

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 89

S.P. 38

January 13, 2009

**An Act To Amend the Laws Concerning Informal Conferences as
Part of the Board of Licensure in Medicine's Disciplinary
Proceedings**

Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 204.

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 RECTOR of Knox.
Cosponsored by Representative SMITH of Monmouth and
Representatives: AUSTIN of Gray, CLEARY of Houlton, MacDONALD of Boothbay.

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 and
3 affected by §80, is further amended to read:

4 **1. Disciplinary proceedings and sanctions.** The board shall investigate a complaint, on
5 its own motion or upon receipt of a written complaint filed with the board, regarding
6 noncompliance with or violation of this chapter or any rules adopted by the board.

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

14 If, in the opinion of the board, the factual basis of the complaint is or may be true and the
15 complaint is of sufficient gravity to warrant further action, the board or a subcommittee
16 of the board may request an informal conference with the licensee. The board shall
17 provide the licensee with adequate notice of the conference and the issues to be
18 discussed. The complainant may attend and may be accompanied by up to 2 individuals,
19 including legal counsel. The conference must be conducted in executive session of the
20 board, pursuant to Title 1, section 405, unless otherwise requested by the licensee.
21 Before the board decides what action to take at the conference or as a result of the
22 conference, the board shall give the complainant a reasonable opportunity to speak.
23 Statements made at the conference may not be introduced at a subsequent formal hearing
24 unless all parties consent. The complainant, the licensee or either of their representatives
25 shall maintain the confidentiality of the conference.

26 When a complaint has been filed against a licensee and the licensee moves or has moved
27 to another state, the board may report to the appropriate licensing board in that state the
28 complaint that has been filed, other complaints in the physician's record on which action
29 was taken and disciplinary actions of the board with respect to that physician.

30 When an individual applies for a license under this chapter, the board may investigate the
31 professional record of that individual, including professional records that the individual
32 may have as a licensee in other states. The board may deny a license or authorize a
33 restricted license based on the record of the applicant in other states.

34 If the board finds that the factual basis of the complaint is true and is of sufficient gravity
35 to warrant further action, it may take any of the following actions it determines
36 appropriate.

37 A. With the consent of the licensee, the board may enter into a consent agreement that
38 fixes the period and terms of probation best adapted to protect the public health and
39 safety and rehabilitate or educate the licensee. A consent agreement may be used to
40 terminate a complaint investigation, if entered into by the board, the licensee and the
41 Attorney General's office.

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

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

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

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

18 **SUMMARY**

19 This bill would allow a subcommittee of the Board of Licensure in Medicine to request
20 an informal conference with a licensee when the board finds a complaint warrants further
21 action. Currently, only the full board may request an informal conference. This bill is
22 intended to facilitate complaint resolution and disciplinary proceedings.