

§2431-A. Disciplinary actions

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

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

If, in the opinion of the board, the factual basis of the complaint is or may be true, and the complaint is of sufficient gravity to warrant further action, the board may request an informal conference with the licensee. The board shall provide the licensee with adequate notice of the conference and of the issues to be discussed. The conference must be conducted in executive session of the board, pursuant to Title 1, section 405, unless otherwise requested by the licensee. Statements made at the conference may not be introduced at a subsequent formal hearing unless all parties consent.

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

A. With the consent of the licensee, enter into a consent agreement that fixes the period and terms of probation best adapted to protect the public health and safety and to rehabilitate or educate the licensee. A consent agreement may be used to terminate a complaint investigation, if entered into by the board, the licensee and the Attorney General's office; [PL 1993, c. 600, Pt. A, §160 (AMD).]

B. In consideration for acceptance of a voluntary surrender of the license, negotiate stipulations, including terms and conditions for reinstatement, that ensure protection of the public health and safety and that serve to rehabilitate or educate the licensee. These stipulations may be set forth only in a consent agreement signed by the board, the licensee and the Attorney General's office; [PL 1993, c. 600, Pt. A, §160 (AMD).]

C. If the board concludes that modification or nonrenewal of the license is in order, the board shall hold an adjudicatory hearing in accordance with the provisions of the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV; or [PL 1993, c. 600, Pt. A, §160 (AMD).]

D. If the board concludes that suspension or revocation of the license is in order, the board shall file a complaint in the District Court in accordance with Title 4, chapter 5. [PL 1999, c. 547, Pt. B, §63 (AMD); PL 1999, c. 547, Pt. B, §80 (AFF).]

[PL 1999, c. 547, Pt. B, §63 (AMD); PL 1999, c. 547, Pt. B, §80 (AFF).]

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

A. The practice of fraud or deceit in obtaining a license under this chapter or in connection with service rendered within the scope of the license issued; [PL 1983, c. 378, §30 (NEW).]

B. Habitual substance use that has resulted or is foreseeably likely to result in the licensee performing services in a manner that endangers the health or safety of patients; [PL 2017, c. 407, Pt. A, §127 (AMD).]

C. A professional diagnosis of a mental or physical condition that has resulted or is foreseeably likely to result in the licensee performing services in a manner that endangers the health or safety of the patients; [PL 1993, c. 600, Pt. A, §160 (AMD).]

D. Aiding or abetting the practice of optometry by an individual not licensed under this chapter who claims to be legally licensed; [PL 1993, c. 600, Pt. A, §160 (AMD).]

E. Incompetence in the practice for which the optometrist is licensed. A licensee is considered incompetent in the practice if the licensee has:

- (1) Engaged in conduct that evidences a lack of ability or fitness to discharge the duty owed by the licensee to a client or patient or the general public; or
- (2) Engaged in conduct that evidences a lack of knowledge or inability to apply principles or skills to carry out the practice for which the optometrist is licensed; [PL 1993, c. 600, Pt. A, §160 (AMD).]

F. Unprofessional conduct. A licensee is considered to have engaged in unprofessional conduct if the licensee violates a commonly understood standard of professional behavior or board rule governing professional conduct; [PL 1993, c. 600, Pt. A, §160 (AMD).]

G. Subject to the limitations of Title 5, chapter 341, conviction of a crime that involves dishonesty or false statement or that relates directly to the practice for which the licensee is licensed, or conviction of a crime for which incarceration for one year or more may be imposed; [PL 1993, c. 600, Pt. A, §160 (AMD).]

H. A violation of this chapter or a rule adopted by the board; [PL 1993, c. 600, Pt. A, §160 (AMD).]

I. Engaging in false, misleading or deceptive advertising; [PL 1983, c. 378, §30 (NEW).]

J. Practicing in or on premises where materials other than those necessary to render optometric services are dispensed to the public; [PL 1993, c. 600, Pt. A, §160 (AMD).]

K. Practicing under a name other than that given in the license. Licensees practicing in association with other licensed optometrists or physicians, as authorized by section 2434 may practice under a name adopted to denote this association if the names of all optometrists and physicians so associated are stated as they appear on each individual's license whenever the association name is used; [PL 1993, c. 600, Pt. A, §160 (AMD).]

L. Representing one's self to the public as something other than an optometrist, for example, as an optician, eye physician or by use of another designation that would tend to confuse the nature of one's licensed practice. The following titles are considered lawful:

- (1) John Doe, O.D., Optometrist;
- (2) John Doe, O.D.;
- (3) John Doe, Optometrist;
- (4) Dr. John Doe, Optometrist; and
- (5) Doctor John Doe, Optometrist; [PL 1993, c. 600, Pt. A, §160 (AMD).]

M. [PL 1993, c. 600, Pt. A, §160 (RP).]

N. Maintaining more than three offices for the practice of optometry without the prior written approval of the board; [PL 1993, c. 600, Pt. A, §160 (AMD).]

O. Failure to display a diagnostic or therapeutic drug license issued under section 2419-A or 2425; or [PL 1987, c. 439, §16 (AMD); PL 1987, c. 542, Pt. K, §§16, 20 (AMD).]

P. Splitting or dividing a fee with an individual not an associate in conformance with section 2434, or giving or accepting a rebate from an optician or ophthalmic dispenser. [PL 1993, c. 600, Pt. A, §160 (AMD).]

[PL 2017, c. 407, Pt. A, §127 (AMD).]

SECTION HISTORY

PL 1983, c. 378, §30 (NEW). PL 1987, c. 542, §§K16,K20 (AMD). PL 1993, c. 600, §A160 (AMD). PL 1999, c. 547, §B63 (AMD). PL 1999, c. 547, §B80 (AFF). PL 2017, c. 407, Pt. A, §127 (AMD).

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