

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

SECOND REGULAR SESSION-2010

Legislative Document

No. 1572

H.P. 1110

House of Representatives, December 22, 2009

**An Act To Correct Errors in the Laws Relating to Unlicensed
Practice and Other Provisions of the Professional and Occupational
Licensing Laws**

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

Received by the Clerk of the House on December 18, 2009. Referred to the Committee on Business, Research and Economic Development pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative SMITH of Monmouth.
Cosponsored by Senator SCHNEIDER of Penobscot and
Representatives: CLEARY of Houlton, COHEN of Portland, SIROIS of Turner, Senator:
PERRY of Penobscot.

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

2 **Sec. 1. 10 MRSA §8003-B, sub-§1**, as amended by PL 1999, c. 687, Pt. C, §10,
3 is further amended to read:

4 **1. During investigation.** Unless otherwise provided by Title 24, chapter 21, all
5 complaints and investigative records of the licensing boards ~~and~~, commissions and and
6 regulatory functions within or affiliated with the Department of Professional and
7 Financial Regulation are confidential during the pendency of an investigation. Those
8 records become public records upon the conclusion of an investigation unless
9 confidentiality is required by some other provision of law. For purposes of this section,
10 an investigation is concluded when:

- 11 A. A notice of an adjudicatory hearing under Title 5, chapter 375, subchapter ~~IV~~ 4
12 has been issued;
- 13 C. A consent agreement has been executed; or
- 14 D. A letter of dismissal has been issued or the investigation has otherwise been
15 closed.

16 **Sec. 2. 10 MRSA §8003-B, sub-§2-A**, as amended by PL 2001, c. 345, §1, is
17 further amended to read:

18 **2-A. Certain client records confidential.** Notwithstanding subsections 1 and 2, a
19 treatment record provided to a licensing board or commission or in connection with a
20 regulatory function within or affiliated with the department during investigation of a
21 person licensed by the department in a medical, mental health, substance abuse,
22 psychological or health field that contains information personally identifying a licensee's
23 client or patient is confidential during the pendency of the investigation and remains
24 confidential upon the conclusion of the investigation. A treatment record may be
25 disclosed only if:

- 26 A. The client or patient executes a written release that states that:
 - 27 (1) Unless the release provides for more limited disclosure, execution of the
28 release may result in the record becoming a public record; or
 - 29 (2) If the client or patient wishes, execution of the release allows disclosure to
30 only the person or persons clearly identified in the release. The release must
31 require the person or persons identified in the release not to make a disclosure to
32 another person;
- 33 B. The disclosure is necessary under Title 22, chapter 857 concerning personnel and
34 licensure actions;
- 35 C. The disclosure is necessary under Title 22, section 3474 concerning reports of
36 suspected adult abuse or exploitation;
- 37 D. The disclosure is necessary under Title 22, section 4011-A concerning reports of
38 suspected child abuse or neglect; or

1 E. The disclosure is necessary under Title 22, section 7703 concerning reports of
2 suspected child or adult abuse or neglect.

3 A release executed by a client or patient does not operate to disclose a record otherwise
4 made confidential by law.

5 This subsection does not prevent disclosure of records pursuant to an order of a court of
6 competent jurisdiction upon good cause shown.

7 **Sec. 3. 10 MRSA §8003-C, sub-§1**, as enacted by PL 1999, c. 687, Pt. C, §12, is
8 amended to read:

9 **1. Complaints of unlicensed practice.** A board or commission ~~listed~~ identified in
10 section 8001, subsection 38 or section 8001-A or a regulatory function administered by
11 the Office of Licensing and Registration identified in section 8001, subsection 38 may
12 receive or initiate complaints of unlicensed practice.

13 **Sec. 4. 10 MRSA §8003-C, sub-§3**, as repealed and replaced by PL 2003, c. 452,
14 Pt. E, §10 and affected by Pt. X, §2, is amended to read:

15 **3. Unlicensed practice; criminal penalties.** Notwithstanding any other provision of
16 law:

17 A. A person who practices or represents to the public that the person is authorized to
18 practice a profession or trade and intentionally, knowingly or recklessly fails to
19 obtain a license as required by ~~this Title~~ the laws relating to a board, commission or
20 regulatory function identified in section 8001, subsection 38 or section 8001-A or
21 intentionally, knowingly or recklessly practices or represents to the public that the
22 person is authorized to practice after the license required by ~~this Title~~ the laws
23 relating to a board, commission or regulatory function identified in section 8001,
24 subsection 38 or section 8001-A has expired or been suspended or revoked commits a
25 Class E crime; and

26 B. A person who practices or represents to the public that the person is authorized to
27 practice a profession or trade and intentionally, knowingly or recklessly fails to
28 obtain a license as required by ~~this Title~~ the laws relating to a board, commission or
29 regulatory function identified in section 8001, subsection 38 or section 8001-A or
30 intentionally, knowingly or recklessly practices or represents to the public that the
31 person is authorized to practice after the license required by ~~this Title~~ the laws
32 relating to a board, commission or regulatory function identified in section 8001,
33 subsection 38 or section 8001-A has expired or been suspended or revoked when the
34 person has a prior conviction under this subsection commits a Class D crime. Title
35 17-A, section 9-A governs the use of prior convictions when determining a sentence,
36 except that, for purposes of this paragraph, the date of the prior conviction must
37 precede the commission of the offense being enhanced by no more than 3 years.

38 **Sec. 5. 10 MRSA §8003-C, sub-§4**, as amended by PL 2009, c. 44, §1, is further
39 amended to read:

40 **4. Unlicensed practice; civil penalties.** Any person who practices or represents to
41 the public that the person is authorized to practice a profession or trade without first

1 obtaining a license as required by ~~this Title~~ the laws relating to a board, commission or
2 regulatory function identified in section 8001, subsection 38 or section 8001-A or after
3 the license has expired or has been suspended or revoked commits a civil violation
4 punishable by a fine of not less than \$1,000 but not more than \$5,000 for each violation.
5 An action under this subsection may be brought in District Court or, in combination with
6 an action under subsection 5, in Superior Court.

7 **Sec. 6. 10 MRSA §8003-D**, as enacted by PL 1999, c. 687, Pt. C, §12, is amended
8 to read:

9 **§8003-D. Investigations; enforcement duties; assessments**

10 When there is a finding of a violation, a board or commission ~~listed~~ identified in
11 section 8001, subsection 38 or section 8001-A or the Office of Licensing and Registration
12 with regard to a regulatory function identified in section 8001, subsection 38
13 administered by the office may assess the licensed person or entity for all or part of the
14 actual expenses incurred by the board, commission, Office of Licensing and Registration
15 or ~~its~~ their agents for investigations and enforcement duties performed.

16 "Actual expenses" include, but are not limited to, travel expenses and the
17 proportionate part of the salaries and other expenses of investigators or inspectors, hourly
18 costs of hearing officers, costs associated with record retrieval and the costs of
19 transcribing or reproducing the administrative record.

20 The board ~~or~~ commission or Office of Licensing and Registration, as soon as feasible
21 after finding a violation, shall give the licensee notice of the assessment. The licensee
22 shall pay the assessment in the time specified by the board ~~or~~ commission or Office of
23 Licensing and Registration, which may not be less than 30 days.

24 **Sec. 7. 10 MRSA §8003-E**, as enacted by PL 1999, c. 687, Pt. C, §12, is amended
25 to read:

26 **§8003-E. Citations and fines**

27 Any board or commission ~~listed~~ identified in section 8001, subsection 38 or section
28 8001-A or a regulatory function administered by the Office of Licensing and Registration
29 identified in section 8001, subsection 38 may adopt by rule a list of violations for which
30 citations may be issued by professional technical support staff. A violation may carry a
31 fine not to exceed \$200. Citations issued by employees of the Office of Licensing and
32 Registration or an affiliated board must expressly inform the licensee that the licensee
33 may pay the fine or request a hearing before the board or commission or the Office of
34 Licensing and Registration with regard to a regulatory function identified in section 8001,
35 subsection 38 administered by the office regarding the violation.

36 **SUMMARY**

37 This bill amends general provisions relating to the professional and occupational
38 licensing programs within the Department of Professional and Financial Regulation,

1 Office of Licensing and Registration to clarify the application of those provisions to
2 regulatory functions of the office.

3 The bill also corrects incorrect statutory citations to "this Title" that were not updated
4 when certain provisions were transferred from the Maine Revised Statutes, Title 32 to
5 Title 10.