

MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 2263

6
7 S.P. 839

In Senate, March 15, 1984

8 Submitted by the Department of Attorney General pursuant to Joint Rule
9 24.

10 Referred to the Committee on Business Legislation. Sent down for
concurrence and ordered printed.

JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Bustin of Kennebec.

Cosponsor: Representative Nelson of Portland.

11
12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-FOUR
16

17 AN ACT to Clarify the Disciplinary
18 Procedure of the Nurse Practice Laws.
19

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

22 Sec. 1. 32 MRSA §2105-A, sub-§1, as enacted by
23 PL 1983, c. 378, §21, is amended to read:

24 1. Disciplinary proceedings and sanctions. The
25 board shall investigate a complaint, on its own
26 motion or upon receipt of a written complaint filed
27 with the board, regarding noncompliance with or vio-
28 lation of this chapter or of any rules adopted by the
29 board. Investigation may include a hearing before
30 the board to determine whether grounds exist for sus-
31 pension, revocation or denial of a license, or as
32 otherwise deemed necessary to the fulfillment of its
33 responsibilities under this chapter. Hearings shall
34 be conducted in conformity with the Maine Administra-

1 tive Procedure Act, Title 5, chapter 375, subchapter
2 IV, to the extent applicable. The board may subpoena
3 witnesses, records and documents, including records
4 and documents maintained by a health care facility,
5 in any hearing it conducts.

6 The board shall notify the licensee of the content of
7 a complaint filed against the licensee as soon as
8 possible, but in no event later than within 60 days
9 of receipt of this information. The licensee shall
10 respond within 30 days. If the licensee's response
11 to the complaint satisfies the board that the com-
12 plaint does not merit further investigation or ac-
13 tion, the matter may be dismissed, with notice of the
14 dismissal to the complainant, if any.

15 If, in the opinion of the board, the factual basis of
16 the complaint is or may be true, and it is of suffi-
17 cient gravity to warrant further action, the board
18 may request an informal conference with the licensee.
19 The board shall provide the licensee with adequate
20 notice of the conference and of the issues to be dis-
21 cussed. The conference shall be conducted in execu-
22 tive session of the board, unless otherwise requested
23 by the licensee. Statements made at the conference
24 may not be introduced at a subsequent formal hearing
25 unless all parties consent.

26 If the board finds that the factual basis of the com-
27 plaint is true and is of sufficient gravity to war-
28 rant further action, it may take any of the following
29 actions it deems appropriate:

30 A. With the consent of the licensee, enter into
31 a consent agreement which fixes the period and
32 terms of probation best adapted to protect the
33 public health and safety and to rehabilitate or
34 educate the licensee. A consent agreement may be
35 used to terminate a complaint investigation, if
36 entered into by the board, the licensee and the
37 Attorney General's office;

38 B. In consideration for acceptance of a volun-
39 tary surrender of the license, negotiate stipula-
40 tions, including terms and conditions for rein-
41 statement, which ensure protection of the public
42 health and safety and which serve to rehabilitate

1 or educate the licensee. These stipulations shall
2 be set forth only in a consent agreement signed
3 by the board, the licensee and the Attorney
4 General's office;

5 C. If the board concludes that modification or
6 nonrenewal of the license might be in order, the
7 board shall hold an adjudicatory hearing in ac-
8 cordance with the provisions of the Maine Admin-
9 istrative Procedure Act, Title 5, chapter 375,
10 subchapter IV; or

11 D. If the board concludes that suspension or
12 revocation of the license is in order, the board
13 shall file a complaint in the Administrative
14 Court in accordance with Title 4, chapter 25.

15 Sec. 2. 32 MRSA §2105-A, sub-§3 is enacted to
16 read:

17 3. Confidentiality of information. Any reports,
18 information or records provided to the board by a
19 health care facility pursuant to this chapter shall
20 be confidential insofar as the reports, information
21 or records identify or permit identification of any
22 patient, provided that the board may disclose any
23 confidential information:

24 A. In an adjudicatory hearing or informal con-
25 ference before the board or in any subsequent
26 formal proceeding to which the information is
27 relevant; and

28 B. In a consent agreement or other written set-
29 tlement, when the information constitutes or per-
30 tains to the basis of board action.

31 A professional or practical nurse licensed under this
32 chapter shall have the right, upon request, to exam-
33 ine his file maintained by the board.

34 Sec. 3. 32 MRSA §2108-A is enacted to read:

35 §2108-A. Immunity

1 Any person or health care facility acting in good
2 faith shall be immune from civil liability to the li-
3 censee or applicant for licensure for the following
4 actions:

5 1. Filing complaints with the board. Filing a
6 complaint with the board regarding a professional or
7 practical nurse licensed or applying for license un-
8 der this chapter;

9 2. Making information available to the
10 board. Making any report or other information avail-
11 able to the board under this chapter; and

12 3. Assisting the board. Assisting the board in
13 carrying out any of its duties.

14 STATEMENT OF FACT

15 The purpose of this bill is to assist the Board
16 of Nursing in its investigations of violations of the
17 nurse practice laws.

18 The bill authorizes the board to subpoena wit-
19 nesses and testimony for investigative hearings, and
20 grants a good faith immunity to individuals who pro-
21 vide information regarding violations. In addition,
22 the bill makes confidential records which would per-
23 mit identification of patients.

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