LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-SIXTH LEGISLATURE

FIRST REGULAR SESSION
December 5, 2012 to July 10, 2013

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
OCTOBER 9, 2013

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH THE MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Augusta, Maine
2013

CHAPTER 355
H.P. 1026 - L.D. 1437

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

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

Sec. 1. 24 MRSA §2505, first ¶, as amended by PL 2013, c. 105, §2, is further amended to read:

Any professional competence committee within this State and any physician or physician assistant licensed to practice or otherwise lawfully practicing within this State shall, and any other person may, report the relevant facts to the appropriate board relating to the acts of any physician or physician assistant in this State if, in the opinion of the committee, physician, physician assistant or other person, the committee or individual has reasonable knowledge of acts of the physician or physician assistant amounting to gross or repeated medical malpractice, misuse of alcohol, drugs or other substances that may result in the physician's or the physician assistant's performing services in a manner that endangers the health or safety of patients, professional incompetence, unprofessional conduct or sexual misconduct identified by board rule. The failure of any such professional competence committee or any such physician or physician assistant to report as required is a civil violation for which a fine of not more than $1,000 may be adjudged.

Sec. 2. 24 MRSA §2505, 2nd ¶, as amended by PL 2013, c. 105, §3, is further amended to read:

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

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

A health care provider or health care entity shall, within 60 days, report in writing to the disciplined practitioner's board or authority the name of any licensed, certified or registered employee or person privileged by the provider or entity whose employment, including employment through a 3rd party, or privileges have been revoked, suspended, limited or terminated or who resigned while under investigation or to avoid investigation for reasons related to clinical competence or unprofessional conduct, together with pertinent information relating to that action. Pertinent information includes: a description of the adverse action; the name of the practitioner involved; the date, the location and a description of the event or events giving rise to the adverse action; and identification of the complainant giving rise to the adverse action. Upon written request, the following information must be released to the board or authority within 20 days of receipt of the request: the names of the patients whose care by the disciplined practitioner gave rise to the adverse action; medical records relating to the event or events giving rise to the adverse action; written statements signed or prepared by any witness or complainant to the event; and related correspondence between the practitioner and the provider or entity. The report must include situations in which employment, including employment through a 3rd party, or privileges have been revoked, suspended, limited or otherwise adversely affected by action of the health care practitioner while the health care practitioner was the subject of a proceeding regarding employment or a disciplinary ~~proceedings~~ proceeding, and it also must include situations where employment, including employment through a 3rd party, or privileges have been revoked, suspended, limited or otherwise adversely affected by act of the health care practitioner in return for the health care provider's or health care entity's terminating such proceeding. Any reversal, modification or change of action reported pursuant to this section must be reported immediately to the practitioner's board or authority, together with a brief statement of the reasons for that reversal, modification or change. If the adverse action requiring a report as a result of a reversal, modification or change of action consists of the revocation, suspension or limitation of employment, including employment through a 3rd party, or clinical privileges of a physician, physician assistant or advanced practice registered nurse by a health care provider or health care entity for reasons relating to clinical competence or unprofessional conduct and is taken pursuant to personnel or employment rules or policies, medical staff bylaws or other credentialing and privileging policies, whether or not the practitioner is employed by that health care provider or entity, then the provider or entity shall include in its initial report to the disciplined practitioner's licensing board or authority the names of all patients whose care by the disciplined practitioner gave rise to the adverse action. The failure of any health care provider or

health care entity to report as required is a civil violation for which a fine of not more than $5,000 may be adjudged.

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

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

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

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

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

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

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

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

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

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

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

Sec. 6. 32 MRSA §3271, sub-§2, as amended by PL 2005, c. 162, §2, is further amended to read:

2. Postgraduate training. Each applicant who has graduated from an accredited medical school on or after January 1, 1970 but before July 1, 2004 must have satisfactorily completed at least 24 months in a graduate educational program accredited by the Accreditation Council on Graduate Medical Education, the Canadian Medical Association or the Royal College of Physicians and Surgeons of Canada. Notwithstanding other requirements of postgraduate training, an applicant is eligible for licensure when the candidate has satisfactorily graduated from a combined postgraduate training program in which each of the contributing programs is accredited by the Accreditation Council on Graduate Medical Education and the applicant is eligible for accreditation by the American Board of Medical Specialties in both specialties. Each applicant who has graduated from an accredited medical school prior to January 1, 1970 must have satisfactorily completed at least 12 months in a graduate educational program accredited by the Accreditation Council on Graduate Medical Education, the Canadian Medical Association or the Royal College of Physicians and Surgeons of Canada. Each applicant who has graduated from an accredited medical school on or after July 1, 2004 or an unaccredited medical school must have satisfactorily completed at least 36 months in a graduate educational program accredited by the Accreditation Council on Graduate Medical Education, the Canadian Medical Association, the Royal College of Physicians and Surgeons of Canada or the Royal Colleges of England, Ireland or Scotland. An applicant who has completed 24 months of postgraduate training and has received an unrestricted endorsement from the director of an accredited graduate edu-

cation program in the State is considered to have satisfied the postgraduate training requirements of this subsection if the applicant continues in that program and completes 36 months of postgraduate training. Notwithstanding this subsection, an applicant who is board certified by the American Board of Medical Specialties is deemed to meet the postgraduate training requirements of this subsection. Notwithstanding this subsection, in the case of subspecialty or clinical fellowship programs, the board may accept in fulfillment of the requirements of this subsection postgraduate training at a hospital in which the subspecialty clinical program, such as a training program accredited by the American Dental Association Commission on Dental Accreditation or its successor organization, is not accredited but the parent specialty program is accredited by the Accreditation Council on Graduate Medical Education.

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

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

Sec. 8. 32 MRSA §3282-A, sub-§1, ¶D, as amended by PL 1999, c. 547, Pt. B, §67 and affected by §80, is repealed.

Sec. 9. 32 MRSA §3282-A, sub-§2, ¶A, as enacted by PL 1983, c. 378, §53, is amended to read:

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

Sec. 10. 32 MRSA §3282-A, sub-§2, ¶L, as amended by PL 1997, c. 680, Pt. C, §7, is further amended to read:

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

Sec. 11. 32 MRSA §3282-A, sub-§2, ¶M, as enacted by PL 1997, c. 680, Pt. C, §8, is amended to read:

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

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

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

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

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

Q. Failure to produce upon request of the board any documents in the licensee's possession or under the licensee's control concerning a pending complaint or proceeding or any matter under investigation by the board, unless otherwise prohibited by state or federal law; or

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

Sec. 13. 32 MRSA §3286, first ¶, as amended by PL 1993, c. 600, Pt. A, §219, is further amended to read:

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

Sec. 14. 32 MRSA §3286, 2nd ¶, as amended by PL 1997, c. 271, §11, is further amended to read:

For the purpose of this chapter, by practicing or by making and filing a biennial license to practice medicine in this State, every physician licensed under this chapter who accepts the privilege to practice medicine in this State is deemed to have given consent to a mental or physical examination when directed in

writing by the board and to have waived all objections to the admissibility of the ~~examining physicians'~~ examiner's testimony or examination reports on the grounds that the testimony or reports constitute a privileged communication.

See title page for effective date.

CHAPTER 356

H.P. 542 - L.D. 791

An Act To Increase Transparency and Improve Equity in Appeals to Superintendents' Agreements

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

Sec. 1. 20-A MRSA §5205, sub-§6, as amended by PL 1991, c. 365, §2, is further amended to read:

6. Transfer students. The following provisions apply to transfers of students from one school administrative unit to another.

A. Two superintendents may approve the transfer of a student from one school administrative unit to another if:

(1) They find that a transfer is in the student's best interest; and

(2) The student's parent approves.

The superintendents shall notify the commissioner of any transfer approved under this paragraph.

B. On the request of the parent of a student requesting transfer under paragraph A, the commissioner shall review the transfer. The commissioner's decision ~~shall be~~ is final and binding.

C. The superintendents shall annually review any transfer under this subsection.

D. For purposes of the state school subsidy, a student transferred under this subsection is considered a resident of the school administrative unit to which transferred. Upon request of the superintendent of schools in the unit in which a student is placed in accordance with this subsection, the state share percentage for subsidized educational costs for that student is equivalent to the state share percentage of the unit in which the student's parent or legal guardian resides or the average state share percentage, whichever is greater. If the parent or legal guardian does not reside in the State or can not be located, the subsidy is the state average subsidy.

E. A school administrative unit may not charge tuition for a transfer approved under this subsection.

A transfer approved under this subsection may be made only to a receiving school administrative unit that operates a public school that includes the grade level of the student whose parent requests the transfer.

See title page for effective date.

CHAPTER 357

H.P. 556 - L.D. 805

An Act To Require Notice to and Input from Municipalities in Which Certain Group Homes Are Located

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

Sec. 1. 34-B MRSA §3612 is enacted to read:

§3612. Municipal notification

With regard to residential services for persons committed to the custody of the commissioner pursuant to Title 15, chapter 5, 120 days prior to the opening of a residential facility by the department or to signing a contract with a community agency to provide a community-based residential facility, the department shall provide the specific location and detailed information to the municipality in which the facility is to be located. The department shall review any response or site alternatives provided by municipal officials prior to the opening of the facility or signing of the contract.

See title page for effective date.

CHAPTER 358

H.P. 835 - L.D. 1191

An Act To Strengthen the Fishing Laws

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

Sec. 1. 12 MRSA §6121, as amended by PL 2011, c. 598, §10, is further amended to read:

§6121. Fishways in existing dams or artificial obstructions

1. Commissioner's authority. In order to conserve, develop or restore anadromous fish resources, the commissioner and the Commissioner of Inland Fisheries and Wildlife may require a fishway to be erected, maintained, repaired or altered by the owners, lessors or other persons in control of any dam or other