

2017 -- H 5884 SUBSTITUTE A

LC001982/SUB A

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

A N A C T

RELATING TO BUSINESSES AND PROFESSIONS -- BOARD OF MEDICAL LICENSURE
AND DISCIPLINE

Introduced By: Representatives McKiernan, O'Brien, Ucci, McEntee, and Craven

Date Introduced: March 09, 2017

Referred To: House Health, Education & Welfare

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 5-37-1.3, 5-37-5.2 and 5-37-6.2 of the General Laws in Chapter 5-
2 37 entitled "Board of Medical Licensure and Discipline" are hereby amended to read as follows:

3 **5-37-1.3. Board of medical licensure and discipline -- Powers and duties.**

4 The board has the following duties and powers:

- 5 (1) To adopt, amend, and rescind rules and regulations, with the approval of the director,
6 necessary to carry out the provisions of this chapter;
- 7 (2) To investigate all complaints and charges of unprofessional conduct against any
8 licensed physician or limited registrant and hold hearings to determine whether those charges are
9 substantiated or unsubstantiated;
- 10 (3) To direct the director of the department of health to license qualified applicants;
- 11 (4) To appoint one or more members of the board to act for the members of the board in
12 investigating the conduct or competence of any licensed physician or limited registrant;
- 13 (5) To direct the director to revoke or suspend licenses or registrations, or implement
14 other disciplinary action against persons licensed or registered under this chapter;
- 15 (6) To issue subpoenas and administer oaths in connection with any investigations,
16 hearings, or disciplinary proceedings held under the authority of this chapter as follows:
- 17 (i) All subpoenas issued pursuant to this section shall only be issued by a vote of either
18 the investigating committee or the full board;

1 (ii) All subpoenas issued by the board or the investigating committee shall be served by a
2 disinterested party or by a constable authorized by the courts to serve process;

3 (iii) Subpoenas issued by either the investigating committee or the full board shall have a
4 reasonable return date that will allow the recipient an opportunity to review the subpoena, consult
5 with counsel, and prepare a response to the subpoena; and

6 (iv) All subpoenas shall be in compliance with the Rhode Island health care
7 confidentiality act;

8 (7) To take or cause depositions to be taken as needed in any investigation, hearing, or
9 proceeding;

10 (8) To summon and examine witnesses during any investigation, hearing, or proceeding
11 conducted by the board;

12 (9) To adopt and publish, with the approval of the director, rules of procedure and other
13 regulations in accordance with the administrative procedure act, chapter 35 of title 42.

14 (10) ~~(i)~~ To require a licensee to undergo a physical or psychiatric examination by a
15 physician acceptable to the board, from a list provided to the licensee by the board, if probable
16 cause exists to believe that allegations of misconduct against a licensee are caused by an
17 impairment that has directly affected the ability of the licensee to conduct his or her practice
18 professionally- ; provided, that:

19 ~~(i)~~(i) The investigating committee and the board may not discriminate on the basis of
20 disability in the administration of the licensing program, nor subject qualified individuals with
21 disabilities to any discrimination on the basis of disability in its complaint procedure.

22 (ii) All decisions of the investigating committee and the board shall be based on the
23 allegation of unprofessional conduct and not due to probable cause of the conduct being related to
24 the disability of the licensee.

25 (11) To advise the licensee of the availability of the physicians health committee of the
26 Rhode Island Medical Society, and in appropriate instances, to refer licensees to that committee
27 for evaluation by appropriate medical professionals.

28 **5-37-5.2. Complaints.**

29 (a) Any person, firm, corporation, or public officer may submit a written complaint to the
30 board charging the holder of a license to practice medicine or limited registrant with
31 unprofessional conduct, specifying the grounds for the complaint. The board shall review all
32 complaints. In those instances during which no referral is made for further investigation and
33 consideration, the board shall make written findings of fact with regard to the complaint. In such
34 event, the board shall notify the complainant in writing within twenty (20) calendar days of the

1 decision to make no referral and that the complaint has been closed with no referral being made.
2 This written notice shall not be deemed a violation of the provisions of chapter 2 of title 38
3 ("access to public records").

4 (b) If the board determines that the complaint merits consideration, or if the board, on its
5 own initiative without a formal complaint, has reason to believe that any holder of a license or
6 limited registration to practice medicine may be guilty of unprofessional conduct, the ~~chairperson~~
7 board administrator shall designate three (3) members of the board, at least one of whom shall be
8 a public member, to serve as a committee to investigate the complaint. If the complaint relates to
9 a procedure involving osteopathic manipulative treatment (OMT), at least one member of the
10 investigating committee shall be an osteopathic physician member of the board.

11 (c) The investigating committee shall conduct its deliberations and make written
12 recommendations regarding the complaint to the board. In conducting an investigation of such
13 complaints that require an inspection of a licensee's office:

14 (1) Either the investigating committee or the full board shall make a finding that an
15 inspection is required and this finding must be evidenced by recorded minutes showing the vote
16 to conduct an inspection;

17 (2) The scope and manner of conducting any such inspection shall be reasonably related
18 to the written complaint received. Any licensee whose office is the subject of such inspection
19 shall be provided by either the investigating committee or the full board with a copy of the
20 complaint or a written summary of all pertinent allegations prior to or at the commencement of
21 the inspection;

22 (3) At the conclusion of the inspection and prior to leaving the licensee's office premises,
23 the board's inspectors shall provide the licensee whose office has been inspected with a copy of
24 the completed inspection form, noting areas of deficiency or follow-up;

25 (4) Unless there is a real potential of imminent, unreasonable harm to patients or staff, the
26 licensee shall have ten (10) days to remedy any deficiencies found during the inspection; and

27 (5) All inspections shall be carried out so as not to interfere with direct patient care.

28 (d) All complaints considered by the board or an investigating committee of the board,
29 shall be reported within six (6) months of the receipt of the complaint, unless the board on a case-
30 by-case basis, for good cause shown, in writing, extends the time for consideration; provided, that
31 the failure to report does not divest the board of its jurisdiction to pursue the rights and remedies
32 established in this chapter.

33 ~~(d)~~(e) No member of the board who participated in the investigation may participate in
34 any subsequent hearing or action taken by the remainder of the board. Investigations shall remain

1 confidential and all initial hearings, investigatory hearings, and full hearings before the board
2 shall remain confidential.

3 ~~(e)~~(f) (1) If the recommendation is no unprofessional conduct, the remaining members of
4 the board shall review the relevant data and vote a final recommendation.

5 (2) If the investigating committee has probable cause to believe the alleged
6 unprofessional conduct of the licensee is caused by an impairment that has directly affected the
7 ability of the licensee to conduct his or her practice professionally, the committee may use its
8 authority under § 5-37-1.3(10) to assist in further deliberations regarding the alleged misconduct
9 of the licensee.

10 (3) During its investigation of a complaint, and prior to making any recommendation to
11 the board regarding a licensee's conduct, the investigative committee shall offer the licensee the
12 opportunity to meet with the committee to discuss the contents of the complaint.

13 ~~(3)~~(4) In the event of a determination by the investigating committee of probable cause
14 for a finding of unprofessional conduct, the accused may request a hearing (see §§ 5-37-5.3 and
15 5-37-5.4). A hearing committee shall be designated at random by the ~~chairperson~~ administrative
16 hearing officer consisting of three (3) other members of the board, at least one of whom shall be a
17 physician member and at least one of whom is a public member. If the complaint relates to a
18 procedure involving osteopathic manipulative treatment (OMT), at least one member of the
19 investigating committee shall be an osteopathic physician member of the board. The hearing shall
20 be conducted by ~~a~~ an administrative hearing officer ~~appointed by the director of the department of~~
21 ~~health~~ selected by the mutual agreement of the director of the department of health and the
22 licensee, or their designee, from an approved list of officers from the department of
23 administration. The hearing officer shall be responsible for conducting the hearing and ~~writing a~~
24 ~~proposed~~ making determinations of findings of fact and conclusions of law along with a
25 recommendation of a sanction, if warranted, that occur during the hearing process. ~~The~~ All
26 members of the hearing committee shall ~~read the transcript and review the evidence and, be~~
27 physically present to hear all testimony and review any and all evidence and after deliberation,
28 the hearing committee shall issue a final written decision including conclusions of fact and of law
29 and a recommendation of sanction, if warranted. The decision shall be provided to the board for
30 implementation of a final disciplinary order, if warranted. The board shall make public all
31 decisions, including all conclusions against a license holder as listed in § 5-37-6.3.

32 (g) Actions reported to the National Practitioners Data Bank (NPDB) by the board must
33 be the result of formal proceedings. Revisions and reinstatements of previously reported licensing
34 and certification actions must also be reported to the NPDB by the board.

1 (1) The board shall provide a licensee ten (10) days written notice prior to the board
2 making a report to the NPDB in the licensees' name.

3 **5-37-6.2. Decision of the board.**

4 If a majority of the members of ~~the board, sitting as~~ the hearing committee, vote in favor
5 of finding the accused guilty of unprofessional conduct as specified in the charges, the board shall
6 prepare a final disciplinary order along with written findings of fact and law in support of that
7 conclusion. The board shall immediately transmit its findings, together with an order stating the
8 sanction to be imposed upon the accused, to the director who shall, as soon as practicable, order
9 that appropriate action to be taken in accordance with the order of the board. In no case shall a
10 person be found guilty of unprofessional conduct unless a majority of the hearing committee
11 votes in favor of finding the person guilty. If the accused is found not guilty, the board shall
12 immediately issue an order dismissing the charges~~;~~ and shall also notify the complainant in
13 writing within twenty (20) calendar days of that finding that the charges have has been dismissed
14 and no further action will be taken. This written notice shall not be deemed a violation of the
15 provisions of chapter 2 of title 38 ("access to public records").

16 SECTION 2. This act shall take effect upon passage.

=====
LC001982/SUB A
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO BUSINESSES AND PROFESSIONS -- BOARD OF MEDICAL LICENSURE
AND DISCIPLINE

1 This act would amend the procedural process followed for a licensing board complaint
2 pending before the board of medical licensure and discipline, as well as the administrative
3 hearing process by adding clarification to the existing provisions and affording greater due
4 process protections to licensees. This act would also provide for written notice to be given to
5 complainants when matters are closed with no referral being made or the charges have been
6 dismissed and no further action will be taken.

7 This act would take effect upon passage.

=====
LC001982/SUB A
=====