

## CHAPTER 857

### USE OF CONFIDENTIAL INFORMATION FOR PERSONNEL AND LICENSURE ACTIONS

#### §3291. Definitions

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings. [PL 1987, c. 714, §2 (NEW).]

**1. Bureau.** "Bureau" means the Office of MaineCare Services with respect to section 7703 and section 1828.

[PL 2019, c. 343, Pt. YY, §6 (AMD).]

**2. Confidential information.** "Confidential information" means information deemed confidential by chapters 958-A and 1071, and sections 7703 and 1828.

[PL 1989, c. 175, §4 (AMD).]

**3. Department.** "Department" means the Department of Health and Human Services.

[PL 1987, c. 714, §2 (NEW); PL 2003, c. 689, Pt. B, §6 (REV).]

**4. Director.** "Director" means the Director of the Office of Child and Family Services with respect to confidential information derived from chapters 958-A and 1071, and the Director of the Office of MaineCare Services or the Director of the Office of Child and Family Services with respect to confidential information derived from section 7703 and the Director of the Office of MaineCare Services with respect to confidential information derived from section 1828.

[PL 2019, c. 343, Pt. YY, §7 (AMD).]

**5. Hearing officer.** "Hearing officer" means presiding officer, judge, board chair, arbitrator or any other person responsible for conducting a proceeding or hearing subject to this chapter.

[RR 2021, c. 2, Pt. B, §171 (COR).]

**6. Licensing board.** "Licensing board" means a professional or occupational licensing board that licenses, certifies or registers a person in a profession or occupation which is included in the list of professional and occupational licensing boards in Title 5, section 12004-A.

[PL 1989, c. 175, §4 (AMD).]

**7. Office.** "Office" means the Office of Child and Family Services with respect to chapters 958-A and 1071.

[PL 2013, c. 368, Pt. CCCC, §2 (NEW).]

#### SECTION HISTORY

PL 1987, c. 714, §2 (NEW). PL 1989, c. 175, §4 (AMD). PL 1989, c. 400, §§5,14 (AMD). PL 2003, c. 689, §B6 (REV). PL 2013, c. 368, Pt. CCCC, §§1, 2 (AMD). PL 2019, c. 343, Pt. YY, §§6, 7 (AMD). RR 2021, c. 2, Pt. B, §171 (COR).

#### §3292. Disclosure and use of confidential information; governing provisions

Any information derived by the department in the course of carrying out its functions and deemed confidential by chapter 958-A or 1071 or section 7703 or 1828, which relates to a state employee or a person licensed, certified or registered by a licensing board as defined in section 3291 who is alleged to have engaged in any unlawful activity or professional misconduct, or in conduct in violation of laws or rules relating to a licensing board, may be disclosed to and used by the appropriate state agencies and licensing boards only in accordance with this chapter. The department, other state agencies and licensing boards shall comply with the following. [PL 1989, c. 175, §5 (AMD).]

**1. Purpose for which disclosure is made.** Any confidential information provided to a state agency, department or licensing board shall be used only for investigative and other action within the scope of the authority of that agency, department or licensing board and to determine whether the employee or the person licensed, certified or registered by the board has engaged in unlawful activity, professional misconduct or activities in violation of the laws or rules relating to the board.

[PL 1987, c. 714, §2 (NEW).]

**2. Designation of person to receive confidential information.** State agencies, departments and licensing boards reasonably expected to be recipients of confidential information, as determined by the director of the bureau, shall designate a person to receive the confidential information for investigative purposes.

[PL 1987, c. 714, §2 (NEW).]

**3. Limitations on disclosure.** Disclosure is limited to information which is directly related to the matter at issue. The identity of reporters and other persons shall not be disclosed except as necessary and relevant. Access to the information shall be limited to parties, parties' representatives, counsel of record and the hearing officers responsible for the determinations. The information shall be used only for the purpose for which the release was intended.

[PL 1987, c. 714, §2 (NEW).]

#### SECTION HISTORY

PL 1987, c. 714, §2 (NEW). PL 1989, c. 175, §5 (AMD).

#### **§3293. Confidential information provided to state employees and the Bureau of Human Resources**

**1. Disclosure to state employees.** Confidential information that is relevant to a grievance or a disciplinary procedure within the department shall be provided to the affected employee and the employee's designated representative.

[PL 2007, c. 240, Pt. HH, §13 (AMD).]

**2. Disclosure to the Bureau of Human Resources.** Confidential information that is relevant to a grievance or disciplinary procedure within the department must be provided to the Bureau of Human Resources in cases regarding state employment subject to the State Employee Labor Relations Act, Title 26, chapter 9-B, and for state employees not subject to Title 26, chapter 9-B, when the Bureau of Human Resources becomes involved in the grievance or disciplinary process, including appeals to an arbitrator or the Civil Service Appeals Board.

[PL 2007, c. 240, Pt. HH, §13 (AMD).]

**3. Procedures governed by contract.** If any other procedure relating to the use of confidential information in state employee personnel actions is governed by collective bargaining agreements, the collective bargaining agreements control, except as provided in section 3292.

[PL 2007, c. 240, Pt. HH, §13 (AMD).]

#### SECTION HISTORY

PL 1987, c. 714, §2 (NEW). PL 2007, c. 240, Pt. HH, §13 (AMD).

#### **§3294. Confidential information provided to professional and occupational licensing boards**

If confidential information regarding a person subject to or seeking licensure, certification or registration by a licensing board indicates that the person may have engaged in unlawful activity, professional misconduct or conduct which may be in violation of the laws or rules relating to the licensing board, the director may release this information to the appropriate licensing board. Confidential information shall be disclosed and used in accordance with section 3292 and may also be disclosed to members, employees and agents of a licensing board who are directly related to the matter at issue. [PL 1987, c. 714, §2 (NEW).]

**1. Notice to the licensee or applicant.** Notice of the release of confidential information shall be provided by the board to the licensee or applicant in accordance with the law and rules relating to the licensing board. If the law or rules relating to a licensing board do not provide for notice to licensees or applicants subject to or seeking licensure, certification or registration, the licensing board shall provide notice to the licensee or applicant upon determination of the board to take further action following its investigation.

[PL 1987, c. 714, §2 (NEW).]

**2. Licensing board requests for confidential information.** Any licensing board pursuing action within the scope of the board's authority or conducting an investigation of any person subject to or seeking licensure, certification or registration by the board for engaging in unlawful activity, professional misconduct or conduct which may be in violation of the laws or rules relating to the board may request confidential information from the bureau. Any information provided to the board for an investigation shall be governed by section 3292 and this section.

[PL 1987, c. 714, §2 (NEW).]

**3. Use of confidential information in proceedings.** The use of confidential information in proceedings, informal conferences and adjudicatory hearings shall be governed by Title 5, section 9057, subsection 6.

[PL 1987, c. 714, §2 (NEW).]

#### SECTION HISTORY

PL 1987, c. 714, §2 (NEW).

#### **§3295. Information provided for unemployment compensation proceedings relevant to state employment**

If confidential information relevant to an unemployment compensation proceeding with respect to the provision of, denial or termination of unemployment compensation benefits related to a person's state employment, the director may release the confidential information to the Commissioner of Labor or the commissioner's designee. The commissioner may request from the director of the bureau confidential information that may be directly related to an unemployment compensation proceeding with respect to a person's state employment. The director may release the confidential information to the commissioner or the commissioner's designee if the confidential information is related to the proceeding. The commissioner shall provide the claimant with access to the information. [PL 1987, c. 714, §2 (NEW).]

#### SECTION HISTORY

PL 1987, c. 714, §2 (NEW).

#### **§3296. Penalty for violations**

Any person who violates this chapter is subject to the applicable penalty as provided in chapters 958-A and 1071. [PL 1999, c. 363, §1 (AMD).]

#### SECTION HISTORY

PL 1989, c. 502, §A73 (NEW). PL 1999, c. 363, §1 (AMD).

#### **§3306. Penalty for violations**

**(REPEALED)**

#### SECTION HISTORY

PL 1987, c. 714, §2 (NEW). PL 1989, c. 502, §A74 (RP).

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