

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND FOURTEENTH LEGISLATURE
FIRST REGULAR SESSION

December 7, 1988 to July 1, 1989

Chapters 1 - 502

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PUBLIC LAWS
OF THE
STATE OF MAINE

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ONE HUNDRED AND FOURTEENTH LEGISLATURE

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4. Privileged or confidential communications. The physician-patient privilege under the Maine Rules of Evidence is abrogated in relation to a report authorized under subsection 1.

See title page for effective date.

CHAPTER 268

S.P. 178 - L.D. 335

An Act to Strengthen the Social Worker Training and Education Requirements

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

Sec. 1. 22 MRSA c. 1063 is enacted to read:

CHAPTER 1063

SOCIAL WORKERS' AND CASEWORKERS' TRAINING

§3911. Training plan

The department shall develop a training plan for persons employed in social worker and caseworker job classifications. The department shall establish the goals and objectives of the plan. The department shall also establish goals and objectives for each course and training program that must be designed to meet the goals and objectives of the plan. The plan shall include, but is not limited to:

1. Differentiation of training to meet specific needs.

Courses and training programs designed to meet the specific needs of social workers and caseworkers engaged in different activities based on the different responsibilities of these social workers and caseworkers;

2. Mandatory training. Courses and training programs designed to meet the specific needs of social workers and caseworkers for which successful completion shall be mandatory;

3. Optional training. Optional courses and training programs for social workers and caseworkers;

4. Assessment and investigation. Courses and training programs in assessment and investigation that shall be mandatory for social workers and caseworkers who conduct investigations or assessments involving clients of the department that may result in the filing of civil or criminal actions;

5. Sources of training. A description of courses and training programs that departmental staff will conduct and a description of courses and training programs to be conducted by persons outside the department;

6. Evaluation procedure. An evaluation procedure by which the effectiveness of the courses and training pro-

grams can be determined. The department, to the greatest possible extent, will use objective criteria to conduct evaluations of courses and training programs; and

7. Equivalent training. Provisions for the waiver of training programs and courses for social workers and caseworkers with equivalent training or training that exceeds the training requirements in the plan.

§3912. Implementation

The department shall establish a schedule governing successful completion of course and training requirements for newly employed social workers and caseworkers of the department and a schedule for all other social workers and caseworkers currently employed by the department.

§3913. Report

The department shall report to the joint standing committee of the Legislature having jurisdiction over human resource matters and the joint standing committee of the Legislature having jurisdiction over state and local government regarding the training plan and any findings and recommendations, including any necessary implementing legislation of the department, no later than January 3, 1990. The report shall include a statistical analysis of social workers who have taken and completed various courses and training programs provided by the department or by agencies, organizations, or persons outside the department.

Sec. 2. 32 MRSA §7030, sub-§5 is enacted to read:

5. Continuing educational requirements. The board may establish continuing educational requirements as the board deems necessary. In developing these requirements, the board shall consider training requirements for social workers who are required to conduct investigations or assessments which may lead to the filing of civil or criminal actions.

See title page for effective date.

CHAPTER 269

S.P. 155 - L.D. 275

An Act to Strengthen the Regulation of Insurance

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

Sec. 1. 24 MRSA §2323, as repealed and replaced by PL 1979, c. 558, §4, is amended to read:

§2323. Order

The superintendent shall issue his an order or decision within 30 days after the close of the hearing, or of any rehearing or reargument or within such other period as the

superintendent for good cause may require, but not to exceed 30 days. In his the order or decision, the superintendent shall either approve or disapprove the rate filing. If he the superintendent disapproves the rate filing, the superintendent shall establish the date on which the filing is no longer effective, specify the filing he the superintendent would approve and authorize the organization to submit a new filing in accordance with the terms of his the order or decision.

Sec. 2. 24-A MRSA §12, as repealed and replaced by PL 1969, c. 177, §1-A, is repealed.

Sec. 3. 24-A MRSA §12-A is enacted to read:

§12-A. Civil penalty and enforcement provisions

1. Civil penalty. Civil penalties may be assessed against any person who:

A. Violates any provision of this Title, Title 24 or any other statute enforced by the superintendent for which a different civil penalty is not provided;

B. Violates any rule lawfully adopted by the superintendent; or

C. Violates any lawful order of the superintendent which has not been stayed by order of the superintendent or the Superior Court.

The Superior Court, upon an action brought by the Attorney General, may assess a civil penalty of not less than \$500 and not more than \$5,000 for each violation in the case of an individual, and not less than \$2,000 and not more than \$15,000 for each violation in the case of a corporation or other entity.

The superintendent, following an adjudicatory hearing, may assess a civil penalty of up to \$500 for each violation in the case of an individual, and a civil penalty of up to \$2,000 for each violation in the case of a corporation or entity other than an individual. The superintendent may assess a civil penalty only if the Attorney General elected not to pursue an action in Superior Court to seek civil penalties. The Attorney General shall notify the superintendent in writing whether or not the Attorney General elects to pursue an action in Superior Court within 90 days after receiving a request from the superintendent for such an election.

2. Cease and desist orders. The superintendent may issue a cease and desist order following an adjudicatory hearing held in conformance with Title 5, chapter 375, subchapter IV, if the superintendent finds that any person has engaged in or is engaging in any act or practice in violation of any law administered or enforced by the superintendent, any rules promulgated under that law or any lawful order of the superintendent.

A. A cease and desist order shall be effective upon expiration of the time allowed for appeals from the superintendent's orders, regardless of whether an

appeal is taken, unless stayed pursuant to Title 5, section 11004.

B. In the event an appeal is taken, the court shall issue its own order for compliance to the extent that the superintendent's order is affirmed.

C. Violation of any cease and desist order shall be punishable as a violation of this Title in accordance with this section.

3. Reprimand or censure. The superintendent may issue a letter of reprimand or censure to any licensee, but only after opportunity for hearing has been provided to any and all persons who are subjects of the reprimand.

4. Refunds of overcharges. In the event that any insurer, nonprofit hospital service plan, nonprofit medical service plan, nonprofit health care plan, health maintenance organization or preferred provider organization makes charges to any person which are not in conformity with a filing which it is required to submit for approval or disapproval by this Title or Title 24, the superintendent may order that refunds of any overcharges be made.

5. Election of enforcement options. The superintendent may elect to utilize any or all of the enforcement options provided by this section, in combination or in sequence, as the superintendent deems appropriate. The penalties and provisions of this section are in addition to any other penalty provided by law.

Sec. 4. 24-A MRSA §212, as amended by PL 1977, c. 694, §386, is further amended to read:

§212. Rules and regulations

Subject to the applicable requirements and procedures of the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter II, the superintendent may make, promulgate, amend and rescind reasonable rules and regulations to aid the administration or effectuation of any provisions of this Title or of the following statutes to the extent administered or enforced by the superintendent: Title 5, chapter 501; Title 32, section 13773; and Title 39, sections 23, 23A and 107. ~~No such rule or regulation shall extend, modify or conflict with any law of this State or the reasonable implications thereof.~~

Sec. 5. 24-A MRSA §216, sub-§2, as amended by PL 1973, c. 585, §12, is further amended to read:

2. All records of the bureau shall be subject to public inspection, except as otherwise expressly provided by law as to particular matters; and except that records, correspondence and reports of investigation in connection with actual or claimed violations of this Title or prosecution or disciplinary action therefor shall be confidential. The confidential nature of any such record, correspondence or report shall not limit or affect use of the same by the superintendent in any such prosecution or action. This subsection shall not preclude participation by the superintendent in the estab-

ishment of an interstate complaint handling system which may involve the sharing of information with insurance regulatory officials in other jurisdictions and with the National Association of Insurance Commissioners, provided that the names of the complainant and insured remain confidential.

Sec. 6. 24-A MRSA §231, as amended by PL 1977, c. 694, §§393 to 395, is further amended to read:

§231. Conduct of hearing

1. The superintendent may hold a hearing in Augusta or any other place of convenience to parties and witnesses, as the superintendent determines. The superintendent or ~~his~~ the superintendent's designee shall preside at the hearing; and shall expedite the hearing and all procedures involved therein. Adjudicatory hearings shall be governed by the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV.

~~2. Any party to the hearing shall have the right to appear in person and by counsel, to be present during the giving of all evidence, to have a reasonable opportunity to inspect all documentary and other evidence and to examine and cross-examine witnesses, to present evidence in support of his interest and to have subpoenas issued by the superintendent to compel attendance of witnesses and production of evidence in his behalf. Testimony may be taken orally or by deposition, and any party shall have such right of introducing evidence by interrogatories or deposition as may obtain in a Superior Court.~~

~~3. Upon timely application, the superintendent shall permit any person showing that he is or may be substantially and directly affected by the proceeding to intervene as a party. The superintendent may, by order, allow any other interested person to intervene and participate as a full or limited party to the proceeding.~~

~~4. Formal rules of pleading or of evidence need not be observed at any hearing. Evidence shall be admitted if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. Irrelevant or unduly repetitious evidence may be excluded.~~

5. The hearing shall be public, unless the superintendent or hearing officer determines that a private hearing would be in the public interest, in which case ~~and only with the consent of all parties to the hearing~~; the hearing shall be private, subject to Title 1, section 405, subsection 6.

~~6. All hearings shall be recorded in a form susceptible to transcription. The recording shall be transcribed when necessary for the prosecution of an appeal. The Bureau of Insurance shall make the recordings available for inspection at the bureau's offices during normal business hours, and shall make copies of recordings or transcriptions of recordings available to any person at actual cost.~~

7. The validity of any hearing held in accordance with the notice thereof, or waiver of notice, shall not be affected by the failure of any person to attend or remain in attendance.

Sec. 7. 24-A MRSA §232, sub-§1, as amended by PL 1973, c. 585, §12, is further amended to read:

1. As to the subject of any examination, investigation or hearing being conducted by ~~him~~ the superintendent, the superintendent may subpoena witnesses and administer oaths or affirmations and examine any individual under oath, or take depositions; and by subpoena duces tecum may require the production of documentary and other evidence. Any delegation by the superintendent of power of subpoena shall be in writing. The procedures of Title 5, section 9060, subsection 1, shall also apply to the issuance of subpoenas.

Sec. 8. 24-A MRSA §234, as amended by PL 1973, c. 585, §12, is repealed and the following enacted in its place:

§234. Witnesses; immunity from prosecution

If any individual asks to be excused from testifying or from producing evidence of any kind in connection with any examination, hearing or investigation being conducted by the superintendent on the ground that the testimony or evidence required of that individual may tend to incriminate the individual or subject the individual to a penalty or forfeiture, and the Attorney General directs that individual to give testimony or produce evidence, the individual must comply with the directive. No testimony or other evidence so compelled, or any information directly or indirectly derived from that testimony or other evidence, may be used against the offering individual in any criminal, juvenile or civil violation proceeding, except that the testimony or other evidence may be used in a prosecution for perjury, false swearing, contempt or otherwise failing to comply with the directive to testify or produce evidence, or in a proceeding in which the individual has waived the immunity or privilege.

Sec. 9. 24-A MRSA §236, sub-§§4 to 8, as repealed and replaced by PL 1977, c. 694, §397, are repealed.

Sec. 10. 24-A MRSA §236, sub-§§9 and 10, as enacted by PL 1977, c. 694, §397, are repealed.

Sec. 11. 24-A MRSA §1539, sub-§1, as amended by PL 1977, c. 694, §407, is further amended to read:

1. ~~The Notwithstanding Title 5, chapter 375, subchapter VI, the superintendent may file a complaint with the Administrative Court seeking suspension or revocation of, after notice and opportunity for hearing, deny, revoke, suspend or limit the permissible activities under any license issued under this chapter or any surplus lines broker license if the superintendent has reason to believe finds that, as to the applicant or licensee, any of the following causes exist:~~

A. For any cause for which issuance of the license could have been refused had it then existed and been known to the superintendent.;

B. For violation of or noncompliance with any applicable provision of this Title, or for willful violation of any lawful rule, regulation or order of the superintendent.;

C. For obtaining or attempting to obtain any such license through misrepresentation, or for failure to disclose a material fact required to be disclosed in the application, or for fraud; ;

D. For misappropriation or conversion to ~~his~~ the applicant's or licensee's own use, or illegal withholding, or illegal failure to remit; moneys belonging to policyholders, or insurers, or beneficiaries, or others and received in conduct of business under the license; ;

E. For material misrepresentation of the terms of any existing or proposed insurance contract; ;

F. For willful overinsurance of property located in this State; ;

G. For holding at the same time licenses as a resident agent or broker in this and any other ~~State~~; state; or

H. If in conduct of ~~his~~ the licensee's affairs under the license, the licensee has used fraudulent, or coercive, or dishonest practices, or has been shown himself to be incompetent, or untrustworthy, or financially irresponsible, or a source of injury and loss to the public.

Sec. 12. 24-A MRSA §1539, sub-§2, as repealed and replaced by PL 1977, c. 694, §408, is amended to read:

2. The superintendent may ~~file a complaint with the Administrative Court seeking the suspension or revocation of deny, suspend, revoke or limit the permissible activities~~ under licenses held or applied for by a firm or corporation for any of such causes as relate to any individual designated or registered in the license to exercise its powers.

Sec. 13. 24-A MRSA §1539, sub-§3, as enacted by PL 1983, c. 419, §9, is amended to read:

3. ~~Notwithstanding subsections 1 and 2, the~~ The superintendent may revoke, suspend or refuse to renew any license issued under this chapter, pursuant to Title 5, section 10004, without proceeding in conformity with chapter 3 or Title 5, chapter 375, subchapter IV or VI, when:

A. The decision to take that action is based solely upon a conviction in court of any offense denominated in Title 5, section 5301, subsection 2, or a conviction in the courts of any other state or any country of an offense which would be denominated under Title 5, section 5301, had the offense occurred in this State. Any revocation, suspension or denial of license under this paragraph shall be in accordance with Title 5, sections 5302 to 5304;

B. The Maine license has been issued upon the basis of a reciprocal agreement with another government and the Maine action is based upon evidence, in the form of a certified copy, that the authority issuing the license which provided the basis for reciprocal licensing in this State has revoked or suspended its license; or

C. The health or physical safety of a person or persons is in immediate jeopardy at the time of the superintendent's action, and acting in accordance with chapter 3 or Title 5, chapter 375, subchapter IV or VI, would fail to adequately respond to a known risk, provided that the revocation, suspension or refusal to renew shall not continue for more than 30 days.

Sec. 14. 24-A MRSA §2736-B, as enacted by PL 1979, c. 558, §9, is amended to read:

§2736-B. Order

The superintendent shall issue ~~his~~ an order or decision within 30 days after the close of the hearing, or of any rehearing or reargument or within such other period as the superintendent for good cause may require, but not to exceed an additional 30 days. In ~~his~~ the order or decision, the superintendent shall either approve or disapprove the rate filing. If ~~he~~ the superintendent disapproves the rate filing, the superintendent shall establish the date on which the filing is no longer effective, specify the filing ~~he~~ the superintendent would approve and authorize the insurer to submit a new filing in accordance with the terms of ~~his~~ the order or decision.

Sec. 15. 24-A MRSA §3476, sub-§3, as amended by PL 1973, c. 585, §12, is further amended to read:

3. If the superintendent does not by affirmative action approve or disapprove the proposed change of control within 30 days after the date such application was so filed with ~~him~~ the superintendent, the proposed change may be made without such approval. Except; that if the superintendent gives notice to the parties of a hearing to be held by ~~him~~ the superintendent with respect to the proposed change of control, and the hearing is held within such 30 days or on a date mutually acceptable to the superintendent and the parties, the superintendent shall have ~~to~~ 30 days after the conclusion of the hearing within which to so approve or disapprove the proposed change; and if not so approved or disapproved, the change may thereafter be made without the superintendent's approval.

See title page for effective date.

CHAPTER 270

H.P. 303 - L.D. 415

An Act to Amend the Child and Family Services and Child Protection Act and the Law Governing Shelters for Children

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

Sec. 1. 22 MRSA §4007, sub-§3, as enacted by PL 1979, c. 733, §18, is amended to read: