

§2806-A. Disciplinary sanctions

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) 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).]
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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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