

MAINE STATE LEGISLATURE

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125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 955

S.P. 301

In Senate, March 8, 2011

An Act To Establish the Dental Adjudicatory Panel

Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.

Joseph G. Carleton Jr.

JOSEPH G. CARLETON, JR.
Secretary of the Senate

Presented by Senator RECTOR of Knox.

Cosponsored by Representative PRESCOTT of Topsham and

Senators: COURTNEY of York, McCORMICK of Kennebec, PLOWMAN of Penobscot,

President RAYE of Washington, SCHNEIDER of Penobscot, Representatives: HAMPER of Oxford, HUNT of Buxton, WEAVER of York.

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

2 **Sec. 1. 5 MRSA §12004-A, sub-§10-A** is enacted to read:

3 **10-A.**

4 Dental Adjudicatory Panel Travel Expenses 32 MRSA §1080

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

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

10 The board shall notify the licensee of the content of a complaint filed against the licensee
11 as soon as possible, but no later than 60 days from receipt of this information. The
12 licensee shall respond within 30 days. If the licensee's response to the complaint satisfies
13 the board that the complaint does not merit further investigation or action, the matter may
14 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 adequate
18 notice of the conference and of the issues to be discussed. The conference must be
19 conducted in executive session of the board, pursuant to Title 1, section 405, unless
20 otherwise requested by the licensee. Statements made at the conference may not be
21 introduced at a subsequent formal hearing unless all parties consent.

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

25 A. With the consent of the licensee, enter into a consent agreement that fixes the
26 period and terms of probation best adapted to protect the public health and safety and
27 to rehabilitate or educate the licensee. A consent agreement may be used to terminate
28 a complaint investigation, if entered into by the board, the licensee and the Attorney
29 General's office;

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

35 C. If the board concludes that modification or nonrenewal of the license is in order,
36 the board shall ~~hold~~ refer the complaint to the Dental Adjudicatory Panel established
37 in section 1080 for the purpose of holding an adjudicatory hearing in accordance with
38 the provisions of the Maine Administrative Procedure Act, Title 5, chapter 375,
39 subchapter 4, except that the Maine Rules of Evidence apply to all adjudicatory
40 hearings; or

1 D. If the board concludes that suspension or revocation of the license is in order,
2 the board shall notify the licensee of the reasons for the suspension or revocation and
3 the facts on which they are based, and the licensee has the right to request an informal
4 conference with the members of the board. If the board continues to believe that
5 suspension or revocation of the license is in order, the board shall file a complaint in
6 the District Court in accordance with Title 4, chapter 5.

7 The authority to take action pursuant to Title 10, section 8003, subsection 5, paragraph
8 A-1, subparagraphs (2) to (4) and paragraph C, subparagraph (3) is granted to the Dental
9 Adjudicatory Panel and not to the board.

10 **Sec. 3. 32 MRSA §1080** is enacted to read:

11 **§1080. Dental Adjudicatory Panel**

12 The Dental Adjudicatory Panel, referred to in this section as "the panel," is
13 established.

14 **1. Purpose of the panel.** The purpose of the panel is to provide for an adjudicatory
15 hearing independent of the board after the board conducts the initial investigation of a
16 complaint against a licensee and refers the complaint to the panel.

17 **2. Appointments.** The panel consists of 5 members appointed by the Governor as
18 follows:

19 A. One member must be a dental hygienist;

20 B. One member must be a dentist; and

21 C. Three members must be dentists.

22 A member must be licensed to practice in this State and may not be a member of the
23 board.

24 **3. Terms.** Members of the panel serve at the pleasure of the Governor and must be
25 appointed for 5-year terms. A member may continue to serve until that member's
26 replacement is appointed and confirmed. A vacancy must be filled for the remainder of
27 the unexpired term. Members may be reappointed.

28 **4. Chair.** The panel shall each year select a chair from among its membership. A
29 member may serve as chair for more than one term.

30 **5. Responsibilities.** The panel has the following responsibilities and authority.

31 A. Upon referral of a complaint to the panel by the board pursuant to section 1077,
32 subsection 1, paragraph C, the panel shall hold an adjudicatory hearing in accordance
33 with the provisions of Title 5, chapter 375, subchapter 4, except that the Maine Rules
34 of Evidence apply to all adjudicatory hearings.

35 B. Upon completion of the adjudicatory hearing, the panel may:

36 (1) Modify or refuse to renew the license of the licensee who is the subject of the
37 complaint; or

