



126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 1166

S.P. 403

In Senate, March 26, 2013

An Act Regarding Records Retention by Mental Health Practitioners

Reference to the Committee on Health and Human Services suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator LACHOWICZ of Kennebec.
Cosponsored by Representative NADEAU of Winslow and
Senators: GRATWICK of Penobscot, MAZUREK of Knox, Representative: HICKMAN of
Winthrop.

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

2 **Sec. 1. 32 MRSA §3824, sub-§§7 and 8** are enacted to read:

3 **7. Client record retention and destruction requirements.** The board shall ensure
4 that the requirements for client record retention and destruction set out in this subsection
5 are met.

6 A. An applicant shall file with the application for licensure and a licensee shall file
7 with any application for renewal of licensure, in a form as required by the board, a
8 plan for retention of client records in the event of the disability or death of the
9 licensee.

10 B. A licensee shall retain records of a client, including records in the licensee's
11 possession from another mental health professional who treated the client, in a secure
12 and private location during the period of treatment and for 3 years after the last date
13 of service for adult clients and for 3 years after the age of majority of minor clients.

14 C. A licensee, when discontinuing practice, shall provide notice to each client of the
15 closure of the practice and the client's right to obtain the client's records.

16 D. A licensee, when planning to destroy client records, shall publish notice in a
17 newspaper of general circulation in the county in which the licensee practiced of the
18 intention to destroy records at least 3 months prior to the date of destruction.

19 E. A licensee, when destroying client records, shall do so by use of an entity in the
20 State that provides confidential document shredding services.

21 **8. Client record retention notification.** Within 24 hours of receiving notice that
22 client records are being retained by a licensee in a manner that does not meet the
23 requirements of subsection 7, the board shall act to secure the records in the Office of the
24 Attorney General until such time as secure and private retention has been arranged for the
25 time period required under subsection 7, paragraph B.

26 **Sec. 2. 32 MRSA §7030, sub-§§6 and 7** are enacted to read:

27 **6. Client record retention and destruction requirements.** The board shall ensure
28 that the requirements for client record retention and destruction set out in this subsection
29 are met.

30 A. An applicant shall file with the application for licensure and a licensee shall file
31 with any application for renewal of licensure, in a form as required by the board, a
32 plan for retention of client records in the event of the disability or death of the
33 licensee.

34 B. A licensee shall retain records of a client, including records in the licensee's
35 possession from another mental health professional who treated the client, in a secure
36 and private location during the period of treatment and for 3 years after the last date
37 of service for adult clients and for 3 years after the age of majority of minor clients.

38 C. A licensee, when discontinuing practice, shall provide notice to each client of the
39 closure of the practice and the client's right to obtain the client's records.

1 D. A licensee, when planning to destroy client records, shall publish notice in a
2 newspaper of general circulation in the county in which the licensee practiced of the
3 intention to destroy records at least 3 months prior to the date of destruction.

4 E. A licensee, when destroying client records, shall do so by use of an entity in the
5 State that provides confidential document shredding services.

6 **7. Client record retention notification.** Within 24 hours of receiving notice that
7 client records are being retained by a licensee in a manner that does not meet the
8 requirements of subsection 6, the board shall act to secure the records in the Office of the
9 Attorney General until such time as secure and private retention has been arranged for the
10 time period required under subsection 6, paragraph B.

11 **Sec. 3. 32 MRSA §13853, sub-§§16 and 17** are enacted to read:

12 **16. Client record retention and destruction requirements.** The board shall ensure
13 that requirements for client record retention and destruction set out in this subsection are
14 met.

15 A. An applicant shall file with the application for licensure and a licensee shall file
16 with any application for renewal of licensure, in a form as required by the board, a
17 plan for retention of client records in the event of the disability or death of the
18 licensee.

19 B. A licensee shall retain records of a client, including records in the licensee's
20 possession from another mental health professional who treated the client, in a secure
21 and private location during the period of treatment and for 3 years after the last date
22 of service for adult clients and for 3 years after the age of majority of minor clients.

23 C. A licensee, when discontinuing practice, shall provide notice to each client of the
24 closure of the practice and the client's right to obtain the client's records.

25 D. A licensee, when planning to destroy client records, shall publish notice in a
26 newspaper of general circulation in the county in which the licensee practiced of the
27 intention to destroy records at least 3 months prior to the date of destruction.

28 E. A licensee, when destroying client records, shall do so by use of an entity in the
29 State that provides confidential document shredding services.

30 **17. Client record retention notification.** Within 24 hours of receiving notice that
31 client records are being retained by a licensee in a manner that does not meet the
32 requirements of subsection 16, the board shall act to secure the records in the Office of
33 the Attorney General until such time as secure and private retention has been arranged for
34 the time period required under subsection 16, paragraph B.

35 **Sec. 4. 34-B MRSA §1203-A, sub-§9** is enacted to read:

36 **9. Agency client records.** An agency or facility applying for licensure or for
37 renewal of a license pursuant to this section shall, as part of the application process, file a
38 plan in a form as required by the department for retention and destruction of client
39 records. The plan must provide that when an agency or facility ceases operation the first
40 priority for payment from the assets of the agency or facility is the payment of taxes and

1 the payment of other obligations required by law and the second priority is payment for
2 the costs of client record retention and destruction.

3

SUMMARY

4 This bill requires mental health agencies and mental health professionals to plan for
5 and provide secure and private retention of client records and record destruction after
6 specified terms or when an agency or facility ceases to operate or a professional ceases to
7 practice.