

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND TWELVE

S.P. 301 - L.D. 955

An Act To Establish a Dental Adjudicatory Panel System

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

Sec. 1. 32 MRSA §1077, sub-§1, as corrected by RR 2009, c. 2, §87, is 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 ~~fixes the period and terms of probation best adapted to protect the public health and safety and to rehabilitate or educate the licensee~~ 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 the an existing license is in order, the board shall hold may refer the complaint to a dental adjudicatory panel, convened pursuant to section 1080, for the purpose of holding an adjudicatory hearing in accordance with the provisions of the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter 4; or

D. If the board concludes that suspension or revocation of the license is in order, the board ~~shall~~ 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 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.

Sec. 2. 32 MRSA §1080 is enacted to read:

§1080. Dental adjudicatory panels

Dental adjudicatory panels may be convened in accordance with this section.

1. Purpose of panel. The purpose of a dental adjudicatory panel, referred to in this section as "a panel," is to conduct adjudicatory hearings independent of the board after the board conducts the initial investigation of a complaint against a licensee and refers the complaint to a panel.

2. Establishment of a pool of panel members. The board shall establish a pool of potential panel members. The board may not select a person for the pool who has been found in violation of the dental practices laws or rules within the preceding 10 years. After selection by the board, each member of the pool is subject to review and appointment by the Governor. The pool must be composed of at least 5 dentists, 5 denturists and 5 dental hygienists licensed under this chapter and 5 public members, but if the board finds that it is beneficial to the administration of the pool, the pool may be composed of no fewer than 3 from each category. A pool member may not be a member of the board.

3. Convening of a panel. The board may convene a panel for a case that cannot be resolved using a consent agreement. The board shall request a member of its staff to

draw names from the pool in accordance with subsection 4. A member of the board may not have a role in the drawing or selection of individuals serving on a panel. For each case, a separate panel must be created and then dissolved once it has issued its decision.

4. Appointments for a panel. A panel consists of 5 members appointed from the pool under subsection 2:

A. One member must be a public member;

B. One member must be either a denturist or a dental hygienist. A dental hygienist must be named to the first panel convened. For subsequent panels, the seat must alternate between a dental hygienist and a denturist, unless the defendant is either a denturist or a dental hygienist, in which case the member filling this seat must be of the defendant's profession; and

C. Three members must be dentists.

If the defendant is a doctor from a dental specialty, at least one of the dentists selected to the panel must, if possible, be of that specialty.

5. Vacancy. In the event of a vacancy on a panel, the board shall appoint a replacement member from the pool under subsection 2.

6. Terms; vacancy. Members of the pool serve 5-year terms. Members may be reappointed. In the event of a vacancy in the pool, the board shall select a replacement member in the same manner as the original selection subject to the provisions of subsection 2.

7. Chair. The members of a panel shall select a chair from among its members. Any member may serve as the chair.

8. Duties and authority of a panel. Upon referral of a complaint by the board pursuant to section 1077, subsection 1, paragraph C to a panel convened pursuant to subsection 3, the panel shall hold an adjudicatory hearing. Upon completion of the adjudicatory hearing, the panel shall issue a decision or order to:

A. Take any action authorized by section 1077, subsection 1; Title 10, section 8003, subsection 5; or Title 10, section 8003-D; or

B. Dismiss the complaint.

9. Compensation. Members of a panel are entitled to reimbursement for travel expenses.

10. Panel meetings. A panel shall hold its first meeting at the request of the board. Subsequent meetings must be held at the request of the chair of the panel.

11. Quorum. Four members of a panel constitutes a quorum.

12. Repeal. This section is repealed September 15, 2014.

Sec. 3. Authority to report out a bill. The Board of Dental Examiners shall report to the joint standing committee of the Legislature having jurisdiction over labor,

commerce, research and economic development matters concerning the implementation of the dental adjudicatory panel system under the Maine Revised Statutes, Title 32, section 1080 by January 15, 2014. The joint standing committee of the Legislature having jurisdiction over labor, commerce, research and economic development matters may report out a bill regarding the dental adjudicatory panel system to the Second Regular Session of the 126th Legislature.

In House of Representatives, 2012

Read twice and passed to be enacted.

..... Speaker

In Senate, 2012

Read twice and passed to be enacted.

..... President

Approved 2012

..... Governor