

§8003-B. Confidentiality of investigative records

1. During investigation. Unless otherwise provided by Title 24, chapter 21, all complaints and investigative records of the licensing boards, commissions and regulatory functions within or affiliated with the Department of Professional and Financial Regulation are confidential during the pendency of an investigation. Those records become public records upon the conclusion of an investigation unless confidentiality is required by some other provision of law. For purposes of this section, an investigation is concluded when:

A. A notice of an adjudicatory hearing under Title 5, chapter 375, subchapter 4 has been issued; [PL 2009, c. 465, §1 (AMD).]

B. [PL 1999, c. 687, Pt. C, §10 (RP).]

C. A consent agreement has been executed; or [PL 1989, c. 173 (NEW).]

D. A letter of dismissal has been issued or the investigation has otherwise been closed. [PL 1989, c. 173 (NEW).]

[PL 2009, c. 465, §1 (AMD).]

2. Exceptions. Notwithstanding subsection 1, during the pendency of an investigation, a complaint or investigative record may be disclosed:

A. To department employees designated by the commissioner; [PL 1989, c. 173 (NEW).]

B. To designated complaint officers of the appropriate board or commission; [PL 1989, c. 173 (NEW).]

C. By a department employee or complaint officer designated by the commissioner when, and to the extent, deemed necessary to facilitate the investigation; [PL 1989, c. 173 (NEW).]

D. To other state or federal agencies when the files contain evidence of possible violations of laws enforced by those agencies; [PL 1989, c. 173 (NEW).]

E. When, and to the extent, deemed necessary by the commissioner to avoid imminent and serious harm. The authority of the commissioner to make such a disclosure shall not be delegated; [PL 1989, c. 173 (NEW).]

F. Pursuant to rules which shall be promulgated by the department, when it is determined that confidentiality is no longer warranted due to general public knowledge of the circumstances surrounding the complaint or investigation and when the investigation would not be prejudiced by the disclosure; and [PL 1989, c. 173 (NEW).]

G. To the person investigated on request. The commissioner may refuse to disclose part or all of any investigative information, including the fact of an investigation, when the commissioner determines that disclosure would prejudice the investigation. The authority of the commissioner to make such a determination shall not be delegated. [PL 1989, c. 173 (NEW).]

[PL 1989, c. 173 (NEW).]

2-A. Certain client records confidential. Notwithstanding subsections 1 and 2, a treatment record provided to a licensing board or commission or in connection with a regulatory function within or affiliated with the department during investigation of a person licensed by the department in a medical, mental health, substance use disorder, psychological or health field that contains information personally identifying a licensee's client or patient is confidential during the pendency of the investigation and remains confidential upon the conclusion of the investigation. A treatment record may be disclosed only if:

A. The client or patient executes a written release that states that:

(1) Unless the release provides for more limited disclosure, execution of the release may result in the record becoming a public record; or

(2) If the client or patient wishes, execution of the release allows disclosure to only the person or persons clearly identified in the release. The release must require the person or persons identified in the release not to make a disclosure to another person; [PL 1993, c. 552, §1 (NEW).]

B. The disclosure is necessary under Title 22, chapter 857 concerning personnel and licensure actions; [PL 1993, c. 552, §1 (NEW).]

C. The disclosure is necessary under Title 22, section 3474 concerning reports of suspected adult abuse or exploitation; [PL 1993, c. 552, §1 (NEW).]

D. The disclosure is necessary under Title 22, section 4011-A concerning reports of suspected child abuse or neglect; or [PL 2001, c. 345, §1 (AMD).]

E. The disclosure is necessary under Title 22, section 7703 concerning reports of suspected child or adult abuse or neglect. [PL 1993, c. 552, §1 (NEW).]

A release executed by a client or patient does not operate to disclose a record otherwise made confidential by law.

This subsection does not prevent disclosure of records pursuant to an order of a court of competent jurisdiction upon good cause shown.

[PL 2017, c. 407, Pt. A, §50 (AMD).]

3. Attorney General records. The provision or disclosure of investigative records of the Department of the Attorney General to a departmental employee designated by the commissioner or to a complaint officer of a board or commission does not constitute a waiver of the confidentiality of those records for any other purposes. Further disclosure of those investigative records is subject to Title 16, section 804 and the discretion of the Attorney General.

[PL 2013, c. 267, Pt. B, §4 (AMD).]

4. Violation. A person who knowingly or intentionally makes a disclosure in violation of this section or who knowingly violates a condition of a release pursuant to subsection 2-A commits a civil violation for which a forfeiture not to exceed \$1,000 may be adjudged.

[PL 1993, c. 552, §2 (AMD).]

SECTION HISTORY

PL 1989, c. 173 (NEW). PL 1993, c. 552, §§1,2 (AMD). PL 1993, c. 719, §4 (AMD). PL 1993, c. 719, §12 (AFF). PL 1999, c. 386, §B6 (AMD). PL 1999, c. 687, §§C10,11 (AMD). PL 2001, c. 345, §1 (AMD). PL 2009, c. 465, §§1, 2 (AMD). PL 2013, c. 267, Pt. B, §4 (AMD). PL 2017, c. 407, Pt. A, §50 (AMD).

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