

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)

2
4
6
8
10
12
14
16
18
20
22
24
26
28
30
32
34
36
38
40
42
44
46

STATE OF MAINE
HOUSE OF REPRESENTATIVES
115TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 825, L.D. 1179, Bill, "An Act to Amend the Laws Regarding Complaints against Physicians and to Require a Study Concerning Patient Information"

Amend the bill by striking out all of sections 1 and 2.

Further amend the bill by striking out all of section 3 and inserting in its place the following:

'Sec. 3. 24 MRSA §2509, sub-§6, as enacted by PL 1977, c. 492, §3, is amended to read:

6. Court action for amendment or destruction. A physician shall have has the right to seek through court action pursuant to the Maine Rules of Civil Procedure the amendment or destruction of any part of his that physician's historical record in the possession of the board. When a physician initiates court action under this subsection, the board shall notify the persons who have filed complaints of the physician's request to amend these complaints or expunge them from the record. Notice to complainants must be sent to the last known address of the complainants. The notice must contain the name and address of the court to which a complainant may respond, the specific change in the complaint that the physician is seeking or the complaint that the physician seeks to expunge, and the length of time that the complainant has to respond to the court. The board shall provide complainants with at least 60 days' notice from the date the notice is sent in which to respond.

Sec. 4. 24 MRSA §2509, sub-§7, as enacted by PL 1977, c. 492, §3, is repealed and the following enacted in its place:

7. Destruction of information. A board, subject to this section, may not amend or expunge any information from a physician's historical record that concerns complaints filed

2 against the physician or disciplinary action taken by the board
3 with respect to that physician unless the board is provided with
4 evidence more probable than not that the complaint may be
5 dismissed for lack of merit or does not raise to a level of
6 misconduct sufficient to merit board action. If there is
7 insufficient evidence to prove or disprove a complaint filed with
8 the board, the historical record must indicate that evidence was
9 insufficient to support disciplinary action.'

10 Further amend the bill in section 6 in that part designated
11 "§2607." by striking out all of the first paragraph (page 3,
12 lines 19 to 25 in L.D.) and inserting in its place the following:

13 'When 3 notices of professional liability claims are made
14 within a 10-year period regarding any person licensed by the
15 Board of Registration in Medicine or the Board of Osteopathic
16 Examination and Registration has-3-professional-liability-claims
17 that-have-resulted-in-a-monetary-judgment,-award-or-settlement
18 ever-a-10-year-period, and one or more of the claims, following
19 an initial review, potentially may rise to a level of misconduct
20 sufficient to merit board action, the boards board shall treat
21 that situation as a complaint against the licensee or
22 practitioner and shall initiate a review consistent with Title
23 32, sections 3282 to 3289. Any claims that lack merit or fail to
24 rise to a level of board action may be dismissed by the board for
25 the purpose of this section.'

26 Further amend the bill by inserting after section 6 the
27 following:

28 'Sec. 7. 32 MRSA §2592-A is enacted to read:

29 §2592-A. Reporting and investigation of complaints

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

36 When a person applies for a license under this chapter, the
37 board may investigate the professional record of that person,
38 including any professional records that the person may have as a
39 licensee in other states. The board may deny a license or
40 authorize a restricted license based on the record of the
41 applicant in other states.'

42 Further amend the bill in section 7 in subsection 1 by
43 striking out all of the 4th paragraph (page 4, lines 4 to 11 in
44 L.D.) and inserting in its place the following:
45
46
47
48
49
50
51
52

2 'When a complaint has been filed against a licensee and the
3 licensee moves or has moved to another state, the board may
4 report to the appropriate licensing board in that state the
5 complaint that has been filed, any other complaints in the
6 physician's record on which action was taken and any disciplinary
7 actions of the board with respect to that physician.

8 When a person applies for a license under this chapter, the board
9 may investigate the professional record of that person, including
10 any professional records that the person may have as a licensee
11 in other states. The board may deny a license or authorize a
12 restricted license based on the record of the applicant in other
13 states.'

14
15 Further amend the bill in section 7 in subsection 1 by
16 striking out all of the last paragraph (page 4, lines 44 to 47 in
17 L.D.) and inserting in its place the following:

18
19 'The board shall require a licensee to notify all patients of the
20 licensee of any probation or stipulation under which the licensee
21 is practicing as a result of board disciplinary action.'

22
23 Further amend the bill in section 8 in subsection 1 by
24 striking out paragraphs A and C.

25
26 Further amend the bill in section 8 in subsection 1 by
27 relettering the paragraphs to read consecutively.

28
29 Further amend the bill in section 8 by striking out all of
30 subsection 2 (page 5, lines 21 to 23 in L.D.).

31
32 Further amend the bill by inserting after section 8 the
33 following:

34
35 **'Sec. 9. Effective date.** Sections 1 to 7 of this Act take
36 effect September 15, 1991. Section 8 of this Act takes effect
37 when approved.'

38
39 Further amend the bill by renumbering the sections to read
40 consecutively.

41
42 Further amend the bill by striking out the emergency clause
43 and inserting in its place the following:

44
45 **'Emergency clause.** In view of the emergency cited in the
46 preamble, this Act takes effect when approved, except as
47 otherwise indicated.'

48
49 Further amend the bill by inserting before the statement of
50 fact the following:

51
52

FISCAL NOTE

2
4
6
8
10

This bill makes substantive changes to laws governing complaints against physicians. The Board of Registration in Medicine and the Board of Osteopathic Examination and Registration can absorb the costs associated with notifications to complainants and similar boards in other states utilizing existing resources. The Department of the Attorney General can absorb the costs associated with receiving and reviewing the required reports within budgeted resources.

12
14

STATEMENT OF FACT

16

This amendment:

18
20
22
24
26
28
30
32
34
36
38
40
42
44
46
48
50

1. Eliminates a section of the bill that removes a statutory provision that relieves a professional review committee from reporting the misuse of alcohol or drugs by a physician;
2. Eliminates the provision of the bill that requires health care providers to report disciplinary action regardless of whether the practitioner is still licensed in the State;
3. Requires the appropriate physician licensing board to notify complainants when a physician seeks court action to amend or expunge part of the physician's professional record with respect to the complaints filed by the complainants;
4. Prohibits the destruction of information of health care practitioners unless there is evidence that is more probable than not that a complaint is false. If there is insufficient evidence to prove or disprove a charge, the record must show that there was insufficient evidence to prove the charge;
5. Requires the Board of Registration in Medicine and the Board of Osteopathic Examination and Registration to investigate licensees of these boards against whom 3 notices of professional liability claims have been made within a 10-year period, if at least one of these claims could rise to a level sufficient to merit board action;
6. Authorizes the Board of Registration in Medicine and the Board of Osteopathic Examination and Registration to report complaints on which action was taken to similar boards in other states when licensees move out of this State. These boards may also review the professional record of any applicant for a license to practice in this State, including the record of a person licensed in another state. The boards may use this information in approving or denying a license;

COMMITTEE AMENDMENT "*A*" to H.P. 825, L.D. 1179

2 7. Requires the Board of Registration in Medicine and the
Board of Osteopathic Examination and Registration to require a
4 licensee subject to any probation or stipulation under which the
licensee is practicing as a result of board disciplinary action
6 to notify all of the licensee's patients in regard to the
probation or stipulation;

8
10 8. Removes from the study required in the bill the study
objectives concerning informed consent to health care treatment,
12 complaints filed against physicians and review committee
findings; and

14 9. Restricts the emergency preamble and clause to the study
required in the bill.

Reported by the Committee on Business Legislation
Reproduced and distributed under the direction of the Clerk of the
House
(5/22/91) (Filing No. H-394)