supervising physician must supervise the physician assistant's medical services; [2017, c. 288, Pt. A, §34 (AMD).]

D. Scope of practice for physician assistants, including prescribing of controlled drugs; [2015, c. 242, §5

(NEW).]

E. Requirements for written plans of supervision; [2015, c. 242, §5 (NEW).]

F. Requirements for a physician assistant to notify the board regarding certain circumstances, including but not limited to any change in address, any change in the identity or address of the physician assistant's employer or in the physician assistant's employment status, any change in the identity or address of the supervising physician, the permanent departure of the physician assistant from the State, any criminal convictions of the physician assistant and any discipline by other jurisdictions of the physician assistant; [2015, c. 242, §5 (NEW).]

G. Issuance of temporary physician assistant licenses and temporary registration of physician assistants; [2015, c. 242, §5 (NEW).]

H. Appointment of an advisory committee for continuing review of the physician assistant program and rules. The physician assistant member of the board pursuant to section 2561 must be a member of the advisory committee; [2015, c. 242, §5 (NEW).]

I. Continuing education requirements as a precondition to continued licensure or licensure renewal; [2015, c. 242, §5 (NEW).]

J. Fees for the application for an initial physician assistant license, which may not exceed $250; [2015, c. 242, §5 (NEW).]

K. Fees for an initial certificate of registration, which may not exceed $100; [2015, c. 242, §5 (NEW).]

L. Fees for transfer of the certificate of registration by a physician assistant from one supervising physician to another, which may not exceed $50; [2015, c. 242, §5 (NEW).]

M. Fees for the biennial renewal of a physician assistant license in an amount not to exceed $250 [2015, c. 242, §5 (NEW).]

N. Continuing clinical competency.

[2017, c. 288, Pt. A, §34 (AMD) .]

SECTION HISTORY
2015, c. 242, §5 (NEW). 2017, c. 288, Pt. A, §34 (AMD).

ATTACHMENT O

Proposed Amendment to Title 10 M.R.S. Section 8003(5)

Title 10 M.R.S. § 8003(5) Authority of bureaus, offices, boards or commissions

Amend the last paragraphs of this section as follows:

The jurisdiction to suspend and revoke occupational and professional licenses conferred by this subsection is concurrent with that of the District Court. Civil penalties must be paid to the Treasurer of State.

Any nonconsensual disciplinary action taken under authority of this subsection may be imposed only after a hearing conforming to the requirements of Title 5, chapter 375, subchapter 4, and~~, except for revocation actions,~~ is subject to judicial review exclusively in the Superior Court in accordance with Title 5, chapter 375, subchapter 7.

~~Any nonconsensual revocation of an occupational or professional license taken under authority of this subsection is subject to, upon appeal within the time frames provided in Title 5, section 11002, subsection 3, de novo judicial review exclusively in District Court. Rules adopted to govern judicial appeals from agency action apply to cases brought under this section.~~

The office, board or commission shall hold a hearing conforming to the requirements of Title 5, chapter 375, subchapter 4 at the written request of any person who is denied an initial or renewal license without a hearing for any reason other than failure to pay a fee, provided that the request for hearing is received by the office, board or commission within 30 days of the applicant's receipt of written notice of the denial of the application, the reasons for the denial and the applicant's right to request a hearing.

The office, board or commission may subpoena witnesses, records and documents in any adjudicatory hearing it conducts.

Rules adopted to govern judicial appeals from agency action apply to cases brought under this subsection.

In the event of appeal to Superior Court from any form of discipline imposed pursuant to this subsection, including denial or nonrenewal of a license, the office, board or commission may assess the licensed person or entity for the costs of transcribing and reproducing the administrative record.

ATTACHMENT P

Proposed Amendment to Title 24 M.R.S. Section 2505

Title 24 M.R.S. §2505. COMMITTEE AND OTHER REPORTS

Any professional competence committee within this State and any health care practitioner as defined by this Chapter ~~physician or physician assistant~~ licensed to practice or otherwise lawfully practicing within this State shall, and any other person may, report the relevant facts to the appropriate board relating to the acts of any physician or physician assistant in this State if, in the opinion of the committee, physician, physician assistant or other person, the committee or individual has reasonable knowledge of acts of the physician or physician assistant amounting to gross or repeated medical malpractice, misuse of alcohol, drugs or other substances that may result in the physician's or the physician assistant's performing services in a manner that endangers the health or safety of patients, professional incompetence, unprofessional conduct or sexual misconduct identified by board rule. The failure of any such professional competence committee or any such physician or physician assistant to report as required is a civil violation for which a fine of not more than $1,000 may be adjudged.

Except for specific protocols developed by a board pursuant to Title 32, section 2596-A, 3298 or 18323, a ~~physician or physician assistant, dentist~~health care practitioner or committee is not responsible for reporting misuse of alcohol, drugs or other substances or professional incompetence or malpractice as a result of physical or mental infirmity or by the misuse of alcohol, drugs or other substances discovered by the ~~physician, physician assistant, dentist~~health care practitioner or committee as a result of participation or membership in a professional review committee or with respect to any information acquired concerning misuse of alcohol, drugs or other substances or professional incompetence or malpractice as a result of physical or mental infirmity or by the misuse of alcohol, drugs or other substances, as long as that information is reported to the professional review committee. This section does not prohibit an impaired physician, physician assistant or dentist from seeking alternative forms of treatment.

The confidentiality of reports made to a board under this section is governed by this chapter.

ATTACHMENT Q

Proposed Amendment to Title 24 M.R.S. Section 2606

Title 24 M.R.S. §2506. PROVIDER, ENTITY AND CARRIER REPORTS

A health care provider or health care entity shall, within 60 days, report in writing to the disciplined practitioner's board or authority the name of any licensed, certified or registered employee or person privileged by the provider or entity whose employment, including employment through a 3rd party, or privileges have been revoked, suspended, limited or terminated or who resigned while under investigation or to avoid investigation for reasons related to clinical competence or unprofessional conduct, together with pertinent information relating to that action. Pertinent information includes: a description of the adverse action; the name of the practitioner involved; the date, the location and a description of the event or events giving rise to the adverse action; ~~and~~ identification of the complainant giving rise to the adverse action;~~.~~ ~~Upon written request, the following information must be released to the board or authority within 20 days of receipt of the request:~~ the names of the patients whose care by the disciplined practitioner gave rise to the adverse action; medical records relating to the event or events giving rise to the adverse action; written statements signed or prepared by any witness or complainant to the event; and related correspondence between the practitioner and the provider or entity. The report must include situations in which employment, including employment through a 3rd party, or privileges have been revoked, suspended, limited or otherwise adversely affected by action of the health care practitioner while the health care practitioner was the subject of a proceeding regarding employment or a disciplinary proceeding, and it also must include situations where employment, including employment through a 3rd party, or privileges have been revoked, suspended, limited or otherwise adversely affected by act of the health care practitioner in return for the health care provider's or health care entity's terminating such proceeding. Any reversal, modification or change of action reported pursuant to this section must be reported immediately to the practitioner's board or authority, together with a brief statement of the reasons for that reversal, modification or change. If the adverse action requiring a report as a result of a reversal, modification or change of action consists of the revocation, suspension or limitation of employment, including employment through a 3rd party, or clinical privileges of a physician, physician assistant or advanced practice registered nurse by a health care provider or health care entity for reasons relating to clinical competence or unprofessional conduct and is taken pursuant to personnel or employment rules or policies, medical staff bylaws or other credentialing and privileging policies, whether or not the practitioner is employed by that health care provider or entity, then the provider or entity shall include in its initial report to the disciplined practitioner's licensing board or authority the names of all patients whose care by the disciplined practitioner gave rise to the adverse action. The failure of any health care provider or health care entity to report as required is a civil violation for which a fine of not more than $5,000 may be adjudged.

Carriers providing managed care plans are subject to the reporting requirements of this section when they take adverse actions against a practitioner's credentials or employment for reasons related to clinical competence or unprofessional conduct that may adversely affect the health or welfare of the patient.

ATTACHMENT R

Proposed Amendment to Title 24 M.R.S. Section 2510

Title 24 M.R.S. §2510. CONFIDENTIALITY OF INFORMATION

2. Confidentiality of orders in disciplinary proceedings. Orders of the board relating to disciplinary action against a ~~physician~~ health care practitioner as defined by this Chapter, including orders or other actions of the board referring or scheduling matters for hearing, shall not be confidential.

5. Health care professional – patient; ~~**Physician patient;**~~ **proceedings by board.** The health care professional-patient ~~physician patient~~ privilege shall, as a matter of law, be deemed to have been waived by the patient and shall not prevail in any investigation or proceeding by the board acting within the scope of its authority, provided that the disclosure of any information pursuant to this subsection shall not be deemed a waiver of such privilege in any other proceeding.

6. Disciplinary action. Disciplinary action by the board in conformance with its laws and Title 5, Chapter 375, subchapter 4.~~Board of Licensure in Medicine is in accordance with Title 32, chapter 48; disciplinary action by the Board of Osteopathic Licensure is in accordance with Title 32, chapter 36; and disciplinary action by the State Board of Veterinary Medicine is in accordance with Title 32, chapter 71-A.~~

ATTACHMENT S

Proposed Amendment to Board Statute Regarding Definition of "Practice of Medicine and Surgery"

§. DEFINITIONS

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

1. Applicant. "Applicant" means an individual who submits an application for licensure or registration with the Board.

2. **Board.** "Board" means the Maine Medical Board.

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

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

5. **License.** "License" means license or registration to practice medicine and surgery or to render medical services in this State pursuant to this chapter.

6. **Licensed in good standing.** "Licensed in good standing" means a full and unrestricted and unconditioned license with no prior discipline in any jurisdiction.

7. Licensee. "Licensee" means any individual licensed or registered pursuant to this chapter.

8. **Practice of Medicine.** "Practice of medicine" means:

A. Using the designation "Doctor," "Doctor of Medicine," "Physician," "Dr.," "M.D.," "D.O." or any combination thereof in the conduct of any occupation or profession pertaining to the prevention, diagnosis, or treatment of human disease or condition unless the designation additionally contains a description of another branch of the healing arts for which one holds a valid license in this State;

B. Advertising, holding out to the public, or representing in any manner that one is authorized to practice medicine in this State;

C. Offering or undertaking to prescribe, order, give, or administer any drug or medicine for the use of any other person;

D. Offering or undertaking to prevent, diagnose, correct, or treat in any manner or by any means, methods, or devices any disease, illness, pain, wound, fracture, infirmity, defect, or abnormal physical or mental condition of any person, including the management of pregnancy and parturition;

E. Offering or undertaking to perform any surgical operation upon any person;

F. Rendering a written or otherwise documented medical opinion concerning the diagnosis or treatment of a patient or the actual rendering of treatment to a patient within the State by a

physician located outside the State as a result of the transmission of individual patient data by electronic or other means from within the State to the physician or his or her agent;

G. Rendering a determination of medical necessity or a decision affecting the diagnosis or treatment of a patient.

9. Physician. "Physician" means an individual who has graduated from an allopathic or osteopathic medical school approved by the Board and holds a valid license issued by the Board.

10. Physician Assistant. "Physician assistant" means an individual who has graduated from a program approved by the Board and holds a valid license issued by the Board.

11. Surgery. "Surgery" means any procedure, including but not limited to laser, in which human tissue is cut, shaped, burned, vaporized, or otherwise structurally altered, except that this section shall not apply to any person to whom authority is given by any other statute to perform acts which might otherwise be deemed the practice of surgery. "Laser" means light amplification by stimulated emission of radiation.

Subchapter 2: LICENSE; LICENSE REQUIRED; EXEMPTIONS

§. INDIVIDUAL LICENSE

Only an individual may be licensed or registered under this chapter and only a licensed individual may provide services for which a license is required under this chapter.

§. LICENSE REQUIRED

1. **Unlicensed practice.** Except as provided in section 5, a person may not practice or profess to be authorized to practice medicine or render medical services in this State without a license or during any period when that person's license has expired and/or lapsed or has been denied, suspended, revoked, or surrendered.

2. Penalties. A person who violates this section commits a Class E crime. Violation of this section is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

3. Injunction. The Attorney General may bring an action in Superior Court pursuant to Title 10, section 8003-C, subsection 5 to enjoin an unlicensed person from violating this chapter.

§. PERSONS AND PRACTICES NOT AFFECTED; EXEMPTIONS

1. The requirement of a license under this chapter does not apply to:

A. A health care professional licensed, certified or registered by any board within or affiliated with the Office of Licensing and Professional Regulation or any other agency of this State when that person is practicing within the scope of his or her professional license;

B. A person serving in the United States Armed Forces, the National Guard, or the United

States Department of Health and Human Services, Public Health Service or employed by the United States Department of Veterans Affairs or other federal agency while performing official duties, if the duties are limited to that service or employment;

C. A student enrolled in and attending an allopathic or osteopathic medical school or a physician assistant graduate program while performing duties assigned by a physician at any office of a licensed physician, hospital, clinic or similar facility;

D. A person providing services in cases of emergency where no fee or other consideration is contemplated, charged or received by the physician or physician assistant or anyone on behalf of the physician or physician assistant;

E. A person fully licensed to practice medicine or render medical services in another jurisdiction of the United States who briefly render emergency medical treatment or briefly provide critical medical services in this State following an executive declaration of a state of emergency in this State;

F. A person accompanying a visiting athletic team and who holds a current unrestricted license to practice medicine and surgery in another state when the person, pursuant to a written agreement with an athletic team located in the state in which the person holds the license, provides medical services to any of the following while the team is traveling to or from or participating in a sporting event in this State:

1. A member of the athletic team;

2. A member of the athletic team's coaching, communications, equipment or sports medicine staff;

3. A member of a band or cheerleading squad accompanying the team; or

4. The team's mascot.

Restrictions. A person authorized to provide medical services in this State pursuant to this exemption may not provide medical services at a health care facility, including a hospital, ambulatory surgical facility or any other facility where medical care, diagnosis or treatment is provided on an inpatient or outpatient basis.

G. An individual licensed as a chiropractor licensed by this State may prefix the title "Doctor" or the letters "Dr." to that individual's name when accompanied by the word "Chiropractor," or a dentist duly licensed by this State may prefix the title "Doctor" or the letters "Dr." to that individual's name or a naturopathic doctor licensed by this State may prefix the title "Doctor" or the letters "Dr." to that individual's name when accompanied by the word "Naturopathy" or the words "Naturopathic Medicine" or an optometrist duly licensed under the laws of this State may prefix the title "Doctor" or the letters "Dr." to that individual's name when accompanied by the word "Optometrist" or a podiatrist licensed under the laws of this State may prefix the title "Doctor" or the letters "Dr." to that individual's name when accompanied by the word "Podiatrist" or "Chiropodist."

H. Nothing contained in this section prevents an individual who has received the degree "Doctor of Medicine" or “Doctor of Osteopathic Medicine” from a reputable college or university but who is not engaged in the practice of medicine or surgery or the treatment of a disease or human ailment, from prefixing the letters "Dr." or appending the letters "M.D." or “D.O.” to that individual's name, as long as that individual's license to practice has never been revoked, withdrawn while under investigation or surrendered. Nothing in this chapter may be

construed as to affect or prevent the practice of the religious tenets of a church in the ministration to the sick or suffering by mental or spiritual means.

I. This chapter may not be construed to prohibit an individual from rendering medical services as a physician assistant if these services are rendered under the supervision and control of a physician or surgeon and if that individual has satisfactorily completed a training program approved by the Board and a competency examination approved by the Board. Supervision and control may not be construed as requiring the personal presence of the supervising and controlling physician at the place where these services are rendered, unless a physical presence is necessary to provide patient care of the same quality as provided by the physician.

J. This chapter may not be construed as prohibiting a physician or surgeon from delegating to the physician's or surgeon's employees or support staff certain activities relating to medical care and treatment carried out by custom and usage when the activities are under the control of the physician or surgeon. The physician delegating these activities to employees or support staff, to program graduates or to participants in an approved training program is legally liable for the activities of those individuals, and any individual in this relationship is considered the physician's agent. This section may not be construed to apply to registered nurses acting pursuant to chapter 31.When the delegated activities are part of the practice of optometry as defined in chapter 34-A, then the individual to whom these activities are delegated must possess a valid license to practice optometry in Maine, or otherwise may perform only as a technician within the established office of a physician, and otherwise acting solely on the order of and under the responsibility of a physician skilled in the treatment of eyes as designated by the proper professional board, and without assuming evaluation or interpretation of examination findings by prescribing corrective procedures to preserve, restore or improve vision.

ATTACHMENT T

Proposed Amendment to Board Statute Regarding Complaint Investigations/Hearings

§. BOARD INVESTIGATORY AND HEARING COMMITTTEES

1. **Investigatory Committees.** The board may establish investigatory committees to review and investigate applications for licensure and complaints.

A. Membership. An investigatory committee shall consist of 5 members as follows:

1. Three physicians who are members of the Board, appointed by the chair of the board, subject to the following:

a. If the complaint/application for licensure involves an allopathic physician, then at least two of the three physicians must also be allopathic physicians;

b. If the complaint/application for licensure involves an osteopathic physician, then at least two of the three physicians must also be osteopathic physicians.

2. A physician assistant who is a member of the board, appointed by the chair of the board; and

3. A public member of the board, appointed by the chair of the board.

B. Duties. The investigatory committees shall:

1. Investigate complaints, review applications for licensure, and take any of the following actions:

A. **Complaints.**

1. Dismiss the complaint;

2. Dismiss the complaint and issue a letter of guidance or concern to the licensee;

3. Hold an informal conference with the licensee who is the subject of the complaint;

4. Execute a consent agreement that resolves a complaint or investigation without further proceedings. Consent agreements may be entered into only with the consent of: the applicant, licensee or registrant; the complaint committee; and the Department of the Attorney General. Any remedy, penalty or fine that is otherwise available by law, even if only in the jurisdiction of the Superior Court, may be achieved by consent agreement, including long-term suspension and permanent revocation of a professional or occupational license or registration. A consent agreement is not subject to review or appeal, and may be modified only by a writing executed by all parties to the original consent agreement. A consent agreement is enforceable by an action in Superior Court;

5. Refer the complaint for a hearing before a hearing committee of the board;

6. Refer the complaint to the Office of the Attorney General to file an action in the District Court in accordance with Title 4, Chapter 5.

B. License Applications.

1. Grant the application for licensure;

2. Hold an informal conference with the applicant for licensure;

3. Execute a consent agreement that resolves a pending application;

4. Deny an application for licensure.

C. Prohibition. No member of a complaint or licensure committee who investigated, reviewed, and took action on a specific complaint or application for licensure shall serve on a hearing committee involving that specific complaint or application for licensure.

D. Quorum. Notwithstanding any other provision of law to the contrary, a majority of the members serving on a complaint committee or a licensing committee constitutes a quorum.

2. **Hearing Committees.**

The board may establish hearing committees to adjudicate complaints and applications for licensure and/or re-licensure.

A. Membership. A hearing committee shall consist of 5 members as follows:

1. Three physicians who are members of the board, appointed by the chair of the board:

2. A physician assistant who is a member of the board, appointed by the chair of the board; and

3. A public member of the Board, appointed by the chair of the Board.

B. Duties. The hearing committees shall conduct adjudicatory hearings in accordance with Title 5, chapter 375, subchapter 4.

1. Complaints. Adjudicate complaints, and take any of the following actions:

A. Dismiss the complaint;

B. Dismiss the complaint and issue a letter of guidance or concern to the licensee;

C. Impose any sanction authorized by Title 10, section 8003, subsection 5;

D. Refer the complaint to the Office of the Attorney General to file an action in the District Court in accordance with Title 4, Chapter 5;

E. Execute a consent agreement that resolves a hearing without further proceedings. Consent agreements may be entered into only with the consent of: the applicant, licensee or registrant; the hearing committee; and the Department of the Attorney General. Any remedy, penalty or fine that is otherwise available by law, even if only in the jurisdiction of the Superior Court, may be achieved by consent agreement, including long-term suspension and permanent revocation of a license or registration.

A consent agreement is not subject to review or appeal, and may be modified only by a writing executed by all parties to the original consent agreement. A consent agreement is enforceable by an action in Superior Court.

2. License Applications. Adjudicate license applications, and take any of the following actions:

A. Grant the application;

B. Deny the application;

C. Grant the application with probation and conditions;

D. Grant the application with restrictions;

E. Execute a consent agreement that resolves a hearing without further proceedings. Consent agreements may be entered into only with the consent of: the applicant, licensee or registrant; the hearing committee; and the Department of the Attorney General. Any remedy, penalty or fine that is otherwise available by law, even if only in the jurisdiction of the Superior Court, may be achieved by consent agreement, including long-term restriction or denial of a license or registration. A consent agreement is not subject to review or appeal, and may be modified only by a writing executed by all parties to the original consent agreement. A consent agreement is enforceable by an action in Superior Court.

C. Prohibition. No member of a complaint committee who investigated, reviewed, and took action with respect to a specific complaint and/or license application shall serve on a hearing committee involving that specific complaint or license application.

D. Quorum. Notwithstanding any other provision of law to the contrary, a majority of the members serving on the hearing committee constitutes a quorum.

E. Appeal and Judicial Review.

1. Complaints. Notwithstanding and other provision of law, including Title 10, section 8003, subsection 5, any nonconsensual disciplinary action taken under authority of this subsection, including license revocation, may be imposed only after a hearing conforming to the requirements of Title 5, chapter 375, subchapter 4, and is subject to judicial review exclusively in the Superior Court in accordance with Title 5, chapter 375, subchapter 7.

2. License Applications. Notwithstanding any other provision of law, any nonconsensual licensing action taken under authority of this subsection, including denial of licensure or re-licensure, may be imposed only after affording the individual the opportunity to request a hearing conforming to the requirements of Title 5, chapter 375, subchapter 4, and is subject to judicial review exclusively in the Superior Court in accordance with Title 5, chapter 375, subchapter 7.