

MAINE STATE LEGISLATURE

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126th MAINE LEGISLATURE

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Legislative Document

No. 1437

H.P. 1026

House of Representatives, April 23, 2013

An Act To Amend the Laws Regarding Licensure of Physicians and Physician Assistants

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

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

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative VOLK of Scarborough.
Cosponsored by Senator PATRICK of Oxford and
Representative: MASON of Topsham.

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

2 **Sec. 1. 24 MRSA §2505, first ¶**, as amended by PL 2007, c. 380, §1, is further
3 amended to read:

4 Any professional competence committee within this State and any physician or
5 physician assistant licensed to practice or otherwise lawfully practicing within this State
6 shall, and any other person may, report the relevant facts to the appropriate board relating
7 to the acts of any physician or physician assistant in this State if, in the opinion of the
8 committee, physician, physician assistant or other person, the committee or individual has
9 reasonable knowledge of acts of the physician or physician assistant amounting to gross
10 or repeated medical malpractice, habitual drunkenness, addiction to the use of drugs,
11 professional incompetence, unprofessional conduct or sexual misconduct identified by
12 board rule. The failure of any such professional competence committee or any such
13 physician or physician assistant to report as required is a civil violation for which a fine
14 of not more than \$1,000 may be adjudged. The identity of any reporting physician or
15 physician assistant must be held confidential unless it is necessary to the investigation or
16 adjudication of the report by the board.

17 **Sec. 2. 24 MRSA §2505, 2nd ¶**, as amended by PL 1997, c. 107, §3, is further
18 amended to read:

19 Except for specific protocols developed by a board pursuant to Title 32, section 1073,
20 2596-A or 3298, a physician or physician assistant, dentist or committee is not
21 responsible for reporting misuse of alcohol or drugs or professional incompetence or
22 malpractice as a result of physical or mental infirmity or by the misuse of alcohol or
23 drugs discovered by the physician, physician assistant, dentist or committee as a result of
24 participation or membership in a professional review committee or with respect to any
25 information acquired concerning misuse of alcohol or drugs or professional incompetence
26 or malpractice as a result of physical or mental infirmity or by the misuse of alcohol or
27 drugs, as long as that information is reported to the professional review committee.
28 ~~Nothing in this~~ This section may does not prohibit an impaired physician, physician
29 assistant or dentist from seeking alternative forms of treatment.

30 **Sec. 3. 24 MRSA §2506, first ¶**, as amended by PL 2005, c. 397, Pt. C, §15 and
31 affected by §16, is further amended to read:

32 A health care provider or health care entity shall, within 60 days, report in writing to
33 the disciplined practitioner's board or authority the name of any licensed, certified or
34 registered employee or person privileged by the provider or entity whose employment,
35 including employment through a 3rd party, or privileges have been revoked, suspended,
36 limited or terminated or who resigned while under investigation or to avoid investigation
37 for reasons related to clinical competence or unprofessional conduct, together with
38 pertinent information relating to that action. Pertinent information includes: a description
39 of the adverse action; the name of the practitioner involved; the date, the location and a
40 description of the event or events giving rise to the adverse action; and identification of
41 the complainant giving rise to the adverse action. Upon written request, the following
42 information must be released to the board or authority within 20 days of receipt of the

1 request: the names of the patients whose care by the disciplined practitioner gave rise to
2 the adverse action; medical records relating to the event or events giving rise to the
3 adverse action; written statements signed or prepared by any witness or complainant to
4 the event; and related correspondence between the practitioner and the provider or entity.
5 The report must include situations in which employment, including employment through
6 a 3rd party, or privileges have been revoked, suspended, limited or otherwise adversely
7 affected by action of the health care practitioner while the health care practitioner was the
8 subject of a proceeding regarding employment or a disciplinary proceedings proceeding,
9 and it also must include situations where employment, including employment through a
10 3rd party, or privileges have been revoked, suspended, limited or otherwise adversely
11 affected by act of the health care practitioner in return for the health care provider's or
12 health care entity's terminating such proceeding. Any reversal, modification or change of
13 action reported pursuant to this section must be reported immediately to the practitioner's
14 board or authority, together with a brief statement of the reasons for that reversal,
15 modification or change. If the adverse action requiring a report as a result of a reversal,
16 modification or change of action consists of the revocation, suspension or limitation of
17 employment, including employment through a 3rd party, or clinical privileges of a
18 physician, physician assistant or advanced practice registered nurse by a health care
19 provider or health care entity for reasons relating to clinical competence or unprofessional
20 conduct and is taken pursuant to personnel or employment rules or policies, medical staff
21 bylaws or other credentialing and privileging policies, whether or not the practitioner is
22 employed by that health care provider or entity, then the provider or entity shall include
23 in its initial report to the disciplined practitioner's licensing board or authority the names
24 of all patients whose care by the disciplined practitioner gave rise to the adverse action.
25 The failure of any health care provider or health care entity to report as required is a civil
26 violation for which a fine of not more than \$5,000 may be adjudged.

27 **Sec. 4. 24 MRSA §2905, sub-§1**, as amended by PL 1991, c. 217, is further
28 amended to read:

29 **1. Disallowance of recovery on grounds of lack of informed consent.** ~~No~~
30 ~~recovery may be~~ Recovery is not allowed against any physician, physician assistant,
31 podiatrist, dentist or any health care provider upon the grounds that the health care
32 treatment was rendered without the informed consent of the patient or the patient's
33 spouse, parent, guardian, nearest relative or other person authorized to give consent for
34 the patient when:

35 A. The action of the physician, physician assistant, podiatrist or dentist in obtaining
36 the consent of the patient or other person authorized to give consent for the patient
37 was in accordance with the standards of practice among members of the same health
38 care profession with similar training and experience situated in the same or similar
39 communities;

40 B. A reasonable person, from the information provided by the physician, physician
41 assistant, podiatrist or dentist under the circumstances, would have a general
42 understanding of the procedures or treatments and of the usual and most frequent
43 risks and hazards inherent in the proposed procedures or treatments ~~which that~~ that are
44 recognized and followed by other physicians, physician assistants, podiatrists or
45 dentists engaged in the same field of practice in the same or similar communities; or

1 C. A reasonable person, under all surrounding circumstances, would have undergone
2 such treatment or procedure had that person been advised by the physician, physician
3 assistant, podiatrist or dentist in accordance with paragraphs A and B or this
4 paragraph.

5 For purposes of this subsection, the physician, physician assistant, podiatrist, dentist or
6 health care provider may rely upon a reasonable representation that the person giving
7 consent for the patient is authorized to give consent unless the physician, physician
8 assistant, podiatrist, dentist or health care provider has notice to the contrary.

9 **Sec. 5. 32 MRSA §3270-C, sub-§2**, as amended by PL 1999, c. 547, Pt. B, §66
10 and affected by §80, is further amended to read:

11 **2. Consent to physical or mental examination; objections to admissibility of**
12 **examiner's testimony waived.** For the purposes of this section, every physician assistant
13 registered under these rules who accepts the privilege of rendering medical services in
14 this State by the filing of an application and of biannual registration renewal:

15 A. Is deemed to have consented to a mental or physical examination by a physician
16 or other person selected or approved by the board when directed in writing by the
17 board; and

18 B. Is deemed to have waived all objections to the admissibility of the examining
19 physician's or other person's testimony or reports on the ground that these constitute a
20 privileged communication.

21 Pursuant to Title 4, section 184, subsection 6, the District Court shall immediately
22 suspend the certificate of a physician assistant who can be shown, through the results of
23 the medical or physical examination conducted under this section or through other
24 competent evidence, to be unable to render medical services with reasonable skill and
25 safety to patients by reason of mental illness, alcohol intemperance, excessive use of
26 drugs or narcotics or as a result of a mental or physical condition interfering with the
27 competent rendering of medical services.

28 **Sec. 6. 32 MRSA §3271, sub-§7**, as enacted by PL 2007, c. 380, §2, is amended
29 to read:

30 **7. Special license categories.** The board may issue a license limited to the practice
31 of administrative medicine, or any other special license, as defined by routine technical
32 rule of the board adopted pursuant to Title 5, chapter 375, subchapter 2-A.

33 **Sec. 7. 32 MRSA §3282-A, sub-§1, ¶D**, as amended by PL 1999, c. 547, Pt. B,
34 §67 and affected by §80, is repealed.

35 **Sec. 8. 32 MRSA §3282-A, sub-§2, ¶A**, as enacted by PL 1983, c. 378, §53, is
36 amended to read:

37 A. The practice of fraud ~~or~~, deceit or misrepresentation in obtaining a license under
38 this chapter or in connection with service rendered within the scope of the license
39 issued;

1 **Sec. 9. 32 MRSA §3282-A, sub-§2, ¶L**, as amended by PL 1997, c. 680, Pt. C,
2 §7, is further amended to read:

3 L. Failure to comply with the requirements of Title 24, section 2905-A; ~~or~~

4 **Sec. 10. 32 MRSA §3282-A, sub-§2, ¶M**, as enacted by PL 1997, c. 680, Pt. C,
5 §8, is amended to read:

6 M. Revocation, suspension or restriction of a license to practice medicine or other
7 disciplinary action; denial of an application for a license; or surrender of a license to
8 practice medicine following the institution of disciplinary action by another state or a
9 territory of the United States or a foreign country if the conduct resulting in the
10 disciplinary or other action involving the license would, if committed in this State,
11 constitute grounds for discipline under the laws or rules of this State;

12 **Sec. 11. 32 MRSA §3282-A, sub-§2, ¶¶N to R** are enacted to read:

13 N. Engaging in any activity requiring a license under the governing law of the board
14 that is beyond the scope of acts authorized by the license held;

15 O. Continuing to act in a capacity requiring a license under the governing law of the
16 board after expiration, suspension or revocation of that license;

17 P. Noncompliance with an order or consent agreement of the board;

18 Q. Failure to produce upon request of the board any documents in the licensee's
19 possession or under the licensee's control concerning a pending complaint or
20 proceeding or any matter under investigation by the board; or

21 R. Failure to timely respond to a complaint notification sent by the board.

22 **Sec. 12. 32 MRSA §3286, first ¶**, as amended by PL 1993, c. 600, Pt. A, §219, is
23 further amended to read:

24 Upon its own motion or upon complaint, the board, in the interests of public health,
25 safety and welfare, shall treat as an emergency a complaint or allegation that an
26 individual licensed under this chapter is or may be unable to practice medicine with
27 reasonable skill and safety to patients by reason of mental illness, alcohol intemperance,
28 excessive use of drugs, narcotics or as a result of a mental or physical condition
29 interfering with the competent practice of medicine. In enforcing this paragraph, the
30 board may compel a physician to submit to a mental or physical examination by
31 ~~physicians designated by it~~ a physician or another person designated by the board.
32 Failure of a physician to submit to this examination when directed constitutes an
33 admission of the allegations against the physician, unless the failure was due to
34 circumstances beyond the physician's control, upon which a final order of disciplinary
35 action may be entered without the taking of testimony or presentation of evidence. A
36 physician affected under this paragraph must, at reasonable intervals, be afforded an
37 opportunity to demonstrate that the physician can resume the competent practice of
38 medicine with reasonable skill and safety to patients.

39 **Sec. 13. 32 MRSA §3286, 2nd ¶**, as amended by PL 1997, c. 271, §11, is further
40 amended to read:

1 For the purpose of this chapter, by practicing or by making and filing a biennial
2 license to practice medicine in this State, every physician licensed under this chapter who
3 accepts the privilege to practice medicine in this State is deemed to have given consent to
4 a mental or physical examination when directed in writing by the board and to have
5 waived all objections to the admissibility of the ~~examining physicians'~~ examiner's
6 testimony or examination reports on the grounds that the testimony or reports constitute a
7 privileged communication.

8 SUMMARY

9 This bill amends the Maine Health Security Act and the laws governing the Board of
10 Licensure in Medicine as follows.

11 1. It provides that physician assistants have the same duty as physicians to report acts
12 of a physician amounting to gross or repeated medical malpractice, habitual drunkenness,
13 addiction to the use of drugs, professional incompetence, unprofessional conduct or
14 sexual misconduct. It also provides that physician assistants may be the subject of such
15 reports.

16 2. It clarifies that a health care provider or health care entity is required to report
17 disciplinary action taken against an employee, even if that person is employed by a 3rd
18 party.

19 3. It provides that recovery is not allowed against a physician assistant on the
20 grounds that treatment was rendered without the informed consent of the patient as long
21 as certain conditions are met. This protection is already provided in current law for
22 similar health care providers.

23 4. It allows the board to specify individuals other than physicians for the purpose of
24 conducting examinations of physicians and physician assistants to determine whether a
25 physician or physician assistant is mentally and physically competent.

26 5. It allows the board, by rulemaking, to issue special licenses in addition to a special
27 license for the practice of administrative medicine.

28 6. It repeals a requirement that the board, upon a finding that a suspension or
29 revocation of a license is in order, file a complaint in the District Court.

30 7. It specifies that misrepresentation in obtaining a license or in connection with
31 service rendered is grounds for discipline and adds 5 other grounds for discipline,
32 including engaging in an activity that requires licensing without a license and continuing
33 to act in a capacity requiring a license under the governing law of the board after
34 expiration, suspension or revocation of that license.