

MAINE STATE LEGISLATURE

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126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 416

S.P. 158

In Senate, February 14, 2013

**An Act To Allow Complainants in Disciplinary Actions To Attend
Informal Conferences Held by the State Board of Nursing in
Executive Session**

Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 204.

Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.

A handwritten signature in black ink, appearing to read "DAREK M. GRANT".

DAREK M. GRANT
Secretary of the Senate

Presented by Senator PATRICK of Oxford.

Cosponsored by Representative CHIPMAN of Portland and

Representatives: FITZPATRICK of Houlton, KNIGHT of Livermore Falls, THERIAULT of Madawaska, TIMBERLAKE of Turner, TURNER of Burlington.

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

2 **Sec. 1. 32 MRSA §2105-A, sub-§1-A,** as amended by PL 2001, c. 260, Pt. D, §2,
3 is further amended to read:

4 **1-A. Disciplinary proceedings and sanctions.** The board shall investigate a
5 complaint, on its own motion or upon receipt of a written complaint filed with the board,
6 regarding noncompliance with or violation of this chapter or of rules adopted by the
7 board. Investigation may include a hearing before the board to determine whether
8 grounds exist for suspension, revocation or denial of a license, or as otherwise considered
9 necessary to the fulfillment of its responsibilities under this chapter. The board may
10 subpoena witnesses, records and documents, including records and documents maintained
11 by a health care facility, in an investigation or hearing it conducts.

12 The board shall notify the licensee of the content of a complaint filed against the licensee
13 as soon as possible, but, absent unusual circumstances justifying the delay, not later than
14 60 days from receipt of this information. The licensee shall respond within 30 days. The
board shall share the licensee's response with the complainant, unless the board
determines that it would be detrimental to the health of the complainant to obtain the
response. If the licensee's response to the complaint satisfies the board that the complaint
17 does not merit further investigation or action, the matter may be dismissed, with notice of
18 the dismissal to the complainant, if any.

19 If, in the opinion of the board, the factual basis of the complaint is or may be true, and ~~it~~
20 ~~the complaint~~ is of sufficient gravity to warrant further action, the board may request an
21 informal conference with the licensee. The board shall provide the licensee with adequate
22 notice of the conference and of the issues to be discussed. The complainant may attend
the conference and may be accompanied by up to 2 individuals, including legal counsel.
23 The conference must be conducted in executive session of the board, or its subcommittee,
24 pursuant to Title 1, section 405, unless otherwise requested by the licensee. Before the
board or its subcommittee decides what action to take at the conference or as a result of
the conference, the board or its subcommittee shall give the complainant a reasonable
opportunity to speak. Statements made at the conference may not be introduced at a
29 subsequent formal hearing unless all parties consent.

30 When a complaint has been filed against a licensee and the licensee moves or has moved
31 to another state, the board may report to the appropriate licensing board in that state the
32 complaint that has been filed, other complaints in the licensee's record on which action
33 was taken and disciplinary actions of the board with respect to that licensee.

34 When an individual applies for a license under this chapter, the board may investigate the
35 professional record of that individual, including professional records that the individual
36 may have as a licensee in other states. The board may deny a license or authorize a
37 restricted license based on the record of the applicant in other states.

38 If the board or its subcommittee finds that the factual basis of the complaint is true and is
39 of sufficient gravity to warrant further action, ~~it~~ the board or its subcommittee may take
40 any of the following actions ~~it~~ the board or its subcommittee considers appropriate:
41

- 42 A. Warn, censure or reprimand;

B. 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;

C. 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 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;

D. If the board or its subcommittee concludes that modification or nonrenewal of the license is in order, hold an adjudicatory hearing in accordance with the provisions of Title 5, chapter 375, subchapter IV 4; or

E. If the board or its subcommittee concludes that suspension or revocation of the license is in order, file a complaint in the District Court in accordance with Title 4, chapter 5.

Sec. 2. Rulemaking. The Department of Professional and Financial Regulation, State Board of Nursing shall amend its rules to implement the provisions of this Act. Rules adopted pursuant to this Act are routine technical rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A.

SUMMARY

This bill confirms that the complainant may be present and speak during an informal conference conducted by the Department of Professional and Financial Regulation, State Board of Nursing regarding a disciplinary action against a licensee.

The bill also gives the State Board of Nursing the authority to report to the appropriate licensing board of the state to which a licensee has moved that a complaint has been filed against the licensee. The board may also take into account the professional records from another state where an individual was a licensee when determining whether to issue a license to that individual.

The bill also requires the State Board of Nursing to amend its rules to implement the changes made by this bill.