

MAINE STATE LEGISLATURE

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127th MAINE LEGISLATURE

FIRST REGULAR SESSION-2015

Legislative Document

No. 1156

H.P. 794

House of Representatives, March 31, 2015

An Act Regarding the Board of Dental Examiners

(EMERGENCY)

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.

A handwritten signature in cursive script that reads "R. B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative MASTRACCIO of Sanford.
Cosponsored by Senator PATRICK of Oxford and
Representatives: AUSTIN of Gray, BATES of Westbrook, CAMPBELL of Newfield,
FECTEAU of Biddeford, GILBERT of Jay, STETKIS of Canaan, WARD of Dedham, Senator:
VOLK of Cumberland.

1 **Emergency preamble. Whereas,** acts and resolves of the Legislature do not
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3 **Whereas,** Public Law 2011, chapter 581 established dental adjudicatory panels,
4 which had sole authority to hold an adjudicatory hearing regarding disciplinary actions
5 for a person licensed by the Board of Dental Examiners; and

6 **Whereas,** the law establishing the dental adjudicatory panels was repealed
7 September 15, 2014, leaving the Board of Dental Examiners without authority to hold
8 adjudicatory hearings on disciplinary actions; and

9 **Whereas,** it is in the best interest of the public that there be a process in place to
10 ensure that the public is served by competent and honest practitioners in the field of
11 dentistry; and

12 **Whereas,** this legislation needs to take effect as soon as possible to restore the
13 authority of the Board of Dental Examiners to adjudicate disciplinary actions; and

14 **Whereas,** in the judgment of the Legislature, these facts create an emergency within
15 the meaning of the Constitution of Maine and require the following legislation as
16 immediately necessary for the preservation of the public peace, health and safety; now,
17 therefore,

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

19 **Sec. 1. 32 MRSA §1077, sub-§1,** as amended by PL 2011, c. 581, §1, is further
20 amended to read:

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

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

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

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

1 A. With the consent of the licensee, enter into a consent agreement that takes any
2 action authorized by Title 10, section 8003, subsection 5 or Title 10, section 8003-D.
3 A consent agreement may be used to terminate a complaint investigation, if entered
4 into by the board, the licensee and the Attorney General's office;

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

10 C. If the board concludes that denial of initial licensure or, modification or
11 nonrenewal of an existing a license is in order warranted, the board may refer the
12 complaint to a dental adjudicatory panel, convened pursuant to section 1080, for the
13 purpose of holding hold an adjudicatory hearing in accordance with the provisions of
14 the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter 4 and may
15 take any action authorized by subsection 2 or Title 10, section 8003, subsection 5; or

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

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

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

30 **Emergency clause.** In view of the emergency cited in the preamble, this
31 legislation takes effect when approved.

32 SUMMARY

33 Public Law 2011, chapter 581 established dental adjudicatory panels and gave those
34 panels sole authority to hold adjudicatory hearings regarding disciplinary actions for
35 persons licensed by the Board of Dental Examiners. The board retained investigative
36 powers but all complaints were required to be referred to a dental adjudicatory panel for a
37 disciplinary hearing. The section of law establishing the adjudicatory panels was
38 repealed on September 15, 2014, leaving the board without a means to hold disciplinary
39 hearings.

40 This bill returns to the Board of Dental Examiners the authority to conduct
41 disciplinary hearings.