

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 1591

H.P. 1165 House of Representatives, May 15, 1987
Reference to the Committee on Human Resources suggested
and ordered printed.

EDWIN H. PERT, Clerk
Presented by Representative CARROLL of Gray.
Cosponsored by Representatives RYDELL of Brunswick,
KIMBALL of Buxton, and KILKELLY of Wiscasset.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-SEVEN

1 AN ACT to Amend the Maine Emergency Medical
2 Services Act of 1982.
3

4 Be it enacted by the People of the State of Maine as
5 follows:

6 Sec. 1. 32 MRSA §83, sub-§16, as enacted by PL
7 1981, c. 661, §2, is amended to read:

8 16. Licensed ambulance attendant. "Licensed am-
9 bulance attendant" means a basic emergency medical
10 person who has completed the minimum training speci-
11 fied in section 85, ~~subsection 2~~ subsection 3 and has
12 met the other conditions specified in regulations un-
13 der this chapter for licensure at this level.

14 Sec. 2. 32 MRSA §83, sub-§18, as amended by PL
15 1985, c. 730, §§8 and 16, is further amended to
16 read:

1 18. Office of Emergency Medical Services. "Of-
2 office of Emergency Medical Services" means the admin-
3 istrative unit within the Department of Human Ser-
4 vices as to which the board assigns responsibility
5 for carrying out the purposes of this chapter.

6 Sec. 3. 32 MRSa §83, sub-§22, as enacted by PL
7 1981, c. 661, §2, is amended to read:

8 22. Statewide emergency medical services' medi-
9 cal director. "Statewide emergency medical services'
10 medical director" means a licensed physician ap-
11 pointed by the commissioner board.

12 Sec. 4. 32 MRSa §84, sub-§1, ¶D, as amended by
13 PL 1985, c. 730, §§9 and 16, is further amended to
14 read:

15 D. Rules promulgated pursuant to this chapter
16 shall include, but not be limited to, the follow-
17 ing:

18 (1) The composition of regional councils
19 and the process by which they come to be
20 recognized as representing their regions;

21 (2) The manner in which regional councils
22 shall report their activities and finances,
23 and the manner in which those activities
24 shall be carried out under this chapter;

25 (3) The designation of regions within the
26 State;

27 (4) The requirements for licensure for all
28 vehicles, persons and services subject to
29 this chapter, and including training and
30 testing of personnel; and

31 (5) Fees to be charged for licenses under
32 this section, except that no fee may be
33 charged for the licensing of emergency medi-
34 cal services' persons under this chapter.

35 In adopting any rule under subparagraph (4) which
36 requires services which deliver advanced care to
37 meet a specified percentage level of performance,

1 the regulation shall not take effect ~~until--after~~
2 ~~January-17-1986~~ and unless the level is specified
3 after study, in cooperation with regional coun-
4 cils and local service units.

5 ~~In-addition, notwithstanding current rules, until~~
6 ~~January-17-1985, requirements--for--licensure--at~~
7 ~~the--intermediate--level shall allow an applicant~~
8 ~~to--be--licensed--for--intravenous---therapy---or~~
9 ~~defibrillation therapy, or both.~~

10 Sec. 5. 32 MRSA §88, sub-§1, ¶D, as enacted by
11 PL 1985, c. 730, §§12 and 16, is amended to read:

12 D. A majority of the members appointed and cur-
13 rently serving shall constitute a quorum for all
14 purposes and no decision of the board may be made
15 without a quorum present. A majority vote of
16 those present and voting shall be required for
17 board action with the exception of a 2/3 vote be-
18 ing required for the suspension or revocation of
19 a license, except that for purposes of either
20 granting a waiver of any of its rules or deciding
21 to pursue the suspension or revocation of a li-
22 cence, the board may take action only if the pro-
23 posed waiver, suspension or revocation receives a
24 favorable vote from at least 2/3 of the members
25 present and voting and from no less than a major-
26 ity of the appointed and currently serving
27 members. When the board is required to take
28 emergency action and it is not possible to con-
29 vene a meeting of the board in a timely manner,
30 the board may take any action authorized by tele-
31 phonic conference or by any other means autho-
32 rized by rule.

33 Sec. 6. 32 MRSA §90, as amended by PL 1985, c.
34 730, §§13 and 16, is repealed.

35 Sec. 7. 32 MRSA §91, as enacted by PL 1985, c.
36 730, §§14 and 16, is repealed.

37 Sec. 8. 32 MRSA §§90-A and 91-A are enacted to
38 read:

39 §90-A. Disciplinary actions

1 1. Disciplinary proceedings and sanctions. The
2 board or its staff shall investigate a complaint, on
3 the board's own motion or upon receipt of a written
4 complaint filed with the board, regarding noncompli-
5 ance with or violation of this chapter or of any
6 rules adopted by the board. Investigation may in-
7 clude a hearing before the board or the board's staff
8 to determine whether grounds exist for suspension,
9 revocation or denial of a license or as otherwise
10 deemed necessary by the board to the fulfillment of
11 its responsibilities under this chapter. Hearings
12 shall be conducted in conformity with the Maine Ad-
13 ministrative Procedure Act, Title 5, chapter 375,
14 subchapter IV, to the extent applicable. The board
15 or department may subpoena witnesses, records and
16 documents, including records and documents maintained
17 by a health care facility or other service organiza-
18 tion or person related to the delivery of emergency
19 medical services, in any hearing it conducts.

20 2. Notice. The board shall notify the licensee
21 of the content of a complaint filed against the li-
22 censee as soon as possible, but in no event later
23 than 60 days after the board or its staff receives
24 the initial pertinent information. The licensee
25 shall have the right to respond within 30 days in all
26 cases except those involving an emergency denial,
27 suspension or revocation, as described in the Maine
28 Administrative Procedure Act, Title 5, chapter 375,
29 subchapter V. If the licensee's response to the com-
30 plaint satisfies the board or its staff that the com-
31 plaint does not merit further investigation or ac-
32 tion, the matter may be dismissed, with notice of the
33 dismissal to the complainant, if any.

34 3. Informal conference. If, in the opinion of
35 the board, the factual basis of the complaint is or
36 may be true and it is of sufficient gravity to war-
37 rant further action, the board or its staff may re-
38 quest an informal conference with the licensee. The
39 board shall provide the licensee with adequate notice
40 of the conference and of the issues to be discussed.
41 The conference shall be conducted in executive ses-
42 sion of the board, unless otherwise requested by the
43 licensee. Statements made at the conference may not
44 be introduced at a subsequent formal hearing unless
45 all parties consent.

1 4. Further action by the board. If the board
2 finds that the factual basis of the complaint is true
3 and is of sufficient gravity to warrant further ac-
4 tion, it may take any of the following actions it
5 deems appropriate.

6 A. With the consent of the licensee, the board
7 may enter into a consent agreement which fixes
8 the period and terms of probation best adapted to
9 protect the public health and safety and to reha-
10 ilitate or educate the licensee. A consent
11 agreement may be used to terminate a complaint
12 investigation, if entered into by the board, the
13 licensee and the Office of the Attorney General.

14 B. In consideration for acceptance of a volun-
15 tary surrender of the license, the board may ne-
16 gotiate stipulations, including terms and condi-
17 tions for reinstatement, which ensure protection
18 of the public health and safety and which serve
19 to rehabilitate or educate the licensee. These
20 stipulations shall be set forth only in a consent
21 agreement signed by the board, the licensee and
22 the Office of the Attorney General.

23 C. If the board concludes that modification,
24 nonrenewal or nonissuance of the license is in
25 order, the board shall so notify the
26 applicant-licensee and inform him of his right to
27 request an adjudicatory hearing. If the
28 applicant-licensee timely requests such a hear-
29 ing, it shall be held by the hearings unit of the
30 department in accordance with the Maine Adminis-
31 trative Procedure Act, Title 5, chapter 375, sub-
32 chapter IV. At the conclusion of the hearing,
33 the hearing officer shall forward a written find-
34 ing of facts and recommended decision to the com-
35 missioner. Opportunity shall then be given for
36 the applicant-licensee and the board to file com-
37 ments on the findings of fact and recommended de-
38 cision to the commissioner. The commissioner,
39 after considering the findings, recommendations
40 and comments, shall either adopt or reject the
41 recommended decision within a reasonable period
42 of time. If the commissioner rejects the recom-
43 mendation or issues a modified decision, the com-
44 missioner's written decision shall contain the

1 specific reasons for modifying or rejecting the
2 recommended decision. The commissioner's deci-
3 sion shall be the department's final decision.

4 D. Except in the specific circumstances where
5 the Maine Administrative Procedure Act, Title 5,
6 section 10004 may be invoked, if the board con-
7 cludes that suspension or revocation of the li-
8 cence is in order, the board shall hold a hearing
9 or file a complaint in the Administrative Court
10 in accordance with Title 4, chapter 25, to com-
11 mence either full or emergency proceedings.

12 5. Grounds for discipline. The board may sus-
13 pend or revoke a license pursuant to Title 5, section
14 10004. The following shall be grounds for an action
15 either to refuse to issue or renew a license or to
16 modify, suspend or revoke or refuse to renew the li-
17 cence of a person, service or vehicle licensed under
18 this chapter:

19 A. The practice of fraud or deceit in obtaining
20 a license under this chapter or in connection
21 with service rendered within the scope of the li-
22 cence issued;

23 B. Habitual intemperance in the use of alcohol
24 or the habitual use of narcotic, hypnotic or oth-
25 er substances, the use of which has resulted or
26 is likely to result in the licensee performing
27 his duties in a manner which endangers the health
28 or safety of his patients;

29 C. A professional diagnosis of a mental or phys-
30 ical condition which has resulted or is likely to
31 result in the licensee performing his duties in a
32 manner which endangers the health or safety of
33 his patients;

34 D. Aiding or abetting the practice of emergency
35 care by a person not duly licensed under this
36 chapter and who represents himself to be so;

37 E. Incompetence in the practice for which he is
38 licensed. A licensee shall be deemed incompetent
39 in the practice if the licensee has:

1 (1) Engaged in conduct which evidences a
2 lack of ability or fitness to discharge the
3 duty owed by the licensee to a client, pa-
4 tient or the general public; or

5 (2) Engaged in conduct which evidences a
6 lack of knowledge or inability to apply
7 principles or skills to carry out the prac-
8 tice for which he is licensed;

9 F. Unprofessional conduct. A licensee shall be
10 deemed to have engaged in unprofessional conduct
11 if he violates any standard of professional be-
12 havior which has been established in the practice
13 for which the licensee is licensed;

14 G. Subject to the limitations of Title 5, chap-
15 ter 341, conviction of a crime which involves
16 dishonesty or false statement which relates di-
17 rectly to the practice for which the licensee is
18 licensed or conviction of any crime for which in-
19 carceration for one year or more may be imposed;

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

22 I. For other purposes as specified by rules or
23 law.

24 §91-A. Appeals

25 Any person or organization aggrieved by the deci-
26 sion of the board in refusing to issue or renew a li-
27 cence or to waive application of a particular rule
28 may appeal the board's decision to the department's
29 hearings unit for a full adjudicatory hearing and for
30 a final decision by the commissioner. The board's
31 decision shall stand until such time as the commis-
32 sioner issues a decision to uphold, modify or over-
33 rule the board's decision.

34 Any person or organization aggrieved by a final
35 decision of the commissioner in refusing to issue or
36 renew a license or to waive application of a particu-
37 lar rule may appeal the commissioner's decision to
38 the Superior Court in accordance with the Maine Ad-
39 ministrative Procedure Act, Title 5, chapter 375,
40 subchapter VII.

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STATEMENT OF FACT

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Sections 1, 2 and 3 make minor grammatical and referential corrections, which were unintentionally omitted when the Act was last amended.

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Section 4 eliminates wording that has become surplusage with the passage of time.

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Section 5 creates special voting requirements for the important board actions of waiver of a rule in a particular case and of deciding to pursue the revocation or suspension of a license. These are significant actions that often have substantial impact on individuals or communities or set far-reaching precedents. To ensure that these actions are taken only if they have strong support, this rule imposes a double voting requirement. First, 2/3 of the members present and voting must vote in favor of the action. Second, in no case may the action be taken unless at least a majority of the appointed and currently serving members vote for it. This latter requirement is particularly critical with respect to the waiver of a rule, an action which should be taken only under extraordinary circumstances and when it has strong support.

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Sections 6 and 7 repeal sections 90 and 91 of the Maine Revised Statutes, Title 32, respectively. Section 8 enacts sections 90-A and 91-A to clarify the original intention underlying those sections 90 and 91, as they were most recently amended. In particular, it is established that: Except in those few circumstances where the board may temporarily deny, suspend or revoke a license, it must file a complaint in the Administrative Court to obtain the suspension or revocation of a license; in all other cases, the board shall make the initial decision concerning the licensure of, or application of a particular rule to, a person or organization; a person or organization aggrieved by that decision shall be entitled to an administrative hearing; that hearing shall be conducted by the Department of Human Services' Hearing Unit; the aggrieved person or organization and the board shall be the parties to appear before the hearing officer; the hearing shall be conducted in ac-

1 cordance with the Maine Administrative Procedure Act,
2 Title 5, chapter 375, subchapter IV; the hearing's
3 officer shall issue written findings of fact and a
4 recommended decision; the final decision shall be
5 made by the commissioner after receiving and consid-
6 ering the hearing officer's recommendations and the
7 comments of the parties to the hearing; and if the
8 aggrieved person or organization disagrees with the
9 commissioner's decision, that party shall have the
10 further right to appeal the commissioner's decision
11 to the Superior Court.

12 The intent is to simplify the description of the
13 procedural steps and rights accorded to individual
14 applicants and licensees and to create a procedure
15 which safeguards those rights but which is not too
16 cumbersome or time-consuming in its administration.
17 Because the board and its staff shall be directly in-
18 volved in the investigation, informal conference, and
19 initial decision stages of this process, it is most
20 appropriate that an impartial arm of the department,
21 the hearings unit, which is expert in those matters,
22 conduct the formal adjudicatory hearing and that the
23 commissioner make the final decision based on the
24 hearing officer's report and the parties' comments
25 thereupon.

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