

## 32 §2591-A. DISCIPLINARY ACTIONS

### 32 §2591-A. DISCIPLINARY ACTIONS

**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 of 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, absent unusual circumstances justifying delay, not later than 60 days from 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 of the issues to be discussed. 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. 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.

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 licensee's record on which action was taken and disciplinary actions of the board with respect to that licensee.

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 considers appropriate:

A. With the consent of the licensee, enter into a consent agreement that fixes the period and terms of probation best adapted to protect the public health and safety and to 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; [1993, c. 600, Pt. A, §181 (AMD).]

B. In consideration for acceptance of a voluntary surrender of the license, negotiate stipulations, including terms and conditions for reinstatement, that ensure protection of the public health and safety and that 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; [1993, c. 600, Pt. A, §181 (AMD).]

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 the provisions of Title 5, chapter 375, subchapter IV; or [1997, c. 680, Pt. B, §2 (AMD).]

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. [1999, c. 547, Pt. B, §64 (AMD); 1999, c. 547, Pt. B, §80 (AFF).]

[ 1999, c. 547, Pt. B, §64 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

**2. Grounds for discipline.** The board may suspend or revoke a license pursuant to Title 5, section 10004. The following are grounds for an action to refuse to issue, modify, restrict, suspend, revoke or refuse to renew the license of an individual licensed under this chapter:

A. The practice of fraud or deceit in obtaining a license under this chapter or in connection with service rendered within the scope of the license issued; [1983, c. 378, §38 (NEW).]

B. Habitual substance abuse that has resulted or is foreseeably likely to result in the licensee performing services in a manner that endangers the health or safety of the licensee's patients; [1993, c. 600, Pt. A, §181 (AMD).]

C. A professional diagnosis of a mental or physical condition that has resulted or may result in the licensee performing the licensee's duties in a manner that endangers the health or safety of the licensee's patients; [1993, c. 600, Pt. A, §181 (AMD).]

D. Aiding or abetting the practice of osteopathic medicine by an individual not duly licensed under this chapter and who claims to be legally licensed; [1993, c. 600, Pt. A, §181 (AMD).]

E. Incompetence in the practice for which the licensee is licensed. A licensee is considered incompetent in the practice if the licensee has:

(1) Engaged in conduct that evidences a lack of ability or fitness to discharge the duty owed by the licensee to a client or patient or the general public; or

(2) Engaged in conduct that evidences a lack of knowledge, or inability to apply principles or skills to carry out the practice for which the licensee is licensed; [1993, c. 600, Pt. A, §181 (AMD).]

F. Unprofessional conduct. A licensee is considered to have engaged in unprofessional conduct if the licensee violates a standard of professional behavior that has been established in the practice for which the licensee is licensed; [1993, c. 600, Pt. A, §181 (AMD).]

G. Subject to the limitations of Title 5, chapter 341, conviction of a crime that involves dishonesty or false statement or that relates directly to the practice for which the licensee is licensed, or conviction of a crime for which incarceration for one year or more may be imposed; [1993, c. 600, Pt. A, §181 (AMD).]

H. A violation of this chapter or a rule adopted by the board; [1993, c. 600, Pt. A, §181 (AMD).]

I. Engaging in false, misleading or deceptive advertising; [1983, c. 378, §38 (NEW).]

J. Advertising, practicing or attempting to practice under a name other than one's own; [1983, c. 378, §38 (NEW).]

K. [1997, c. 680, Pt. B, §4 (RP).]

L. Division of professional fees not based on actual services rendered; [1997, c. 680, Pt. B, §5 (AMD).]

M. Failure to comply with the requirements of Title 24, section 2905-A; or [1997, c. 680, Pt. B, §6 (AMD).]

N. 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. [1997, c. 680, Pt. B, §7 (NEW).]

[ 1997, c. 680, Pt. B, §§3-7 (AMD) .]

**3. Report.** By March 1st of each year, the board shall submit to the Legislature a report consisting of statistics on the following for the preceding year:

A. The number of complaints against licensees received from the public or filed on the board's own motion; [1989, c. 462, §7 (NEW).]

B. The number of complaints dismissed for lack of merit or insufficient evidence of grounds for discipline; [1989, c. 462, §7 (NEW).]

C. The number of cases in process of investigation or hearing carried over at year end; and [1989, c. 462, §7 (NEW).]

D. The number of disciplinary actions finalized during the report year as tabulated and categorized by the annual statistical summary of the Physician Data Base of the Federation of State Medical Boards of the United States, Inc. [1989, c. 462, §7 (NEW).]

[ 1989, c. 462, §7 (NEW) .]

#### SECTION HISTORY

1983, c. 378, §38 (NEW). 1989, c. 291, §§2,3 (AMD). 1989, c. 462, §7 (AMD). 1993, c. 600, §A181 (AMD). 1997, c. 680, §§B2-7 (AMD). 1999, c. 547, §B64 (AMD). 1999, c. 547, §B80 (AFF).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the First Special Session of the 124th Legislature, and is current through December 31, 2009, but is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.