

RIGHT TO KNOW ADVISORY COMMITTEE

Monday, November 6, 2023

1:00 p.m.

Location: State House, Room 228 (Hybrid Meeting)

Public access also available through the Maine Legislature's livestream:

<https://legislature.maine.gov/Audio/#228>

1. Introductions
2. Subcommittee updates
 - a. Public records exceptions
 - b. Public records process
 - c. Law enforcement records
3. Disciplinary records of public employees
 - a. Committee discussion of specific elements of LD 1397
 - i. Location of records
 - County, municipality, or BHR “shall produce the final written decision in its possession or custody whether located in a personnel file or in another location.”
 - ii. Record retention schedules and CBA
 - “Notwithstanding any collective bargaining agreement or other employment contract entered into on or after January 1, 2024 that provides for the removal, destruction or purging of records, records may not be destroyed or otherwise disposed of by any local government official, except as provided by the records retention schedule...”
 - iii. Record retention schedules
 - Directing State Archivist to set specific periods
 - “Less serious conduct”
 - b. Public comment: focused on topic of disciplinary records of public employees
 - c. Any additional committee discussion
4. Adjourn
 - Final planned meeting: Monday, December 4, 2023, 1:00 pm (AFA Committee Room, State House Room 228)



131st MAINE LEGISLATURE

FIRST REGULAR SESSION-2023

Legislative Document

No. 1397

H.P. 892

House of Representatives, March 28, 2023

**An Act to Implement the Recommendations of the Right To Know
Advisory Committee Concerning Records of Disciplinary Actions
Against Public Employees**

Reported by Representative MOONEN of Portland for the Joint Standing Committee on
Judiciary pursuant to the Maine Revised Statutes, Title 1, section 411, subsection 6, paragraph
G.

Reference to the Committee on Judiciary suggested and ordered printed pursuant to Joint
Rule 218.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

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

2 **Sec. 1. 5 MRSA §95-B, sub-§7**, as amended by PL 2019, c. 50, §10, is further
3 amended to read:

4 **7. Disposition of records.** Records Notwithstanding any collective bargaining
5 agreement or other employment contract entered into on or after January 1, 2024 that
6 provides for the removal, destruction or purging of records, records may not be destroyed
7 or otherwise disposed of by any local government official, except as provided by the
8 records retention schedule established by the State Archivist pursuant to section 95-C,
9 subsection 2, paragraph A, subparagraph (3). Records that have been determined to possess
10 archival value must be preserved by the municipality.

11 **Sec. 2. 5 MRSA §7070, sub-§2, ¶E**, as amended by PL 1997, c. 770, §1, is further
12 amended to read:

13 E. Except as provided in section 7070-A, complaints, charges or accusations of
14 misconduct, replies to those complaints, charges or accusations and any other
15 information or materials that may result in disciplinary action. If disciplinary action is
16 taken, the final written decision relating to that action is no longer confidential after
17 the decision is completed if it imposes or upholds discipline. The decision must state
18 the conduct or other facts on the basis of which disciplinary action is being imposed
19 and the conclusions of the acting authority as to the reasons for that action. If an
20 arbitrator completely overturns or removes disciplinary action from an employee
21 personnel file, the final written decision is public except that the employee's name must
22 be deleted from the final written decision and kept confidential. If the employee whose
23 name was deleted from the final written decision discloses that the employee is the
24 person who is the subject of the final written decision, the entire final written report,
25 with regard to that employee, is public. In response to a request to inspect or copy the
26 final written decision in accordance with Title 1, section 408-A, the Bureau of Human
27 Resources shall produce the final written decision in its possession or custody whether
28 located in a personnel file or in another location.

29 For purposes of this paragraph, "final written decision" means:

30 (1) The final written administrative decision that is not appealed pursuant to a
31 grievance arbitration procedure; or

32 (2) If the final written administrative decision is appealed to arbitration, the final
33 written decision of a neutral arbitrator.

34 A final written administrative decision that is appealed to arbitration is no longer
35 confidential 120 days after a written request for the decision is made to the employer
36 if the final written decision of the neutral arbitrator is not issued and released before
37 the expiration of the 120 days;

38 **Sec. 3. 30-A MRSA §503, sub-§1, ¶B**, as amended by PL 2019, c. 451, §2, is
39 further amended by amending subparagraph (5) to read:

40 (5) Complaints, charges or accusations of misconduct, replies to those complaints,
41 charges or accusations and any other information or materials that may result in
42 disciplinary action. If disciplinary action is taken, the final written decision
43 relating to that action is no longer confidential after the decision is completed if it

1 imposes or upholds discipline. The decision must state the conduct or other facts
2 on the basis of which disciplinary action is being imposed and the conclusions of
3 the acting authority as to the reasons for that action. If an arbitrator completely
4 overturns or removes disciplinary action from an employee personnel file, the final
5 written decision is public except that the employee's name must be deleted from
6 the final written decision and kept confidential. If the employee whose name was
7 deleted from the final written decision discloses that the employee is the person
8 who is the subject of the final written decision, the entire final written report, with
9 regard to that employee, is public. In response to a request to inspect or copy the
10 final written decision in accordance with Title 1, section 408-A, the county shall
11 produce the final written decision in its possession or custody whether located in a
12 personnel file or in another location.

13 For purposes of this subparagraph, "final written decision" means:

14 (a) The final written administrative decision that is not appealed pursuant to a
15 grievance arbitration procedure; or

16 (b) If the final written administrative decision is appealed to arbitration, the
17 final written decision of a neutral arbitrator.

18 A final written administrative decision that is appealed to arbitration is no longer
19 confidential 120 days after a written request for the decision is made to the
20 employer if the final written decision of the neutral arbitrator is not issued and
21 released before the expiration of the 120 days; and

22 **Sec. 4. 30-A MRS §2702, sub-§1, ¶B**, as amended by PL 2019, c. 451, §3, is
23 further amended by amending subparagraph (5) to read:

24 (5) Complaints, charges or accusations of misconduct, replies to those complaints,
25 charges or accusations and any other information or materials that may result in
26 disciplinary action. If disciplinary action is taken, the final written decision
27 relating to that action is no longer confidential after the decision is completed if it
28 imposes or upholds discipline. The decision must state the conduct or other facts
29 on the basis of which disciplinary action is being imposed and the conclusions of
30 the acting authority as to the reasons for that action. If an arbitrator completely
31 overturns or removes disciplinary action from an employee personnel file, the final
32 written decision is public except that the employee's name must be deleted from
33 the final written decision and kept confidential. If the employee whose name was
34 deleted from the final written decision discloses that the employee is the person
35 who is the subject of the final written decision, the entire final written report, with
36 regard to that employee, is public. In response to a request to inspect or copy the
37 final written decision in accordance with Title 1, section 408-A, the municipality
38 shall produce the final written decision in its possession or custody whether located
39 in a personnel file or in another location.

40 For purposes of this subparagraph, "final written decision" means:

41 (a) The final written administrative decision that is not appealed pursuant to a
42 grievance arbitration procedure; or

43 (b) If the final written administrative decision is appealed to arbitration, the
44 final written decision of a neutral arbitrator.

1 A final written administrative decision that is appealed to arbitration is no longer
2 confidential 120 days after a written request for the decision is made to the
3 employer if the final written decision of the neutral arbitrator is not issued and
4 released before the expiration of the 120 days; and

5 **Sec. 5. Revision of record retention schedules.** The State Archivist shall revise
6 the record retention schedules applicable to state and local government personnel records
7 as follows.

8 1. Except as provided in subsections 2 and 3 and notwithstanding any collective
9 bargaining agreement or other employment contract entered into on or after January 1, 2024
10 to the contrary, final written decisions relating to disciplinary action must be maintained
11 for a period of 20 years.

12 2. For final written decisions relating to less serious conduct or disciplinary action as
13 described in the schedules, the schedules may provide for a shorter retention period of no
14 less than 5 years.

15 3. For final written decisions relating to law enforcement employee disciplinary
16 actions that could be used to impeach the credibility of the law enforcement officer if the
17 law enforcement officer is a witness in a criminal case, the schedules may provide for a
18 retention period of more than 20 years.

19 4. The schedules must use consistent terminology related to records that are not
20 retained and provide definitions for terms used in the schedule such as "remove," "purge"
21 and "destroy."

22 SUMMARY

23 This bill implements the recommendations of the Right To Know Advisory Committee
24 related to records of disciplinary actions against public employees.

25 The bill provides that, notwithstanding any collective bargaining agreement or other
26 employment contract entered into on or after January 1, 2024 to the contrary, local
27 government records may not be disposed of except in accordance with record retention
28 schedules established by the State Archivist.

29 The bill amends the statutes governing state, municipal and county employee personnel
30 records to require that, in response to Freedom of Access Act requests for final written
31 decisions, the responding public body provide the records in its possession or custody
32 regardless of the specific file location in which the final written decision is located. The
33 bill also requires the final written decisions applicable to state and county employees to
34 state the conduct or other facts on the basis of which the disciplinary action is being
35 imposed and the conclusions of the state or county employer as to the reasons for that
36 action. Similar language is already included in the statute governing municipal employee
37 personnel records.

38 The bill directs the State Archivist to revise the record retention schedules applicable
39 to state and local government personnel records to require that final written decisions
40 relating to disciplinary action be maintained for a period of 20 years or a lesser period
41 depending on the severity of the conduct or disciplinary action. The State Archivist may
42 increase the retention period beyond 20 years for final written decisions relating to law
43 enforcement employee disciplinary actions that could be used to impeach the credibility of

- 1 the law enforcement officer if the law enforcement officer is a witness in a criminal case.
- 2 It also requires that the schedules use consistent terminology and define terms related to
- 3 the disposition of records.

Title 10:

- §8003 (Departmental organization; duties)
- §8003-A (Complaint investigation)
- §8003-B (Confidentiality of investigative records)

§8003. Departmental organization; duties

1. Division of Administrative Services. There is created a Division of Administrative Services, which is a division within the department under the commissioner's office, to provide assistance to the commissioner and to the agencies within and affiliated with the department in civil service matters, budgeting and financial matters, purchasing, and clerical and support services, and to perform other duties the commissioner designates. The commissioner may employ a Director of Administrative Services and clerical and technical assistants necessary to discharge the duties of the division and shall outline their duties and fix their compensation, subject to the Civil Service Law.

A. Within the Division of Administrative Services, there is a computer services section. It is the responsibility of the computer services section to provide technical assistance to the Office of Professional and Occupational Regulation to process and issue original and renewal licenses for the department and for bureaus, offices, boards and commissions within the department as the commissioner directs. The licenses may be processed and issued only upon authorization of the appropriate bureau, office, board or commission or upon the authorization of the commissioner in the case of licenses granted directly by the department. The computer services section shall maintain a central register containing the name and address of each person or firm licensed by profession, occupation or industry and such other information as the commissioner may direct for administration, information or planning purposes. The commissioner, with the advice of the respective bureaus, offices, boards and commissions, may determine the type and form of licenses issued by all agencies within the department. The computer services section shall perform such other administrative services for the agencies within the department as the commissioner directs. [PL 1995, c. 502, Pt. H, §10 (AMD); PL 2011, c. 286, Pt. B, §5 (REV).]

[PL 1995, c. 502, Pt. H, §10 (AMD); PL 2011, c. 286, Pt. B, §5 (REV).]

2. Office of Licensing and Registration.

[PL 1999, c. 687, Pt. C, §5 (RP).]

2-A. Office of Professional and Occupational Regulation. There is created an Office of Professional and Occupational Regulation, referred to in this subsection as the "office," composed of the boards, commissions and regulatory functions set forth in section 8001, subsection 38. The commissioner may appoint a Director of the Office of Professional and Occupational Regulation and those clerical and technical assistants who are necessary to discharge the duties of the office and shall outline their duties and fix their compensation, subject to the Civil Service Law. Notwithstanding any other provision of law granting authority to a board or commission, the Director of the Office of Professional and Occupational Regulation has the following superseding powers, duties and functions:

A. To administer the office and maximize and direct the use of personnel and financial resources to regulate professionals in the best interest of the public; [PL 1999, c. 687, Pt. C, §6 (NEW).]

B. To prepare and administer, with the advice of the boards and commissions, budgets necessary to carry out the regulatory purposes of the boards and commissions. The Director of the Office of Professional and Occupational Regulation shall maintain one office budget that includes a separate account for each board or commission. The Director of the Office of Professional and Occupational Regulation has the authority to disapprove expenditures by boards and commissions that are not necessary to protect the public health and welfare or that would seriously jeopardize a board's or commission's fiscal well-being; [PL 1999, c. 687, Pt. C, §6 (NEW); PL 2011, c. 286, Pt. B, §5 (REV).]

C. To provide all staffing necessary and appropriate to administer the office and carry out the statutory missions of the boards, commissions and regulatory functions. All clerks, technical support staff and supervisors must be assigned to the office and allocated by the director to perform functions on behalf of the various boards, commissions and regulatory functions according to need; [PL 1999, c. 687, Pt. C, §6 (NEW).]

D. To establish by rule and after reasonable notice to the affected board all fees necessary and appropriate for all boards, commissions and regulatory functions within the office, subject to any fee cap established by statute and applicable to that board, commission or regulatory function. The Director of the Office of Professional and Occupational Regulation shall set the criteria for all fees. The criteria must include, but are not limited to, the costs, statutory requirements, enforcement requirements and fees and expenses of each board, commission or regulatory function. Rules adopted pursuant to this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A; [PL 2001, c. 323, §9 (AMD); PL 2011, c. 286, Pt. B, §5 (REV).]

E. To establish by rule, such processes and procedures necessary to administer the various boards, commissions and regulatory functions of the office, including, but not limited to, a uniform complaint procedure, a uniform procedure regarding protested checks, a uniform policy regarding the treatment of late renewals and a uniform procedure for substantiating continuing education requirements. Rules adopted pursuant to this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A; [PL 1999, c. 687, Pt. C, §6 (NEW).]

F. To keep records of public meetings, proceedings and actions and to make those records available to the public at cost upon request, unless otherwise prohibited by state or federal law; [PL 1999, c. 687, Pt. C, §6 (NEW).]

G. To enter into contracts to ensure the provision of goods and services necessary to perform regulatory functions and to fulfill statutory responsibilities. This authority includes the ability to employ and engage experts, professionals or other personnel of other state or federal regulatory agencies as necessary to assist the office in carrying out its regulatory functions and to contract office staff to other state and federal regulatory agencies to assist those agencies in carrying out their regulatory functions; [PL 1999, c. 687, Pt. C, §6 (NEW).]

H. To perform licensing functions for other state agencies on a fee-for-service basis; [PL 1999, c. 687, Pt. C, §6 (NEW).]

I. To enter into cooperative agreements with other state, federal or foreign regulatory agencies to facilitate the regulatory functions of the office, including, but not limited to, information sharing, coordination of examinations or inspections and joint examinations or inspections. Any information furnished pursuant to this paragraph by or to the office that has been designated confidential by the agency furnishing the information remains confidential and the property of the agency furnishing the information and may not be disclosed by the recipient of the information unless disclosure has been authorized by the agency that furnished the information; [PL 1999, c. 687, Pt. C, §6 (NEW).]

J. To direct staff to review and approve applications for licensure or renewal in accordance with criteria established in statute or in rules adopted by a board or commission. Licensing decisions made by staff may be appealed to the full board or commission; [PL 1999, c. 687, Pt. C, §6 (NEW).]

K. To prepare and submit to the commissioner an annual report of the office's operations, activities and goals; [PL 2017, c. 173, §1 (AMD).]

L. To study jurisdictional overlap between the department's boards and commissions and other state agencies for purposes of streamlining and consolidating related legal authorities and administrative processes; [PL 2017, c. 173, §1 (AMD).]

M. To exercise discretionary authority, after consultation with the appropriate licensing board, commission or personnel administering a regulatory function of the office, to review and determine on a case-by-case basis examination and licensing eligibility for applications for licensure submitted by individuals who identify themselves as veterans with military service, experience and training; [PL 2021, c. 167, §1 (AMD).]

N. To exercise discretionary authority, after consultation with the appropriate licensing board, commission or personnel administering a regulatory function of the office, to waive examination fees and license fees for applicants for licensure who identify themselves as veterans with military service, experience and training; [PL 2021, c. 167, §2 (AMD).]

O. To exercise discretionary authority, after consultation with the appropriate licensing board, commission or personnel administering a regulatory function of the office, to waive, on a case-by-case basis in situations of extreme and demonstrated hardship, documentation requirements for licensure submitted by applicants for licensure educated in or with relevant experience or licensure in other jurisdictions, including other states, United States territories, foreign nations and foreign administrative divisions, as long as the waiver does not reduce the requisite standards of proficiency for the licensed profession or occupation. The Director of the Office of Professional and Occupational Regulation may adopt rules to implement this paragraph. Rules adopted pursuant to this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A; [PL 2021, c. 642, §1 (AMD).]

P. To exercise discretionary authority, after consultation with the appropriate licensing board, commission or personnel administering a regulatory function of the office, to waive, on a case-by-case basis in situations of extreme and demonstrated hardship, examination fees and license fees set pursuant to paragraph D for applicants for licensure educated in or with relevant experience or licensure in other jurisdictions, including other states, United States territories, foreign nations and foreign administrative divisions. The Director of the Office of Professional and Occupational Regulation may adopt rules to implement this paragraph. Rules adopted pursuant to this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A; [PL 2021, c. 642, §2 (AMD).]

Q. To adopt rules defining, as appropriate for licensing purposes, the term "jurisdiction" to mean a state, a United States territory, a foreign nation or a foreign administrative division that issues a license or credential. Rules adopted pursuant to this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A; and [PL 2021, c. 167, §5 (NEW).]

R. To accept funds from the Federal Government, from any political subdivision of the State or from any individual, foundation or corporation and to expend those funds for purposes consistent with this section. The Director of the Office of Professional and Occupational Regulation may also provide grants to nongovernmental entities for purposes consistent with this section. [PL 2021, c. 167, §6 (NEW).]

[PL 2021, c. 642, §§1, 2 (AMD).]

3. License defined. For purposes of this section, the term "license" means a license, certification, registration, permit, approval or other similar document evidencing admission to or granting authority to engage in a profession, occupation, business or industry but does not mean a registration, permit, approval or similar document evidencing the granting of authority to engage in the business of banking pursuant to Title 9-B.

[PL 1991, c. 509, §1 (AMD).]

4. Licensing periods; renewal dates. The commissioner may establish expiration or renewal dates and establish whether licenses are issued annually or biennially for all licenses authorized to be issued by bureaus, offices, boards and commissions within the department, notwithstanding any other provisions of law. If an expiration or renewal date established by the commissioner has the effect of shortening the term of a license currently in effect, the bureau, office, board or commission, or the department in the case of a license that it issues directly, shall credit the fee paid, on a prorated basis, for the unexpired term of the current license toward the renewal fee of the renewal license. If a license is not renewed on the new expiration or renewal date established by the commissioner, the license remains in effect through its original term, unless suspended or revoked sooner under laws or

regulations of the respective bureau, office, board or commission. Should a licensee seek to renew the license at the end of the original term, the law or regulations established by the respective bureau, office, board or commission for late renewals or reregistrations apply. For the purpose of implementing and administering biennial licensing, the commissioner may permit bureaus, offices, boards and commissions within the department to issue licenses and establish renewal fees for less than a 2-year term. This section may not change the term or fee for one-time licenses, except as specifically stated. [PL 1999, c. 386, Pt. B, §3 (AMD).]

4-A. Disclosure and recording of social security numbers. An individual who applies for a license shall provide that individual's social security number on the application, which must be recorded.

[PL 1997, c. 537, §3 (NEW); PL 1997, c. 537, §62 (AFF).]

5. Authority of bureaus, offices, boards or commissions. In addition to authority otherwise conferred, unless expressly precluded by language of denial in its own governing law, each bureau, office, licensing board and commission within or affiliated with the department may take one or more of the following actions, except that this subsection does not apply to the Bureau of Financial Institutions or the Office of Professional and Occupational Regulation, including the licensing boards and commissions and regulatory functions within the Office of Professional and Occupational Regulation.

A. [PL 1989, c. 450, §6 (RP).]

A-1. For each violation of applicable laws, rules or conditions of licensure or registration, the bureau, office, board or commission may take one or more of the following actions:

(1) Issue warnings, censures or reprimands to a licensee or registrant. Each warning, censure and reprimand issued must be based upon violations of different applicable laws, rules or conditions of licensure or must be based upon separate instances of actionable conduct or activity;

(2) Suspend a license or registration for up to 90 days for each violation of applicable laws, rules and conditions of licensure or registration or for instance of actionable conduct or activity. Suspensions may be set to run concurrently or consecutively. Execution of all or any portion of a term of suspension may be stayed pending successful completion of conditions of probation, although the suspension remains part of the licensee's or registrant's record;

(2-A) Revoke a license or registration;

(3) Impose civil penalties of up to \$1,500 for each violation of applicable laws, rules and conditions of licensure or registration or for instances of actionable conduct or activity; and

(4) Impose conditions of probation upon an applicant, licensee or registrant. Probation may run for such time period as the bureau, office, board or commission determines appropriate. Probation may include conditions such as: additional continuing education; medical, psychiatric or mental health consultations or evaluations; mandatory professional or occupational supervision of the applicant, licensee or registrant; and other conditions as the bureau, office, board or commission determines appropriate. Costs incurred in the performance of terms of probation are borne by the applicant, licensee or registrant. Failure to comply with the conditions of probation is a ground for disciplinary action against a licensee or registrant.

[PL 2001, c. 167, §1 (AMD).]

B. The bureau, office, board or commission may execute a consent agreement that resolves a complaint or investigation without further proceedings. Consent agreements may be entered into only with the consent of: the applicant, licensee or registrant; the bureau, office, board or commission; and the Department of the Attorney General. Any remedy, penalty or fine that is otherwise available by law, even if only in the jurisdiction of the Superior Court, may be achieved

by consent agreement, including long-term suspension and permanent revocation of a professional or occupational license or registration. A consent agreement is not subject to review or appeal, and may be modified only by a writing executed by all parties to the original consent agreement. A consent agreement is enforceable by an action in Superior Court. [PL 2001, c. 167, §1 (AMD).]

C. The bureau, office, board or commission may:

- (1) Require all applicants for license or registration renewal to have responded under oath to all inquiries set forth on renewal forms;
- (2) Except as provided in Title 37-B, section 390-A, require applicants for license or registration renewal to present proof of satisfactory completion of continuing professional or occupational education in accordance with each bureau's, office's, board's or commission's rules. Failure to comply with the continuing education rules may, in the bureau's, office's, board's or commission's discretion, result in a decision to deny license or registration renewal or may result in a decision to enter into a consent agreement and probation setting forth terms and conditions to correct the licensee's or registrant's failure to complete continuing education. Terms and conditions of a consent agreement may include requiring completion of increased hours of continuing education, civil penalties, suspension and other terms as the bureau, office, board, commission, the licensee or registrant and the Department of the Attorney General determine appropriate. Notwithstanding any contrary provision set forth in a bureau's, office's, board's or commission's governing law, continuing education requirements may coincide with the license or registration renewal period;
- (3) Refuse to renew a license or registration or deny a license when the bureau, office, board or commission finds a licensee or registrant to be in noncompliance with a bureau, office, board or commission order or consent agreement;
- (4) Allow licensees or registrants to hold inactive status licenses or registrations in accordance with each bureau's, office's, board's or commission's rules. The fee for an inactive license or registration may not exceed the statutory fee cap established for the bureau's, office's, board's or commission's license or registration renewal set forth in its governing law; or
- (5) Delegate to staff the authority to review and approve applications for licensure pursuant to procedures and criteria established by rule. Rules developed pursuant to this subparagraph are routine technical rules as described in Title 5, chapter 375, subchapter 2-A. [PL 2005, c. 111, §1 (AMD).]

D. The bureau, office, board or commission may require surrender of licenses and registrations. In order for a licensee's or registrant's surrender of a license or registration to be effective, a surrender must first be accepted by vote of the bureau, office, board or commission. Bureaus, offices, boards and commissions may refuse to accept surrender of licenses and registrations if the licensee or registrant is under investigation or is the subject of a pending complaint or proceeding, unless a consent agreement is first entered into pursuant to this chapter. [PL 1995, c. 502, Pt. H, §10 (AMD).]

E. The bureau, office, board or commission may issue letters of guidance or concern to a licensee or registrant. Letters of guidance or concern may be used to educate, reinforce knowledge regarding legal or professional obligations and express concern over action or inaction by the licensee or registrant that does not rise to the level of misconduct sufficient to merit disciplinary action. The issuance of a letter of guidance or concern is not a formal proceeding and does not constitute an adverse disciplinary action of any form. Notwithstanding any other provision of law, letters of guidance or concern are not confidential. The bureau, office, board or commission may place letters of guidance or concern, together with any underlying complaint, report and investigation materials, in a licensee's or registrant's file for a specified amount of time, not to exceed 10 years. Any letters, complaints and materials placed on file may be accessed and

considered by the bureau, office, board or commission in any subsequent action commenced against the licensee or registrant within the specified time frame. Complaints, reports and investigation materials placed on file are only confidential to the extent that confidentiality is required pursuant to Title 24, chapter 21, the Maine Health Security Act. [PL 1999, c. 386, Pt. B, §5 (AMD).]

F. A bureau, office, board or commission may establish, by rule, procedures for licensees in another state to be licensed in this State by written agreement with another state, by entering into written licensing compacts with other states or by any other method of license recognition considered appropriate that ensures the health, safety and welfare of the public. Rules adopted pursuant to this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. [PL 2007, c. 402, Pt. C, §2 (AMD).]

G. Notwithstanding any other provision of law, any bureau, office, board or commission within or affiliated with the department may issue a temporary license for a period of 6 months and waive all licensing requirements, except for fees, to any applicant upon a showing of current, valid licensure in that profession in another state. [PL 2005, c. 474, §1 (NEW).]

The jurisdiction to suspend and revoke occupational and professional licenses conferred by this subsection is concurrent with that of the District Court. Civil penalties must be paid to the Treasurer of State.

Any nonconsensual disciplinary action taken under authority of this subsection may be imposed only after a hearing conforming to the requirements of Title 5, chapter 375, subchapter 4, and, except for revocation actions, is subject to judicial review exclusively in the Superior Court in accordance with Title 5, chapter 375, subchapter 7.

Any nonconsensual revocation of an occupational or professional license taken under authority of this subsection is subject to, upon appeal within the time frames provided in Title 5, section 11002, subsection 3, de novo judicial review exclusively in District Court. Rules adopted to govern judicial appeals from agency action apply to cases brought under this section.

[PL 2007, c. 402, Pt. C, §2 (AMD); PL 2011, c. 286, Pt. B, §5 (REV).]

5-A. Authority of Office of Professional and Occupational Regulation. In addition to authority otherwise conferred, unless expressly precluded by language of denial in its own governing law, the Office of Professional and Occupational Regulation, referred to in this subsection as "the office," including the licensing boards and commissions and regulatory functions within the office, have the following authority.

A. The office, board or commission may deny or refuse to renew a license, may suspend or revoke a license and may impose other discipline as authorized in this subsection for any of the following reasons:

- (1) The practice of fraud, deceit or misrepresentation in obtaining a license from a bureau, office, board or commission, or in connection with services rendered while engaged in the occupation or profession for which the person is licensed;
- (2) Any gross negligence, incompetence, misconduct or violation of an applicable code of ethics or standard of practice while engaged in the occupation or profession for which the person is licensed;
- (3) Conviction of a crime to the extent permitted by Title 5, chapter 341;
- (4) Any violation of the governing law of an office, board or commission;
- (5) Any violation of the rules of an office, board or commission;
- (6) Engaging in any activity requiring a license under the governing law of an office, board or commission that is beyond the scope of acts authorized by the license held;

- (7) Continuing to act in a capacity requiring a license under the governing law of an office, board or commission after expiration, suspension or revocation of that license;
 - (8) Aiding or abetting unlicensed practice by a person who is not licensed as required by the governing law of an office, board or commission;
 - (9) Noncompliance with an order or consent agreement of an office, board or commission;
 - (10) Failure to produce any requested documents in the licensee's possession or under the licensee's control concerning a pending complaint or proceeding or any matter under investigation;
 - (11) Any violation of a requirement imposed pursuant to section 8003-G; or
 - (12) Failure of an individual subject to Title 22, section 1711 or Title 22, section 1711-B to provide to a patient, upon written request, a copy of that patient's treatment records in accordance with the requirements of Title 22, section 1711 or Title 22, section 1711-B, whichever is applicable. [PL 2019, c. 503, Pt. A, §1 (AMD).]
- B. The office, board or commission may impose the following forms of discipline upon a licensee or applicant for licensure:
- (1) Denial or refusal to renew a license, or issuance of a license in conjunction with the imposition of other discipline;
 - (2) Issuance of warning, censure or reprimand. Each warning, censure or reprimand issued must be based upon violation of a single applicable law, rules or condition of licensure or must be based upon a single instance of actionable conduct or activity;
 - (3) Suspension of a license for up to 90 days for each violation of applicable laws, rules or conditions of licensure or for each instance of actionable conduct or activity. Suspensions may be set to run concurrently or consecutively. Execution of all or any portion of a term of suspension may be stayed pending successful completion of conditions of probation, although the suspension remains part of the licensee's record;
 - (4) Revocation of a license;
 - (5) Imposition of civil penalties of up to \$1,500, or such greater amount as may be authorized by statute, for each violation of applicable laws, rules or conditions of licensure or for each instance of actionable conduct or activity; or
 - (6) Imposition of conditions of probation upon an applicant or licensee. Probation may run for such time period as the office, board or commission determines appropriate. Probation may include conditions such as: additional continuing education; medical, psychiatric or mental health consultations or evaluations; mandatory professional or occupational supervision of the applicant or licensee; practice restrictions; and other conditions as the office, board or commission determines appropriate. Costs incurred in the performance of terms of probation are borne by the applicant or licensee. Failure to comply with the conditions of probation is a ground for disciplinary action against a licensee. [PL 2009, c. 112, Pt. B, §4 (AMD).]
- C. The office, board or commission may execute a consent agreement that resolves a complaint or investigation without further proceedings. Consent agreements may be entered into only with the consent of the applicant or licensee; the office, board or commission; and the Department of the Attorney General. Any remedy, penalty or fine that is otherwise available by law, even if only in the jurisdiction of the Superior Court, may be achieved by consent agreement, including long-term suspension and permanent revocation of a professional or occupational license. A consent agreement is not subject to review or appeal and may be modified only by a writing executed by all parties to the original consent agreement. A consent agreement is enforceable by an action in Superior Court. [PL 2007, c. 402, Pt. C, §3 (NEW).]

D. The office, board or commission may:

(3) Except as provided in Title 37-B, section 390-A, adopt rules requiring continuing professional or occupational education and require applicants for license renewal to present proof of satisfactory completion of continuing professional or occupational education in accordance with such rules. Failure to comply with the continuing education rules is punishable by nonrenewal of the license and other discipline authorized by this subsection. Notwithstanding any contrary provision set forth in the governing law of an office, board or commission, continuing education requirements may coincide with the license renewal period. Rules adopted pursuant to this subparagraph are routine technical rules as described in Title 5, chapter 375, subchapter 2-A;

(4) Issue continuing education deferments in cases of undue hardship;

(5) Grant inactive status licenses to licensees in accordance with rules that may be adopted by each office, board or commission. The fee for an inactive status license may not exceed the statutory fee cap for license renewal set forth in the governing law of the office, board or commission. Licensees in inactive status are required to pay license renewal fees for renewal of an inactive status license and may be required to pay a reinstatement fee as set by the Director of the Office of Professional and Occupational Regulation if the license is reactivated on a date other than the ordinary renewal date of the license. Any rules of an office, board or commission regulating inactive status licensure must describe the obligations of an inactive status licensee with respect to any ongoing continuing education requirement in effect for licensees of the office, board or commission and must set forth any requirements for reinstatement to active status, which requirements may include continuing education. Rules adopted pursuant to this subparagraph are routine technical rules as described in Title 5, chapter 375, subchapter 2-A;

(6) Delegate to staff the authority to review and approve applications for licensure pursuant to procedures and criteria established by rule. Rules adopted pursuant to this subparagraph are routine technical rules as described in Title 5, chapter 375, subchapter 2-A; and

(7) Exercise discretionary authority to grant provisional licenses to applicants for licensure educated in or with relevant experience or licensure in other jurisdictions, including other states, United States territories, foreign nations and foreign administrative divisions. For purposes of this subparagraph, "provisional license" means a license issued for a defined period of time and with the requirement that the licensee meet certain established conditions in order to maintain the provisional license or to gain full licensure. The office, board or commission may adopt rules to implement this subparagraph. Rules adopted pursuant to this subparagraph are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. [PL 2021, c. 167, §§7-9 (AMD).]

E. The office, board or commission may require surrender of licenses. In order for a licensee's surrender of a license to be effective, a surrender must first be accepted by vote of the office, board or commission. The office, board or commission may refuse to accept surrender of a license if the licensee is under investigation or is the subject of a pending complaint or proceeding, unless a consent agreement is first entered into pursuant to this subsection. The consent agreement may include terms and conditions for reinstatement. [PL 2007, c. 402, Pt. C, §3 (NEW).]

F. The office, board or commission may issue a letter of guidance or concern to a licensee as part of the dismissal of a complaint against the licensee. A letter of guidance or concern may be used to educate, reinforce knowledge regarding legal or professional obligations or express concern over action or inaction by the licensee that does not rise to the level of misconduct sufficient to merit disciplinary action. The issuance of a letter of guidance or concern is not a formal proceeding and does not constitute an adverse disciplinary action of any form. Notwithstanding any other provision of law, letters of guidance or concern are not confidential. The office, board or commission may

place letters of guidance or concern, together with any underlying complaint, report and investigation materials, in a licensee's file for a specified period of time, not to exceed 10 years. Any letters, complaints and materials placed on file may be accessed and considered by the office, board or commission in any subsequent action commenced against the licensee within the specified time frame. Complaints, reports and investigation materials placed on file are confidential only to the extent that confidentiality is required pursuant to Title 24, chapter 21. [PL 2013, c. 217, Pt. A, §1 (AMD).]

G. The office, board or commission may establish, by rule, procedures for licensees in another state to be licensed in this State by written agreement with another state, by entering into written licensing compacts with other states or by any other method of license recognition considered appropriate that ensures the health, safety and welfare of the public. Rules adopted pursuant to this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. [PL 2007, c. 402, Pt. C, §3 (NEW).]

The jurisdiction to impose discipline against occupational and professional licenses conferred by this subsection is concurrent with that of the District Court. Civil penalties must be paid to the Treasurer of State.

Any nonconsensual disciplinary action taken under authority of this subsection other than denial or nonrenewal of a license may be imposed only after a hearing conforming to the requirements of Title 5, chapter 375, subchapter 4 and is subject to judicial review exclusively in the Superior Court in accordance with Title 5, chapter 375, subchapter 7.

The office, board or commission shall hold a hearing conforming to the requirements of Title 5, chapter 375, subchapter 4 at the written request of any person who is denied an initial or renewal license without a hearing for any reason other than failure to pay a fee, provided that the request for hearing is received by the office, board or commission within 30 days of the applicant's receipt of written notice of the denial of the application, the reasons for the denial and the applicant's right to request a hearing.

The office, board or commission may subpoena witnesses, records and documents in any adjudicatory hearing it conducts.

Rules adopted to govern judicial appeals from agency action apply to cases brought under this subsection.

In the event of appeal to Superior Court from any form of discipline imposed pursuant to this subsection, including denial or nonrenewal of a license, the office, board or commission may assess the licensed person or entity for the costs of transcribing and reproducing the administrative record. [PL 2021, c. 167, §§7-9 (AMD).]

6. Funding. The commissioner may assess each internal bureau, office, board or commission served by the commissioner's office, the Division of Administrative Services or the Office of Professional and Occupational Regulation its reasonable share of an amount sufficient to cover the cost of operating those service agencies. The commissioner may assess any board affiliated with the department for the services the board receives from the department. The commissioner may assess other state agencies for licensing functions performed on behalf of those agencies by the Office of Professional and Occupational Regulation.

[PL 1999, c. 687, Pt. C, §8 (AMD); PL 2011, c. 286, Pt. B, §5 (REV).]

7. Evidentiary effect of certificate. Notwithstanding any provision of law or rule of evidence, the certificate of the commissioner under the seal of the State must be received by any court in this State as prima facie evidence of the issuance, suspension or revocation of any license issued by the department.

[PL 1991, c. 509, §3 (NEW).]

8. Display of license.

[PL 2009, c. 112, Pt. A, §2 (RP).]

9. Construction.

[PL 1999, c. 687, Pt. C, §9 (RP).]

10. National disciplinary record system. Within the limits of available revenues, all bureaus, offices, boards or commissions internal or affiliated with the department shall join or subscribe to a national disciplinary record system used to track interstate movement of regulated professionals who have been the subject of discipline by state boards, commissions or agencies and report disciplinary actions taken within this State to that system.

[PL 1995, c. 502, Pt. H, §10 (AMD).]

SECTION HISTORY

PL 1975, c. 556, §1 (NEW). PL 1975, c. 705, §3 (AMD). PL 1975, c. 767, §9 (RPR). PL 1977, c. 113 (AMD). PL 1977, c. 273, §§1,2 (AMD). PL 1983, c. 553, §13 (RPR). PL 1985, c. 748, §18 (AMD). PL 1985, c. 785, §B55 (AMD). PL 1987, c. 595, §2 (AMD). PL 1987, c. 609, §§1,2 (AMD). PL 1989, c. 450, §6 (AMD). PL 1991, c. 509, §§1-3 (AMD). PL 1993, c. 600, §A11 (AMD). PL 1993, c. 659, §§B2,3 (AMD). PL 1995, c. 397, §12 (AMD). PL 1995, c. 502, §H10 (AMD). PL 1997, c. 210, §§1-3 (AMD). PL 1997, c. 537, §3 (AMD). PL 1997, c. 537, §62 (AFF). PL 1997, c. 680, §A1 (AMD). PL 1999, c. 184, §§15-17 (AMD). PL 1999, c. 386, §§B2-5 (AMD). PL 1999, c. 547, §B78 (AMD). PL 1999, c. 547, §B80 (AFF). PL 1999, c. 687, §§C5-9 (AMD). PL 2001, c. 44, §10 (AMD). PL 2001, c. 44, §14 (AFF). PL 2001, c. 167, §1 (AMD). PL 2001, c. 323, §9 (AMD). PL 2003, c. 204, §B1 (AMD). PL 2005, c. 111, §1 (AMD). PL 2005, c. 474, §1 (AMD). PL 2007, c. 402, Pt. C, §§2, 3 (AMD). PL 2007, c. 621, §§2, 3 (AMD). PL 2009, c. 112, Pt. A, §2 (AMD). PL 2009, c. 112, Pt. B, §4 (AMD). PL 2011, c. 286, Pt. B, §2 (AMD). PL 2011, c. 286, Pt. B, §5 (REV). PL 2013, c. 217, Pt. A, §1 (AMD). PL 2017, c. 173, §§1, 2 (AMD). PL 2019, c. 503, Pt. A, §1 (AMD). PL 2021, c. 167, §§1-9 (AMD). PL 2021, c. 642, §§1, 2 (AMD).

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§8003-A. Complaint investigation

1. Affiliated boards. In aid of their investigative authority, the licensing boards and commissions affiliated with the department pursuant to section 8001-A may issue subpoenas in the name of the relevant licensing board or commission, in accordance with the terms of Title 5, section 9060, except that the authority applies to any stage of an investigation and is not limited to an adjudicatory proceeding.

[PL 2007, c. 402, Pt. C, §4 (NEW).]

2. Office of Professional and Occupational Regulation. The Office of Professional and Occupational Regulation, including the licensing boards and commissions and regulatory functions within the office, may receive, initiate and investigate complaints alleging any ground for disciplinary action set forth in section 8003, subsection 5-A. To assist with complaint or other investigations, or as otherwise considered necessary for the fulfillment of their responsibilities, the office, boards and commissions may hold hearings and may issue subpoenas for witnesses, records and documents in the name of the office, board or commission, as the case may be, in accordance with the terms of Title 5, section 9060, except that the subpoena authority applies to any stage or type of an investigation and is not limited to an adjudicatory hearing held pursuant to section 8003, subsection 5-A.

Investigative personnel of the Office of Professional and Occupational Regulation, during the normal conduct of their work for boards, commissions and regulatory functions within the office, may conduct investigations, issue citations, serve summonses and order corrections of violations in accordance with specific statutory authority. When specific authority does not exist to appeal an order to correct, that process must be established by rule by the respective board.

[PL 2007, c. 402, Pt. C, §4 (NEW); PL 2011, c. 286, Pt. B, §5 (REV).]

3. Dispositions available to the public. Upon disposition of each complaint and investigation, the office and all boards and commissions shall make such disposition available to the public.

[PL 2007, c. 402, Pt. C, §4 (NEW).]

SECTION HISTORY

PL 1985, c. 748, §19 (NEW). PL 1991, c. 509, §4 (AMD). PL 1995, c. 502, §H11 (AMD). PL 2007, c. 402, Pt. C, §4 (RPR). PL 2011, c. 286, Pt. B, §5 (REV).

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§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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Title 20-A:

- §6101 (Record of directory information)
- §13004 (List of persons credentialed; records confidential)
- §13020 (Revocation or suspension of a certificate)
- §13025 (Investigations)

§6101. Record of directory information

The following provisions apply to employee records. [PL 1981, c. 693, §§5, 8 (NEW).]

1. Contents. A school administrative unit shall maintain a record of directory information on each employee as follows:

- A. Name; [PL 1981, c. 693, §§5, 8 (NEW).]
 - B. Dates of employment; [PL 1981, c. 693, §§5, 8 (NEW).]
 - C. Regular and extracurricular duties, including all courses taught in that school administrative unit; [PL 1981, c. 693, §§5, 8 (NEW).]
 - D. Post-secondary educational institutions attended; [PL 1981, c. 693, §§5, 8 (NEW).]
 - E. Major and minor fields of study recognized by the post-secondary institutions attended; and [PL 1997, c. 452, §1 (AMD).]
 - F. Degrees received and dates awarded. [PL 1997, c. 452, §1 (AMD).]
 - G. [PL 1997, c. 452, §2 (RP).]
- [PL 1997, c. 452, §§1, 2 (AMD).]

2. Access. The following provisions apply to access of employee records.

A. The record of directory information shall be available for inspection and copying by any person. [PL 1981, c. 693, §§5, 8 (NEW).]

B. Except as provided in paragraph A, information in any form relating to an employee or applicant for employment, or to the employee's immediate family, must be kept confidential if it relates to the following:

- (1) All information, working papers and examinations used in the examination or evaluation of all applicants for employment;
- (2) Medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;
- (3) Performance evaluations, personal references and other reports and evaluations reflecting on the quality or adequacy of the employee's work or general character compiled and maintained for employment purposes;
- (4) Credit information;
- (5) Except as provided by subsection I, the personal history, general character or conduct of the employee or any member of the employee's immediate family;
- (6) Complaints, charges of misconduct, replies to complaints and charges of misconduct and memoranda and other materials pertaining to disciplinary action;
- (7) Social security number;
- (8) The teacher action plan and support system documents and reports maintained for certification purposes; and
- (9) Criminal history record information obtained pursuant to section 6103. [PL 1995, c. 547, §4 (AMD).]

C. Any written record of a decision involving disciplinary action taken with respect to an employee by the governing body of the school administrative unit shall not be included within any category of confidential information set forth in paragraph B. [PL 1981, c. 693, §§5, 8 (NEW).]

[PL 1995, c. 547, §4 (AMD).]

3. Commissioner's review. The commissioner shall have access to any of the records or documents designated as confidential in this section for carrying out the commissioner's duties pursuant to section 13020. Copies of any such records or documents shall simultaneously be provided to the employee.

The commissioner shall also have access to support system documents for carrying out the commissioner's certification and support system approval duties pursuant to chapter 502 and to other confidential employee records for carrying out the commissioner's school approval duties pursuant to chapter 206.

[PL 1987, c. 620, §2 (AMD).]

SECTION HISTORY

PL 1981, c. 693, §§5,8 (NEW). PL 1983, c. 470, §5 (AMD). PL 1983, c. 806, §60 (AMD). PL 1983, c. 862, §58 (AMD). PL 1985, c. 506, §A37 (AMD). PL 1987, c. 620, §§1,2 (AMD). PL 1995, c. 547, §§2-4 (AMD). PL 1997, c. 452, §§1,2 (AMD).

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§13004. List of persons credentialed; records confidential

1. Lists. The commissioner shall keep a list of credentialed individuals. This list is a public record. [PL 2017, c. 235, §3 (AMD); PL 2017, c. 235, §41 (AFF).]

2. Records confidential. Transcripts, recommendations and other documents submitted in support of an application for a credential or collected by the department for verification of credential records are confidential. They may be made available only to the following:

- A. School boards and superintendents; [PL 1981, c. 693, §§5, 8 (NEW).]
 - B. Authorized personnel of the department in fulfilling assigned duties; and [PL 1981, c. 693, §§5, 8 (NEW).]
 - C. Individuals and their representatives who request to examine their own records. [PL 1981, c. 693, §§5, 8 (NEW).]
- [PL 2017, c. 235, §3 (AMD); PL 2017, c. 235, §41 (AFF).]

2-A. Confidentiality. The provisions of this subsection govern confidentiality.

A. Complaints and responses pursuant to section 13020 and any other information or materials that may result in an action to deny, revoke or suspend a credential are confidential, except when submitted in court proceedings to revoke or suspend a credential. [PL 2017, c. 235, §3 (AMD); PL 2017, c. 235, §41 (AFF).]

B. Except for information designated confidential under section 6101 or section 6103, information designated confidential under paragraph A may be released or used by the department as necessary to:

- (1) Complete its own investigations;
 - (2) Provide information to a national association of state directors of teacher education and certification to which the State belongs;
 - (3) Assist other public authorities to investigate an individual's credential in another jurisdiction;
 - (4) Report or prevent criminal misconduct or assist law enforcement agencies in their investigations; or
 - (5) Report child abuse or neglect under Title 22, section 4011-A. [PL 2017, c. 235, §3 (AMD); PL 2017, c. 235, §41 (AFF).]
- C. The department may publish and release as public information statistical summaries of complaints and dispositions as long as the release of such information does not jeopardize the confidentiality of individually identifiable information. [PL 2009, c. 331, §1 (NEW).]
- D. Notwithstanding paragraph A, the following information concerning final written decisions relating to disciplinary action taken by the commissioner against a person holding a credential is a public record:

- (1) The name of the person;
- (2) The type of action taken, consisting of denial, revocation, suspension, surrender or reinstatement;
- (3) The grounds for the action taken;
- (4) The relevant dates of the action;
- (5) The type of credential and endorsements held, including relevant dates;
- (6) The schools where the person was or is employed; and

(7) The dates of employment. [PL 2017, c. 235, §3 (AMD); PL 2017, c. 235, §41 (AFF).]
[PL 2017, c. 235, §3 (AMD); PL 2017, c. 235, §41 (AFF).]

2-B. Addresses of credential holders and applicants. Home addresses held by the department of individuals with credentials or applicants for credentials in the State may be made available in response to the following:

A. Formal request from a commissioner or chief executive officer of other state agencies, including the judicial branch when access to that information may be necessary in carrying out an official function; and [PL 1987, c. 395, Pt. A, §86 (NEW).]

B. Formal request by majority vote of any joint standing committee of the Legislature when access to that information may be necessary in carrying out an official function. [PL 1987, c. 395, Pt. A, §86 (NEW).]

The use of these addresses by any other agency or department of government to which they may be furnished is limited to the purposes for which they are furnished and by the law under which they may be furnished. It is unlawful for any person to solicit, disclose, receive, make use of or authorize, knowingly permit, participate in or acquiesce in the use of, any list of or names of, or any information concerning, persons applying for or receiving assistance, directly or indirectly, derived from the records, papers, files or communications of the State or subdivisions or agencies, or acquired in the course of the performance of official duties. Any person violating this subsection must be punished by a fine of not more than \$500 or by imprisonment for not more than 11 months, or by both. [PL 2017, c. 235, §3 (AMD); PL 2017, c. 235, §41 (AFF).]

3. Duplication costs. Individuals requesting copies of their records bear the costs of copying them. [PL 2017, c. 235, §3 (AMD); PL 2017, c. 235, §41 (AFF).]

4. Rules.
[PL 2017, c. 235, §3 (RP); PL 2017, c. 235, §41 (AFF).]

SECTION HISTORY

PL 1981, c. 693, §§5,8 (NEW). PL 1983, c. 470, §11 (AMD). PL 1983, c. 806, §92 (AMD). PL 1987, c. 395, §A86 (AMD). PL 1999, c. 547, §B78 (AMD). PL 1999, c. 547, §B80 (AFF). PL 2007, c. 666, §1 (AMD). PL 2009, c. 331, §1 (AMD). PL 2009, c. 567, §10 (AMD). PL 2017, c. 235, §3 (AMD). PL 2017, c. 235, §41 (AFF).

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§13020. Revocation or suspension of a certificate

1. General. The state board's rules adopted under this chapter shall specify the procedure to be followed by the commissioner in seeking the revocation or suspension of a certificate in the District Court and shall authorize the commissioner to enter into a consent agreement with any certificated person in lieu of initiating or completing a proceeding in the District Court.

[PL 1983, c. 845, §4 (NEW); PL 1999, c. 547, Pt. B, §78 (AMD); PL 1999, c. 547, Pt. B, §80 (AFF).]

2. Grounds for revocation or suspension of a certificate. The following are grounds for revocation or suspension of a certificate issued under this Title:

A. Evidence that a person has injured the health or welfare of a child through physical or sexual abuse or exploitation shall be grounds for revocation or suspension of a certificate. Notwithstanding Title 5, chapter 341, a certified court record that a person certificated under this Title was convicted in any state or federal court of a criminal offense involving the physical or sexual abuse or exploitation of a child within the previous 5 years shall be sufficient grounds for revocation or suspension of that person's certificate; and [PL 1983, c. 845, §4 (NEW).]

B. Other grounds as may be established by the state board in its rules relating to criminal offenses not inconsistent with Title 5, chapter 341, fraud or gross incompetence. [PL 1983, c. 845, §4 (NEW).]

[PL 1983, c. 845, §4 (NEW).]

2-A. Grounds for discipline of a school psychologist or guidance counselor. Evidence that a person who is certified under this Title as a school psychologist or guidance counselor has advertised, offered or administered conversion therapy as defined in Title 32, section 59-C, subsection 1 to a child is grounds for discipline of that person.

[PL 2019, c. 165, §1 (NEW).]

3. Denial of certificate for prior immoral or prohibited conduct. Evidence that an applicant for initial certification or renewal has injured the health or welfare of a child through physical or sexual abuse or exploitation is grounds for a denial of a certificate. Evidence that an applicant for initial certification or renewal as a school psychologist or guidance counselor has advertised, offered or administered conversion therapy as defined in Title 32, section 59-C, subsection 1 to a child is grounds for a denial of a certificate. Notwithstanding Title 5, chapter 341, every person who, within 5 years of the application for initial certification or renewal, has been convicted in any state or federal court of a criminal offense involving the physical or sexual abuse or exploitation of a child may be presumed by the commissioner to lack good moral character for the purposes of this chapter. This presumption is a rebuttable presumption. Notwithstanding Title 5, chapter 341, the commissioner is entitled to consider all records of prior criminal convictions involving child abuse or exploitation in determining an applicant's eligibility for a certificate.

[PL 2019, c. 165, §2 (AMD).]

4. Reinstatement of certificate. Revoked certificates may only be reinstated in accordance with state board rules. The following provisions govern the reinstatement of any certificate revoked for reasons of child abuse or exploitation.

A. Notwithstanding Title 5, chapter 341, no certificate revoked for reasons of child abuse or exploitation may be reinstated within 5 years of the revocation and in no case less than 3 years from the expiration of probation or parole or discharge from imprisonment for a criminal conviction involving child abuse or exploitation. [PL 1983, c. 845, §4 (NEW).]

B. In determining whether a certificate may be reinstated, the commissioner shall determine whether the applicant has been sufficiently rehabilitated to warrant the public trust. The applicant shall be required to demonstrate sufficient evidence of rehabilitation, notwithstanding Title 5,

chapter 341, and the commissioner shall state in writing the basis for any decision which denies reinstatement of a certificate. [PL 1983, c. 845, §4 (NEW).]

C. Denial of reinstatement pursuant to paragraph B may be appealed to the Superior Court. [PL 1983, c. 845, §4 (NEW).]
[PL 1983, c. 845, §4 (NEW).]

SECTION HISTORY

PL 1983, c. 845, §4 (NEW). PL 1999, c. 547, §B78 (AMD). PL 1999, c. 547, §B80 (AFF). PL 2019, c. 165, §§1, 2 (AMD).

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§13025. Investigations

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. [PL 2019, c. 403, §1 (RP).]

B. "Covered investigation" means an investigation by a school entity into the conduct of a holder of a credential that a school entity has a reasonable expectation would affect the credential holder's employment or contracted service because the alleged conduct involves alcohol, illegal drugs, physical abuse, emotional abuse, inappropriate contact between a credential holder and a student, stalking or similar behavior that endangers the health, safety or welfare of a student. [PL 2019, c. 403, §1 (AMD).]

C. "School entity" means an approved private school, school administrative unit, public charter school, education service center, school in the unorganized territory or school operated by the State. [PL 2019, c. 219, §6 (AMD).]

[PL 2019, c. 219, §6 (AMD); PL 2019, c. 403, §1 (AMD).]

2. Subpoenas. When conducting an investigation relating to the credentialing of personnel under chapter 501 and this chapter and rules of the state board, the commissioner may issue subpoenas for education records relevant to that investigation.

[PL 2017, c. 477, §1 (NEW).]

3. Duties of school entities. A school entity shall notify the department immediately if a credential holder who is the subject of a covered investigation leaves the school entity's employment for any reason prior to the conclusion of the covered investigation. A school entity shall notify the department immediately if a credential holder is disciplined, suspended or terminated as a result of a covered investigation in which the school entity determined that a student's health, safety or welfare was endangered. The school entity shall provide to the department any final report produced in support of the school entity's decision to discipline, suspend or terminate the credential holder. The credential holder who is the subject of the report may submit to the department a written rebuttal to the report. The written rebuttal must be placed in the department's investigative file.

[PL 2019, c. 403, §1 (AMD).]

4. Duties of department. The department shall act in accordance with this subsection.

A. The department shall notify the superintendent or chief administrative officer of a school entity within 15 business days of the department's initiating an investigation into a holder of a credential who works for the school entity and shall notify the school entity immediately if the department takes action on that credential. Within 5 business days after completion of an investigation, the department shall notify each school entity for which the credential holder works of the final outcome of the investigation, including, but not limited to, any actions taken, and shall provide to the school entity any final written decision. [PL 2017, c. 477, §1 (NEW).]

B. Immediately upon receipt from a school entity of notification pursuant to subsection 3 of the discipline, suspension or termination of a credential holder, or the leaving of employment by a credential holder prior to the completion of a covered investigation of that credential holder, the department shall notify the superintendent or chief administrative officer of all other school entities for which the credential holder works, as reported to the department under section 13026, that the credential holder was disciplined, suspended or terminated as a result of a covered investigation, or that the credential holder left employment prior to completion of a covered investigation. If a credential holder provides consent as part of that credential holder's application for employment with a school entity, the department shall notify the superintendent or the chief administrative officer of that school entity if that credential holder left employment with a school entity prior to the completion of a covered investigation of that credential holder. [PL 2019, c. 403, §1 (AMD).]

C. The department shall destroy copies of all records and reports related to a finding resulting in discipline, suspension or termination of a credential holder if the finding resulting in that discipline, suspension or termination is reversed upon appeal at the school entity level. [PL 2019, c. 403, §1 (NEW).]

[PL 2019, c. 403, §1 (AMD).]

5. Confidentiality. The department may share information that is confidential pursuant to section 6101 or 13004 with a school entity in accordance with subsection 4. A school entity that receives confidential information shall maintain the confidentiality of that information.

[PL 2019, c. 403, §1 (AMD).]

6. Rules.

[PL 2019, c. 403, §1 (RP).]

SECTION HISTORY

PL 2013, c. 167, Pt. D, §1 (NEW). PL 2017, c. 235, §29 (AMD). PL 2017, c. 235, §41 (AFF). PL 2017, c. 477, §1 (RPR). PL 2019, c. 219, §6 (AMD). PL 2019, c. 403, §1 (AMD).

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Title 25:

- §2805-B (Employment and training records)
- §2805-C (Complaint review committee)
- §2806-A (Disciplinary sanctions)
- §2807 (Reports of conviction or misconduct by certificate holder)

§2805-B. Employment and training records

1. Annual report and records. Within 30 days of the close of each calendar year, the highest elected official of each political subdivision and the head of each state department and agency employing law enforcement or corrections officers subject to this chapter shall provide the board with a report containing a list of the names and dates of employment of all law enforcement and corrections officers covered by this chapter. The official or department or agency head shall maintain records regarding the basic and in-service training of law enforcement and corrections officers as provided in sections 2804-C to 2804-F. The report provided to the board must include the total number of excessive force complaints received about law enforcement or corrections officers during the reporting year by the reporting jurisdiction and the total number of these complaints that were determined to be founded and unfounded. The board may adopt additional categories that law enforcement agencies shall record and include in their annual report to the board.

[PL 1993, c. 744, §10 (AMD).]

2. New officers. Whenever a law enforcement officer or corrections officer is newly appointed, the official or department or agency head shall send notice of appointment within 30 days to the board on a form provided for that purpose. The form is deemed an application for admission to the training program or for other certification as required by this chapter.

[PL 2005, c. 331, §24 (AMD).]

3. Termination of officers. Whenever the employment of a law enforcement officer or corrections officer is terminated, the official or department or agency head shall send notice of the termination within 30 days to the board on a form provided for that purpose.

[PL 2005, c. 331, §25 (NEW).]

4. Application for employment with a law enforcement agency, correctional facility or county or regional jail. This subsection applies when a law enforcement officer or corrections officer who is employed by a law enforcement agency, correctional facility or county or regional jail, or who was employed by a law enforcement agency, correctional facility or county or regional jail within 90 days prior to making an application for employment, applies for employment as a law enforcement officer or corrections officer with a different law enforcement agency, correctional facility or county or regional jail.

A. As used in this subsection, unless the context otherwise indicates, the following terms have the following meanings.

(1) "Applicant" means the law enforcement officer or corrections officer who is applying for employment at a hiring agency.

(2) "Employing agency" means the law enforcement agency, correctional facility or county or regional jail that employs the applicant at the time that a request is made pursuant to paragraph B or that employed the applicant within 90 days prior to the applicant making an employment application to the hiring agency.

(3) "Employment records" means personnel, employment and any other records pertaining to an applicant's employment and job performance with the employing agency but does not include any internal investigative records of the employing agency relating to the applicant.

(4) "Hiring agency" means the law enforcement agency, correctional facility or county or regional jail to which the applicant is applying for employment. [PL 2021, c. 256, §1 (NEW).]

B. The applicant shall sign a request that an employing agency release all employment records to a hiring agency. For the purposes of the employment application, the request form must include a waiver of any rights that the applicant has to the privacy of the employment records. The request

form must be signed by the applicant and the signature must be witnessed. The board shall adopt rules establishing a standard request and waiver form. Rules adopted pursuant to this paragraph are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A. [PL 2021, c. 256, §1 (NEW).]

C. An employing agency that receives a request pursuant to paragraph B shall promptly release all employment records to the hiring agency. [PL 2021, c. 256, §1 (NEW).]

D. An employing agency that responds to a request pursuant to paragraph B and releases information pursuant to paragraph C is immune from civil or criminal liability for releasing the requested information to a hiring agency. [PL 2021, c. 256, §1 (NEW).]

E. A hiring agency that receives information pursuant to paragraph C from an employing agency shall treat that information in the same manner as it treats employment records of the employees of the hiring agency. A hiring agency is immune from civil or criminal liability for receiving the requested information. [PL 2021, c. 256, §1 (NEW).]

[PL 2021, c. 256, §1 (NEW).]

5. Release of the results of a polygraph examination. When a polygraph examination has been performed on a law enforcement officer or corrections officer and the results indicate probable cause to believe that the officer is or has been involved in criminal activity, the law enforcement agency, correctional facility or county or regional jail that conducted the examination or for whom the examination was performed shall release the results of the examination to the head of the law enforcement agency, correctional facility or county or regional jail that employs the law enforcement officer or corrections officer.

[PL 2021, c. 256, §2 (NEW).]

SECTION HISTORY

PL 1989, c. 521, §§8,17 (NEW). PL 1993, c. 744, §10 (AMD). PL 2005, c. 331, §§24,25 (AMD). PL 2021, c. 256, §§1, 2 (AMD).

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§2805-C. Complaint review committee

1. Committee. The chair of the board shall appoint 5 members of the board to serve on the complaint review committee. Two of the members must be citizen members of the board. A majority of the members of the committee, including at least one citizen member, must be present for deliberations. A majority vote is necessary to recommend taking corrective or disciplinary action on a complaint or to order an independent investigation pursuant to subsection 3.

[PL 2021, c. 196, §2 (AMD).]

2. Investigation. The committee shall investigate complaints regarding any violation of this chapter or rules established by the board by a person holding a certificate issued by the board pursuant to section 2803-A and recommend appropriate action to the board.

[PL 2013, c. 147, §37 (AMD).]

3. Investigation and notice of complaints. Before proceeding with a hearing to suspend or revoke a certificate issued by the board pursuant to section 2803-A, the board, the complaint review committee or board staff shall notify the chief administrative officer of the agency employing the certificate holder that the board is investigating the certificate holder. The chief administrative officer shall investigate the alleged conduct of the certificate holder and, notwithstanding any other provision of law, report the findings and provide copies of the investigative reports to the board within 30 days of receiving notice of the investigation. The board shall proceed with any suspension or revocation action it determines appropriate after receiving the chief administrative officer's findings and reports. This subsection does not preclude a chief administrative officer from investigating conduct that may give rise to grounds for suspension or revocation before receiving a request for an investigation from the board, the complaint review committee or board staff, as long as the chief administrative officer notifies the board following that investigation if the investigation reveals reasonable cause to believe that a certificate holder has engaged in conduct described in section 2806-A, subsection 5, and providing to the board the findings and investigative reports related to the conduct. Nothing in this subsection precludes the board from investigating the conduct of a certificate holder on its own or referring a matter of such conduct to another agency for investigation regardless of whether it receives an investigative report from the chief administrative officer under this section.

[PL 2013, c. 147, §37 (NEW).]

SECTION HISTORY

PL 1993, c. 744, §11 (NEW). PL 1997, c. 42, §1 (AMD). PL 2013, c. 147, §37 (AMD). PL 2021, c. 196, §2 (AMD).

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§2806-A. Disciplinary sanctions**(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)**

1. Disciplinary proceedings and sanctions. The board or, as delegated, the complaint review committee, established pursuant to section 2805-C, or staff, 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 any rules adopted by the board. Investigation may include an informal conference before the complaint review committee to determine whether grounds exist for suspension, revocation or denial of a certificate or for taking other disciplinary action pursuant to this chapter. The board, the complaint review committee or staff may subpoena witnesses, records and documents in any investigation or hearing conducted.

[PL 2013, c. 147, §39 (NEW).]

2. Notice. The board or, as delegated, the complaint review committee, established pursuant to section 2805-C, or staff, shall notify the certificate holder of the content of a complaint filed against the certificate holder as soon as possible, but in no event later than 60 days after the board or staff receives the initial pertinent information. The certificate holder has the right to respond within 30 days in all cases except those involving an emergency denial, suspension or revocation, as described in Title 5, chapter 375, subchapter 5. If the certificate holder's response to the complaint satisfies the board, the complaint review committee or staff 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.

[PL 2013, c. 147, §39 (NEW).]

3. Informal conference. If, in the opinion of the board, the complaint review committee, established pursuant to section 2805-C, or staff, the factual basis of the complaint is or may be true and the complaint is of sufficient gravity to warrant further action, the board or staff may request an informal conference with the certificate holder. The complaint review committee or staff shall provide the certificate holder with adequate notice of the conference and of the issues to be discussed. The certificate holder may, without prejudice, refuse to participate in an informal conference if the certificate holder prefers to request an adjudicatory hearing.

[PL 2013, c. 147, §39 (NEW).]

4. Further action. If the board or the complaint review committee, established pursuant to section 2805-C, 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.

A. The board, the complaint review committee or staff may negotiate a consent agreement that resolves a complaint or investigation without further proceedings. Consent agreements may be entered into only with the consent of the certificate holder and the board. Any remedy, penalty or fine that is otherwise available by law, even if only in the jurisdiction of the Superior Court, may be achieved by consent agreement, including long-term suspension and permanent revocation of a certificate issued under this chapter. A consent agreement is not subject to review or appeal and may be modified only by a writing executed by all parties to the original consent agreement. A consent agreement is enforceable by an action in Superior Court. [PL 2013, c. 147, §39 (NEW).]

B. If a certificate holder offers to voluntarily surrender a certificate, the board, the complaint review committee or staff may negotiate stipulations necessary to ensure protection of the public health and safety and the rehabilitation or education of the certificate holder. These stipulations may be set forth only in a consent agreement entered into between the board and the certificate holder. [PL 2013, c. 147, §39 (NEW).]

C. Unless specifically otherwise indicated in this chapter, if the board concludes that modification, suspension, revocation or imposition of any other sanction authorized under this chapter is in order, the board shall so notify the certificate holder and inform the certificate holder of the right to request

an adjudicatory hearing. If the certificate holder requests an adjudicatory hearing in a timely manner, the adjudicatory hearing must be held by the board, a subcommittee of 3 board members designated by the board chair or a hearing officer appointed by the board. The hearing must be in accordance with Title 5, chapter 375, subchapter 4. If a hearing officer conducts the hearing, the hearing officer, after conducting the hearing, shall file with the board all papers connected with the case and report recommended findings and sanctions to the board, which may approve or modify them. If the certificate holder wishes to appeal the final decision of the board, the certificate holder shall file a petition for review with the Superior Court within 30 days of receipt of the board's decision. Review under this paragraph must be conducted pursuant to Title 5, chapter 375, subchapter 7. [PL 2013, c. 147, §39 (NEW).]

[PL 2013, c. 147, §39 (NEW).]

5. Grounds for action. The board may take action against any applicant for a certificate or certificate holder pursuant to this chapter or any rules adopted pursuant to this chapter, including, but not limited to, a decision to impose a civil penalty or to refuse to issue a certificate or to modify, suspend or revoke a certificate for any of the following reasons:

A. Failure to meet annual certification or recertification requirements. In enforcing this paragraph, the board shall, no later than March 31st of every year, review the certification of all law enforcement and corrections officers and decertify those individuals who do not meet certification or recertification requirements; [PL 2013, c. 147, §39 (NEW).]

B. Absent extenuating circumstances as determined by the board, working more than 1,040 hours in any one calendar year as a part-time law enforcement officer performing law enforcement duties and while possessing a part-time law enforcement certificate issued by the board pursuant to section 2803-A; [PL 2013, c. 147, §39 (NEW).]

C. Conviction of murder or any crime or attempted crime classified in state law as a Class A, Class B, Class C or Class D crime or a violation of any provision of Title 17-A, chapter 15, 19, 25, 29, 31, 35, 41 or 45. Notwithstanding any other provision of law, the board may summarily and without hearing suspend or revoke any certificate as a result of any criminal conviction identified by this paragraph pursuant to Title 5, section 10004, subsection 1; [PL 2013, c. 147, §39 (NEW).]

D. Juvenile adjudication of murder or any crime or attempted crime classified in state law as a Class A, Class B, Class C or Class D crime; [PL 2013, c. 147, §39 (NEW).]

E. Guilty plea pursuant to a deferred disposition of murder or any crime or attempted crime classified in state law as a Class A, Class B, Class C or Class D crime or a violation of any provision of Title 17-A, chapter 15, 19, 25, 29, 31, 35, 41 or 45; [PL 2013, c. 147, §39 (NEW).]

F. Engaging in conduct that is prohibited or penalized by state law as murder or a Class A, Class B, Class C or Class D crime or by any provision of Title 17-A, chapter 15, 19, 25, 29, 31, 35, 41 or 45; [PL 2013, c. 147, §39 (NEW).]

G. Conviction of or adjudication as a juvenile of a crime specified in paragraph D in another state or other jurisdiction, unless that crime is not punishable as a crime under the laws of that state or other jurisdiction in which it occurred. Notwithstanding any other provision of law, the board may summarily and without hearing suspend or revoke any certificate as a result of any criminal conviction identified by this paragraph pursuant to Title 5, section 10004, subsection 1; [PL 2013, c. 147, §39 (NEW).]

H. Engaging in conduct specified in paragraphs C and D in another state or other jurisdiction unless that conduct is not punishable as a crime under the laws of that state or other jurisdiction in which it occurred; [PL 2013, c. 147, §39 (NEW).]

I. Falsifying or misrepresenting material facts in obtaining or maintaining a certificate issued by the board pursuant to section 2803-A; [PL 2013, c. 147, §39 (NEW).]

J. Engaging in conduct that violates the standards established by the board and that when viewed in light of the nature and purpose of the person's conduct and circumstances known to the person, involves a gross deviation from the standard of conduct that a reasonable and prudent certificate holder would observe in the same or similar situation; [PL 2019, c. 438, §5 (AMD).]

K. Engaging in a sexual act, as defined in Title 17-A, section 251, subsection 1, paragraph C, or in sexual contact, as defined in Title 17-A, section 251, subsection 1, paragraph D, with another person, not the person's spouse, if at the time of the sexual act or sexual contact:

(1) **(TEXT EFFECTIVE UNTIL 1/01/23)** The officer was engaged in an investigation or purported investigation involving an allegation of abuse, as defined in former Title 19, section 762, subsection 1 and in Title 19-A, section 4002, subsection 1;

(1) **(TEXT EFFECTIVE 1/01/23)** The officer was engaged in an investigation or purported investigation involving an allegation of abuse, as defined in former Title 19, section 762, subsection 1, in Title 19-A, former section 4002, subsection 1 and in Title 19-A, section 4102, subsection 1;

(2) The other person was the alleged victim of that abuse;

(3) The parties did not have a preexisting and ongoing sexual relationship that included engaging in any sexual act or sexual contact; and

(4) Less than 60 days had elapsed since the officer initially became involved in the investigation or purported investigation; [PL 2021, c. 255, §2 (AMD); PL 2021, c. 647, Pt. B, §58 (AMD); PL 2021, c. 647, Pt. B, §65 (AFF).]

L. Engaging in sexual contact, as defined in Title 17-A, section 251, subsection 1, paragraph D, with another person, not the person's spouse, if at the time of the sexual contact the applicant or certificate holder is acting in performance of official duties and the other person is under arrest, in custody or being interrogated or temporarily detained, including during a traffic stop or questioning pursuant to an investigation of a crime, except that it is not grounds for discipline that a certificate holder properly performs a search of a person for legitimate law enforcement purposes consistent with training standards approved by the board; and [PL 2021, c. 255, §3 (AMD).]

M. Engaging in conduct that is a violation of the standards of conduct established by the board by rule pursuant to section 2803-A, subsection 15-A. [PL 2021, c. 255, §4 (NEW).]
[PL 2021, c. 255, §§2-4 (AMD); PL 2021, c. 647, Pt. B, §58 (AMD); PL 2021, c. 647, Pt. B, §65 (AFF).]

6. Discipline. The board may impose the following forms of discipline upon a certificate holder or applicant for a certificate:

A. Denial of an application for a certificate, which may occur in conjunction with the imposition of other discipline; [PL 2013, c. 147, §39 (NEW).]

B. Issuance of warning, censure or reprimand. Each warning, censure or reprimand issued must be based upon violation of a single applicable law, rule or condition of certification or must be based upon a single instance of actionable conduct or activity; [PL 2013, c. 147, §39 (NEW).]

C. Suspension of a certificate for up to 3 years. Execution of all or any portion of a term of suspension may be stayed pending successful completion of conditions of probation, although the suspension remains part of the certificate holder's record; [PL 2013, c. 147, §39 (NEW).]

D. Revocation of a certificate; [PL 2013, c. 147, §39 (NEW).]

E. Imposition of civil penalties of up to \$1,500 for each violation of applicable laws, rules or conditions of certification or for each instance of actionable conduct or activity; or [PL 2013, c. 147, §39 (NEW).]

F. Imposition of conditions of probation. Probation may run for such time period as the board determines appropriate. Probation may include conditions such as: additional continuing education; medical, psychiatric or mental health consultations or evaluations; mandatory professional supervision of the applicant or certificate holder; restrictions; and other conditions as the board determines appropriate. Costs incurred in the performance of terms of probation are borne by the applicant or certificate holder. Failure to comply with the conditions of probation is a ground for disciplinary action against a certificate holder. [PL 2013, c. 147, §39 (NEW).]
[PL 2013, c. 147, §39 (NEW).]

7. Letter of guidance. The board may issue a letter of guidance or concern to a certificate holder. A letter of guidance or concern may be used to educate, reinforce knowledge regarding legal or professional obligations or express concern over action or inaction by the certificate holder that does not rise to the level of misconduct sufficient to merit disciplinary action. The issuance of a letter of guidance or concern is not a formal proceeding and does not constitute an adverse disciplinary action of any form. Notwithstanding any other provision of law, letters of guidance or concern are not confidential. The board may place letters of guidance or concern, together with any underlying complaint, report and investigation materials, in a certificate holder's file for a specified period of time, not to exceed 10 years. Any letters, complaints and materials placed on file may be accessed and considered by the board in any subsequent action commenced against the certificate holder within the specified time frame. Complaints, reports and investigation materials placed on file remain confidential to the extent required by this chapter.
[PL 2013, c. 147, §39 (NEW).]

8. Injunction. The State may bring an action in Superior Court to enjoin a person from violating any provision of this chapter, regardless of whether civil or administrative proceedings have been or may be instituted.
[PL 2013, c. 147, §39 (NEW).]

9. Recertification. A person whose certificate has been revoked under this chapter may apply to the board for reinstatement of certification if:

A. The certificate was revoked for a cause other than engaging in conduct that is prohibited or penalized by state law as murder or as a Class A, Class B or Class C crime or for equivalent conduct in another state or other jurisdiction; [PL 2013, c. 147, §39 (NEW).]

B. At least 3 years have elapsed since revocation of the certificate; and [PL 2013, c. 147, §39 (NEW).]

C. A law enforcement or corrections agency has indicated a commitment to hire the individual if the individual is recertified. [PL 2013, c. 147, §39 (NEW).]

The granting of recertification under this subsection is governed by Maine Criminal Justice Academy rules relating to certification. The individual is subject to all training requirements applicable to persons whose certification has lapsed.
[PL 2013, c. 147, §39 (NEW).]

10. Confidentiality; access to documents; public records. All complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in suspension or revocation of a certificate that are considered by the board or the complaint review committee established pursuant to section 2805-C are confidential. If a person subject to this chapter requests an adjudicatory hearing under the Maine Administrative Procedure Act, that hearing must be open to the public. The hearing officer who presides over the hearing shall issue a written decision that states the conduct or other facts on the basis of which action is being taken and the reason for that action. Once issued, the hearing officer's written decision is a public record under the Freedom of Access Act, regardless of whether it is appealed. Any action taken by the board pursuant to this section as a result of a complaint, charge or accusation must be supported

by a statement of findings and must be issued as a written decision of the board. The written decision of the board and findings are public records under the Freedom of Access Act.

[PL 2021, c. 255, §5 (AMD).]

SECTION HISTORY

PL 2013, c. 147, §39 (NEW). PL 2019, c. 438, §§5, 6 (AMD). PL 2021, c. 255, §§2-5 (AMD). PL 2021, c. 647, Pt. B, §58 (AMD). PL 2021, c. 647, Pt. B, §65 (AFF).

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§2807. Reports of conviction or misconduct by certificate holder

Notwithstanding any other provision of law, in the event that a certificate holder is convicted of a crime or violation or engages in conduct that could result in suspension or revocation of the individual's certificate pursuant to section 2806-A and the chief administrative officer of the agency employing the certificate holder or considering the individual for employment has knowledge of the conviction or conduct, the chief administrative officer shall within 30 days notify the Director of the Maine Criminal Justice Academy with the name of the certificate holder and a brief description of the conviction or conduct. [PL 2013, c. 147, §40 (AMD).]

SECTION HISTORY

PL 1983, c. 67, §6 (NEW). PL 1983, c. 544, §1 (NEW). PL 1985, c. 506, §A49 (RPR). PL 1995, c. 131, §3 (AMD). PL 2005, c. 331, §28 (AMD). PL 2013, c. 147, §40 (AMD).

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Laxon, Lindsay

From: Marcus Wraight <marcus@wraight.law>
Sent: Friday, November 3, 2023 1:12 PM
To: Laxon, Lindsay
Subject: RTKAC public comment

This message originates from outside the Maine Legislature.

Ms. Laxon,

I respectfully submit the following as a comment for Monday's meeting. I hope it is helpful.

My interest in access to the disciplinary records of public employees is as a criminal defense attorney and would cover law enforcement officers and others, such as state experts. Any state employee called as a witness would be covered in my concerns about the status quo.

Destruction of records that is currently allowed by the State Archivist's retention schedule subcontracts access to public records to private contracts in the form of collective bargaining agreements (CBAs). Record retention should be set by the legislature so that documents are available to the public, and not thwarted by such contractual arrangements - as a matter of principle. Some entities allow destruction (not just separation from a personnel file) within months. Public records about discipline should be above negotiating the slalom of various timelines of document destruction in different CBAs before a FOIA request can be made to know they even exist. Records can still be separated for the purpose of tiered discipline, but retained for public records purposes without any issue. Make no mistake. This is about a reluctance to disclose, which needs to be protected. Retention must be uniformly applied state-wide.

There is also an important public policy and legal reason why this practice is hugely problematic. Under *Brady v. Maryland* (and its progeny, such as *Giglio v. United States*), impeachment material of witnesses should be disclosed as part of a constitutional obligation of discovery for defendants in criminal cases. This case law is commonly misunderstood, conveniently, and defined narrowly. Discovery of disciplinary records about a state witness in a criminal case is not just about a witness's veracity, accuracy, or the like. If a witness, such as a police officer, testifies that they have never been disciplined, or they always follow policy, and they have been or do not, that is a misstatement that can and should be impeached during a trial. It is the *process of impeachment* that undermines credibility, NOT what the discipline was about. Whether the discipline was for being late, or missing a shift - the misstatement was made. It is incumbent on a prosecutor to disclose before that point to allow that impeachment to happen - or at least give a defendant an opportunity to decide whether to do so through counsel. If a record is shredded, a prosecutor's obligation remains but becomes a hollow one if there is no record to disclose. No one will ever know about the misstatement or that an ability to impeach was lost. This hampers the truth-seeking function of courts and trials. Injustices are inevitable. The current practice must end. Disciplinary records must be retained uniformly for a period of years. State entities should not be able to adopt a patchwork of retention based on the negotiating prowess of union representatives of those to whom the records pertain. They have a job to do in protecting members and can't be faulted for doing so brilliantly. However, foxes do not make good guardians of henhouses.

M



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"Errors do not cease to be errors simply because they're ratified into law." E.A. Bucchianeri, *Brushstrokes of a Gadfly*.