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An Act To Make Certain Changes to the Board of Licensure in Medicine

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

Sec. 1. 32 MRSA §3282-A, sub-§1, as amended by PL 1999, c. 547, Pt. B, §67 and as affected by PL 1999, c. 547, Pt. B, §80, is further amended to read:

1. Disciplinary proceedings and sanctions. The board shall investigate a complaint, on its own motion or upon receipt of a written complaint filed with the board, regarding noncompliance with or violation of this chapter or any rules adopted by the board.

The board shall notify the licensee of the content of a complaint filed against the licensee as soon as possible, but not later than 60 days after receipt of this information. The licensee shall respond within 30 days. The board shall share the licensee's response with the complainant, unless the board determines that it would be detrimental to the health of the complainant to obtain the response. If the licensee's response to the complaint satisfies the board that the complaint does not merit further investigation or action, the matter may be dismissed, with notice of the dismissal to the complainant, if any.

If, in the opinion of the board, the factual basis of the complaint is or may be true and the complaint is of sufficient gravity to warrant further action, the board may request an informal conference with the licensee. The board shall provide the licensee with adequate notice of the conference and the issues to be discussed, as well as the licensee's right to be represented by counsel. The board shall provide the licensee with the ability to confer with counsel during the conference. The complainant may attend and may be accompanied by up to 2 individuals, including legal counsel. The conference must be conducted in executive session of the board, pursuant to Title 1, section 405, unless otherwise requested by the licensee. The licensee may, without prejudice, refuse to participate in an informal conference if the licensee prefers to request an adjudicatory hearing. Before the board decides what action to take at the conference or as a result of the conference, the board shall give the complainant a reasonable opportunity to speak. Statements made at the conference may not be introduced at a subsequent formal hearing unless all parties consent. The complainant, the licensee or either of their representatives shall maintain the confidentiality of the conference.

When a complaint has been filed against a licensee and the licensee moves or has moved to another state, the board may report to the appropriate licensing board in that state the complaint that has been filed, other complaints in the physician's record on which action was taken and disciplinary actions of the board with respect to that physician.

When an individual applies for a license under this chapter, the board may investigate the professional record of that individual, including professional records that the individual may have as a licensee in other states. The board may deny a license or authorize a restricted license based on the record of the applicant in other states.

If the board finds that the factual basis of the complaint is true and is of sufficient gravity to warrant further action, it may take any of the following actions it determines appropriate.

A. With the consent of the licensee, the board may enter into a consent agreement that fixes the period and terms of probation best adapted to protect the public health and safety and rehabilitate or educate the licensee. A consent agreement may be used to terminate a complaint investigation, if entered into by the board, the licensee and the Attorney General's office.

B. In consideration for acceptance of a voluntary surrender of the license, the board may negotiate stipulations, including terms and conditions for reinstatement, that ensure protection of the public health and safety and serve to rehabilitate or educate the licensee. These stipulations may be set forth only in a consent agreement signed by the board, the licensee and the Attorney General's office.

C. If the board concludes that modification or nonrenewal of the license is in order, the board shall hold an adjudicatory hearing in accordance with Title 5, chapter 375, subchapter IV4.

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

E. A consent agreement or modification of a license by the board that involves the licensee's participation in an alcohol or drug treatment program must provide the licensee with the right to select the alcohol or drug treatment program, as long as the program is approved or licensed by the Department of Health and Human Services, Office of Substance Abuse or other federally licensed treatment providers or state-licensed treatment providers. A consent agreement or modification of a license that involves the licensee's treatment by a licensed therapist must provide the licensee with the right to select a therapist from a broad selection of licensed therapists approved by the board.

The board shall require a licensee to notify all patients of the licensee of a probation or stipulation under which the licensee is practicing as a result of board disciplinary action. This requirement does not apply to a physician participating in an alcohol or drug treatment program pursuant to Title 24, section 2505, a physician who retires following charges made or complaints investigated by the board or a physician under the care of a professional and whose medical practices and services are not reduced, restricted or prohibited by the disciplinary action.

SUMMARY

This bill requires the Board of Licensure in Medicine to inform licensees of their right to be represented by counsel during an informal conference with the board involving a complaint against the licensee. This bill allows a licensee to confer with counsel during the conference. This bill also

provides licensees with the ability to refuse to participate in an informal conference with the board if an adjudicatory hearing is preferred. It also requires that any consent agreement that involves the licensee's participation in an alcohol or drug treatment program, or the licensee's treatment by a licensed therapist, must provide the licensee with the right to select the alcohol or drug treatment program or licensed therapist.