

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



121st MAINE LEGISLATURE

SECOND REGULAR SESSION-2004

Legislative Document

No. 1762

H.P. 1284

House of Representatives, December 22, 2003

An Act To Amend the Maine Emergency Medical Services Act of 1982

Submitted by the Department of Public Safety pursuant to Joint Rule 204.

Received by the Clerk of the House on December 17, 2003. Referred to the Committee on Criminal Justice and Public Safety pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative BULL of Freeport.
Cosponsored by Senator HATCH of Somerset and
Representatives: BLANCHETTE of Bangor, GERZOFKY of Brunswick, LESSARD of
Topsham.

2
3 **Be it enacted by the People of the State of Maine as follows:**

4 **Sec. 1. 32 MRSA §85, sub-§6**, as amended by PL 2001, c. 697,
Pt. C, §1, is further amended to read:

6 **6. Ambulance operator course.** By January 1, 2005 2007, a
7 person whose job description includes operating an ambulance in
8 an emergency mode or transporting a patient must possess
9 certification of successful completion of a basic ambulance
10 vehicle operator course, or a course that has been approved by
11 the board as an equivalent, in order to operate an ambulance in
12 an emergency mode or to transport a patient. This requirement
13 applies to all paid and volunteer ambulance operators and
14 transporters. This requirement is in addition to vehicle
15 operator requirements of Title 29-A or other law. A person whose
16 job description includes operating an ambulance in an emergency
17 mode or transporting a patient who successfully completes a basic
18 ambulance vehicle operator course or a course that has been
19 approved by the board as an equivalent may apply to the board for
20 reimbursement for the cost of the course.

22 **Sec. 2. 32 MRSA §90-A**, as amended by PL 2001, c. 229, §§5 to
23 8, is further amended to read:

24 **§90-A. Licensing actions**

26 **1. Disciplinary proceedings and sanctions.** The board or,
27 as delegated, its subcommittee or staff, shall investigate a
28 complaint on its own motion or upon receipt of a written
29 complaint filed with the board regarding noncompliance with or
30 violation of this chapter or of any rules adopted by the board.
31 Investigation may include an informal conference before the
32 board, its subcommittee or staff to determine whether grounds
33 exist for suspension, revocation or denial of a license or for
34 taking other disciplinary action pursuant to this chapter. The
35 board, its subcommittee or staff may subpoena witnesses, records
36 and documents, including records and documents maintained by a
37 health care facility or other service organization or person
38 related to the delivery of emergency medical services, in any
39 investigation or hearing it conducts.

42 **2. Notice.** The board shall notify the licensee of the
43 content of a complaint filed against the licensee as soon as
44 possible, but in no event later than 60 days after the board or
45 staff receives the initial pertinent information. The licensee
46 has the right to respond within 30 days in all cases except those
47 involving an emergency denial, suspension or revocation, as
48 described in the Maine Administrative Procedure Act, Title 5,
chapter 375, subchapter 5. If the licensee's response to the
49 complaint satisfies the board or staff that the complaint does
50

2 not merit further investigation or action, the matter may be
dismissed, with notice of the dismissal to the complainant, if
4 any.

6 **3. Informal conference.** If, in the opinion of the board,
its subcommittee or staff, the factual basis of the complaint is
8 or may be true and the complaint is of sufficient gravity to
warrant further action, the board or staff may request an
10 informal conference with the licensee. The board shall provide
the licensee with adequate notice of the conference and of the
12 issues to be discussed. The conference must be conducted in
executive session of the board, subcommittee or staff, pursuant
14 to Title 1, section 405, unless otherwise requested by the
licensee. Statements made at the conference may not be
16 introduced at a subsequent formal administrative or judicial
hearing unless all parties consent. The licensee may, without
18 prejudice, refuse to participate in an informal conference if the
licensee prefers to request an adjudicatory hearing. If the
20 licensee participates in the informal conference, the licensee
waives the right to object to a participant at the hearing who
22 participated at the informal conference.

24 **4. Further action.** If the board, its subcommittee or staff
finds that the factual basis of the complaint is true and is of
26 sufficient gravity to warrant further action, it may take any of
the following actions.

28 A. The board, its subcommittee or staff may ~~enter--into~~
negotiate a consent agreement, with the ~~consent--of--the~~
30 licensee, that fixes the period and terms of probation
necessary to protect the public health and safety and to
32 rehabilitate or educate the licensee. A consent agreement
may be used to terminate a complaint investigation, if
34 entered into by the board, the licensee and the Department
of the Attorney General.

36 B. If a licensee voluntarily surrenders a license, the
38 board, its subcommittee or staff may negotiate stipulations
necessary to ensure protection of the public health and
40 safety and the rehabilitation or education of the licensee.
These stipulations may be set forth only in a consent
42 agreement signed by the board, the licensee and the
Department of the Attorney General.

44 C. If the board, its subcommittee or staff concludes that
46 modification, nonrenewal, ~~nonissuance~~ or suspension pursuant
to section 88, subsection 3 of a license or imposition of a
48 civil penalty pursuant to section 88, subsection 3 is in
order, the board shall so notify the ~~applicant-licensee~~
50 licensee and inform the ~~applicant-licensee~~ licensee of the

2 ~~applicant-licensee's~~ licensee's right to request an
3 adjudicatory hearing. If the ~~applicant-licensee~~ licensee
4 requests an adjudicatory hearing in a timely manner, the
5 adjudicatory hearing must be held by the board in accordance
6 with Title 5, chapter 375, subchapter IV 4. If the
7 ~~applicant-licensee~~ licensee wishes to appeal the final
8 decision of the board, the ~~applicant-licensee~~ licensee shall
9 file a petition for review with the Superior Court within 30
10 days of receipt of the board's decision. Review under this
11 paragraph must be conducted pursuant to Title 5, chapter
12 375, subchapter VII 7.

13
14 D. Except in the specific circumstances where Title 5,
15 section 10004 may be invoked, if the board or its staff
16 concludes that suspension beyond the authority conferred by
17 section 88 or revocation of the license is in order, the
18 board or its staff shall request the Attorney General to
19 file a complaint in the District Court in accordance with
20 Title 4, chapter 5 and the Maine Administrative Procedure
21 Act to commence either full or emergency proceedings.

22 **5. Grounds for licensing action.** A decision to take
23 action against any applicant or licensee pursuant to this chapter
24 or any rules adopted pursuant to this chapter, including, but not
25 limited to, a decision to impose a civil penalty or to refuse to
26 issue or renew a license or to modify, suspend or revoke a
27 license of a person, service or vehicle, may be predicated on the
28 following grounds:

29 A. Fraud or deceit in obtaining a license under this
30 chapter or in connection with service rendered within the
31 scope of the license issued;

32 B. Habitual substance abuse that has resulted or is
33 foreseeably likely to result in the licensee performing
34 services in a manner that endangers the health or safety of
35 the licensee's patients;

36 C. A professional diagnosis of a mental or physical
37 condition that has affected or is likely to affect the
38 licensee's performance in a manner that endangers the health
39 or safety of the licensee's patients;

40 D. Aiding or abetting the practice of emergency care by a
41 person not duly licensed under this chapter who purports to
42 be so;

43 E. Incompetent professional practice as evidenced by:

44 (1) Demonstrated inability to respond appropriately to
45 a client, patient or the general public; or

2 (2) Inability to apply principles, skills or knowledge
4 necessary to successfully carry out the practice for
which the licensee is licensed;

6 F. Violation of any reasonable standard of professional
8 behavior, conduct or practice that has been established in
the practice for which the licensee is licensed;

10 G. Subject to the limitations of Title 5, chapter 341,
12 conviction of a crime that involves dishonesty or false
statement, conviction of a crime that relates directly to
14 the practice for which the licensee is licensed, conviction
of a crime for which incarceration for one year or more may
16 be imposed or conviction of a crime defined in Title 17-A,
chapter 11 or 45;

18 H. Any violation of this chapter or any rule adopted by the
board; or

20 I. For other purposes as specified by rules or law.

22 **Sec. 3. 32 MRSA §91-A**, as repealed and replaced by PL 2001,
24 c. 229, §9, is amended to read:

26 **§91-A. Appeals of nondisciplinary actions and refusals to issue**

28 Any person or organization aggrieved by the decision of the
staff or a subcommittee of the board in ~~waiving the application~~
30 ~~of any rule, in modifying or refusing to issue or renew a~~
~~license, in taking any disciplinary~~ nondisciplinary action
32 pursuant to this chapter or rules adopted pursuant to this
chapter or in the interpretation of this chapter or rules adopted
34 pursuant to this chapter or in refusing to issue a license may
appeal the decision to the board for a final decision. The
36 staff's or subcommittee's decision stands until the board issues
a decision to uphold, modify or overrule the staff's or
38 subcommittee's decision. In the case of nonrenewal, the person
or organization must be afforded an opportunity for hearing in
40 accordance with this chapter and the Maine Administrative
Procedure Act.

42 ~~Any person or organization aggrieved by a final decision of~~
44 ~~the board in waiving the application of any rule, in refusing to~~
~~issue or renew a license, in taking any disciplinary action~~
46 ~~pursuant to this chapter or rules adopted pursuant to this~~
~~chapter or in the interpretation of this chapter or any rule~~
48 ~~adopted pursuant to this chapter may appeal the board's decision~~
~~to the Superior Court in accordance with~~ A final decision of the

2 board constitutes final agency action appealable pursuant to
Title 5, chapter 375, subchapter VII 7.

4 **Sec. 4. 32 MRSA §92, first ¶**, as amended by PL 2001, c. 229,
§10, is further amended to read:

6
8 All complaints and investigative records of the board are
confidential during the pendency of an investigation. Any
10 reports, information or records provided to the board or
department pursuant to this chapter ~~must--be--provided--to--the~~
12 ~~licensee--and~~ are confidential insofar as the reports, information
or records identify or permit identification of any patient,
14 ~~provided--that--the.~~ The board may disclose any confidential
information as follows.

16 **Sec. 5. 32 MRSA §92, sub-§§3 and 4**, as enacted by PL 2001, c.
229, §10, are amended to read:

18
20 **3. Investigations.** ~~All--complaints--and--investigative~~
~~records--of--the--board--are--confidential--during--the--pendency--of--an~~
22 ~~investigation.~~ These Investigative records become public records
upon the conclusion of an investigation unless confidentiality is
24 required by some other provision of law. For purposes of this
subsection, an investigation is concluded when:

26 A. A notice of an adjudicatory hearing as defined under
Title 5, chapter 375, subchapter I 1 has been issued;

28 B. A consent agreement has been executed; or

30 C. A letter of dismissal has been issued or the
32 investigation has otherwise been closed.

34 **4. Exceptions.** ~~Notwithstanding subsection--3~~ any other
36 provision of this section, during the pendency of an
investigation, a complaint or investigative record may be
disclosed:

38 A. To Maine Emergency Medical Services employees designated
40 by the director;

42 B. To designated complaint officers of the board;

44 C. By a Maine Emergency Medical Services employee or
46 complaint officer designated by the board when, and to the
extent, considered necessary to facilitate the investigation;

48 D. To other state or federal agencies when the files
50 contain evidence of possible violations of laws enforced by
those agencies;

2 E. When and to the extent considered necessary by the
4 director to avoid imminent and serious harm. The authority
of the director to make such a disclosure may not be
delegated;

6
8 F. Pursuant to rules adopted by the department, when it is
determined that confidentiality is no longer warranted due
10 to general public knowledge of the circumstances surrounding
the complaint or investigation and when the investigation
would not be prejudiced by the disclosure; or

12
14 G. To the person investigated on request of that person.
The director may refuse to disclose part or all of any
16 investigative information, including the fact of an
investigation when the director determines that disclosure
would prejudice the investigation. The authority of the
18 director to make such a determination may not be delegated.

20 **Sec. 6. 32 MRSA §92-A, sub-§2,** as repealed and replaced by PL
2001, c. 229, §11, is amended to read:

22
24 **2. Confidentiality.** All proceedings and records of
proceedings concerning the quality assurance activities of an
26 emergency medical services quality assurance committee approved
by the board and all reports, information and records provided to
28 the committee are confidential and may not be obtained by
discovery from the committee, the board or its staff. Quality
30 assurance information may be disclosed to a licensee as part of
any board-approved educational or corrective process.

32
34 **SUMMARY**

36 This bill extends the deadline for the completion of the
ambulance vehicle operators course requirements from January 1,
2005 to January 1, 2007, corrects inconsistencies regarding
38 complaint procedures between the Maine Emergency Medical Services
Act of 1982 and the Maine Administrative Procedure Act and
40 clarifies the confidentiality provisions in the areas of quality
assurance and investigations regarding licensees in the emergency
42 medical services field.