

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 1596

S.P. 509

In Senate, March 13, 2001

An Act to Amend the Maine Emergency Medical Services Act of 1982.

Submitted by the Department of Public Safety pursuant to Joint Rule 204.
Reference to the Committee on Criminal Justice suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator McALEVEY of York.
Cosponsored by Senator O'GARA of Cumberland, Representatives: BULL of Freeport,
NASS of Acton.

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

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Sec. 1. 4 MRSA §152, sub-§9, as amended by PL 1999, c. 731, Pt. ZZZ, §4 and affected by §42, is further amended to read:

9. Licensing jurisdiction. Except as provided in Title 5, section 10004; Title 8, section 279-B; Title 10, section 8003, subsection 5; Title 20-A, sections 10712 and 10713; Title 29-A; Title 32, chapters 2-B, 105 and 114; and Title 35-A, section 3132, exclusive jurisdiction upon complaint of an agency or, if the licensing agency fails or refuses to act within a reasonable time, upon complaint of the Attorney General to revoke or suspend licenses issued by the agency. The District Court has original jurisdiction upon complaint of a licensing agency to determine whether renewal or reissuance of a license of that agency may be refused. The District Court has original concurrent jurisdiction to grant equitable relief in proceedings initiated by an agency or the Department of the Attorney General alleging any violation of a license or licensing laws or rules.

Notwithstanding any other provisions of law, a licensing agency may not reinstate or otherwise affect a license suspended, revoked or modified by the District Court pursuant to a complaint filed by the Attorney General without the approval of the Attorney General;

Sec. 2. 5 MRSA §10051, sub-§1, as amended by PL 1999, c. 547, Pt. B, §19 and affected by §80, is further amended to read:

1. Jurisdiction. Except as provided in section 10004; Title 8, section 279-B; Title 10, section 8003; Title 20-A, sections 10712 and 10713; Title 29-A; Title 32, chapters 2-B, 105 and 114; and Title 35-A, section 3132, the District Court has exclusive jurisdiction upon complaint of any agency or, if the licensing agency fails or refuses to act within a reasonable time, upon complaint of the Attorney General to revoke or suspend licenses issued by the agency and has original jurisdiction upon complaint of an agency to determine whether renewal or reissuance of a license of that agency may be refused.

Sec. 3. 32 MRSA §85, sub-§2, as amended by PL 1991, c. 742, §1, is further amended to read:

2. Advanced emergency medical treatment. With the advice and consultation noted in subsection 1, the board may provide, by rule, which advanced skills, techniques and judgments may be supervised by a physician by means of standing orders, by voice radio and by other means. ~~Nothing in this section may preclude protocols in a particular region from imposing controls more strict than those permitted by the board's rules on the use of a~~

2 ~~skill, technique or judgment.~~ In every case, advanced emergency
3 medical treatment must be given in accordance with protocols
4 adopted by the Medical Direction and Practices Board.

5 The board may establish by rule appropriate licensure levels for
6 advanced emergency medical technicians and fix the qualifications
7 for persons to hold those licenses.

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9 **Sec. 4. 32 MRSA §86, sub-§2,** as amended by PL 1999, c. 182,
10 §10, is further amended to read:

11 **2. Care of patient.** Whenever an ambulance transports a
12 patient ~~from the scene of an emergency,~~ the patient must be cared
13 for by a physician, by a ~~flight nurse~~ specialized medical team
14 approved by the board or by a person licensed and authorized
15 under this chapter to provide emergency medical care. ~~Whenever an~~
16 ~~ambulance transports a patient from a hospital or other health~~
17 ~~care facility to another place, the patient must be cared for by:~~

18
19 ~~A. The physician in charge of the patient's case, by a~~
20 ~~person licensed under this chapter or by a professional~~
21 ~~nurse; or~~

22
23 ~~B. A licensed practical nurse, or other person~~
24 ~~appropriately trained to care for the patient, acting under~~
25 ~~orders from the patient's physician.~~

26
27 The person or team specified in this subsection as caring for the
28 patient shall accompany the patient in the patient care portion
29 of the ambulance ~~where the patient rides.~~

30
31 **Sec. 5. 32 MRSA §88, sub-§3** is enacted to read:

32
33 **3. Authority.** In addition to authority otherwise
34 conferred, the board or, as delegated, its subcommittee or staff
35 may, for each violation of applicable laws, rules or conditions
36 of licensure or registration, take one or more of the following
37 actions:

38
39 A. Issue warnings, censures or reprimands to a licensee.
40 Each warning, censure or reprimand issued must be based upon
41 violations of different applicable laws, rules or conditions
42 of licensure or must be based upon separate instances of
43 actionable conduct or activity;

44
45 B. Suspend a license or registration for up to 90 days for
46 each violation of applicable laws, rules and conditions of
47 licensure or registration or for each instance of actionable
48 conduct or activity. Suspensions may be set to run
49 concurrently or consecutively and may not exceed one year in
50

2 total. Execution of all or any portion of a term of
3 suspension may be stayed pending successful completion of
4 conditions of probation, although the suspension remains
5 part of the licensee's record;

6 C. Impose civil penalties of up to \$1,500 for each
7 violation of applicable laws, rules and conditions of
8 licensure or for each instance of actionable conduct or
9 activity;

10 D. Impose conditions of probation upon an applicant or
11 licensee. Probation may run for that time period as the
12 board, its subcommittee or staff determines appropriate.
13 Probation may include conditions such as: additional
14 continuing education; medical, psychiatric or mental health
15 consultations or evaluations; mandatory professional or
16 occupational supervision of the applicant or licensee; and
17 other conditions as the board, its subcommittee or staff
18 determines appropriate. Costs incurred in the performance
19 of terms of probation are borne by the applicant or
20 licensee. Failure to comply with the conditions of
21 probation is a ground for disciplinary action against a
22 licensee; or

23 E. Execute a consent agreement that resolves a complaint or
24 investigation without further proceedings. Consent
25 agreements may be entered into only with the consent of the
26 applicant or licensee, the board, its subcommittee or staff
27 and the Department of the Attorney General. Any remedy,
28 penalty or fine that is otherwise available by law, even if
29 only in the jurisdiction of the District Court, may be
30 achieved by consent agreement, including long-term
31 suspension and permanent revocation of a professional
32 license. A consent agreement is not subject to review or
33 appeal and may be modified only by a writing executed by all
34 parties to the original consent agreement. A consent
35 agreement is enforceable by an action in Superior Court.

36 **Sec. 6. 32 MRSA §90-A, sub-§1,** as amended by PL 1991, c. 588,
37 §19, is further amended to read:

38 **1. Disciplinary proceedings and sanctions.** The board or,
39 as delegated, its subcommittee or staff shall investigate a
40 complaint, on the-board's its own motion or upon receipt of a
41 written complaint filed with the board, regarding noncompliance
42 with or violation of this chapter or of any rules adopted by the
43 board. Investigation may include an informal conference or--a
44 hearing--or--both before the board, its subcommittee or staff to
45 determine whether grounds exist for suspension, revocation or
46 denial of a license or as otherwise determined necessary by the
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2 board to the fulfillment of its responsibilities under this
chapter. ~~Hearings must be conducted in conformity with the Maine~~
4 ~~Administrative Procedure Act, Title 5, chapter 375, subchapter~~
~~IV, to the extent applicable.~~ The board, its subcommittee or
6 staff may subpoena witnesses, records and documents, including
records and documents maintained by a health care facility or
8 other service organization or person related to the delivery of
emergency medical services, in any investigation or hearing it
conducts.

10
12 **Sec. 7. 32 MRSA §90-A, sub-§3,** as amended by PL 1993, c. 600,
Pt. A, §35, is further amended to read:

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

32 **Sec. 8. 32 MRSA §90-A, sub-§4,** as amended by PL 1999, c. 547,
Pt. B, §58 and affected by §80, is further amended to read:

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

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

48 B. If a licensee voluntarily surrenders a license, the
board, its subcommittee or staff may negotiate stipulations
50 necessary to ensure protection of the public health and

2 safety and the rehabilitation or education of the licensee.
3 These stipulations may be set forth only in a consent
4 agreement signed by the board, the licensee and the
5 Department of the Attorney General.

6 C. If the board, its subcommittee or staff concludes that
7 modification, nonrenewal ~~or~~, nonissuance or suspension
8 pursuant to section 88, subsection 3 of a license is in
9 order, the board shall so notify the applicant-licensee and
10 inform the applicant-licensee of the applicant-licensee's
11 right to request an adjudicatory hearing. If the
12 applicant-licensee requests an adjudicatory hearing in a
13 timely manner, the adjudicatory hearing must be held by the
14 board in accordance with ~~the Maine Administrative Procedure~~
15 ~~Act, Title 5, chapter 375, subchapter IV. At the conclusion~~
16 ~~of the hearing, the board shall forward a written finding of~~
17 ~~facts and recommended decision to the commissioner.~~
18 ~~Opportunity must then be given for the applicant-licensee~~
19 ~~and the board to file comments on the findings of fact and~~
20 ~~recommended decision to the commissioner. The commissioner,~~
21 ~~after considering the findings, recommendations and~~
22 ~~comments, shall either adopt or reject the recommended~~
23 ~~decision within a reasonable period of time. If the~~
24 ~~commissioner rejects the recommendation or issues a modified~~
25 ~~decision, the commissioner's written decision must contain~~
26 ~~the specific reasons for modifying or rejecting the~~
27 ~~recommended decision. The commissioner's decision is the~~
28 ~~department's final decision. If the applicant-licensee~~
29 ~~wishes to appeal the final decision of the board, the~~
30 ~~applicant-licensee shall file a petition for review with the~~
31 ~~Superior Court within 30 days of receipt of the board's~~
32 ~~decision. Review under this paragraph must be conducted~~
33 ~~pursuant to Title 5, chapter 375, subchapter VII.~~

34 D. Except in the specific circumstances where Title 5,
35 section 10004 may be invoked, if the board or its staff
36 concludes that suspension beyond the authority conferred by
37 section 88 or revocation of the license is in order, the
38 board or its staff ~~shall hold a hearing or~~ request the
39 Attorney General to file a complaint in the District Court
40 in accordance with Title 4, chapter 5 and the Maine
41 Administrative Procedure Act to commence either full or
42 emergency proceedings.

43 **Sec. 9. 32 MRSA §90-A, sub-§5**, as amended by PL 1993, c. 575,
44 §3 and c. 600, Pt. A, §36, is further amended to read:

45 **5. Grounds for licensing action.** ~~The board may suspend or~~
46 ~~revoke a license pursuant to Title 5, section 10004.~~ Refusal to
47 issue or renew a license or to modify, ~~suspend or revoke~~ take
48 take

2 disciplinary action against a license of a person, service or
vehicle may be predicated on the following grounds:

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

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

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

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

20 E. Incompetent professional practice as evidenced by:

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

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

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

34 G. Subject to the limitations of Title 5, chapter 341,
conviction of a crime that involves dishonesty or false
36 statement that relates directly to the practice for which
the licensee is licensed, conviction of a crime for which
38 incarceration for one year or more may be imposed or
conviction of a crime defined in Title 17-A, chapter 11 or
40 45;

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

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

46 **Sec. 10. 32 MRSA §91-A**, as amended by PL 1991, c. 588, §20,
48 is further amended to read:

2 **§91-A. Appeals**

4 Any person or organization aggrieved by the decision of the
6 staff or a subcommittee of the board in modifying or refusing to
8 issue or renew a license or ~~to waive application of a particular~~
10 rule in the interpretation of this chapter or rules adopted
12 pursuant to this chapter may appeal the ~~board's~~ board's decision to the
14 ~~commissioner's~~ board for a final decision. The ~~board's~~ staff's or
16 subcommittee's decision stands until such time as the
18 ~~commissioner's~~ board issues a decision to uphold, modify or
20 overrule the ~~board's~~ staff's or subcommittee's decision. In the
22 case of nonrenewal, the person or organization must be afforded
24 an opportunity for hearing in accordance with this chapter and
26 the Maine Administrative Procedure Act.

16 Any person or organization aggrieved by a final decision of
18 the ~~commissioner's~~ board in refusing to issue or renew a license or
20 ~~to waive application of a particular~~ in the interpretation of a
22 rule may appeal the ~~commissioner's~~ board's decision to the
24 Superior Court in accordance with ~~the--Maine--Administrative~~
26 ~~Procedure-Act,~~ Title 5, chapter 375, subchapter VII.

28 **Sec. 11. 32 MRSA §92**, as amended by PL 1991, c. 588, §§21 and
30 22, is further amended to read:

32 **§92. Confidentiality of information**

34 Any reports, information or records provided to the board or
36 department pursuant to this chapter must be provided to the
38 licensee and are confidential insofar as the reports, information
40 or records identify or permit identification of any patient,
42 provided that the board may disclose any confidential information
44 as follows+.

46 **1. Hearings or proceedings.** In Confidential information may
48 be released in an adjudicatory hearing or informal conference
50 before the board or in any subsequent formal proceeding to which
information is relevant+and.

46 **2. Consent agreements or settlement.** In Confidential
48 information may be released in a consent agreement or other
50 written settlement, when the information constitutes or pertains
to the basis of board action.

46 **3. During investigation.** All complaints and investigative
48 records of the board are confidential during the pendency of an
50 investigation. Those records become public records upon the
conclusion of an investigation unless confidentiality is required
by some other provision of law. For purposes of this subsection,
an investigation is concluded when:

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

6 B. A consent agreement has been executed; or

8 C. A letter of dismissal has been issued or the
10 investigation has otherwise been closed.

12 4. Exceptions. Notwithstanding subsection 3, during the
14 pendency of an investigation, a complaint or investigative record
16 may be disclosed:

18 A. To Maine Emergency Medical Services employees designated
20 by the director;

22 B. To designated complaint officers of the board;

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

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

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

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

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

Sec. 12. 32 MRSA §92-A, sub-§2, as amended by PL 1991, c. 588,
 §23, is further amended to read:

2. Confidentiality. All proceedings and records of
 proceedings concerning the quality assurance activities of any
 emergency medical services quality assurance committee approved

2 by the board are confidential and are exempt from discovery. All
3 reports, information and records provided to any emergency
4 medical services quality assurance committee approved by the
5 board are confidential and exempt from discovery.

6

8 SUMMARY

9 This bill amends the Maine Emergency Medical Services Act of
10 1982 to:

11 1. Require that whenever a patient is transported by
12 ambulance, the patient must be accompanied by a physician, person
13 licensed to provide emergency care or a specialized medical team
14 approved by the Emergency Medical Services' Board;

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16 2. Allow the board to issue warnings, suspend licenses and
17 impose civil penalties for violations of the Maine Emergency
18 Medical Services Act of 1982;

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20 3. Allow a decision of the board to be appealed to the
21 Superior Court; and

22 4. Clarify the confidentiality of complaints and records of
23 the board and the circumstances under which those records may be
24 disclosed and to whom.
25
26