



# **Maine Board of Licensure in Medicine**

## **Jurisprudence Exam**

### **Study Guide**

#### **INTRODUCTION**

Welcome to the State of Maine! Since 1895, the Maine Board of Licensure in Medicine (BOLIM) has been issuing licenses to practice medicine and surgery in Maine. In addition to reviewing applications for licensure, the BOLIM investigates and adjudicates complaints against allopathic physicians and physician assistants, and enacts rules, policies and guidelines to implement the law and safeguard the public. Each state and territory of the United States has laws and rules that pertain to the practice of medicine. Maine is no different. The purpose of the Jurisprudence Exam (and this Study Guide) is to help familiarize physician and physician assistant applicants for licensure (and re-licensure) with the laws and rules in Maine. Maine's State Motto is: "Dirigo" – which is Latin for "I direct" or "I lead." The BOLIM hopes that the Jurisprudence Exam (and this Study Guide) will lead physicians and physician assistants to understand some of the important aspects of Maine laws and rules so that they may practice safely, ethically, and professionally. Primum non nocere.

#### **Disclaimer**

This study guide is designed to be used as an aide to assist the user in locating and understanding the various laws, rules, and policies that govern the practice of medicine in Maine. This study guide is not intended to be used as the sole information that an applicant or licensee needs to know or as a substitute for reading and understanding the applicable laws, rules, and policies of the Board. While the Board has sought to ensure that the study guide is consistent as possible with current laws, rules, and policies, there may be unintentional errors or omissions. To the extent that there are any inconsistencies between the contents of this study guide and the applicable laws, rules, and policies, the latter are controlling.

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## I. Board of Licensure in Medicine

### Board Mission, Powers & Composition

"For the Protection of the Health, Safety and Welfare of the Public."

The Board of Licensure in Medicine is one of many occupational and professional licensing boards in the State of Maine. The Board is one of several state agencies that are responsible for protecting the health and safety of the public by licensing and regulating health care providers. Examples of other state agencies include: The Board of Osteopathic Licensure; The Board of Nursing; The Board of Complementary Healthcare; The Board of Dental Practice; and The Board of Pharmacy.

The Board of Licensure in Medicine licenses and regulates allopathic physicians who are graduates of medical schools and received the degree of *Medicinae Doctor* ("M.D."). It also licenses and regulates physician assistants who render medical services in collaboration with physicians and other health care professionals. The primary powers of the Board include the authority to investigate complaints, hold hearings, adopt rules, establish standards and procedures, and to grant or deny applications for licensure.

The members of the Board are officers of the State who are appointed by the Governor. The Board is composed of 6 physicians, 3 non-physician representatives of the public, and 2 physician assistants. All members must have been Maine residents for at least five years at the time of their appointment and the physician/physician assistant members must have been licensed and actively practicing medicine or rendering medical services in the state.

The Board has administrative, licensing, and complaint investigative staff and is provided with legal counsel and additional investigative staff by the Maine Department of Attorney General.

**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.**

## II. Licensure and Registration

There are approximately 6,800 physicians and 1,000 physician assistants currently licensed with the Board. The qualifications for licensure and registration are established in laws enacted by the Legislature, and rules, policies and guidelines enacted by the Board. The following laws, rules, policies, and guidelines pertain to licensing and registration:

**A. Laws.** Title 32 M.R.S. §§3270 – 3281; 3275-A; 3300-D. This law can be found at <http://legislature.maine.gov/statutes/32/title32ch48sec0.html>. Key aspects of the Board's statutes as they pertain to licensure and registration include:

- The Board has authority to grant or deny licenses to physicians and physician assistants.
- The law establishes the criteria for physician and physician assistant licensure.
- If an applicant is unsure about how to answer a question on an application for licensure or re-licensure, she/he should contact the Board staff and/or attach an addendum to the application explaining the situation/circumstances.
- Applicants who answer questions incorrectly, fail to make required disclosures, or engage in fraud, deceit or misrepresentation risk administrative fines, disciplinary action and/or denial of licensure.
- Licenses are renewed every two years based on the applicant's birthdate. Renewals are due by the end of the month of a physician or physician assistant's birth on even years if he/she was born in an even numbered year, or odd years if the physician was born in an odd numbered year.
- It is the licensee's professional responsibility to know the date on which his/her license will expire and the date by which date administratively complete renewal application must be submitted in order to prevent the expiration of the license.
- Continuing Medical Education (CME) is required in order to qualify to renew a license in active status. Applicants who have failed to complete the required CME prior to renewal should disclose that fact on their renewal applications. An applicant should not claim CME that is planned, but not completed.
- 60 days prior to the expiration of a license, the Board notifies a licensee about the upcoming expiration of his/her license.
- If a licensee fails to file a timely and complete renewal application on or before the date of expiration on the license, his/her license automatically expires and he/she no longer can practice medicine or render medical services. The Board notifies a licensee by email on the date of the expiration of his/her license that the license has expired.
- A licensee has up to 90 days to reinstate his/her license after expiration before incurring additional monetary penalties and the license lapses.
- The State of Maine is a member of the Interstate Medical Licensure Compact, which expedites the interstate medical licensure of certain qualified physicians.

**B. Rules.** The Board currently has 2 rules pertaining to licensure: Chapter 1 regarding physician licensure and registration; and Chapter 2 regarding physician assistant licensure. Official copies of the rules can be found on the Board's website: <https://www.maine.gov/md/laws-rules-updates/rules>. Key aspects of each rule include:

**1. Chapter 1 – Rules and Regulations for Physician Licensing.**

- A licensee whose license is in inactive status may NOT practice medicine and surgery in Maine.
- After the expiration of a license, the former licensee cannot practice medicine or render medical services until the license is approved for renewal.
- If a licensee wishes to renew the license in active status and has failed to obtain adequate CME for license renewal she/he should send in the application on time, including an accurate CME report, explain the circumstances around not having completed CME requirements, and request an extension of time to complete the CME.
- All physicians are required to acquire 3 hours of CME regarding prescribing opioids every biennium.
- If unsure how to answer a question on a licensure application, a prudent course would be to call the Board for advice and/or attach an addendum to the application explaining the situation/circumstances.
- Physicians who have not engaged in any clinical practice during the 24 months prior to application for an active license are required to demonstrate current clinical competency.

**2. Chapter 2 – Physician Assistants.** This is a joint rule with the Board of Osteopathic Licensure. Key aspects of this rule include:

- Before a physician assistant can render any medical services, she/he must have a license in Maine.
- Physician Assistants with less than 4,000 hours of clinical practice experience are required to have either a collaborative agreement (private practice other than a health care facility or physician group practice) or a privileging and credentialing

document (health care facility or physician group practice) that identifies scope of practice.

- Physician Assistants with more than 4,000 hours of clinical experience and who work within a health care facility or a physician group practice under a system of credentialing and granting of privileges pursuant to a written scope of practice agreement are not required to practice pursuant to a collaborative agreement or practice agreement.
- Physician Assistants with more than 4,000 hours of clinical experience who will be the principal clinical provider in a practice other than a health care facility or physician group practice and that does not include a physician partner (i.e. own or operate an independent practice) are required to practice pursuant to a practice agreement with a collaborating physician.
- The Board reviews collaborative agreements and practice agreements to ensure that the proposed delineated scope of practice is commensurate with the physician assistant's training and experience.
- Physician assistants are legally liable for any medical services they render.
- After the expiration of a license, the former licensee cannot practice medicine or render medical services until the license is approved for renewal.
- If a licensee wishes to renew a license in active status and has failed to obtain adequate CME for license renewal she/he should send in the application on time, including an accurate CME report, explain the circumstances around not having completed CME requirements, and request an extension of time to complete the CME.
- All physician assistants are required to acquire 3 hours of CME regarding prescribing opioids every biennium.
- If unsure how to answer a question on a licensure application, a prudent course would be to call the Board for advice and/or attach an addendum to the application explaining the situation/circumstances.
- Physician assistants who have not engaged in any clinical practice during the 24 months prior to application for an active license are required to demonstrate current clinical competency.

C. **Guidelines.** The Board has a set of guidelines that pertains to licensure, which may be found at <https://www.maine.gov/md/sites/maine.gov.md/files/inline-files/REENTRY-TO-PRACTICE-GUIDELINES.pdf>.

- ***Reentry to Practice Guidelines:*** These guidelines establish procedures for physicians and physician assistants who have been out of clinical practice for more than two years to demonstrate current competency, and recommends that such individuals review the guidelines prior to submitting an application for licensure.

### III. Complaints and Investigations

The Board has the duty and authority to investigate and/or initiate complaints regarding licensees or former licensees. It also has the authority to issue subpoenas and adjudicate complaints pursuant to a formal hearing process. The Board processes approximately 150 to 200 complaints per year. Complaints may be initiated in a number of ways: complaints can be received from patients, patients' relatives, or patients' representatives; complaints can be received from other health care providers; mandated reports from other health care providers or health care entities; reports received from law enforcement or other state or federal agencies; reports received from the National Practitioner Data Bank (NPDB) or the Federation of State Medical Boards (FSMB); self-reports from licensees.

- Common issues underlying complaints against licensees to the Board of Licensure in Medicine include:
  - Office staff communication style;
  - Lack of communication regarding test results;
  - Poor communication among professionals; and
  - Licensee rudeness.
- If a patient or individual files a complaint and then requests to withdraw it, the Board may still pursue the complaint.
- If deemed pertinent to the investigation of a complaint, the Board has the authority to insist that a licensee undergo a physical, mental health, and/or substance misuse evaluation by an evaluator of the Board's choice.
- The Board is unable to assist the public or licensees with civil medical malpractice issues. [However, the Board may investigate allegations contained in a complaint or report of a violation of a standard of care or standard of

professional behavior alleging conduct which may also serve as the subject of a separate civil medical malpractice matter]

The following laws, rules, policies, and guidelines pertain to complaints and investigations:

**A. Laws.** There are a number of laws that provide the Board with authority to investigate and resolve or adjudicate complaints.

**1. Title 32 M.R.S. §§3268-3269; 3270-C; 3282-A; 3286.** This law can be found at <http://legislature.maine.gov/statutes/32/title32ch48sec0.html>. Key aspects of the Board's statute as they pertain to complaints and investigations include:

- Grounds for discipline of a license include but are not limited to:
  - fraud or misrepresentation;
  - substance misuse;
  - unprofessional conduct – including sexual misconduct or a violation of a standard of care;
  - incompetence;
  - prescribing controlled substances for other than accepted therapeutic purposes;
  - violating a Board law or rule.

**2. Title 10 M.R.S. §§ 8003-8008**

- The Board reports all license denials, disciplinary actions, and practice restrictions to the National Practitioner Data Bank and the Federation of State Medical Boards discipline databank.
- The Board has authority to issue investigative subpoenas.
- The Board has authority to issue Letters of Guidance or Concern. Letters of Guidance or Concern DO NOT constitute disciplinary action that is reportable to the National Practitioner Data Bank or the Federation of State Medical Boards. Letters of Guidance or concern are used to educate, reinforce knowledge regarding legal or professional obligations and express concern over action or inaction by the licensee or registrant that does not rise to the level of misconduct sufficient to merit disciplinary action.

**B. Rules.** The Board has several rules that are relevant to complaints and investigations. All rules can be accessed at <https://www.maine.gov/md/laws-rules-updates/rules>. Violation of any

Board rule constitutes grounds for discipline, so licensees should become familiar with them. The following rule concerns sexual misconduct.

**1. Chapter 10 – Sexual Misconduct.** Chapter 10 defines sexual misconduct by physicians and physician assistants. Key aspects of this rule include:

- There are two categories of sexual misconduct: “sexual violation” and “sexual impropriety.”
- “Key third party” means immediate family members and others who would be reasonably expected to play a significant role in the health care decisions of a patient of the physician or physician assistant and includes, but is not limited to, the spouse, domestic partner, parent, child, guardian, or surrogate.
- "Sexual violation" is any conduct by a physician/physician assistant with a patient or a key third party that is sexual or may be reasonably interpreted as sexual, even when initiated by or consented to by a patient.
- "Sexual impropriety" is behavior, gestures, or expressions by the physician/physician assistant that is seductive, sexually suggestive, or sexually demeaning to a patient and includes examining the patient without verbal or written consent.
- Sexual misconduct includes kissing a patient or key third party.
- Sexual misconduct with a patient or a key third party is a violation whether it happens inside or outside the office or whether it was initiated by or suggested by the patient or key third party.
- Sexual misconduct with a patient or a key third party constitutes unprofessional conduct and incompetence and is serious enough to result in revocation of licensure.

**C. Board Policies/Guidelines.**

Board policies and guidelines can be found on its website <https://www.maine.gov/md/laws-rules-updates/policies>. The following policies and guidelines pertain to complaints and investigations.

**1. *Board Policy – The AMA Code of Medical Ethics as a Primary Source for Defining Ethical Conduct***

It is the policy of the Board of Licensure in Medicine that the American Medical Association’s Code of Medical Ethics, most recent edition of Current Opinions with Annotations, is one of the primary sources in defining ethical physician and physician

assistant behavior. This means that even if a licensee is not a member of the AMA, the Code of Medical Ethics will be applied to the licensee's conduct.

Key provisions:

- **Disruptive Behavior.** This does not apply only to licensee behavior. The Board maintains that licensees are responsible, whether employed by the licensee or not, for the staff in the licensee's office. Just as the Board will investigate complaints against licensees for rudeness or outbursts of anger, it will also investigate complaints against licensees based on staff rudeness or outbursts. The Board does not consider stress, or lack of sleep as excuses for rude behavior.
- **Sale of Health-Related Products.** Licensees need to be aware there is an imbalance of power in their relationship with a patient. This means that patients can feel pressured into doing things they might not do in other circumstances. For example, patients might feel compelled to buy items that are on sale at the office, donate to a charity or cause supported at the office, or support a political cause (sign petitions), if they are going to continue to receive care from the licensee. Although the intention may be good on the part of the licensee it is important to remember that it is the patient's perception and the influence created that matters. The sale of goods from the licensee's office raises ethical concerns about financial conflict of interest, risks placing undue pressure on the patient, and threatens to erode patient trust, undermine the primary obligation of physicians to serve the interests of their patients before their own, and demeans the profession of medicine.
- **Self-Treatment and Treatment of Family.** Licensees should not treat themselves or family members except in emergency situations where no other physician is available or for short-term, minor problems. Licensees who treat family members in an emergency or for a short term, minor problem are responsible for documenting the care provided and conveying that information to the patient's primary care physician. Licensees who prescribe controlled substances to themselves or their family members in non-emergency situations engage in unprofessional conduct.

Additional information regarding the *AMA Code of Ethics* can be found at <http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics.page>

2. **Board Guidelines** – The Board has 5 guidelines related to complaints and investigations, which can be found at <https://www.maine.gov/md/laws-rules-updates/policies>.
  - **Chaperone Guideline:** This guideline recommends that clinicians should have a policy notifying patients of the right to have a chaperone present during any exam, but most certainly for any exam of the breast, genitalia or rectum.

- ***Communication with Patients:*** This guideline provides licensees with information regarding appropriate communication with patients.
- ***Medical Professionalism and Social Media:*** This guideline provides licensees with practical information regarding the use of social media and its relationship and impact upon medical professionalism.
- ***Copy and Paste Guideline (Medical Records):*** This guideline identifies the following negative risks associated with copy and paste forward functions in an electronic medical record:
  - It contains outdated or irrelevant information.
  - It propagates false information.
  - It misrepresents what actually occurred during the specific patient encounter.
  - It makes it difficult to identify the duration of a medical problem.
  - It confuses medication dose changes or other instructions to the patient.
- ***Informed Consent Guideline:*** This guideline provides that informed consent is a process that occurs during the physician and patient relationship and includes an element of shared decision making.

## IV. Prescribing Controlled Substances

Maine, like the rest of the United States, is in the midst of an opioid epidemic. As a result, the Legislature has enacted laws that impose specific requirements regarding prescribing benzodiazepines and opioids. In addition, the Board and the Maine Department of Health and Human Services (DHHS) have promulgated rules regarding the prescribing of controlled substances. Failure to comply with the laws and rules regarding the prescribing of controlled substances constitutes grounds for discipline, and may also subject the prescriber to additional civil fines by DHHS. Therefore, licensees should familiarize themselves with the applicable laws and rules regarding the prescribing of controlled substances.

A. **Laws.** There are two laws that are relevant to the prescribing of controlled substances.

1. **Title 32 M.R.S. §3300-F (Requirements regarding prescription of opioid medication).** This law can be found at: <http://legislature.maine.gov/statutes/32/title32sec3300-F.html>. Key aspects of this law include:

- A maximum daily dosage of any combination of opioid medication in an aggregate amount in excess of 100 morphine milligram equivalents of opioid medication.

- Exceptions to the maximum daily dosage of opioid medication when prescribing opioid medication to a patient for:
  - Pain associated with active and aftercare cancer treatment;
  - Palliative care, as defined in Title 22, section 1726, subsection 1, paragraph A, in conjunction with a serious illness, as defined in Title 22, section 1726, subsection 1, paragraph B;
  - End-of-life and hospice care;
  - Medication-assisted treatment for substance use disorder; or
  - Other circumstances determined in rule by the Department of Health and Human Services pursuant to Title 22, section 7254, subsection 2; and
  - When directly ordering or administering a benzodiazepine or opioid medication to a person in an emergency room setting, an inpatient hospital setting, a long-term care facility or a residential care facility or in connection with a surgical procedure.
  
- Requires electronic prescriptions unless granted a waiver from the Commissioner of Health and Human Services.
  
- Requires 3 hours of CME every 2 years regarding opioid prescribing for any licensee who prescribes opioids.
  
- Requires a health care entity with licensees whose scope of practice includes prescribing opioid medication to adopt an opioid prescribing policy that includes but is not limited to procedures and practices related to risk assessment, informed consent, and counseling on the risk of opioid use.

2. **Title 22 M.R.S. §7255 Controlled Substances Prescription Monitoring.** This law can be found at <http://legislature.maine.gov/statutes/22/title22sec7253.html>. This Title and sections of law include a requirement for prescribers of controlled substances to check the prescription monitoring program (PMP) information of the patient. Key aspects of this law include:

- Upon initial prescription of a benzodiazepine or an opioid medication and every 90 days thereafter, a prescriber must for as long as the prescription is renewed, a prescriber must check the PMP for records related to that patient.
  
- Exceptions to checking the PMP:

- When a licensed or certified health care professional directly orders or administers a benzodiazepine or opioid medication to a person in an emergency room setting, an inpatient hospital setting, a long-term care facility or a residential care facility or in connection with a surgical procedure; or
- When a licensed or certified health care professional directly orders, prescribes or administers a benzodiazepine or opioid medication to a person suffering from pain associated with end-of-life or hospice care.

**B. Rules.** There are 2 rules that are relevant to prescribing controlled substances.

**1. Chapter 21 – Use of Controlled Substances for the Treatment of Pain.** This rule can be accessed at: <https://www.maine.gov/md/sites/maine.gov.md/files/inline-files/Chapter%2021%2005.27.20.pdf>. Chapter 21 is a joint rule of the Board of Osteopathic Licensure, the Board of Licensure in Medicine, the Board of Nursing and the Board of Podiatric Medicine that sets forth standards for prescribing controlled substances for treatment of pain including: defining certain terms; requiring that clinicians achieve and maintain competence in assessing and treating pain; requiring that clinicians consider the use of non-pharmacologic modalities and non-controlled drugs in treatment of pain prior to prescribing controlled substances; requiring that clinicians use and document “*Universal Precautions*” when prescribing controlled substances; requiring that clinicians report illegal acts such as the illegal acquisition and selling of drugs; requiring that clinicians comply with state and federal controlled substance laws and regulations and CDC guidelines for prescribing opioids; and requiring clinicians who prescribe controlled substances to maintain current clinical knowledge by complying with continuing education requirements. Key aspects of the rule include:

- The United States in the midst of a national opioid epidemic.
- All physicians and physician assistants who are authorized to prescribe controlled substances must register as data requesters with the Maine Prescription Monitoring Program.
- With limited exceptions, upon initial prescription of a benzodiazepine or an opioid medication to a person and every 90 days for as long as that prescription is renewed all physicians and physician assistants must check the Maine Prescription Monitoring Program information for records related to that person.
- There are exemptions or exceptions to the 100 MME per day maximum dosage of opiates that physicians and physician assistants may prescribe to patients.
- According to the U.S. CDC Guideline for Prescribing Opioids for Chronic Pain, nonpharmacologic therapy and nonopioid pharmacologic therapy are preferred for chronic pain.

- “Universal precautions” in prescribing controlled substances includes:
  - Patient evaluation, including medical history & risk assessment.
  - Treatment plan.
  - Informed consent.
  - Use of the Maine Prescription Monitoring Program information.
  - Written Treatment Agreement.
  - Toxicological testing.
  - Medical record keeping.
- Effective December 31, 2018, ALL licensees of the Board must complete at least 3 hours of CME regarding the prescribing of opioid medication.
- The Chapter 21 rule does not apply in the following circumstances:
  1. **Custodial Care Facilities.** The rule does not apply to the treatment of patients who are in-patients of any medical facility or to the treatment of patients in any custodial care facilities (including nursing homes, rehabilitation facilities, and assisted living facilities) where the patients do not have possession or control of their medications and where the medications are dispensed or administered by a licensed, certified or registered health care provider.
  2. **Hospice Care** The rule does not apply to the treatment of patients who are terminally ill and who are receiving hospice services as defined by this rule.

2. **DHHS Chapter 11, Rules Governing the Controlled Substances Prescription Monitoring Program and Prescription of Opioid Medications**

This rule, which became effective September 16, 2017, has the force and effect of law. The rule may be obtained at the following website: <http://www.maine.gov/dhhs/oms/rules/samhs-rules.shtml>. Key aspects of this rule include:

- A requirement that all prescribers register as data requesters with the Maine Prescription Monitoring Program (PMP).
- Specific requirements regarding prescriptions for opioid medication, including:
  - DEA number
  - Prescription Code Requirement for “Acute” or “Chronic” pain
  - A Diagnosis Code
  - An Exemption Code
- A requirement for electronic prescribing (or a waiver).
- A requirement for prescribers to check the PMP (with exceptions).
- Limits on opioid medication prescribing and Exemptions to limits.
- Access to PMP information by prescribers and duly authorized staff.

- Confidentiality of PMP information.

C. **Board Policies.** The Board has 1 policy that is relevant to prescribing controlled substances.

1. ***Board Policy – The AMA Code of Medical Ethics as a Primary Source for Defining Ethical Conduct.***

It is the policy of the Board of Licensure in Medicine that the American Medical Association’s Code of Medical Ethics, most recent edition of Current Opinions with Annotations, is one of the primary sources in defining ethical physician and physician assistant behavior. This means that even if a licensee is not a member of the AMA, the Code of Medical Ethics will be applied to the licensee’s conduct.

- **Self-Treatment and Treatment of Family.** Licensees should not treat themselves or family members except in emergency situations or for short-term, minor problems. Licensees who treat family members in an emergency or for a short term, minor problem are responsible for documenting the care provided and conveying that information to the patient’s primary care physician. Licensees who prescribe controlled substances to themselves or their family members in non-emergency situations engage in unprofessional conduct.

Additional information regarding the *AMA Code of Ethics* can be found at <http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics.page>

## V. **Mandated Reporting and Notifications**

Maine law requires that licensees of the Board make certain mandated reports to the Board, the Department of Health and Human Services (DHHS), and to the District Attorney. In addition, Board rules requires that licensees provide certain notifications to the Board within 10 days of their occurrence.

### A. **Maine Laws**

1. **Title 24 M.R.S. §§2501-2511 Maine Health Security Act.** This law can be found at <http://www.mainelegislature.org/legis/statutes/24/title24ch21sec0-2.html>. This Title and sections of law include a requirement of mandated reports to the Board and describe what situations require a mandated report. Key aspects of this law include:

- A physician or physician assistant is required to report to the Board the relevant facts relating to the acts of any physician or physician assistant in this State if, in the opinion of the physician or physician assistant, [she/he] 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.

2. **Title 22 M.R.S. § 4011-A Reporting of Abuse or Neglect.** This law can be found at <http://www.mainelegislature.org/legis/statutes/22/title22sec4011-A.html>. This Title and section requires physicians and physician assistants to report to the Maine Department of Health and Human Services OR the District Attorney suspected child abuse and neglect AND certain injuries to children under the age of 6 months. Mandated Reporter Training and additional information regarding mandated reporting can be found at: <http://www.maine.gov/dhhs/ocfs/cps/>. Key aspects of this law include:

- It requires a physician and a physician assistant to immediately report or cause a report to be made to DHHS [When the suspected abuser is responsible for the child] or to the District Attorney [When the suspected abuser is not responsible for the child] when she/he knows or has reasonable cause to suspect that a child has been or is likely to be abused or neglected or that a suspicious child death has occurred.
- It requires a physician and a physician assistant to immediately report to DHHS if a child who is under 6 months of age or is otherwise nonambulatory exhibits evidence of ANY of the following:
  - Fracture of a bone;
  - Substantial bruising or multiple bruises;
  - Subdural hematoma;
  - Burns;
  - Poisoning; or
  - Injury resulting in substantial bleeding, soft tissue swelling or impairment of an organ.

NOTE: This subsection does not require the reporting of injuries occurring as a result of the delivery of a child attended by a licensed medical practitioner or the reporting of burns or other injuries occurring as a result of medical treatment following the delivery of the child while the child remains hospitalized following the delivery.

**B. Rules.** Board rules Chapter 1 (Physicians) and Chapter 2 (Physician Assistants) can be accessed at <https://www.maine.gov/md/laws-rules-updates/rules>. Each rule requires licensees to notify the Board within 10 days of the occurrence of any of the following:

- Change of contact information.
- Criminal arrest/summons/indictment/conviction.
- Change in status of employment or hospital privileges.
- Disciplinary action taken by any licensing authority.
- Material change in qualifications or information submitted with applications to the Board.
- Failure to pass initial NCCPA Examination (Physician Assistants only)

## VI. Medical Records

Maine law and current medical ethics provide patients with the right, with limited exceptions, to access to their medical records.

### A. Laws.

1. **Title 22 M.R.S. §1711 (including subparagraphs A- C) Medical Records.** The law can be found at <http://legislature.maine.gov/statutes/22/title22sec1711.html>. This Title and section of law includes patient access to medical records and fees that can be charged. Maine law (22 M.R.S.§§1711 [pertains to hospital records], 1711-A [Fees charged for records], & 1711-B [pertains to treatment records in possession of health care providers]) governs a patient's access to their medical/treatment records. Upon receipt of written authorization, 22 M.R.S. §1711-B requires a health care practitioner to:

[R]elease copies of all treatment records of a patient or a narrative containing all relevant information in the treatment records to the patient. The health care practitioner may exclude from the copies of treatment records released any personal notes that are not directly related to the patient's past or future treatment and any information related to a clinical trial sponsored, authorized or regulated by the federal Food and Drug Administration. The copies or narrative must be released to the designated person within a reasonable time.

- Historically, the Board has considered thirty (30) days to be a reasonable time frame although, depending on the circumstances, the copies might need to be released more quickly.

- If the licensee is concerned the release of records to the patient might be detrimental to the patient's health, the licensee can ask the patient to designate an authorized representative and release the copies or narrative to that individual.
- The law also provides the licensee the ability to charge the patient for copies of the narrative. The charge for the narrative may not exceed reasonable costs incurred in making the narrative and the charge for copies may not exceed \$5 for the first page and \$0.45 for each additional page up to a maximum of \$250 for the entire record or narrative.
- Although the law allows you to charge for this service, medical ethics do not allow a licensee to withhold records needed for treatment because of an unpaid bill. Upon receipt of proper authorization a licensee should not refuse, for any reason, to make records available to another physician presently treating the patient.

Key aspects of this law include:

- In general, a patient is entitled to a copy of his or her own medical record.
- If a patient has not paid a bill, the licensee still has an obligation to forward records upon request and not wait until the bill is paid.

## **B. Board Policies.**

1. ***Board Policy – The AMA Code of Medical Ethics as a Primary Source for Defining Ethical Conduct.*** The policy can be found at [https://www.maine.gov/md/sites/maine.gov.md/files/inline-files/MEDICAL\\_ETHICS\\_POLICY.pdf](https://www.maine.gov/md/sites/maine.gov.md/files/inline-files/MEDICAL_ETHICS_POLICY.pdf)

It is the policy of the Board of Licensure in Medicine that the American Medical Association's Code of Medical Ethics, most recent edition of Current Opinions with Annotations, is one of the primary sources in defining ethical physician and physician assistant behavior. This means that even if a licensee is not a member of the AMA, the Code of Medical Ethics will be applied to the licensee's conduct.

The 2017 edition of the AMA Code of Medical Ethics imposes an obligation on physicians to safeguard and manage patient records, including retaining old records and providing copies or transferring the records upon retirement. The AMA Code of Medical Ethics states in part the following with regards to medical records:

To manage medical records responsibly, physicians (or the individual responsible for the practices medical records should:

(c) Make the medical record available:

(i) as requested or authorized by the patient (or the patient’s authorized representative);

(ii) to the succeeding physician or other authorized person when the physician discontinues his or her practice (whether through departure, sale of practice, retirement, or death);

(iii) as otherwise required by law.

**Key aspect of this policy: Physicians and physician assistants who have retired must still ensure that their former patients have access to their medical records.**

- **Board Guidelines**. The Board has adopted a guideline regarding “copy and paste”, which can be found at <https://www.maine.gov/md/sites/maine.gov.md/files/inline-files/COPY-AND-PASTE.pdf>

***Copy and Paste Guideline (Medical Records)***: This guideline identifies the following negative risks associated with copy and paste forward functions in an electronic medical record:

- It contains outdated or irrelevant information.
- It propagates false information.
- It misrepresents what actually occurred during the specific patient encounter.
- It makes it difficult to identify the duration of a medical problem.
- It confuses medication dose changes or other instructions to the patient.

## VII. Telemedicine

Telemedicine is a field of medicine that allows licensees to treat patients who might otherwise not have immediate access to a physician or physician assistant. Licensees who intend to practice medicine should be aware of the Board’s rule regarding telemedicine.

- A. **Board Rule. Chapter 6 – Telemedicine Standards of Practice**. This is a joint rule of the Board of Licensure in Medicine and the Board of Osteopathic Licensure establishing standards for the practice of medicine using telemedicine in providing health care. The rule can be found at: [https://www.maine.gov/md/sites/maine.gov.md/files/inline-files/Chapter\\_6\\_Telemedicine%20.pdf](https://www.maine.gov/md/sites/maine.gov.md/files/inline-files/Chapter_6_Telemedicine%20.pdf). Key aspects of the rule include:

- Sole contact with a patient through e-mail/instant messaging is NOT sufficient for creating a physician/patient relationship including diagnosis and treatment.
- The location (state) of the patient is where the practice of medicine takes place.
- If a clinician is practicing telemedicine and the patient is located in Maine the clinician must be licensed in Maine.

## **VIII. Medical Professionals Health Program (MPHP)**

The complexity of contemporary medicine and health care requires today's medical professional to be healthy and well balanced. Medical professionals are subject to high degrees of stress, both personally and professionally. This stress can impair one's ability to maintain a healthy balance and can result in addictive behaviors and psychiatric or medical disorders. The potential for impairment is universal and no one is immune from the dangers of alcohol or other drug use. The Medical Professionals Health Program is available to assist and advocate for a number of healthcare professionals.

The Medical Professionals Health Program offers non-disciplinary, voluntary participation under protocols developed with the Maine Board of Licensure in Medicine, the Maine Board of Osteopathic Licensure, the Maine Board of Dental Examiners, the Maine Board of Pharmacy, and the Maine State Board of Nursing.

### **Mission**

The Medical Professionals Health Program, a program of the Maine Medical Association, assists medical professionals of Maine by providing confidential, compassionate assistance and advocacy. Their clinical professionals and committee members help participants with diagnosed substance use disorders. Although they do not provide evaluation or treatment, they help participants better understand the treatment and recovery process and help implement strategies for return to safe practice.

### **Who does the MPHP consider impaired?**

The Medical Professionals Health Program helps professionals who suffer from alcohol or chemical dependency. The Medical Professionals Health Program and the Medical Professionals Health Committee are advocates for colleagues whose health problems may compromise their professional and personal lives and the lives of their patients.

### **How are Participants Referred?**

Anyone with a concern and desire to help a family member, colleague or friend can make a referral. The MPHP also accepts self-referrals as well as anonymous calls. The MPHP is a voluntary program and does not mandate participation, but are glad to assist anyone interested in exploring referral options. Their clinical staff is prepared to discuss the process of referral and enrollment in addition to diagnosis and recovery options. It is in the best interest of participants, both personally and professionally, that treatment begins as soon as possible.

Title 24 M.R.S. § 2505 mandates the reporting of physicians and physician assistants by licensees to the Board when they have reasonable knowledge of acts amounting to misuse of alcohol, drugs or other substances that may result in them performing services in a manner that endangers the health or safety of patients. The law also provides that if the licensee makes a report to the MPHP they do not have to make a report to the Board.

### **How does the MPHP help Medical professionals?**

The Medical Professionals Health Program assists medical professionals in developing strategies for treatment, helping them return to successful professional careers. The MPHP does not make diagnoses or provide treatment. The MPHP clinical staff and committee members act as advocates for their impaired colleagues, providing compassionate, comprehensive and confidential assistance.

For more information contact the Medical Professionals Health Program by phone at (207) 623-9266, by e-mail at [mphp@mainemed.com](mailto:mphp@mainemed.com), or visit their website at [www.mainemphp.org](http://www.mainemphp.org)

### **How the Board and the MPHP Interact**

The Board interacts with the MPHP (and the physicians involved in the program) in two very different ways.

1. The licensee enters the program voluntarily prior to coming to the attention of the Board. As long as the licensee meets the requirements of the MPHP and there has been no patient harm, the Board will not pursue discipline against the licensee and will keep their participation confidential. If the licensee violates the MPHP contract and/or tests positive for a substance, the MPHP will make a report to the Board.
2. The Board becomes aware of a substance misuse issue on its own. This often happens through police reports, newspaper articles, or notification from the MPHP that a contract has been broken. In those cases, the Board will often mandate participation in the MPHP and report the action as discipline.

The Board strongly urges any licensee who thinks they may have a problem to contact the MPHP. A high percentage of physicians and physician assistants with substance problems respond successfully to treatment and return to full practice.

### **General Health Information**

Although substance misuse/abuse is often one of the most talked about problems our licensees may face, the Board understands that its licensees are human and will have other human conditions. The Board wants its licensees to be healthy, happy, and productive members of society. Therefore, the Board will not automatically discipline a licensee for being on certain medications (narcotics) or seeking treatment for certain conditions (mental health) as long as the licensee is being treated and monitored by a healthcare provider and they do not pose a risk to the public.