

MAINE STATE LEGISLATURE

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123rd MAINE LEGISLATURE

FIRST REGULAR SESSION-2007

Legislative Document

No. 1161

S.P. 409

March 7, 2007

**An Act To Make Certain Changes to the Board of Licensure in
Medicine**

Reference to the Committee on Business, Research and Economic Development 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 ROTUNDO of Androscoggin.
Cosponsored by Representatives: SILSBY of Augusta, SMITH of Monmouth.

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

2 **Sec. 1. 32 MRSA §3282-A, sub-§1**, as amended by PL 1999, c. 547, Pt. B, §67
3 and as affected by PL 1999, c. 547, Pt. B, §80, is further amended to read:

4 **1. 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 any rules adopted by the
7 board.

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

15 If, in the opinion of the board, the factual basis of the complaint is or may be true and the
16 complaint is of sufficient gravity to warrant further action, the board may request an
17 informal conference with the licensee. The board shall provide the licensee with
18 adequate notice of the conference and the issues to be discussed, as well as the licensee's
19 right to be represented by counsel. The board shall provide the licensee with the ability
20 to confer with counsel during the conference. The complainant may attend and may be
21 accompanied by up to 2 individuals, including legal counsel. The conference must be
22 conducted in executive session of the board, pursuant to Title 1, section 405, unless
23 otherwise requested by the licensee. The licensee may, without prejudice, refuse to
24 participate in an informal conference if the licensee prefers to request an adjudicatory
25 hearing. Before the board decides what action to take at the conference or as a result of
26 the conference, the board shall give the complainant a reasonable opportunity to speak.
27 Statements made at the conference may not be introduced at a subsequent formal hearing
28 unless all parties consent. The complainant, the licensee or either of their representatives
29 shall maintain the confidentiality of the conference.

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 physician's record on which action
33 was taken and disciplinary actions of the board with respect to that physician.

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 finds that the factual basis of the complaint is true and is of sufficient gravity
39 to warrant further action, it may take any of the following actions it determines
40 appropriate.

41 A. With the consent of the licensee, the board may enter into a consent agreement
42 that fixes the period and terms of probation best adapted to protect the public health

1 and safety and rehabilitate or educate the licensee. A consent agreement may be used
2 to terminate a complaint investigation, if entered into by the board, the licensee and
3 the Attorney General's office.

4 B. In consideration for acceptance of a voluntary surrender of the license, the board
5 may negotiate stipulations, including terms and conditions for reinstatement, that
6 ensure protection of the public health and safety and serve to rehabilitate or educate
7 the licensee. These stipulations may be set forth only in a consent agreement signed
8 by the board, the licensee and the Attorney General's office.

9 C. If the board concludes that modification or nonrenewal of the license is in order,
10 the board shall hold an adjudicatory hearing in accordance with Title 5, chapter 375,
11 subchapter ~~IV~~ 4.

12 D. If the board concludes that suspension or revocation of the license is in order, the
13 board shall file a complaint in the District Court in accordance with Title 4, chapter 5.

14 E. A consent agreement or modification of a license by the board that involves the
15 licensee's participation in an alcohol or drug treatment program must provide the
16 licensee with the right to select the alcohol or drug treatment program, as long as the
17 program is approved or licensed by the Department of Health and Human Services,
18 Office of Substance Abuse or other federally licensed treatment providers or state-
19 licensed treatment providers. A consent agreement or modification of a license that
20 involves the licensee's treatment by a licensed therapist must provide the licensee
21 with the right to select a therapist from a broad selection of licensed therapists
22 approved by the board.

23 The board shall require a licensee to notify all patients of the licensee of a probation or
24 stipulation under which the licensee is practicing as a result of board disciplinary action.
25 This requirement does not apply to a physician participating in an alcohol or drug
26 treatment program pursuant to Title 24, section 2505, a physician who retires following
27 charges made or complaints investigated by the board or a physician under the care of a
28 professional and whose medical practices and services are not reduced, restricted or
29 prohibited by the disciplinary action.

30 SUMMARY

31 This bill requires the Board of Licensure in Medicine to inform licensees of their
32 right to be represented by counsel during an informal conference with the board involving
33 a complaint against the licensee. This bill allows a licensee to confer with counsel during
34 the conference. This bill also provides licensees with the ability to refuse to participate in
35 an informal conference with the board if an adjudicatory hearing is preferred. It also
36 requires that any consent agreement that involves the licensee's participation in an
37 alcohol or drug treatment program, or the licensee's treatment by a licensed therapist,
38 must provide the licensee with the right to select the alcohol or drug treatment program or
39 licensed therapist.