

# MAINE STATE LEGISLATURE

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# 126th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2013

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Legislative Document

No. 1166

S.P. 403

In Senate, March 26, 2013

### **An Act Regarding Records Retention by Mental Health Practitioners**

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Reference to the Committee on Health and Human Services suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate

Presented by Senator LACHOWICZ of Kennebec.  
Cosponsored by Representative NADEAU of Winslow and  
Senators: GRATWICK of Penobscot, MAZUREK of Knox, Representative: HICKMAN of  
Winthrop.

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

2 **Sec. 1. 32 MRSA §3824, sub-§§7 and 8** are enacted to read:

3 **7. Client record retention and destruction requirements.** The board shall ensure  
4 that the requirements for client record retention and destruction set out in this subsection  
5 are met.

6 A. An applicant shall file with the application for licensure and a licensee shall file  
7 with any application for renewal of licensure, in a form as required by the board, a  
8 plan for retention of client records in the event of the disability or death of the  
9 licensee.

10 B. A licensee shall retain records of a client, including records in the licensee's  
11 possession from another mental health professional who treated the client, in a secure  
12 and private location during the period of treatment and for 3 years after the last date  
13 of service for adult clients and for 3 years after the age of majority of minor clients.

14 C. A licensee, when discontinuing practice, shall provide notice to each client of the  
15 closure of the practice and the client's right to obtain the client's records.

16 D. A licensee, when planning to destroy client records, shall publish notice in a  
17 newspaper of general circulation in the county in which the licensee practiced of the  
18 intention to destroy records at least 3 months prior to the date of destruction.

19 E. A licensee, when destroying client records, shall do so by use of an entity in the  
20 State that provides confidential document shredding services.

21 **8. Client record retention notification.** Within 24 hours of receiving notice that  
22 client records are being retained by a licensee in a manner that does not meet the  
23 requirements of subsection 7, the board shall act to secure the records in the Office of the  
24 Attorney General until such time as secure and private retention has been arranged for the  
25 time period required under subsection 7, paragraph B.

26 **Sec. 2. 32 MRSA §7030, sub-§§6 and 7** are enacted to read:

27 **6. Client record retention and destruction requirements.** The board shall ensure  
28 that the requirements for client record retention and destruction set out in this subsection  
29 are met.

30 A. An applicant shall file with the application for licensure and a licensee shall file  
31 with any application for renewal of licensure, in a form as required by the board, a  
32 plan for retention of client records in the event of the disability or death of the  
33 licensee.

34 B. A licensee shall retain records of a client, including records in the licensee's  
35 possession from another mental health professional who treated the client, in a secure  
36 and private location during the period of treatment and for 3 years after the last date  
37 of service for adult clients and for 3 years after the age of majority of minor clients.

38 C. A licensee, when discontinuing practice, shall provide notice to each client of the  
39 closure of the practice and the client's right to obtain the client's records.

1           D. A licensee, when planning to destroy client records, shall publish notice in a  
2           newspaper of general circulation in the county in which the licensee practiced of the  
3           intention to destroy records at least 3 months prior to the date of destruction.

4           E. A licensee, when destroying client records, shall do so by use of an entity in the  
5           State that provides confidential document shredding services.

6           **7. Client record retention notification.** Within 24 hours of receiving notice that  
7           client records are being retained by a licensee in a manner that does not meet the  
8           requirements of subsection 6, the board shall act to secure the records in the Office of the  
9           Attorney General until such time as secure and private retention has been arranged for the  
10           time period required under subsection 6, paragraph B.

11           **Sec. 3. 32 MRSA §13853, sub-§§16 and 17** are enacted to read:

12           **16. Client record retention and destruction requirements.** The board shall ensure  
13           that requirements for client record retention and destruction set out in this subsection are  
14           met.

15           A. An applicant shall file with the application for licensure and a licensee shall file  
16           with any application for renewal of licensure, in a form as required by the board, a  
17           plan for retention of client records in the event of the disability or death of the  
18           licensee.

19           B. A licensee shall retain records of a client, including records in the licensee's  
20           possession from another mental health professional who treated the client, in a secure  
21           and private location during the period of treatment and for 3 years after the last date  
22           of service for adult clients and for 3 years after the age of majority of minor clients.

23           C. A licensee, when discontinuing practice, shall provide notice to each client of the  
24           closure of the practice and the client's right to obtain the client's records.

25           D. A licensee, when planning to destroy client records, shall publish notice in a  
26           newspaper of general circulation in the county in which the licensee practiced of the  
27           intention to destroy records at least 3 months prior to the date of destruction.

28           E. A licensee, when destroying client records, shall do so by use of an entity in the  
29           State that provides confidential document shredding services.

30           **17. Client record retention notification.** Within 24 hours of receiving notice that  
31           client records are being retained by a licensee in a manner that does not meet the  
32           requirements of subsection 16, the board shall act to secure the records in the Office of  
33           the Attorney General until such time as secure and private retention has been arranged for  
34           the time period required under subsection 16, paragraph B.

35           **Sec. 4. 34-B MRSA §1203-A, sub-§9** is enacted to read:

36           **9. Agency client records.** An agency or facility applying for licensure or for  
37           renewal of a license pursuant to this section shall, as part of the application process, file a  
38           plan in a form as required by the department for retention and destruction of client  
39           records. The plan must provide that when an agency or facility ceases operation the first  
40           priority for payment from the assets of the agency or facility is the payment of taxes and

1 the payment of other obligations required by law and the second priority is payment for  
2 the costs of client record retention and destruction.

3

### **SUMMARY**

4       This bill requires mental health agencies and mental health professionals to plan for  
5 and provide secure and private retention of client records and record destruction after  
6 specified terms or when an agency or facility ceases to operate or a professional ceases to  
7 practice.