

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 94

H.P. 78

House of Representatives, January 12, 2009

**An Act To Authorize the State Board of Nursing To Request Mental
and Physical Examinations and To Establish a Nurse Health
Program**

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.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative PERRY of Calais.
Cosponsored by Senator RECTOR of Knox and
Representatives: AUSTIN of Gray, DRISCOLL of Westbrook, PENDLETON of Scarborough,
SMITH of Monmouth, Senator: GERZOFKY of Cumberland.

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

2 **Sec. 1. 24 MRSA §2502, sub-§4-A,** as amended by PL 2007, c. 288, §1, is further
3 amended to read:

4 **4-A. Professional review committee.** "Professional review committee" means a
5 committee of physicians, dentists, pharmacists, nurses or a combination of members of all 3 4
6 professions formed by a professional society for the purpose of identifying and working with
7 physicians, dentists and other licensees of the Board of Dental Examiners, physician
8 assistants, pharmacists and pharmacy technicians and nurses who are disabled or impaired by
9 virtue of physical or mental infirmity or by the misuse of alcohol or drugs, as long as the
10 committee operates pursuant to protocols approved by the Board of Licensure in Medicine,
11 the Board of Dental Examiners, the Board of Osteopathic Licensure and the Maine Board of
12 Pharmacy and the State Board of Nursing.

13 **Sec. 2. 32 MRSA §2105-A, sub-§4** is enacted to read:

14 **4. Authority to request mental and physical examinations.** For the purposes of this
15 section, by application for and acceptance of a license to practice, a nurse is considered to
16 have given consent to a mental or physical examination when directed by the board. The
17 board may direct a nurse to submit to an examination whenever the board determines the
18 nurse may be suffering from a mental illness that may be interfering with the competent
19 practice of nursing or from the use of intoxicants or drugs to an extent that they are
20 preventing the nurse from practicing nursing competently and with safety to patients. A nurse
21 examined pursuant to an order of the board may not prevent the testimony of the examining
22 individual or prevent the acceptance into evidence of the report of an examining individual in
23 a proceeding under subsection 1-A. Failure to comply with an order of the board to submit to
24 a mental or physical examination results in the immediate suspension of the license of the
25 nurse by order of the District Court until the nurse submits to the examination.

26 **Sec. 3. 32 MRSA §2105-A, sub-§5** is enacted to read:

27 **5. Nurse health program.** The board may establish protocols for the operation of a
28 professional review committee as defined in Title 24, section 2502, subsection 4-A. The
29 protocols must include the committee's reporting information the board considers appropriate
30 regarding reports received, contracts or investigations made and the disposition of each
31 report, as long as the committee is not required to disclose any personally identifiable
32 information. The protocols may not prohibit an impaired nurse from seeking alternative forms
33 of treatment.

34 The board may contract with other agencies, individuals, firms or associations for the conduct
35 and operation of a nurse health program operated by a professional review committee as that
36 term is defined in Title 24, section 2502, subsection 4-A.

37 **Sec. 4. Appropriations and allocations.** The following appropriations and
38 allocations are made.

39 **PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF**

1 **State Board of Nursing 0380**

2 Initiative: Allocates dedicated revenue funds for the State Board of Nursing to contract with
3 an agency to operate a nurse health program beginning in September 2009.

4

5	OTHER SPECIAL REVENUE FUNDS	2009-10	2010-11
6	All Other	\$100,000	\$120,000
7			
8	OTHER SPECIAL REVENUE FUNDS TOTAL	<u>\$100,000</u>	<u>\$120,000</u>

9

SUMMARY

10 This bill provides authority for the State Board of Nursing to require an applicant for
11 licensure or a licensee to undergo a physical or mental health examination for purposes of
12 determining fitness to practice nursing. The language is consistent with that found in medical
13 and dental statutes.

14 The bill also provides for an alternative to a discipline program for nurses with substance
15 abuse history by creating a nurse health program consistent with those available for other
16 health care providers.