SENATE PROPOSAL OF AMENDMENT

H. 369

An act relating to health professionals regulated by the board of medical practice

The Senate proposes to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 26 V.S.A. chapter 7 is amended to read:

CHAPTER 7. PODIATRY

Subchapter 1. General Provisions

§ 321. DEFINITIONS

In this chapter, unless the context requires another meaning:

(1) "Board" means the state board of medical practice established by chapter 23 of this title.

(2) "Disciplinary action" means any action taken against a licensee or an applicant by the board~~, the appellate officer~~, or on appeal ~~therefrom~~ from that action, when that action suspends, revokes, limits, or conditions licensure in any way, ~~and~~ or when it includes reprimands or an administrative penalty.

* * *

§ 324. PROHIBITIONS; PENALTIES

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(c) A person who violates a provision of this ~~chapter~~ section shall be imprisoned not more than two years or fined not more than ~~$100.00 for the first offense and not more than $500.00 for each subsequent offense~~ $10,000.00.

* * *

§ 371. ELIGIBILITY

To be eligible for licensure as a podiatrist, an applicant must:

* * *

(3) have received a diploma or certificate of graduation from an accredited school of podiatric medicine approved by the board; ~~and~~

(4) successfully complete the examinations given by the National Board of Podiatry Examiners; and

(5) if the applicant has not engaged in practice as a podiatrist within the last three years, comply with the requirements for updating knowledge and skills as defined by board rules.

* * *

§ 373. RENEWAL OF LICENSURE

(a) ~~Licenses shall be renewable every two years without examination and on payment of the required fee~~ A person licensed by the board to practice podiatry shall apply biennially for the renewal of his or her license. At least one month prior to the date on which renewal is required, the board shall send to each licensee a license renewal application form and notice of the date on which the existing license will expire. On or before the renewal date, the licensee shall file an application for license renewal and pay the required fee; however, any podiatrist while on extended active duty in the uniformed services of the United States or as a member of the national guard, state guard, or reserve component who is licensed as a podiatrist at the time of an activation or deployment shall receive an extension of licensure up to 90 days following the podiatrist's return from activation or deployment, provided the podiatrist notifies the board of his or her activation or deployment prior to the expiration of the current license and certifies that the circumstances of the activation or deployment impede good faith efforts to make timely application for renewal of the license. The board shall register the applicant and issue the renewal license. Within one month following the date by which renewal is required, the board shall pay the license renewal fees into the medical practice board special fund.

(b) A license which has lapsed may be reinstated on payment of a renewal fee and a late renewal penalty. The applicant shall not be required to pay renewal fees during periods when the license was lapsed. However, if such license remains lapsed for a period of three years, the board may~~, after notice and an opportunity for hearing,~~ require ~~reexamination as a condition of renewal~~ the licensee to update his or her knowledge and skills as defined by board rules.

* * *

(d) All applicants shall demonstrate that the requirements for licensure are met.

§ 374. FEES; LICENSES

Applicants and persons regulated under this chapter shall pay the following fees:

(1) Application for licensure ~~$565.00, in fiscal year 2009 $600.00, and in fiscal year 2010 and thereafter,~~ $625.00; the board shall use at least $25.00 of this fee to support the ~~costs~~ cost of ~~the creation and maintenance of a~~ maintaining the Vermont practitioner recovery network which ~~will monitor~~ monitors recovering chemically dependent licensees for the protection of the public.

(2) Biennial renewal ~~$450.00 and in fiscal year 2009 and thereafter~~, $500.00; the board shall use at least $25.00 of this fee to support the ~~costs~~ cost of ~~the creation and maintenance of a~~ maintaining the Vermont practitioner recovery network which ~~will monitor~~ monitors recovering chemically dependent licensees for the protection of the public.

§ 375. UNPROFESSIONAL CONDUCT

(a) ~~The term "unprofessional conduct" as used in this chapter shall mean the conduct prohibited by this chapter.~~

(b) The following conduct and the conduct described in section 1354 of this title by a licensed podiatrist constitutes unprofessional conduct. When that conduct is by an applicant or person who later becomes an applicant, it may constitute grounds for denial of licensure:

(1) ~~fraudulent procuring~~ fraud or ~~use of a license~~ misrepresentation in applying for or procuring a podiatry license or in connection with applying for or procuring a periodic renewal of a podiatry license;

* * *

(c) Unprofessional conduct includes the following actions by a licensee:

* * *

(3) ~~professional negligence~~ failure to practice competently by reason of any cause on a single occasion or on multiple occasions constitutes unprofessional conduct. Failure to practice competently includes as determined by the board:

(A) performance of unsafe or unacceptable patient care; and

(B) failure to conform to the essential standards of acceptable and prevailing practice;

* * *

(7) administering, dispensing or prescribing any controlled substance other than as authorized by law;

(8) habitual or excessive use or abuse of drugs, alcohol, or other substances that impair the podiatrist's ability to practice.

* * *

§ 376. DISPOSITION OF COMPLAINTS

* * *

(b) ~~The board shall accept complaints from any person including a state or federal agency and the attorney general~~ Any person, firm, corporation, or public officer may submit a written complaint to the board charging any

podiatrist practicing in the state with unprofessional conduct, specifying the grounds. The board ~~may~~ shall initiate ~~disciplinary action in any complaint against~~ an investigation of a podiatrist ~~and~~ when a complaint is received or may act without having received a complaint.

(c) After giving an opportunity for a hearing ~~and upon a finding of unprofessional conduct~~, the board ~~may suspend or revoke a license, refuse to issue or renew a license, issue a warning, or limit or condition a license~~ shall take disciplinary action described in subsection 1361(b) of this title against a podiatrist or applicant found guilty of unprofessional conduct.

(d) The board may approve a negotiated agreement between the parties when it is in the best interest of the public health, safety, or welfare to do so. Such an agreement may include~~, without limitation,~~ any of the following conditions or restrictions which may be in addition to, or in lieu of, suspension:

* * *

(4) a requirement that the scope of practice permitted be restricted to a specified extent;

(5) an administrative penalty not to exceed $1,000.00 for each act that constitutes an unprofessional conduct violation. Any money received from the imposition of an administrative penalty imposed under this subdivision shall be deposited into the board of medical practice regulatory fee fund for the purpose of providing education and training for board members and the professions regulated by the board. The commissioner shall detail in the annual report receipts and expenses from money received under this subsection.

* * *

Sec. 2. 26 V.S.A. chapter 23 is amended to read:

CHAPTER 23. MEDICINE ~~AND SURGERY~~

Subchapter 1. General Provisions

§ 1311. DEFINITIONS

For the purposes of this chapter:

(1) ~~A person who advertises or holds himself or herself out to the public as a physician or surgeon, or who assumes the title or uses the words or letters "Dr.," "Doctor," "Professor," "M.D.," or "M.B.," in connection with his or her name, or any other title implying or designating that he or she is a practitioner of medicine or surgery in any of its branches, or shall advertise or hold himself or herself out to the public as one skilled in the art of curing or alleviating disease, pain, bodily injuries or physical or nervous ailments, or shall prescribe, direct, recommend, or advise, give or sell for the use of any person, any drug, medicine or other agency or application for the treatment, cure or relief of any bodily injury, pain, infirmity or disease, or who follows the~~

~~occupation of treating diseases by any system or method, shall be deemed a physician, or practitioner of medicine or surgery.~~ Practice of medicine means:

(A) using the designation "Doctor," "Doctor of Medicine," "Physician," "Dr.," "M.D.," or any combination thereof in the conduct of any occupation or profession pertaining to the prevention, diagnosis, or treatment of human disease or condition unless the designation additionally contains the description of another branch of the healing arts for which one holds a valid license in Vermont;

(B) advertising, holding out to the public, or representing in any manner that one is authorized to practice medicine in the jurisdiction;

(C) offering or undertaking to prescribe, order, give, or administer any drug or medicine for the use of any other person;

(D) offering or undertaking to prevent, diagnose, correct, or treat in any manner or by any means, methods, or devices any disease, illness, pain, wound, fracture, infirmity, defect, or abnormal physical or mental condition of any person, including the management of pregnancy and parturition;

(E) offering or undertaking to perform any surgical operation upon any person;

(F) rendering a written or otherwise documented medical opinion concerning the diagnosis or treatment of a patient or the actual rendering of treatment to a patient within the state by a physician located outside the state as a result of the transmission of individual patient data by electronic or other means from within the state to the physician or his or her agent; or

(G) rendering a determination of medical necessity or a decision affecting the diagnosis or treatment of a patient.

* * *

§ 1313. EXEMPTIONS

(a) ~~Except as to the provisions of sections 1398 and 1399 of this title, this chapter shall not apply to persons licensed to practice osteopathy under chapter 33 of this title; or to persons licensed to practice chiropractic under the laws of the state; or to persons licensed under the laws in force prior to December 9, 1904, or to commissioned officers~~ The provisions of this chapter shall not apply to the following:

(1) a health care professional licensed or certified by the office of professional regulation when that person is practicing within the scope of his or her profession;

(2) a member of the United States ~~army, navy or marine hospital service~~ military or national guard, including a national guard member in state status, or

to any person ~~or persons~~ giving aid, assistance, or relief in emergency or accident cases pending the arrival of a regularly licensed physician ~~or surgeon.~~;

~~(b)~~(3) ~~This chapter shall not apply to a nonresident physician or surgeon who is called to treat a particular case in this state and who does not otherwise practice in this state, provided that such nonresident physician or surgeon is duly licensed where he resides and that the state of his residence grants the same privilege to duly licensed practitioners of this state. This chapter shall not prevent~~ a nonresident physician ~~or surgeon from~~ coming into this state ~~for consultation~~ to consult or using telecommunications to consult with a duly licensed practitioner herein ~~nor shall it prevent,~~; or

(4) a duly licensed physician ~~or surgeon of an adjoining~~ in another state, ~~or of the Dominion of~~ in Canada ~~from coming into a town bordering thereon, in this state for the purpose of treating a sick or disabled person therein~~, or in another nation as approved by the board who is visiting a medical school or a teaching hospital in this state to receive or conduct medical instruction for a period not to exceed three months, provided the practice is limited to that instruction and is under the supervision of a physician licensed by the board.

~~(c)~~(b) The provisions of sections 1311 and 1312 of this title shall not apply to a person, firm or corporation that manufactures or sells patent, compound or proprietary medicines, that are compounded according to the prescription of a physician who has been duly authorized to practice medicine, or to the domestic administration of family remedies.

* * *

(e) ~~Notwithstanding the provisions of subsection 1313(d) of this title, no physician's assistant shall engage in the practice of optometry as defined in section 1601 of this title.~~

* * *

§ 1314. ILLEGAL PRACTICE

(a) A person who, not being licensed, advertises or holds himself or herself out to the public as described in section 1311 of this title, or who, not being licensed, practices medicine ~~or surgery~~ as defined in section 1311 of this title, or who practices medicine ~~or surgery~~ under a fictitious or assumed name, or who impersonates another practitioner or who is not a licensed health care provider as defined in 18 V.S.A. § 5202 and signs a certificate of death for the purpose of burial or removal, shall be imprisoned not more than ~~three months~~ two years or fined not more than ~~$200.00 nor less than $50.00~~ $10,000.00, or both.

* * *

§ 1317. UNPROFESSIONAL CONDUCT TO BE REPORTED TO BOARD

(a) Any hospital, clinic, community mental health center, or other health care institution in which a licensee performs professional services shall report to the ~~commissioner of health~~ board, along with supporting information and evidence, any disciplinary action taken by it or its staff which significantly limits the licensee's privilege to practice or leads to suspension or expulsion from the institution, a nonrenewal of medical staff membership, or the restrictions of privileges at a hospital taken in lieu of, or in settlement of, a pending disciplinary case related to unprofessional conduct as defined in sections 1354 and 1398 of this title. The commissioner of health shall forward any such information or evidence he or she receives immediately to the board. The report shall be made within 10 days of the date such disciplinary action was taken, and, in the case of disciplinary action taken against a licensee based on the provision of mental health services, a copy of the report shall also be sent to the commissioner of mental health and the commissioner of disabilities, aging, and independent living. This section shall not apply to cases of resignation or separation from service for reasons unrelated to disciplinary action.

* * *

(e) A person who violates this section shall be subject to a civil penalty of not more than ~~$1,000.00~~ $10,000.00.

§ 1318. ACCESSIBILITY AND CONFIDENTIALITY OF DISCIPLINARY MATTERS

* * *

(c) The commissioner of health shall prepare and maintain a register of all complaints, which shall be a public record, and which shall show:

* * *

(2) only with respect to complaints resulting in filing of disciplinary charges or stipulations or the taking of disciplinary action, the following additional information, except for medical and other protected health information contained therein pertaining to any identifiable person that is otherwise confidential by state or federal law:

* * *

(E) stipulations ~~filed with~~ presented to the board at a public meeting; and

* * *

(f) For the purposes of this section, "disciplinary action" means action that suspends, revokes, limits, or conditions licensure or certification in any way, and includes reprimands and administrative penalties.

(g) Nothing in this section shall prohibit the disclosure of information by the commissioner regarding disciplinary complaints to Vermont or other state or federal law enforcement or regulatory agencies in the execution of its duties authorized by statute or regulation, including the department of disabilities, aging, and independent living or the department of banking, insurance, securities, and health care administration in the course of its investigations about an identified licensee, provided the agency or department agrees to maintain the confidentiality and privileged status of the information as provided in subsection (d) of this section.

(h) Nothing in this section shall prohibit the board, at its discretion, from sharing investigative and adjudicatory files of an identified licensee with another state, territorial, or international medical board at any time during the investigational or adjudicative process.

(i) Neither the commissioner nor any person who received documents, material, or information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, material, or information.

Subchapter 2. Board of Medical Practice

§ 1351. BOARD OF MEDICAL PRACTICE

(a) A state board of medical practice is created. The board shall be composed of 17 members, nine of whom shall be licensed physicians, one of whom shall be a ~~physician's~~ physician assistant ~~certified~~ licensed pursuant to chapter 31 of this title, one of whom shall be a podiatrist ~~as described in section 322~~ licensed pursuant to chapter 7 of this title, and six of whom shall be persons not associated with the medical field. The governor, with the advice and consent of the senate, shall appoint the members of the board. Appointments shall be for a term of five years, except that a vacancy occurring during a term shall be filled by an appointment by the governor for the unexpired term. No member shall be appointed to more than two consecutive full terms, but a member appointed for less than a full term (originally or to fill a vacancy) may serve two full terms in addition to such part of a full term, and a former member shall again be eligible for appointment after a lapse of one or more years. Any member of the board may be removed by the governor at any time. The board shall elect from its members a chair, vice chair, and secretary who shall serve for one year and until their successors are appointed and qualified. The board shall meet upon the call of the chair or the commissioner of health, or at such other times and places as the board may determine. Except as provided in section 1360 of this title, nine members of the board shall constitute a quorum for the transaction of business. The affirmative vote of the majority of the members present shall be required to carry any motion or resolution, to adopt any rule, to pass any measure or to authorize any decision or order of the board.

(b) In the performance of their duties, members of the board shall be paid ~~$30.00~~ a per diem and their actual and necessary expenses as provided by 32 V.S.A. § 1010(b).

(c) The board of medical practice is established as an office within the department of health. With respect to the board, the commissioner shall have the following powers and duties to:

* * *

(4) act as custodian of the records of the board; ~~and~~

(5) prepare an annual budget and administer money appropriated to the board by the general assembly. The budget of the board shall be part of the budget of the department. A board of medical practice regulatory fee fund is created. All board regulatory fees received by the department shall be deposited into this fund and used to offset up to two years of the costs incurred by the board, and shall not be used for any purpose other than professional regulation and responsibilities of the board, as determined by the commissioner of health. To ensure that revenues derived by the department are adequate to offset the cost of regulation, the commissioner shall review fees from time to time, and present proposed fee changes to the general assembly;

(6) prepare and maintain a registry of all physicians licensed by the board; and

(7) make available an accounting of all fees and fines received by the board and all expenditures and costs of the board annually.

* * *

§ 1353. POWERS AND DUTIES OF THE BOARD

The board shall have the following powers and duties to:

(1) License and certify health professionals pursuant to this title.

(2) Investigate all complaints and charges of unprofessional conduct against any holder of a license or certificate, or any medical practitioner practicing pursuant to section 1313 of this title, and to hold hearings to determine whether such charges are substantiated or unsubstantiated.

~~(2)~~(3) Issue subpoenas and administer oaths in connection with any investigations, hearings, or disciplinary proceedings held under this chapter.

~~(3)~~(4) Take or cause depositions to be taken as needed in any investigation, hearing or proceeding.

~~(4)~~(5) Undertake any such other actions and procedures specified in, or required or appropriate to carry out, the provisions of this chapter and chapters 7, 29, 31, and 52 of this title.

~~(5)~~(6) Require a licensee or applicant to submit to a mental or physical examination, and an evaluation of medical knowledge and skill by individuals or entities designated by the board if the board has a reasonable basis to believe a licensee or applicant may be incompetent or unable to practice medicine with reasonable skill and safety. The results of the examination or evaluation shall be admissible in any hearing before the board. The results of an examination or evaluation obtained under this subsection and any information directly or indirectly derived from such examination or evaluation shall not be used for any purpose, including impeachment or cross-examination against the licensee or applicant in any criminal or civil case, except a prosecution for perjury or giving a false statement. The board shall bear the cost of any examination or evaluation ordered and conducted pursuant to this subdivision in whole or in part if the licensee demonstrates financial hardship or other good cause. The licensee or applicant, at his or her expense, shall have the right to present the results or reports of independent examinations and evaluations for the board's due consideration. An order by the board that a licensee or applicant submit to an examination, test or evaluation shall be treated as a discovery order for the purposes of enforcement under ~~sections~~ 3 V.S.A. §§ 809a and 809b ~~of Title 3~~. The results of an examination or evaluation obtained under this subdivision shall be confidential except as provided in this subdivision.

(7) Investigate all complaints of illegal practice of medicine and refer any substantiated illegal practice of medicine to the office of the attorney general or the state's attorney in the county in which the violation occurred.

(8) Obtain, at the board's discretion, from the Vermont criminal information center a Vermont criminal history record, an out-of-state criminal history record, and a criminal history record from the Federal Bureau of Investigation, for any applicant, licensee, or holder of certification. The board may also inquire of Interpol for any information on criminal history records of an applicant, licensee, or holder of certification. Each applicant, licensee, or holder of certification shall consent to the release of criminal history records to the board on forms substantially similar to the release forms developed in accordance with 20 V.S.A. § 2056c. When the board obtains a criminal history record, it shall promptly provide a copy of the record to the applicant, licensee, or holder of certification and inform him or her of the right to appeal the accuracy and completeness of the record pursuant to rules adopted by the Vermont criminal information center. When fingerprinting is required pursuant to this subdivision, the applicant, licensee, or holder of certification shall bear all costs associated with fingerprinting. The board shall comply with all laws regulating the release of criminal history records and the protection of individual privacy. No person shall confirm the existence or nonexistence of criminal history record information to any person who would not be eligible to

receive the information pursuant to this chapter. For purposes of this subdivision, "criminal history record" is as defined in 20 V.S.A. § 2056a.

(9) Inquire, at the board's discretion, of the Vermont department for children and families or of the Vermont department of disabilities, aging, and independent living to determine whether any applicant, licensee, or holder of certification who may provide care or treatment to a child or a vulnerable adult is listed on the child protection registry or the vulnerable adult abuse, neglect, and exploitation registry.

§ 1354. UNPROFESSIONAL CONDUCT

(a) The board shall find that any one of the following, or any combination of the following, whether or not the conduct at issue was committed within or outside the state, constitutes unprofessional conduct:

(1) ~~fraudulent~~ fraud or ~~deceptive procuring or use of a license~~ misrepresentation in applying for or procuring a medical license or in connection with applying for or procuring periodic renewal of a medical license;

* * *

(5) ~~addiction to narcotics,~~ habitual ~~drunkenness~~ or ~~rendering professional services to a patient if the physician is intoxicated or under the influence of drugs~~ excessive use or abuse of drugs, alcohol, or other substances that impair the licensee's ability to practice medicine;

* * *

(15) practicing medicine with a physician who is not legally practicing within the state, or aiding or abetting such physician in the practice of medicine; except that it shall be legal to practice in an accredited preceptorship or residency training program or pursuant to section 1313 of this title;

* * *

(23) revocation of a license to practice medicine or surgery in another jurisdiction on one or more of the grounds specified in ~~subdivisions (1)-(25) of~~ this section;

* * *

(30) conviction of a crime related to the practice of the profession or conviction of a felony, whether or not related to the practice of the profession, or failure to report to the board a conviction of any crime related to the practice of the profession or any felony in any court within 30 days of the conviction;

* * *

(32) use of the services of a radiologist assistant by a radiologist in a manner that is inconsistent with the provisions of chapter 52 of this title;

(33)(A) providing, prescribing, dispensing or furnishing medical services or prescription medication or prescription-only devices to a person in response to any communication transmitted or received by computer or other electronic means, when the licensee fails to take the following actions to establish and maintain a proper physician-patient relationship:

(i) a reasonable effort to verify that the person requesting medication is in fact the patient, and is in fact who the person claims to be;

(ii) establishment of documented diagnosis through the use of accepted medical practices; and

(iii) maintenance of a current medical record.

(B) For the purposes of this subdivision (33), an electronic, on-line, or telephonic evaluation by questionnaire is inadequate for the initial evaluation of the patient.

(C) The following would not be in violation of this subdivision (33) if transmitted or received by computer or other electronic means:

(i) initial admission orders for newly hospitalized patients;

(ii) prescribing for a patient of another physician for whom the prescriber has taken the call;

(iii) prescribing for a patient examined by a licensed advanced practice registered nurse, physician assistant, or other advanced practitioner authorized by law and supported by the physician;

(iv) continuing medication on a short-term basis for a new patient, prior to the patient's first appointment; or

(v) emergency situations where life or health of the patient is in imminent danger;

(34) failure to provide to the board such information it may reasonably request in furtherance of its statutory duties. The patient privilege set forth in 12 V.S.A. § 1612 shall not bar the licensee's obligations under this subsection (a) and no confidentiality agreement entered into in concluding a settlement of a malpractice claim shall exempt the licensee from fulfilling his or her obligations under this subdivision;

(35) disruptive behavior which involves interaction with physicians, hospital personnel, office staff, patients, or support persons of the patient or others that interferes with patient care or could reasonably be expected to adversely affect the quality of care rendered to a patient;

(36) commission of any sexual misconduct which exploits the physician-patient relationship, including sexual contact with a patient, surrogates, or key third parties;

(37) prescribing, selling, administering, distributing, ordering, or dispensing any drug legally classified as a controlled substance for the licensee's own use or to an immediate family member as defined by rule;

(38) signing a blank or undated prescription form;

(39) use of the services of a physician assistant by a physician in a manner which is inconsistent with the provisions of chapter 31 of this title.

* * *

§ 1355. COMPLAINTS; HEARING COMMITTEE

(a) Any person, firm, corporation, or public officer may submit a written complaint to the ~~secretary charging~~ board alleging any person practicing medicine ~~or surgery~~ in the state ~~with~~ committed unprofessional conduct, specifying the grounds therefor. ~~If the board determines that such complaint merits consideration, or~~ i~~f the board shall have reason to believe, without a formal complaint, that any person practicing medicine or surgery in the state has been guilty of unprofessional conduct, and in the case of every formal complaint received, the chairman~~ The board shall initiate an investigation of the physician when a complaint is received or may act on its own initiative without having received a complaint. The chairperson shall designate four members, including one public member to serve as a committee to hear or investigate and report upon such charges.

* * *

(c) A person or organization shall not be liable in a civil action for damages resulting from the good faith reporting of information to the board about alleged incompetent, unprofessional, or unlawful conduct of a licensee.

(d) The hearing committee may close portions of hearings to the public if the hearing committee deems it appropriate in order to protect the confidentiality of an individual or for medical and other protected health information pertaining to any identifiable person that is otherwise confidential by state or federal law.

(e) In any proceeding under this section which addresses an applicant's or licensee's alleged sexual misconduct, evidence of the sexual history of the victim of the alleged sexual misconduct shall neither be subject to discovery nor be admitted into evidence. Neither opinion evidence nor evidence of the reputation of the victim's sexual conduct shall be admitted. At the request of the victim, the hearing committee may close portions of hearings to the public if the board deems it appropriate in order to protect the identity of the victim and the confidentiality of his or her medical records.

* * *

§ 1357. TIME AND NOTICE OF HEARING

The time of hearing shall be fixed by the secretary as soon as convenient, but not earlier than 30 days after service of the charge upon the person complained against. The secretary shall issue a notice of hearing of the charges, which notice shall specify the time and place of hearing and shall notify the person complained against that he or she may file with the secretary a written response within 20 days of the date of service. ~~Such~~ The notice shall also notify the person complained against that a stenographic record of the proceeding will be kept, that he or she will have the opportunity to appear personally and to have counsel present, with the right to produce witnesses and evidence in his or her own behalf, to cross-examine witnesses testifying against him or her and to examine such documentary evidence as may be produced against him or her.

* * *

§ 1359. REPORT OF HEARING

Within 30 days after holding a hearing under the provisions of section 1357 ~~and section 1358~~ of this title, the committee shall make a written report of its findings of fact and its recommendations, and the same shall be forthwith transmitted to the secretary, with a transcript of the evidence.

§ 1360. HEARING BEFORE BOARD

* * *

(d) The board may close portions of hearings to the public if the board deems it appropriate in order to protect the confidentiality of an individual or for medical and other protected health information pertaining to any identifiable person that is otherwise confidential by state or federal law.

§ 1361. DECISION AND ORDER

* * *

(b) In such order, the board may reprimand the person complained against, as it deems appropriate; condition, limit, suspend or revoke the license, certificate, or practice of the person complained against; or take such other action relating to discipline or practice as the board determines is proper, including imposing an administrative penalty not to exceed $1,000.00 for each act that constitutes an unprofessional conduct violation. Any money received from the imposition of an administrative penalty imposed under this subsection shall be deposited into the board of medical practice regulatory fee fund for the purpose of providing education and training for board members and licensees. The commissioner shall detail in the annual report receipts and expenses from money received under this subsection.

(c) If the person complained against is found not guilty, or the proceedings against him or her are dismissed, the board shall forthwith order a dismissal of the charges and the exoneration of the person complained against.

* * *

§ 1365. NOTICE OF CONVICTION OF CRIME; INTERIM SUSPENSION OF LICENSE

(a) The board shall treat a certified copy of the judgment of conviction of a crime for which a licensee may be disciplined under ~~subdivision~~ section 1354~~(a)(3)~~ of this title as an unprofessional conduct complaint. The record of conviction shall be conclusive evidence of the fact that the conviction occurred. If a person licensed under this chapter is convicted of a crime by a court in this state, the clerk of the court shall within 10 days of such conviction transmit a certified copy of the judgment of conviction to the board.

* * *

§ 1368. DATA REPOSITORY; LICENSEE PROFILES

(a) A data repository is created within the department of health which will be responsible for the compilation of all data required under this section and any other law or rule which requires the reporting of such information. Notwithstanding any provision of law to the contrary, licensees shall promptly report and the department shall collect the following information to create individual profiles on all health care professionals licensed, certified, or registered by the department, pursuant to the provisions of this title, in a format created that shall be available for dissemination to the public:

* * *

(6)(A) All medical malpractice court judgments and all medical malpractice arbitration awards in which a payment is awarded to a complaining party during the last 10 years, and all settlements of medical malpractice claims in which a payment is made to a complaining party within the last 10 years. Dispositions of paid claims shall be reported in a minimum of three graduated categories, indicating the level of significance of the award or settlement, if valid comparison data are available for the profession or specialty. Information concerning paid medical malpractice claims shall be put in context by comparing an individual health care professional's medical malpractice judgment awards and settlements to the experience of other health care professionals within the same specialty within the New England region or nationally. The commissioner may, in consultation with the Vermont medical society, report comparisons of individual health care professionals covered under this section to all similar health care professionals within the New England region or nationally.

(B) Comparisons of malpractice payment data shall be accompanied by:

(i) an explanation of the fact that ~~physicians~~ professionals treating certain patients and performing certain procedures are more likely to be the subject of litigation than others;

(ii) a statement that the report reflects data for the last 10 years, and the recipient should take into account the number of years the ~~physicians~~ professional has been in practice when considering the data;

* * *

(iv) an explanation of the possible effect of treating high-risk patients on a ~~physician's~~ professional's malpractice history; and

* * *

(C) Information concerning all settlements shall be accompanied by the following statement: "Settlement of a claim may occur for a variety of reasons which do not necessarily reflect negatively on the professional competence or conduct of the health care professional. A payment in settlement of a medical malpractice action or claim should not be construed as creating a presumption that medical malpractice has occurred." Nothing herein shall be construed to limit or prevent the licensing authority from providing further explanatory information regarding the significance of categories in which settlements are reported. Pending malpractice claims and actual amounts paid by or on behalf of a ~~physician~~ professional in connection with a malpractice judgment, award or settlement shall not be disclosed by the commissioner of health or by the licensing authority to the public. Nothing herein shall be construed to prevent the licensing authority from investigating and disciplining a health care professional on the basis of medical malpractice claims that are pending.

* * *

(c) The profile shall include the following conspicuous statement: "This profile contains information which may be used as a starting point in evaluating the ~~physician~~ professional. This profile should not, however, be your sole basis for selecting a ~~physician~~ professional."

Subchapter 3. Licenses

§ 1391. ~~GENERAL PROVISIONS~~ QUALIFICATIONS FOR MEDICAL LICENSURE

* * *

(b) If a person successfully completes the examination, he or she may then apply for licensure to practice medicine ~~and surgery~~ in the state of Vermont.

In addition, each applicant ~~must appear for a personal interview~~ ~~with one or more members of the~~ may be interviewed by a board member.

* * *

(e) An applicant for limited temporary license, who shall furnish the board with satisfactory proof that he or she has attained the age of majority, ~~and~~ is of good moral character, ~~that he or she~~ is a graduate of a legally chartered medical school of this country or of a foreign country ~~having~~ that is recognized by the board and which has power to grant degrees in medicine, that all other eligibility requirements for house officer status have been met, and that he or she has been appointed an intern, resident, fellow or medical officer in a licensed hospital or in a clinic which is affiliated with a licensed hospital, or in any hospital or institution maintained by the state, or in any clinic or outpatient clinic affiliated with or maintained by the state, may upon the payment of the required fee, be granted a limited temporary license by the board as a hospital medical officer for a period of up to 54 weeks and such license may be renewed or reissued, upon payment of the fee, for the period of the applicant's postgraduate training, internship, or fellowship program. Such limited temporary license shall entitle the said applicant to practice medicine only in the hospital or other institution designated on his or her certificate of limited temporary license and in clinics or outpatient clinics operated by or affiliated with such designated hospital or institution and only if such applicant is under the direct supervision and control of a licensed physician. Such licensed physician shall be legally responsible and liable for all negligent or wrongful acts or omissions of the limited temporary licensee and shall file with the board the name and address both of himself or herself and the limited temporary licensee and the name of such hospital or other institution. Such limited temporary license shall be revoked upon the death or legal incompetency of the licensed physician or, upon ten days written notice, by withdrawal of his or her filing by such licensed physician. The limited temporary licensee shall at all times exercise the same standard of care and skill as a licensed physician, practicing in the same specialty, in the state of Vermont. Termination of appointment as intern, resident, fellow or medical officer of such designated hospital or institution shall operate as a revocation of such limited temporary license. An application for limited temporary license shall not be subject to ~~section~~ subsection 1391(d) of this title.

§ 1392. [Repealed.]

§ 1393. EXAMINATIONS

The examinations shall be wholly or partly in writing, in the English language, and shall be of a practical character, sufficiently strict to test the qualifications of the applicant. In its discretion the board may use multiple choice style examinations provided by the National Board of Medical Examiners or by the Federation of State Medical Boards ~~(The Federation~~

~~Licensing Examination or FLEX)~~, or as determined by rule. The ~~examinations~~ examination shall embrace the general subjects of anatomy, physiology, chemistry, pathology, bacteriology, hygiene, practice of medicine, surgery, obstetrics, gynecology, materia medica, therapeutics, and legal medicine. The subjects covered by the National Board ~~or FLEX~~ of Medical Examiners examination shall be considered to have met the requirements of this section. If the applicant passes the ~~National Board of Examiners test or FLEX~~ examination approved by the board and meets the other standards for licensure, he or she will qualify for licensure.

* * *

§ 1395. LICENSE WITHOUT EXAMINATION

(a) Without examination the board may, upon payment of the required fee, issue a license to a reputable physician ~~or surgeon~~ who personally appears and presents a certified copy of a certificate of registration or a license issued to him or her in a jurisdiction whose requirements for registration are deemed by the board as equivalent to those of this state, providing that such jurisdiction grants the same reciprocity to a Vermont physician or by the national board of medical examiners.

(b) Without examination the board may issue a license to a reputable physician ~~or surgeon~~ who is a resident of a foreign country and who shall furnish the board with satisfactory proof that he or she has been appointed to the faculty of a medical college accredited by the Liaison Committee on Medical Education (LCME) and located within the state of Vermont. An applicant for a license under this subsection shall furnish the board with satisfactory proof that he or she has attained the age of majority, is of good moral character, is licensed to practice medicine in his or her country of residence, and that he or she has been appointed to the faculty of an LCME accredited medical college located within the state of Vermont. The information submitted to the board concerning the applicant's faculty appointment shall include detailed information concerning the nature and term of the appointment and the method by which the performance of the applicant will be monitored and evaluated. A license issued under this subsection shall be for a period no longer than the term of the applicant's faculty appointment and may, in the discretion of the board, be for a shorter period. A license issued under this subsection shall expire automatically upon termination for any reason of the licensee's faculty appointment.

(c) Notwithstanding the provisions of subsection (a) of this section and any other provision of law, a physician who holds an unrestricted license in all jurisdictions where the physician is currently licensed, and who certifies to the Vermont board of medical practice that he or she will limit his or her practice in Vermont to providing pro bono services at a free or reduced fee health care clinic in Vermont and who meets the criteria of the board, shall be licensed by

the board within 60 days of the licensee's certification without further examination, interview, fee, or any other requirement for board licensure. The physician shall file with the board, on forms provided by the board and based on criteria developed by the board, information on medical qualifications, professional discipline, criminal record, malpractice claims, or any other such information as the board may require. A license granted under this subsection shall authorize the licensee to practice medicine ~~or surgery~~ on a voluntary basis in Vermont.

§ 1396. REQUIREMENTS FOR ADMISSION TO PRACTICE

(a) The standard of requirements for admission to practice in this state, under section 1395 of this title, shall be as follows:

* * *

(4) Moral: Applicant shall present letters of reference as to moral character and professional competence from the chief of service and two other active physician staff members at the hospital where he or she was last affiliated. In the discretion of the board, letters from different sources may be presented.

* * *

(7) Practice: Applicant shall have practiced medicine within the last three years as defined in section 1311 of this title or shall comply with the requirements for updating knowledge and skills as defined by board rules.

* * *

§ 1398. REFUSAL OR REVOCATION OF LICENSES

The board may refuse to issue the licenses provided for in section 1391 of this title to persons who ~~have been convicted of the practice of criminal abortion, or who~~, by false or fraudulent representations, have obtained or sought to obtain practice in their profession, or by false or fraudulent representations of their profession, have obtained or sought to obtain money or any other thing of value, or who assume names other than their own, or for any other immoral, unprofessional or dishonorable conduct. ~~For like cause, or when a licensee has been admitted to a mental hospital or has become incompetent by reason of senility, the board may suspend or revoke any certificate issued by it.~~ However, a certificate shall not be suspended, revoked, or refused until the holder or applicant is given a hearing before the board. In the event of revocation, the holder of any certificate so revoked shall forthwith relinquish the same to the secretary of the board.

§ 1399. [Repealed.]

§ 1400. RENEWAL OF LICENSE; CONTINUING MEDICAL EDUCATION

(a) Every person licensed to practice medicine ~~and surgery~~ by the board shall apply biennially for the renewal of his or her license. ~~One~~ At least one month prior to the date on which renewal is required, the board shall send to each licensee a license renewal application form and notice of the date on which the existing license will expire. On or before the renewal date, the licensee shall file an application for license renewal and pay the required fee. The board shall register the applicant and issue the renewal license. Within one month following the date renewal is required, the board shall pay the license renewal fees into the medical practice board special fund ~~and shall file a list of licensees with the department of health~~.

(b) A licensee for renewal of an active license to practice medicine shall have completed continuing medical education which shall meet minimum criteria as established by rule, by the board, by August 31, 2012 and which shall be in effect for the renewal of licenses to practice medicine expiring after August 31, 2014. The board shall require a minimum of ten hours of continuing medical education by rule. The training provided by the continuing medical education shall be designed to assure that the licensee has updated his or her knowledge and skills in his or her own specialties and also has kept abreast of advances in other fields for which patient referrals may be appropriate. The board shall require evidence of current professional competence in recognizing the need for timely appropriate consultations and referrals to assure fully informed patient choice of treatment options, including treatments such as those offered by hospice, palliative care, and pain management services.

(c) A licensee for renewal of an active license to practice medicine shall have practiced medicine within the last three years as defined in section 1311 of this title or have complied with the requirements for updating knowledge and skills as defined by board rules.

(d) All licensees shall demonstrate that the requirements for licensure are met.

(e) A licensee shall promptly provide the board with new or changed information pertinent to the information in his or her license and license renewal applications at the time he or she becomes aware of the new or changed information.

(f) A person who practices medicine ~~and surgery~~ and who fails to renew his or her license in accordance with the provisions of this section shall be deemed an illegal practitioner and shall forfeit the right to so practice or to hold himself or herself out as a person licensed to practice medicine ~~and surgery~~ in the state until reinstated by the board, but nevertheless a ~~person who was licensed to practice medicine and surgery at the time of his induction, call on reserve commission or enlistment into the armed forces of the United States, shall be entitled to practice medicine and surgery during the time of his service with the~~

~~armed forces of the United States and for 60 days after separation from such service~~ physician while on extended active duty in the uniformed services of the United States or as a member of the national guard, state guard, or reserve component who is licensed as a physician at the time of an activation or deployment shall receive an extension of licensure up to 90 days following the physician's return from activation or deployment, provided the physician notifies the board of his or her activation or deployment prior to the expiration of the current license and certifies that the circumstances of the activation or deployment impede good faith efforts to make timely application for renewal of the license.

~~(c)~~(g) Any person who allows a license to lapse by failing to renew the same in accordance with the provisions of this section may be reinstated by the board by payment of the renewal fee ~~and~~, the late renewal penalty, and if applicable, by completion of the required continuing medical education requirement as established in subsection (b) of this section and any other requirements for licensure as required by this section and board rule.

§ 1401. [Expired.]

§ 1401a. FEES

(a) The department of health shall collect the following fees:

(1) Application for licensure ~~$565.00, in fiscal year 2009 $600.00, and in fiscal year 2010 and thereafter~~, $625.00; the board shall use at least $25.00 of this fee to support the ~~costs~~ cost of ~~the creation and maintenance of a~~ maintaining the Vermont practitioner recovery network which ~~will monitor~~ monitors recovering chemically dependent licensees for the protection of the public.

(2) Biennial renewal ~~$450.00 and in fiscal year 2009 and thereafter~~, $500.00; the board shall use at least $25.00 of this fee to support the ~~costs~~ cost of ~~the creation and maintenance of a~~ maintaining the Vermont practitioner recovery network which ~~will monitor~~ monitors recovering chemically dependent licensees for the protection of the public.

* * *

§ 1403. PROFESSIONAL CORPORATIONS; MEDICINE ~~AND SURGERY~~

A person licensed to practice medicine ~~and surgery~~ under this chapter may own shares in a professional corporation created under chapter 4 of Title 11 which provides professional services in the medical and nursing professions.

* * *

Subchapter 5. Quality Assurance Data

* * *

§ 1446. DIRECTORS OF CORPORATION

The board of directors of the Vermont Program for Quality in Health Care, Inc. shall include ~~without limitation~~ the commissioner of the department of health~~, the chair of the hospital data council~~ and two directors, each of whom represents at least one of the following populations: elderly, ~~handicapped~~ people with disabilities, or low income individuals.

* * *

Sec. 3. 26 V.S.A. chapter 29 is amended to read:

CHAPTER 29. ANESTHESIOLOGIST ASSISTANTS

* * *

§ 1654. ELIGIBILITY

To be eligible for certification as an anesthesiologist assistant, an applicant shall have:

(1) obtained a master's degree from a board-approved anesthesiologist assistant program at an institution of higher education accredited by the Committee on Allied Health Education and Accreditation, the Commission on Accreditation of Allied Health Education Programs, or their successor agencies, or graduated from a board-approved anesthesiologist assistant program at an institution of higher education accredited by the Committee on Allied Health Education and Accreditation or the Commission of Accreditation of Allied Health Education Programs, prior to January 1, 1984; ~~and~~

(2) satisfactorily completed the certification examination given by the NCCAA and be currently certified by the NCCAA; and

(3) if the applicant has not engaged in practice as an anesthesiologist assistant within the last three years, complied with the requirements for updating knowledge and skills as defined by board rules.

* * *

§ 1656. RENEWAL OF CERTIFICATION

(a) Certifications shall be ~~renewable~~ renewed every two years ~~on payment of the required fee and submission of proof of current, active NCCAA certification~~. At least one month prior to the date on which renewal is required, the board shall send to each anesthesiologist assistant a renewal application form and notice of the date on which the existing certification will expire. On or before the renewal date, the anesthesiologist assistant shall file an application for renewal, pay the required fee and submit proof of current active NCCAA certification. The board shall register the applicant and issue the renewal certification. Within one month following the date renewal is

required, the board shall pay the certification renewal fees into the medical practice board special fund.

(b) A certification that has lapsed may be reinstated on payment of a renewal fee and a late renewal fee. The applicant shall not be required to pay back renewal fees for the periods when certification was lapsed. However, if such certification remains lapsed for a period of three years, the board may~~, after notice and an opportunity for hearing,~~ require ~~reexamination as a condition of renewal~~ the applicant to update his or her knowledge and skills as defined by board rules.

* * *

§ 1658. UNPROFESSIONAL CONDUCT

(a) The following conduct and the conduct described in section 1354 of this title by a certified anesthesiologist assistant constitutes unprofessional conduct. When that conduct is by an applicant or person who later becomes an applicant, it may constitute grounds for denial of certification:

(1) ~~fraudulent procuring~~ fraud or ~~use of certification~~ misrepresentation in applying for or procuring an anesthesiologist assistant certificate or in connection with applying for or procuring a periodic renewal of an anesthesiologist assistant certificate;

* * *

(9) ~~professional negligence~~ failure to practice competently by reason of any cause on a single occasion or on multiple occasions constitutes unprofessional conduct. Failure to practice competently includes as determined by the board:

(A) performance of unsafe or unacceptable patient care; or

(B) failure to conform to the essential standards of acceptable and prevailing practice;

* * *

(18) in the course of practice, gross failure to use and exercise on a particular occasion or the failure to use and exercise on repeated occasions that degree of care, skill, and proficiency which is commonly exercised by the ordinary skillful, careful, and prudent professional engaged in similar practice under the same or similar conditions, whether or not actual injury to a patient has occurred; ~~or~~

(19) habitual or excessive use or abuse of drugs, alcohol, or other substances that impair the anesthesiologist assistant's ability to provide medical services; or

~~(19)~~(20) revocation of certification to practice as an anesthesiologist assistant in another jurisdiction on one or more of the grounds specified in subdivisions ~~(1)–(18)~~(1)–(19) of this subsection.

* * *

§ 1659. DISPOSITION OF COMPLAINTS

* * *

(b) ~~The board shall accept complaints from a member of the public, a physician, a hospital, an anesthesiologist assistant, a state or federal agency, or the attorney general~~ Any person, firm, corporation, or public officer may submit a written complaint to the board alleging any anesthesiologist assistant practicing in the state is engaged in unprofessional conduct, specifying the grounds. The board shall initiate an investigation of an anesthesiologist assistant when a complaint is received or may act on its own initiative without having received a complaint.

(c) After giving opportunity for hearing, the board shall take disciplinary action described in subsection 1361(b) of this title against an anesthesiologist assistant or applicant found guilty of unprofessional conduct.

(d) The board may approve a negotiated agreement between the parties when it is in the best interest of the public health, safety, or welfare to do so. That agreement may include any of the following conditions or restrictions which may be in addition to, or in lieu of, suspension:

* * *

(4) a requirement that the scope of practice permitted be restricted to a specified extent;

(5) an administrative penalty not to exceed $1,000.00 for each act that constitutes an unprofessional conduct violation. Any money received from the imposition of an administrative penalty imposed under this subsection shall be deposited into the board of medical practice regulatory fee fund and shall not be used for any other purpose other than professional regulation and other responsibilities of the board, as determined by the commissioner of health.

* * *

§ 1662. FEES

Applicants and persons regulated under this chapter shall pay the following fees:

(1)(A)(i) Original application for certification, $115.00;

(ii) Each additional application, $50.00;

(B) The board shall use at least $10.00 of these fees to support the ~~costs~~ cost of ~~the creation and maintenance of a~~ maintaining the Vermont practitioner recovery network which ~~will monitor~~ monitors recovering chemically dependent licensees for the protection of the public.

(2)(A)(i) Biennial renewal, $115.00;

(ii) Each additional renewal, $50.00;

(B) The board shall use at least $10.00 of these fees to support the ~~costs~~ cost of ~~the creation and maintenance of a~~ maintaining the Vermont practitioner recovery network ~~that will monitor~~ which monitors recovering chemically dependent licensees for the protection of the public. In addition to the fee, an applicant for certification renewal shall submit evidence in a manner acceptable to the board that he or she continues to meet the certification requirements of the NCCAA.

* * *

§ 1664. PENALTY

(a) A person who, not being certified, holds himself or herself out to the public as being certified under this chapter shall be liable for a fine of not more than ~~$1,000.00~~ $10,000.00.

* * *

Sec. 4. 26 V.S.A. chapter 31 is amended to read:

CHAPTER 31. ~~PHYSICIAN'S~~ PHYSICIAN ASSISTANTS

* * *

§ 1732. DEFINITIONS

1. As used in this chapter:

(1) "Accredited physician assistant program" means a physician assistant educational program that has been accredited by the Accreditation Review Commission on Education for the Physician Assistant (ARC-PA), or, prior to 2001, by either the Committee on Allied Health Education and Accreditation (CAHEA), or the Commission on Accreditation of Allied Health Education Programs (CAAHEP).

(2) "Board" means the state board of medical practice established by chapter 23 of this title.

~~(2)~~(3) ~~"Contract" means a legally binding agreement, expressed in writing, containing the terms of employment of a physician's assistant.~~ "Delegation agreement" means a detailed description of the duties and scope of practice delegated by a primary supervising physician to a physician assistant that is signed by both the physician assistant and the supervising physicians.

~~(3)~~(4) "Physician" means an individual licensed to practice medicine pursuant to ~~chapters~~ chapter 23 ~~and~~ or 33 of this title.

~~(4)~~(5) "~~Physician's~~ Physician assistant" means an individual ~~certified~~ licensed by the state of Vermont who is qualified by education, training, experience, and personal character to provide medical ~~services under~~ care with the direction and supervision of a Vermont licensed physician.

~~(5) "Physician's assistant trainee" means a person who is not certified as a "physician's assistant" under this chapter but who assists a physician under the physician's direct supervision for the purpose of acquiring the basic knowledge and skills of a physician's assistant by the apprentice-preceptor mode of education.~~

(6) ~~"Protocol" means a detailed description of the duties and scope of practice delegated by a physician to a physician's assistant~~ "Supervising physician" means an M.D. or D.O. licensed by the state of Vermont who oversees and accepts responsibility for the medical care provided by a physician assistant.

(7) "Supervision" means the direction and review by the supervising physician~~, as determined to be appropriate by the board,~~ of the medical ~~services~~ care provided by the ~~physician's~~ physician assistant. The constant physical presence of the supervising physician is not required as long as the supervising physician and physician assistant are or easily can be in contact with each other by telecommunication.

(8) "Disciplinary action" means any action taken against a ~~certified physician's~~ physician assistant~~, a registered physician's assistant trainee~~ or an applicant by the board~~, the appellate officer,~~ or on appeal therefrom, when that action suspends, revokes, limits, or conditions ~~certification or registration~~ licensure in any way, and includes reprimands and administrative penalties.

§ 1733. ~~CERTIFICATION AND REGISTRATION~~ LICENSURE

(a) The state board of medical practice is responsible for the ~~certification~~ licensure of ~~physician's~~ physician assistants ~~and the registration of physician's assistant trainees~~, and the commissioner of health shall adopt, amend, or repeal rules regarding the training, practice ~~and~~, qualification, and discipline of ~~physician's~~ physician assistants.

(b) ~~All applications for certification shall be accompanied by an application by the proposed supervising physician which shall contain a statement that the physician shall be responsible for all medical activities of the physician's assistant~~ In order to practice, a licensed physician assistant shall have completed a delegation agreement as described in section 1735a of this title with a Vermont licensed physician signed by both the physician assistant and the supervising physician or physicians. The original shall be filed with the

board and copies shall be kept on file at each of the physician assistant's practice sites.

~~(c) All applications for certification shall be accompanied by a protocol signed by the supervising physician and a copy of the physician's assistant employment contract~~ All applicants and licensees shall demonstrate that the requirements for licensure are met.

~~(d) All physician's assistant trainees shall register biennially with the board. Registrants shall provide the board with such information as it may require, including a copy of an employment contract and description of the apprenticeship program involved~~

§ 1734. ELIGIBILITY

(a) ~~To be eligible for certification as a physician's assistant, an applicant shall:~~

~~(1) have graduated from a board-approved physician's assistant program sponsored by an institution of higher education and have satisfactorily completed the certification examination given by the National Commission on the Certification of Physicians' Assistants (NCCPA); or~~

~~(2) have completed a board-approved apprenticeship program, including an evaluation conducted by the board. The requirements of apprenticeship programs shall be set by the board to ensure continuing opportunity for nonuniversity trained persons to practice as physician's assistants consistent with ensuring the highest standards of professional medical care~~ The board may grant a license to practice as a physician assistant to an applicant who:

(1) submits a completed application form provided by the board;

(2) pays the required application fee;

(3) has graduated from an accredited physician assistant program or has passed and maintained the certification examination by the National Commission on the Certification of Physician Assistants (NCCPA) prior to 1988;

(4) has passed the certification examination given by the NCCPA;

(5) is mentally and physically able to engage safely in practice as a physician assistant;

(6) does not hold any license, certification, or registration as a physician assistant in another state or jurisdiction which is under current disciplinary action, or has been revoked, suspended, or placed on probation for cause resulting from the applicant's practice as a physician assistant, unless the board has considered the applicant's circumstances and determines that licensure is appropriate;

(7) is of good moral character;

(8) submits to the board any other information that the board deems necessary to evaluate the applicant's qualifications; and

(9) has engaged in practice as a physician assistant within the last three years or has complied with the requirements for updating knowledge and skills as defined by board rules. This requirement shall not apply to applicants who have graduated from an accredited physician assistant program within the last three years.

(b) ~~A person intending to practice as a physician's assistant and his or her supervising physician shall be responsible for designing and presenting an apprenticeship program to the board for approval. The program shall be approved in a timely fashion unless there is good reason to believe that the program would be inconsistent with the public health, safety and welfare.~~

(c) ~~Evaluation procedures followed by the board shall be fair and reasonable and shall be designed and implemented to demonstrate competence in the skills required of a physician's assistant and to reasonably ensure that all applicants are certified unless there is good reason to believe that certification of a particular applicant would be inconsistent with the public health, safety and welfare. An evaluation shall include reviewing statements of the supervising physician who has observed the applicant conduct a physical examination, render a diagnosis, give certain tests to patients, prepare and maintain medical records and charts, render treatment, provide patient education and prescribe medication. The evaluation shall be of activities appropriate to the applicant's approved training program. They shall not be designed or implemented for the purpose of limiting the number of certified physician's assistants.~~

(d) When the board intends to deny an application for ~~certification~~ licensure, it shall send the applicant written notice of its decision by certified mail. The notice shall include a statement of the reasons for the action. Within 30 days of the date that an applicant receives such notice, the applicant may file a petition with the board for review of its preliminary decision. At the hearing, the burden shall be on the applicant to show that ~~certification~~ licensure should be granted. After the hearing, the board shall affirm or reverse its preliminary denial.

(e) Failure to maintain competence in the knowledge and skills of a ~~physician's~~ physician assistant, as determined by the board, shall be cause for revocation of ~~certification~~ licensure. ~~Any person whose certification has been revoked for failure to maintain competence may practice for one year as a registered physician's assistant trainee, but shall be examined at the end of that period in the manner provided in subsection (a) of this section. Should the~~

~~person fail upon reexamination, the person shall be enjoined from practice until meeting all requirements for certification under this chapter.~~

* * *

§ 1734b. RENEWAL OF ~~CERTIFICATION~~ LICENSE

(a) ~~Certifications~~ Licenses shall be ~~renewable~~ renewed every two years ~~without examination and~~ on payment of the required fee. At least one month prior to the date on which renewal is required, the board shall send to each licensee a license renewal application form and notice of the date on which the existing license will expire. On or before the renewal date, the licensee shall file an application for license renewal and pay the required fee. The board shall register the applicant and issue the renewal license. Within one month following the date renewal is required, the board shall pay the license renewal fees into the medical practice board special fund. Any physician assistant while on extended active duty in the uniformed services of the United States or member of the national guard, state guard, or reserve component who is licensed as a physician assistant at the time of an activation or deployment shall receive an extension of licensure up to 90 days following the physician assistant's return from activation or deployment, provided the physician assistant notifies the board of his or her activation or deployment prior to the expiration of the current license, and certifies that the circumstances of the activation or deployment impede good faith efforts to make timely application for renewal of the license.

(b) A licensee shall demonstrate that the requirements for licensure are met.

(c) A licensee for renewal of an active license to practice shall have practiced as a physician assistant within the last three years or have complied with the requirements for updating knowledge and skills as defined by board rules.

(d) A licensee shall promptly provide the board with new or changed information pertinent to the information in his or her license and license renewal applications at the time he or she becomes aware of the new or changed information.

(e) A ~~certification~~ license which has lapsed may be reinstated on payment of a renewal fee and a late renewal fee. The applicant shall not be required to pay renewal fees during periods when ~~certification~~ the license was lapsed. However, if ~~such certification~~ a license remains lapsed for a period of three years, the board may~~, after notice and an opportunity for hearing,~~ require ~~reexamination as a condition of renewal~~ the licensee to update his or her knowledge and skills as defined by board rules.

§ 1734c. EXEMPTIONS

Nothing herein shall be construed to require licensure under this chapter of:

(1) a physician assistant student enrolled in a physician assistant educational program accredited by the Accreditation Review Commission on Education for the Physician Assistant;

(2) a physician assistant employed in the service of the U.S. military or national guard, including national guard in-state status, while performing duties incident to that employment; or

(3) a technician or other assistant or employee of a physician who performs physician-delegated tasks but who is not rendering services as a physician assistant or identifying himself or herself as a physician assistant.

* * *

§ 1735a. SUPERVISION AND SCOPE OF PRACTICE

(a) It is the obligation of each team of physician and physician assistant to ensure that the physician assistant's scope of practice is identified; that delegation of medical care is appropriate to the physician assistant's level of competence; that the supervision, monitoring, documentation, and access to the supervising physician is defined; and that a process for evaluation of the physician assistant's performance is established.

(b) The information required in subsection (a) of this section shall be included in a delegation agreement as required by the commissioner by rule. The delegation agreement shall be signed by both the physician assistant and the supervising physician or physicians, and a copy shall be kept on file at each of the physician assistant's practice sites and the original filed with the board.

(c) The physician assistant's scope of practice shall be limited to medical care which is delegated to the physician assistant by the supervising physician and performed with the supervision of the supervising physician. The medical care shall be within the supervising physician's scope of practice and shall be care which the supervising physician has determined that the physician assistant is qualified by education, training, and experience to provide.

(d) A physician assistant may prescribe, dispense, and administer drugs and medical devices to the extent delegated by a supervising physician. A physician assistant who is authorized by a supervising physician to prescribe controlled substances must register with the federal Drug Enforcement Administration.

(e) A supervising physician and physician assistant shall report to the board immediately upon an alteration or the termination of the delegation agreement.

§ 1736. UNPROFESSIONAL CONDUCT

(a) The following conduct and the conduct described in section 1354 of this title by a ~~certified physician's~~ licensed physician assistant ~~or registered physician's assistant trainee constitutes~~ shall constitute unprofessional conduct.

When that conduct is by an applicant or person who later becomes an applicant, it may constitute grounds for denial of ~~certification or registration~~ licensure:

(1) ~~fraudulent procuring~~ fraud or ~~use of certification or registration~~ misrepresentation in applying for or procuring a license or in applying for or procuring a periodic renewal of a license;

* * *

(b) Unprofessional conduct includes the following actions by a ~~certified physician's~~ licensed physician assistant ~~or a registered physician's assistant trainee~~:

* * *

(3) ~~professional negligence~~ practicing the profession without having a delegation agreement meeting the requirements of this chapter on file at the primary location of the physician assistant's practice and the board;

* * *

(7) performing otherwise than at the direction and under the supervision of a physician licensed by the board or an osteopath licensed by the Vermont board of osteopathic physicians and surgeons;

(8) ~~accepting the delegation of, or~~ performing or offering to perform a task or tasks beyond the individual's delegated scope ~~as defined by the board~~ of practice;

(9) administering, dispensing, or prescribing any controlled substance otherwise than as authorized by law;

(10) habitual or excessive use or abuse of drugs, alcohol, or other substances that impair the ability to provide medical services;

(11) failure to practice competently by reason of any cause on a single occasion or on multiple occasions. Failure to practice competently includes as determined by the board:

(A) performance of unsafe or unacceptable patient care; or

(B) failure to conform to the essential standards of acceptable and prevailing practice.

* * *

§ 1737. DISPOSITION OF COMPLAINTS

* * *

(b) ~~The board shall accept complaints from any member of the public, any physician, and any physician's assistant, any state or federal agency or the~~

~~attorney general~~ Any person, firm, corporation, or public officer may submit a written complaint to the board alleging a physician assistant practicing in the state committed unprofessional conduct, specifying the grounds. The board may initiate disciplinary action in any complaint against a ~~physician's~~ physician assistant and may act without having received a complaint.

(c) After giving opportunity for hearing, the board shall take disciplinary action described in subsection 1361(b) of this title against a ~~physician's~~ physician assistant~~, physician's assistant trainee,~~ or applicant found guilty of unprofessional conduct.

(d) The board may approve a negotiated agreement between the parties when it is in the best interest of the public health, safety, or welfare to do so. Such an agreement may include~~, without limitation,~~ any of the following conditions or restrictions which may be in addition to, or in lieu of, suspension:

(1) a requirement that the individual submit to care or counseling;

(2) a restriction that the individual practice only under supervision of a named person or a person with specified credentials;

(3) a requirement that the individual participate in continuing education in order to overcome specified practical deficiencies;

(4) a requirement that the scope of practice permitted be restricted to a specified extent;

(5) an administrative penalty not to exceed $1,000.00 for each act that constitutes an unprofessional conduct violation. Any money received from the imposition of an administrative penalty imposed under this subdivision shall be deposited into the board of medical practice regulatory fee fund for the purpose of providing education and training for board members and the professions regulated by the board. The commissioner shall detail in the annual report receipts and expenses from money received under this subsection.

(e) Upon application, the board may modify the terms of an order under this section and, if ~~certification or registration~~ licensure has been revoked or suspended, order reinstatement on terms and conditions it deems proper.

§ 1738. USE OF TITLE

Any person who is ~~certified~~ licensed to practice as a ~~physician's~~ physician assistant in this state shall have the right to use the title "~~physician's~~ physician assistant" and the abbreviation "P.A." and "PA-C". No other person may assume that title or use that abbreviation, or any other words, letters, signs, or devices to indicate that the person using them is a ~~physician's~~ physician assistant. ~~A physician's assistant shall not so represent himself or herself unless there is currently in existence, a valid contract between the physician's assistant and his or her employer supervising physician, and unless the~~

~~protocol under which the physician's assistant's duties are delegated is on file with, and has been approved by, the board.~~

§ 1739. LEGAL LIABILITY

(a) The supervising physician delegating activities to a ~~physician's~~ physician assistant shall be legally liable for such activities of the ~~physician's~~ physician assistant, and the ~~physician's~~ physician assistant shall in this relationship be the physician's agent.

* * *

§ 1739a. INAPPROPRIATE USE OF SERVICES BY PHYSICIAN; UNPROFESSIONAL CONDUCT

Use of the services of a ~~physician's~~ physician assistant ~~or a physician's assistant trainee~~ by a physician in a manner which is inconsistent with the provisions of this chapter constitutes unprofessional conduct by the physician and such physician shall be subject to disciplinary action by the board in accordance with the provisions of chapter 23 or 33 of this title, as appropriate.

§ 1740. FEES

Applicants and persons regulated under this chapter shall pay the following fees:

(1) Original application for ~~certification and registration~~ ~~$115.00 with each additional application at $50.00~~ licensure, $170.00; the board shall use at least $10.00 of this fee to support the ~~costs~~ cost of ~~the creation and maintenance of a~~ maintaining the Vermont practitioner recovery network which ~~will monitor~~ monitors recovering chemically dependent licensees for the protection of the public.

(2) Biennial renewal ~~$115.00~~ ~~with each additional renewal at $50.00~~, $170.00; the board shall use at least $10.00 of this fee to support the ~~costs~~ cost of ~~the creation and maintenance of a~~ maintaining the Vermont practitioner recovery network which ~~will monitor~~ monitors recovering chemically dependent licensees for the protection of the public.

~~(3) Transfer of certification or registration, $15.00.~~

§ 1741. NOTICE OF USE OF ~~PHYSICIAN'S~~ PHYSICIAN ASSISTANT TO BE POSTED

A physician, clinic, or hospital that utilizes the services of a ~~physician's~~ physician assistant shall post a notice to that effect in a prominent place.

§ 1742. PENALTY

(a) Any person who, not being ~~certified or registered~~ licensed, holds himself or herself out to the public as being ~~so certified or registered~~ licensed

under this chapter shall be liable for a fine of not more than ~~$1,000.00~~ $10,000.00.

* * *

§ 1743. MEDICAID REIMBURSEMENT

The secretary of the agency of human services shall, pursuant to the Administrative Procedure Act, promulgate rules providing for a fee schedule for reimbursement under Title XIX of the Social Security Act and chapter ~~36~~ 19 of Title 33, relating to medical assistance which recognizes reasonable cost differences between services provided by physicians and those provided by ~~physician's~~ physician assistants under this chapter.

§ 1744. CERTIFIED PHYSICIAN ASSISTANTS

Any person who is certified by the board as a physician assistant prior to the enactment of this section shall be considered to be licensed as a physician assistant under this chapter immediately upon enactment of this section, and shall be eligible for licensure renewal pursuant to section 1734 of this title.

Sec. 5. 26 V.S.A. chapter 52 is amended to read:

CHAPTER 52. RADIOLOGIST ASSISTANTS

* * *

§ 2854. ELIGIBILITY

To be eligible for certification as a radiologist assistant, an applicant shall:

* * *

(3) be certified as a radiologic technologist in radiography by the ARRT; ~~and~~

(4) be licensed as a radiologic technologist in radiography in this state under chapter 51 of this title; and

(5) if the applicant has not engaged in practice as a radiologist assistant within the last three years, comply with the requirements for updating knowledge and skills as defined by board rules.

* * *

§ 2856. RENEWAL OF CERTIFICATION

(a) ~~Certifications shall be renewable every two years upon payment of the required fee and submission of proof of current, active ARRT certification, including compliance with continuing education requirements~~ At least one month prior to the date on which renewal is required, the board shall send to each radiology assistant a renewal application form and notice of the date on which the existing certification will expire. On or before the renewal date, the

radiologist assistant shall file an application for renewal, pay the required fee and submit proof of current active ARRT certification, including compliance with continuing education requirements. The board shall register the applicant and issue the renewal certification. Within one month following the date renewal is required, the board shall pay the certification renewal fees into the medical practice board special fund.

(b) A certification that has lapsed may be reinstated on payment of a renewal fee and a late renewal fee. The applicant shall not be required to pay back renewal fees for the periods when certification was lapsed. However, if certification remains lapsed for a period of three years, the board may~~, after notice and an opportunity for hearing,~~ require ~~reexamination as a condition of renewal~~ the applicant to update his or her knowledge and skills as defined by board rules.

* * *

§ 2858. UNPROFESSIONAL CONDUCT

(a) The following conduct and the conduct described in section 1354 of this title by a certified radiologist assistant constitutes unprofessional conduct. When that conduct is by an applicant or person who later becomes an applicant, it may constitute grounds for denial of certification:

(1) ~~fraudulent procuring~~ fraud or ~~use of certification~~ misrepresentation in applying for or procuring a certificate or in connection with applying for or procuring a periodic recertification as a radiologist assistant;

* * *

(5) conviction of a crime related to the profession or conviction of a felony, whether or not related to the practice of the profession or failure to report to the board of medical practice a conviction of any crime related to the practice of the profession or any felony in any court within 30 days of the conviction;

* * *

(9) ~~professional negligence~~ failure to practice competently by reason of any cause on a single occasion or on multiple occasions constitutes unprofessional conduct. Failure to practice competently includes as determined by the board:

(A) performance of unsafe or unacceptable patient care; or

(B) failure to conform to the essential standards of acceptable and prevailing practice;

* * *

(18) in the course of practice, gross failure to use and exercise on a particular occasion or the failure to use and exercise on repeated occasions that degree of care, skill, and proficiency that is commonly exercised by the ordinary skillful, careful, and prudent professional engaged in similar practice under the same or similar conditions, whether or not actual injury to a patient has occurred; ~~or~~

(19) habitual or excessive use or abuse of drugs, alcohol, or other substances that impair the radiologist assistant's ability to provide medical services; or

(20) revocation of certification to practice as a radiologist assistant in another jurisdiction on one or more of the grounds specified in subdivisions ~~(1) (18)~~(1)–(19) of this subsection.

* * *

§ 2859. DISPOSITION OF COMPLAINTS

* * *

(b) ~~The board shall accept complaints from a member of the public, a physician, a hospital, a radiologist assistant, a state or federal agency, or the attorney general~~ Any person, firm, corporation, or public officer may submit a written complaint to the board alleging a radiologist assistant practicing in the state engaged in unprofessional conduct, specifying the grounds. The board shall initiate an investigation of a radiologist assistant when a complaint is received or may act on its own initiative without having received a complaint.

* * *

(d) After giving an opportunity for hearing, the board shall take disciplinary action described in subsection 1361(b) of this title against a radiologist assistant or applicant found guilty of unprofessional conduct.

(e) The board may approve a negotiated agreement between the parties when it is in the best interest of the public health, safety, or welfare to do so. That agreement may include any of the following conditions or restrictions which may be in addition to or in lieu of suspension:

* * *

(4) a requirement that the scope of practice permitted be restricted to a specified extent;

(5) an administrative penalty not to exceed $1,000.00 for each act that constitutes an unprofessional conduct violation. Any money received from the imposition of an administrative penalty imposed under this subdivision shall be deposited into the board of medical practice regulatory fee fund for the purpose of providing education and training for board members. The commissioner

shall detail in the annual report receipts and expenses from money received under this subsection.

* * *

§ 2862. FEES

Applicants and persons regulated under this chapter shall pay the following fees:

(1)(A)(i) Original application for certification $115.00;

(ii) Each additional application $ 50.00;

(B) The board shall use at least $10.00 of these fees to support the ~~costs~~ cost of ~~the creation and maintenance of a~~ maintaining the Vermont practitioner recovery network which ~~will monitor~~ monitors recovering chemically dependent licensees for the protection of the public.

(2)(A)(i) Biennial renewal $115.00;

(ii) Each additional renewal $ 50.00;

(B) The board shall use at least $10.00 of these fees to support the ~~costs~~ cost of ~~the creation and maintenance of a~~ maintaining the Vermont practitioner recovery network ~~that will monitor~~ which monitors recovering chemically dependent licensees for the protection of the public. In addition to the fee, an applicant for certification renewal shall submit evidence in a manner acceptable to the board that he or she continues to meet the certification requirements of the ARRT and is licensed as a radiologic technologist under chapter 51 of this title.

* * *

§ 2864. PENALTY

(a) A person who, not being certified, holds himself or herself out to the public as being certified under this chapter shall be liable for a fine of not more than ~~$1,000.00~~ $10,000.00.

* * *

Sec. 6. 20 V.S.A. § 2060 is amended to read:

§ 2060. RELEASE OF RECORDS

The center is authorized to release records or information requested under ~~section 309 or 6914 of Title~~ 33 V.S.A. §§ 309 or 6914, 26 V.S.A. § 1353, ~~section 4010 of Title~~ 24 V.S.A. § 4010, or chapter 5, subchapter 4 of Title 16.

Sec. 7. 33 V.S.A. § 4919 is amended to read:

§ 4919. DISCLOSURE OF REGISTRY RECORDS

(a) The commissioner may disclose a registry record only as follows:

* * *

(10) To the board of medical practice for the purpose of evaluating an applicant, licensee, or holder of certification pursuant to 26 V.S.A. § 1353.

* * *

Sec. 8. 33 V.S.A. § 6911 is amended to read:

§ 6911. RECORDS OF ABUSE, NEGLECT, AND EXPLOITATION

* * *

(c) The commissioner or the commissioner's designee may disclose registry information only to:

* * *

(6) the commissioner of health, or the commissioner's designee, for purposes related to oversight and monitoring of persons who are served by or compensated with funds provided by the department of health, including persons to whom a conditional offer of employment has been made; ~~and~~

(7) upon request or when relevant to other states' adult protective services offices; and

(8) the board of medical practice for the purpose of evaluating an applicant, licensee, or holder of certification pursuant to 26 V.S.A. § 1353.

Sec. 9. REPEAL

The following sections of Title 26 are repealed:

(1) § 322 (podiatrist as member of board of medical practice);

(2) § 1352 (reports);

(3) § 1397 (recording license);

(4) § 1734a (temporary certification); and

(5) § 1735 (supervision and scope of practice).

Sec. 10. ADOPTION OF RULES

The state board of medical practice shall adopt maintenance of licensure rules for podiatrists, physicians, and physician assistants by September 1, 2012.

Sec. 11. REPORT

By January 15, 2012, the Vermont board of medical practice shall review the process for licensing physicians who seek to provide only pro bono services pursuant to 26 V.S.A. § 1395(c) and report to the house committee on health care regarding any changes to the criteria developed by the board for

licensing those physicians pursuant to that subsection or, if no changes are made to the criteria, the reasons therefor.

Sec. 12. EFFECTIVE DATES

This act shall take effect on passage, except that, in Title 26:

(1) §§ 371(5)and 373(b) shall take effect 60 days after the adoption of the maintenance of licensure rule for podiatrists;

(2) §§ 1396(7) and 1400(c) shall take effect 60 days after the adoption of the maintenance of licensure rule for physicians;

(3) §§ 1654(3) and 1656(b) shall take effect 60 days after the adoption of the rule referenced in 26 V.S.A. § 1654(3);

(4) § 1734b(c) shall take effect 60 days after the adoption of the maintenance of licensure rule for physician assistants; and

(5) §§ 2854(5) and 2856(b) shall take effect 60 days after the adoption of the rule referenced in 26 V.S.A. § 2854(5).