

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND FIFTEEN

—
H.P. 794 - L.D. 1156

An Act Regarding the Board of Dental Examiners

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, Public Law 2011, chapter 581 established dental adjudicatory panels, which had sole authority to hold an adjudicatory hearing regarding disciplinary actions for a person licensed by the Board of Dental Examiners; and

Whereas, the law establishing the dental adjudicatory panels was repealed September 15, 2014, leaving the Board of Dental Examiners without authority to hold adjudicatory hearings on disciplinary actions; and

Whereas, it is in the best interest of the public that there be a process in place to ensure that the public is served by competent and honest practitioners in the field of dentistry; and

Whereas, this legislation needs to take effect as soon as possible to restore the authority of the Board of Dental Examiners to adjudicate disciplinary actions; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 32 MRSA §1077, sub-§1, as amended by PL 2011, c. 581, §1, is further amended to read:

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

The board shall notify the licensee of the content of a complaint filed against the licensee as soon as possible, but no later than 60 days from receipt of this information. The licensee shall respond within 30 days. 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 conference must be conducted in executive session of the board, pursuant to Title 1, section 405, unless otherwise requested by the licensee. Statements made at the conference may not be introduced at a subsequent formal hearing unless all parties consent.

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 takes any action authorized by Title 10, section 8003, subsection 5 or Title 10, section 8003-D. 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, if a consent agreement is signed by the board, the licensee and the Attorney General's office, 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;

C. ~~If the board concludes that denial of initial licensure or, modification or nonrenewal of an existing a license is in order warranted, the board may refer the complaint to a dental adjudicatory panel, convened pursuant to section 1080, for the purpose of holding hold an adjudicatory hearing in accordance with the provisions of the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter 4 and may take any action authorized by subsection 2 or Title 10, section 8003, subsection 5; or~~

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

~~Notwithstanding any other provision of law, a dental adjudicatory panel convened pursuant to section 1080 has the sole authority to hold an adjudicatory hearing conforming to the requirements of Title 5, chapter 375, subchapter 4 and take any action authorized by Title 10, section 8003, subsection 5 or Title 10, section 8003 D following an adjudicatory hearing.~~

Notwithstanding Title 10, section 8003, subsection 5, any nonconsensual revocation of a license ~~by a dental adjudicatory panel~~ pursuant to Title 10, section 8003, subsection 5 may be imposed only after a hearing conforming to the requirements of Title 5, section 375, subchapter 4 and is subject to judicial review exclusively in the Superior Court in accordance with Title 5, chapter 375, subchapter 7. ~~The board retains the authority to take any other action pursuant to this section and Title 10, section 8003 regarding the disposition of any complaint that does not involve an adjudicatory hearing.~~

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.