

MAINE STATE LEGISLATURE

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L.D. 955

Date: **3-26-12**

(Filing No. S-**482**)

LABOR, COMMERCE, RESEARCH AND ECONOMIC DEVELOPMENT

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STATE OF MAINE

SENATE

125TH LEGISLATURE

SECOND REGULAR SESSION

COMMITTEE AMENDMENT "**A**" to S.P. 301, L.D. 955, Bill, "An Act To Establish the Dental Adjudicatory Panel"

Amend the bill by striking out the title and substituting the following:

'An Act To Establish a Dental Adjudicatory Panel System'

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'Sec. 1. 32 MRSA §1077, sub-§1, as corrected by RR 2009, c. 2, §87, is amended to read:

1. Disciplinary proceedings and sanctions. Regarding noncompliance with or violation of this chapter or of rules adopted by the board, the board shall investigate a complaint on its own motion or upon receipt of a written complaint filed with the board.

The board shall notify the licensee of the content of a complaint filed against the licensee as soon as possible, but no later than 60 days from receipt of this information. The licensee shall respond within 30 days. If the licensee's response to the complaint satisfies the board that the complaint does not merit further investigation or action, the matter may be dismissed, with notice of the dismissal to the complainant, if any.

If, in the opinion of the board, the factual basis of the complaint is or may be true, and the complaint is of sufficient gravity to warrant further action, the board may request an informal conference with the licensee. The board shall provide the licensee with adequate notice of the conference and of the issues to be discussed. The conference must be conducted in executive session of the board, pursuant to Title 1, section 405, unless otherwise requested by the licensee. Statements made at the conference may not be introduced at a subsequent formal hearing unless all parties consent.

If the board finds that the factual basis of the complaint is true and is of sufficient gravity to warrant further action, it may take any of the following actions it considers appropriate:

R. 03.

1 A. With the consent of the licensee, enter into a consent agreement that ~~fixes the~~
2 ~~period and terms of probation best adapted to protect the public health and safety and~~
3 ~~to rehabilitate or educate the licensee~~ takes any action authorized by Title 10, section
4 8003, subsection 5 or Title 10, section 8003-D. A consent agreement may be used to
5 terminate a complaint investigation, if entered into by the board, the licensee and the
6 Attorney General's office;

7 B. In consideration for acceptance of a voluntary surrender of the license, if a
8 consent agreement is signed by the board, the licensee and the Attorney General's
9 office, negotiate stipulations, including terms and conditions for reinstatement, that
10 ensure protection of the public health and safety and that serve to rehabilitate or
11 educate the licensee;

12 C. If the board concludes that denial of initial licensure or modification or
13 nonrenewal of the an existing license is in order, the board shall hold may refer the
14 complaint to a dental adjudicatory panel, convened pursuant to section 1080, for the
15 purpose of holding an adjudicatory hearing in accordance with the provisions of the
16 Maine Administrative Procedure Act, Title 5, chapter 375, subchapter 4; or

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

20 Notwithstanding any other provision of law, a dental adjudicatory panel convened
21 pursuant to section 1080 has the sole authority to hold an adjudicatory hearing
22 conforming to the requirements of Title 5, chapter 375, subchapter 4 and take any action
23 authorized by Title 10, section 8003, subsection 5 or Title 10, section 8003-D following
24 an adjudicatory hearing.

25 Notwithstanding Title 10, section 8003, subsection 5, any nonconsensual revocation of a
26 license by a dental adjudicatory panel pursuant to Title 10, section 8003 may be imposed
27 only after a hearing conforming to the requirements of Title 5, section 375, subchapter 4
28 and is subject to judicial review exclusively in the Superior Court in accordance with
29 Title 5, chapter 375, subchapter 7. The board retains the authority to take any other
30 action pursuant to this section and Title 10, section 8003 regarding the disposition of any
31 complaint that does not involve an adjudicatory hearing.

32 **Sec. 2. 32 MRSA §1080** is enacted to read:

33 **§1080. Dental adjudicatory panels**

34 Dental adjudicatory panels may be convened in accordance with this section.

35 **1. Purpose of panel.** The purpose of a dental adjudicatory panel, referred to in this
36 section as "a panel," is to conduct adjudicatory hearings independent of the board after
37 the board conducts the initial investigation of a complaint against a licensee and refers the
38 complaint to a panel.

39 **2. Establishment of a pool of panel members.** The board shall establish a pool of
40 potential panel members. The board may not select a person for the pool who has been
41 found in violation of the dental practices laws or rules within the preceding 10 years.
42 After selection by the board, each member of the pool is subject to review and

1 appointment by the Governor. The pool must be composed of at least 5 dentists, 5
2 denturists and 5 dental hygienists licensed under this chapter and 5 public members, but if
3 the board finds that it is beneficial to the administration of the pool, the pool may be
4 composed of no fewer than 3 from each category. A pool member may not be a member
5 of the board.

6 **3. Convening of a panel.** The board may convene a panel for a case that cannot be
7 resolved using a consent agreement. The board shall request a member of its staff to
8 draw names from the pool in accordance with subsection 4. A member of the board may
9 not have a role in the drawing or selection of individuals serving on a panel. For each
10 case, a separate panel must be created and then dissolved once it has issued its decision.

11 **4. Appointments for a panel.** A panel consists of 5 members appointed from the
12 pool under subsection 2:

13 A. One member must be a public member;

14 B. One member must be either a denturist or a dental hygienist. A dental hygienist
15 must be named to the first panel convened. For subsequent panels, the seat must
16 alternate between a dental hygienist and a denturist, unless the defendant is either a
17 denturist or a dental hygienist, in which case the member filling this seat must be of
18 the defendant's profession; and

19 C. Three members must be dentists.

20 If the defendant is a doctor from a dental specialty, at least one of the dentists selected to
21 the panel must, if possible, be of that specialty.

22 **5. Vacancy.** In the event of a vacancy on a panel, the board shall appoint a
23 replacement member from the pool under subsection 2.

24 **6. Terms; vacancy.** Members of the pool serve 5-year terms. Members may be
25 reappointed. In the event of a vacancy in the pool, the board shall select a replacement
26 member in the same manner as the original selection subject to the provisions of
27 subsection 2.

28 **7. Chair.** The members of a panel shall select a chair from among its members.
29 Any member may serve as the chair.

30 **8. Duties and authority of a panel.** Upon referral of a complaint by the board
31 pursuant to section 1077, subsection 1, paragraph C to a panel convened pursuant to
32 subsection 3, the panel shall hold an adjudicatory hearing. Upon completion of the
33 adjudicatory hearing, the panel shall issue a decision or order to:

34 A. Take any action authorized by section 1077, subsection 1; Title 10, section 8003,
35 subsection 5; or Title 10, section 8003-D; or

36 B. Dismiss the complaint.

37 **9. Compensation.** Members of a panel are entitled to reimbursement for travel
38 expenses.

39 **10. Panel meetings.** A panel shall hold its first meeting at the request of the board.
40 Subsequent meetings must be held at the request of the chair of the panel.

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11. Quorum. Four members of a panel constitutes a quorum.

12. Repeal. This section is repealed September 15, 2014.

Sec. 3. Authority to report out a bill. The Board of Dental Examiners shall report to the joint standing committee of the Legislature having jurisdiction over labor, commerce, research and economic development matters concerning the implementation of the dental adjudicatory panel system under the Maine Revised Statutes, Title 32, section 1080 by January 15, 2014. The joint standing committee of the Legislature having jurisdiction over labor, commerce, research and economic development matters may report out a bill regarding the dental adjudicatory panel system to the Second Regular Session of the 126th Legislature.'

SUMMARY

This amendment makes the following changes to the bill.

1. It clarifies that the Board of Dental Examiners has the authority in the case of a consent agreement with a licensee to take any action authorized by the Maine Revised Statutes, Title 10, section 8003, subsection 5 or Title 10, section 8003-D.
2. It provides that if the board concludes that denial of initial licensure or modification or nonrenewal of an existing license is in order, the board may refer a complaint to a dental adjudicatory panel for the purpose of holding an adjudicatory hearing in accordance with the provisions of the Maine Administrative Procedure Act.
3. It provides that a dental adjudicatory panel, not the board, has the sole authority to hold an adjudicatory hearing conforming to the requirements of the Maine Administrative Procedure Act and take any action following an adjudicatory hearing authorized by Title 10, section 8003, subsection 5 or Title 10, section 8003-D.
4. It provides that any nonconsensual revocation of a license by a dental adjudicatory panel may be imposed only after a hearing conforming to the requirements of the Maine Administrative Procedure Act and is subject to judicial review exclusively in the Superior Court. It also provides that the board retains the authority to take any other action regarding the disposition of any complaint that does not involve an adjudicatory hearing.
5. It replaces the provisions in the bill that establish the Dental Adjudicatory Panel with a system of dental adjudicatory panels that are convened on a case-by-case basis from a pool of variously qualified potential panel members, each serving a 5-year term, and establishes the duties and authority of the panels.
6. It repeals the laws governing the dental adjudicatory panels September 15, 2014, but allows the joint standing committee of the Legislature having jurisdiction over labor, commerce, research and economic development matters to report out a bill regarding dental adjudicatory panels to the Second Regular Session of the 126th Legislature.

FISCAL NOTE REQUIRED

(See attached)



125th MAINE LEGISLATURE

LD 955

LR 1350(02)

An Act To Establish the Dental Adjudicatory Panel

Fiscal Note for Bill as Amended by Committee Amendment "A" S 482
Committee: Labor, Commerce, Research and Economic Development
Fiscal Note Required: Yes

Fiscal Note

Potential current biennium cost increase - Other Special Revenue Funds
Potential current biennium revenue increase - Other Special Revenue Funds

Fiscal Detail and Notes

Additional costs to the Board of Dental Examiners, affiliated with the Department of Professional and Financial Regulation, associated with establishing a Dental Adjudicatory Panel for the purpose of conducting adjudicatory hearings can not be determined at this time and will depend on the number of hearings conducted.

This fiscal note assumes that this legislation represents a shift of duties from the Board to the Panel and that a similar number of adjudicatory hearings will occur whether it is the Board or the Panel conducting the hearing. Given this assumption, there appears to be both sufficient allocations and funding within the board's existing budgeted resources to support such additional costs as travel reimbursement and other incidental expenses for panel members until the panel is repealed on September 15, 2014. To the extent that the number of requests for adjudicatory hearings increase as a result of this legislation, the Board may need to increase fees to cover the additional costs.

The increase in costs to the Judicial Department are expected to be minimal and can be absorbed utilizing existing budgeted resources.