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H.420

Introduced by Committee on Government Operations

Date:

Subject: Professions and occupations; licensing

Statement of purpose: This bill proposes to amend the practice acts for various professions.

An act relating to the office of professional regulation

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 3 V.S.A. § 128 is redesignated to read:

§ 128. ~~UNPROFESSIONAL CONDUCT~~ DISCIPLINARY ACTION TO BE REPORTED TO THE BOARD

* * *

Sec. 2. 3 V.S.A. § 129 is amended to read:

§ 129. POWERS OF BOARDS; DISCIPLINE PROCESS

* * *

(g) A board may authorize any of the following:

* * *

(2) Its chair ~~or legal counsel~~ to grant or deny stays pending appeal.

* * *

1 Sec. 3. 3 V.S.A. § 129a(a) is amended to read:

2 §129a. UNPROFESSIONAL CONDUCT

3 (a) In addition to any other provision of law, the following conduct by a
4 licensee constitutes unprofessional conduct. When that conduct is by an
5 applicant or person who later becomes an applicant, it may constitute grounds
6 for denial of a license or other disciplinary action. Any one of the following
7 items, or any combination of items, whether or not the conduct at issue was
8 committed within or outside the state, shall constitute unprofessional conduct:

9 * * *

(6) Delegating professional responsibilities to a person whom the
licensed professional knows, or has reason to know, is not qualified by
training, experience, education, or licensing credentials to perform them, or
knowingly providing professional supervision or serving as a preceptor to a
person who has not been licensed or registered as required by the laws of ~~his~~
~~or her~~ that person's profession.

10 * * *

11 Sec. 4. 26 V.S.A. chapter 6 is amended to read:

12 CHAPTER 6. BARBERS AND COSMETOLOGISTS

13 * * *

1 § 288. UNPROFESSIONAL CONDUCT

2 The conduct listed in this section and in 3 V.S.A. § 129a constitutes
3 unprofessional conduct when committed by a licensee. When that conduct is
4 by an applicant or person who later becomes an applicant, it may constitute
5 grounds for denial of a license or other disciplinary action:

6 * * *

7 (3) Failing to adequately supervise employees who are engaged in any
8 of the practices of barbering or cosmetology and nail technician practice.

9 * * *

10 ~~Sec. 5. 26 V.S.A. chapter 28 is amended to read:~~

11 ~~CHAPTER 28. NURSING~~

12 ~~Subchapter 1. Registered and Licensed Practical Nursing~~

13 ~~* * *~~

14 ~~§ 1584. PROHIBITIONS; OFFENSES~~

15 ~~(a) It shall be a violation of this chapter for any person, including any~~
16 ~~corporation, association, or individual, to:~~

17 ~~* * *~~

18 ~~(7) Employ unlicensed persons to practice registered ~~or nursing,~~~~
19 ~~practical nursing, or as a nursing assistant.~~

20 ~~* * *~~

Sec. 5. 26 V.S.A. chapter 28 is amended to read:

CHAPTER 28. NURSING

Subchapter 1. Registered and Licensed Practical Nursing

* * *

§ 1572. DEFINITIONS

As used in this chapter:

* * *

(4) “Advanced practice registered nurse” or “APRN” means a licensed registered nurse authorized to practice in this state who, because of specialized education and experience, is endorsed to perform acts of medical diagnosis and to prescribe medical, therapeutic, or corrective measures under administrative rules adopted by the board.

(5) “License” means a current authorization permitting the practice of nursing as a registered nurse, licensed practical nurse, or advanced practice registered nurse.

§ 1573. VERMONT STATE BOARD OF NURSING

(a) There is hereby created a Vermont state board of nursing consisting of ~~five~~ six registered nurses, including at least ~~one endorsed~~ two licensed as an advanced practice registered nurse nurses, two practical nurses, one nursing assistant, and two public members. Board members shall be appointed by the governor pursuant to 3 V.S.A. §§ 129b and 2004.

* * *

§ 1573a. APRN SUBCOMMITTEE

The board shall appoint a subcommittee to study and report to the board on matters relating to advanced practice registered nurse practice. The subcommittee shall be composed of at least five members. The majority shall be advanced practice registered nurses who are licensed and in good standing in this state. At least one member shall be a member of the public, and at least one member shall be a physician designated by the board of medical practice. Members of the subcommittee shall be entitled to compensation at the rate provided in 32 V.S.A. § 1010.

* * *

§ 1582. REGULATORY AUTHORITY; UNPROFESSIONAL CONDUCT

(a) The board may deny an application for registration, licensure, or relicensure; revoke or suspend any license to practice nursing issued by it; or discipline or in other ways condition the practice of a registrant or licensee upon due notice and opportunity for hearing in compliance with the provisions of ~~chapter 25 of Title 3, 3 V.S.A. chapter 25~~ if the person engages in the

following conduct or the conduct set forth in ~~section 129a~~ of Title 3 V.S.A. § 129a:

(1) Has made or caused to be made a false, fraudulent, or forged statement or representation in procuring or attempting to procure registration or renew a license to practice nursing;

** * **

(6) Has a mental, emotional, or physical disability, the nature of which interferes with ability to practice nursing competently; ~~or~~

(7) Engages in conduct of a character likely to deceive, defraud, or harm the public;

(8) Has willfully omitted to file or record or has willfully impeded or obstructed a filing or recording or has induced another person to omit to file or record medical reports required by law;

(9) Has knowingly aided or abetted a health care provider who is not legally practicing within the state in the provision of health care services;

(10) Has permitted his or her name or license to be used by a person, group, or corporation when not actually in charge of or responsible for the treatment given;

(11) Has failed to comply with the patient bill of rights provisions of 18 V.S.A. § 1852; or

(12) Has committed any sexual misconduct that exploits the provider-patient relationship, including sexual contact with a patient, surrogates, or key third parties.

(b) Procedure. The board shall establish a discipline process based on this chapter and the Administrative Procedure Act.

(c) Appeals. ~~(1)~~ Any person or institution aggrieved by any action of the board under this section or section 1581 of this title may appeal as provided in ~~section 130a~~ of Title 3 V.S.A. § 130a.

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

** * **

§ 1584. PROHIBITIONS; OFFENSES

(a) It shall be a violation of this chapter for any person, including any corporation, association, or individual, to:

** * **

(7) Employ unlicensed persons to practice registered ~~or~~ nursing, practical nursing, or as a nursing assistant.

* * *

Subchapter 3. Advanced Practice Registered Nurses

§ 1611. ADVANCED PRACTICE REGISTERED NURSE LICENSURE

To be eligible for an APRN license, an applicant shall:

(1) have a degree or certificate from a Vermont graduate nursing program approved by the board or a graduate program approved by a state or a national accrediting agency that includes a curriculum substantially equivalent to programs approved by the board. The educational program shall meet the educational standards set by the national accrediting board and the national certifying board. Programs shall include a supervised clinical component in the role and population focus of the applicant's certification. The program shall prepare nurses to practice advanced nursing in a role as a nurse practitioner, certified nurse midwife, certified nurse anesthetist, or clinical nurse specialist in psychiatric or mental health nursing and shall include, at a minimum, graduate level courses in:

(A) advanced pharmacotherapeutics;

(B) advanced patient assessment; and

(C) advanced pathophysiology;

(2) hold a degree or certificate from an accredited graduate-level educational program preparing the applicant for one of the four recognized APRN roles described in subdivision (1) of this section and have educational preparation consistent with the applicant's certification, role, population focus, and specialty practice; and

(3) hold current advanced nursing certification in a role and population focus granted by a national certifying organization recognized by the board.

§ 1612. PRACTICE GUIDELINES

(a) APRN licensees shall submit for review individual practice guidelines and receive board approval of the practice guidelines. Practice guidelines shall reflect current standards of advanced nursing practice specific to the APRN's role, population focus, and specialty.

(b) Licensees shall submit for review individual practice guidelines and receive board approval of the practice guidelines:

(1) prior to initial employment;

(2) upon application for renewal of an APRN's registered nurse license;
and

(3) prior to a change in the APRN's employment or clinical role, population focus, or specialty.

§ 1613. TRANSITION TO PRACTICE

(a) Graduates with fewer than 24 months and 2,400 hours of licensed active advanced nursing practice in an initial role and population focus or fewer than 12 months and 1,600 hours for any additional role and population focus shall have a formal agreement with a collaborating provider as required by board rule. APRNs shall have and maintain signed and dated copies of all required collaborative provider agreements as part of the practice guidelines. An APRN required to practice with a collaborative provider agreement may not engage in solo practice, except with regard to a role and population focus in which the APRN has met the requirements of this subsection.

(b) An APRN who satisfies the requirements to engage in solo practice pursuant to subsection (a) of this section shall notify the board that these requirements have been met.

§ 1614. APRN RENEWAL

An APRN license renewal application shall include:

(1) documentation of completion of the APRN practice requirement;

(2) a current certification by a national APRN specialty certifying organization;

(3) current practice guidelines; and

(4) a current collaborative provider agreement if required for transition to practice.

§ 1615. REGULATORY AUTHORITY; UNPROFESSIONAL CONDUCT

(a) The board may deny an application for licensure or renewal or may revoke, suspend, or otherwise discipline an advanced practice registered nurse upon due notice and opportunity for hearing in compliance with the provisions of 3 V.S.A. chapter 25 if the person engages in the conduct set forth in 3 V.S.A. § 129a or section 1582 of this title or any of the following:

(1) abandonment of a patient in violation of the duty to maintain a provider-patient relationship within the reasonable expectations of continuing care or referral.

(2) solicitation of professional patronage by agents or persons or profiting from the acts of those representing themselves to be agents of the licensed APRN.

(3) division of fees or agreeing to split or divide the fees received for professional services for any person for bringing or referring a patient.

(4) practice beyond those acts and situations that are within the practice guidelines approved by the board for an APRN and within the limits of the knowledge and experience of the APRN, and, for an APRN who is practicing under a collaborative agreement, practice beyond those acts and situations that are within both the usual scope of the collaborating provider's practice and the terms of the collaborative agreement.

(5) for an APRN who acts as the collaborating provider for an APRN who is practicing under a collaboration agreement, allowing the mentored APRN to perform a medical act which is outside the usual scope of the mentor's own practice or which the mentored APRN is not qualified to perform by training or experience or which is not consistent with the requirements of this chapter and the rules of the board.

(6) 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 provider-patient relationship:

(A) 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;

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

(C) maintenance of a current medical record.

(7) prescribing, selling, administering, distributing, ordering, or dispensing any drug legally classified as a controlled substance for his or her own use or for an immediate family member.

(8) signing a blank or undated prescription form.

(b)(1) For the purposes of subdivision (a)(6) of this section, an electronic, online, or telephonic evaluation by questionnaire is inadequate for the initial evaluation of the patient.

(2) The following would not be in violation of subdivision (a)(6) of this section:

(A) initial admission orders for newly hospitalized patients;

(B) prescribing for a patient of another provider for whom the prescriber has taken call;

(C) prescribing for a patient examined by a licensed APRN, physician assistant, or other practitioner authorized by law and supported by the APRN;

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

(E) emergency situations where the life or health of the patient is in imminent danger.

1 ~~Sec. 6. 26 V.S.A. chapter 30 is amended to read:~~

2 CHAPTER 30. OPTOMETRY

3 * * *

4 Subchapter 4. Unprofessional Conduct and Discipline

5 § 1719. UNPROFESSIONAL CONDUCT

6 * * *

7 (b) Unprofessional conduct means:

8 * * *

9 (3) Any of the following with regard to the buyer's prescription or
10 purchase of ophthalmic goods:

11 (A) Failure to give to the buyer a copy of the buyer's spectacle lens
12 prescription or contact lens prescription immediately after the eye examination
13 is completed. Provided, an optometrist may refuse to give the buyer a copy of
14 the buyer's prescription until the buyer has paid for the eye examination but
15 only if that optometrist would have required immediate payment from that
16 buyer had the examination revealed that no ophthalmic goods were required.

1 ~~If the buyer requests his or her contact lens prescription before the prescription~~
2 ~~is complete, the optometrist shall furnish a copy of the buyer's contact lens~~
3 ~~prescription to the buyer, clearly marked to indicate that it is not a complete~~
4 ~~contact lens prescription.~~

5 ~~***~~

6 Sec. ~~7~~6. 26 V.S.A. chapter 36 is amended to read:

7 CHAPTER 36. PHARMACY

8 Subchapter 1. General Provisions

9 § 2021. STATEMENT OF PURPOSE

10 It is the purpose of this chapter to promote, preserve₂ and protect the public
11 health, safety₂ and welfare by and through the effective control and regulation
12 of the practice of pharmacy and of the registration of drug outlets engaged in
13 the manufacture, production, sale₂ and distribution of drugs, medications,
14 ~~devices~~ and other such materials as may be used in the diagnosis and treatment
15 of injury, illness₂ and disease.

16 * * *

17 Subchapter 2. Board of Pharmacy

18 * * *

19 § 2032. POWERS, DUTIES, LIMITATIONS

20 * * *

1 (g)(1) The board may develop procedures to permit it to oversee, at no
2 more than three locations and for no more than ~~two~~ four years each in duration,
3 pilot experiments for remote pharmacies. In addition, the board may develop a
4 pilot experiment, for no more than ~~two~~ four years in duration, to use
5 telepharmacy to dispense prescriptions from secure automatic dispensing units
6 at locations in Vermont recognized as a covered entity under Section 340B of
7 the Public Health Service Act.

8 * * *

9 Sec. ~~8~~ 7. 26 V.S.A. chapter 45 is amended to read:

10 CHAPTER 45. LAND SURVEYORS

11 * * *

12 Subchapter 3. Licenses

13 § 2592. QUALIFICATIONS

14 * * *

15 (e) ~~Experience claimed by an applicant under a notice received under~~
16 ~~subsection (d) of this section shall be credited towards the requirements for~~
17 ~~licensure unless within 15 days following the next board meeting after~~
18 ~~receiving the notice, the board or a board member designated by the board~~
19 ~~gives the applicant notice of opportunity for hearing. Following such a~~
20 ~~hearing, the board may reject some or all of the claimed experience on grounds~~
21 ~~that it does not comply with the rules of the board.~~

1 * * *

2 § 2598. UNPROFESSIONAL CONDUCT

3 * * *

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

5 * * *

6 (6) using the licensee's seal on documents prepared by others not in the
7 licensee's direct employ, or use the seal of another;

8 ~~(7) repeated failure to follow minimum standards of practice.~~

9 * * *

10 § 2602. MEASUREMENTS

11 (a) A land surveyor may use either of the following measurement
12 standards:

13 (1) Accuracy ~~Measurements~~ Standards. The minimum positional
14 tolerance of any point on the subject boundary shall be: 0.03 feet plus 1:10,000
15 for urban surveys; 0.05 feet plus 1:5,000 for suburban surveys; and 0.25 feet
16 plus 1:5,000 for rural surveys; ~~and 1.0 feet plus 1:500 for mountain/marshlands~~
17 ~~surveys.~~

18 (2) Precision ~~Measurements~~ Standards. The minimum traverse
19 precision ratio, after angles are balanced and closure is calculated, shall be:
20 1:10,000 for urban or suburban surveys; and 1:5,000 for rural surveys; ~~and~~
21 ~~1:500 for mountain/marshlands surveys.~~

1 * * *

2 Sec. ~~9~~8. 26 V.S.A. chapter 46 is amended to read:

3 CHAPTER 46. LANDSCAPE ARCHITECTS

4 * * *

5 § 2622. ADVISOR APPOINTEES

6 (a) The secretary of state shall appoint two landscape architects for
7 ~~four-year~~ five-year staggered terms to serve at the secretary's pleasure as
8 advisors in matters relating to landscape architecture. One of the initial
9 appointments may be for less than a ~~four-year~~ five-year term. An appointee
10 shall have not less than three years' experience as a landscape architect
11 immediately preceding appointment, shall be licensed as a landscape architect
12 in Vermont or be in the process of applying for licensure, and shall be actively
13 engaged in the practice of landscape architecture in this state during
14 incumbency.

15 * * *

16 Sec. ~~10~~9. 26 V.S.A. chapter 51 is amended to read:

17 CHAPTER 51. RADIOLOGY

18 * * *

19 Subchapter 2. Board of Radiologic Technology

20 * * *

21 § 2814. FEES

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

3 (1) Application for temporary permit and licensure \$ 100.00

4 * * *

5 Sec. ~~11~~ 10. 26 V.S.A. chapter 65 is amended to read:

6 CHAPTER 65. CLINICAL MENTAL HEALTH COUNSELORS

7 * * *

8 § 3269. RENEWALS

9 * * *

10 (d) ~~The director may, after notice and opportunity for hearing, revoke a~~
11 ~~person's right to renew a license if the license has lapsed for five or more~~
12 ~~years.~~

13 * * *

Sec. ~~11~~ 10a. 26 V.S.A. chapter 67 is amended to read:

CHAPTER 67. HEARING AID DISPENSERS

** * **

Subchapter 2. Administration

§ 3287. ADVISOR APPOINTEES

(a) The secretary shall appoint three licensed hearing aid dispensers and one member of the public to serve as advisors in matters related to hearing aid dispensers. ~~One~~ Of the licensed hearing aid dispensers, one member shall be an otolaryngologist; one shall be an audiologist; and one shall be a hearing aid dispenser who is neither an otolaryngologist nor an audiologist. ~~They~~ The public member shall be an individual with significant hearing impairment who uses a hearing aid regularly. The members shall be appointed as set forth in 3 V.S.A. § 129b and shall serve at the pleasure of the secretary.

(b) The director shall seek the advice of the ~~hearing aid dispensers~~ advisors appointed under this section in carrying out the provisions of this chapter. Such members shall be entitled to compensation and necessary expenses in the amount provided in 32 V.S.A. § 1010 for attendance at any meeting called by the director for this purpose.

* * *

1 Sec. ~~12~~ 11. 26 V.S.A. chapter 69 is amended to read:

2 CHAPTER 69. REAL ESTATE APPRAISERS

3 * * *

4 § 3321. RENEWALS

5 * * *

6 (d) The board may require, by rule, as a condition of renewal, that an
7 applicant undergo review of one or more aspects of the applicant's professional
8 work in the practice of real estate appraising provided that ~~no applicant may be~~
9 ~~reviewed more than once every two years and that~~ the manner and
10 performance results of the review be specified by the board. Such a review
11 requirement shall:

12 * * *

13 § 3322. USE OF LICENSE NUMBER; CONSUMER FEE DISCLOSURE

14 ~~(a) Each licensee or registrant shall be assigned a license or registration~~
15 ~~number which shall be used in a report, a contract, engagement letter, or other~~
16 ~~instrument used by the licensee or registrant in connection with the licensee's~~
17 ~~or registrant's activities under this chapter. The license number shall be placed~~
18 ~~adjacent to or immediately below the title the licensee is entitled to use under~~

1 ~~this chapter, and the registration number shall appear adjacent to or~~
2 ~~immediately below the appraisal management company's registered name on~~
3 ~~documents supplied to clients or customers in this state.~~

(a) Each licensee or registrant shall be assigned a license or registration number which shall be used in a report, a contract, engagement letter, or other instrument used by the licensee or registrant in connection with the licensee's or registrant's activities under this chapter. The license number shall be placed adjacent to or immediately below the title the licensee is entitled to use under this chapter, ~~and the~~. The licensed appraiser shall ensure that the registration number and the appraiser's fee for appraisal services shall appear adjacent to or immediately below the appraisal management company's registered name on documents supplied to clients or customers in this state.

~~(b) The fee charged by the licensed appraiser for appraisal services shall be included in the appraisal report.~~

(b) The licensed appraiser shall include within the body of the appraisal report the amount of the appraiser's fee for appraisal services.

4 * * *

5 Sec. ~~13~~ 12. 26 V.S.A. chapter 78 is amended to read:

6 CHAPTER 78. ROSTER OF PSYCHOTHERAPISTS WHO ARE
7 NONLICENSED AND NONCERTIFIED

8 * * *

9 § 4085. EXEMPTIONS

1 (a) The provisions of this chapter shall not apply to persons while engaged
2 in the course of their customary duties as clergy, licensed physicians, nurses,
3 osteopaths, optometrists, dentists, lawyers, psychologists, social workers,
4 mental health counselors, certified marriage and family therapists, licensed
5 alcohol and drug counselors, and psychoanalysts or licensed educators when
6 performing their duties consistent with the accepted standards of their
7 respective professions.

8 * * *

9 Sec. ~~14~~ 13. Sec. 4 of No. 84 of the Acts of the 2009 Adj. Sess. (2010) is
10 amended to read:

11 Sec. 4. REVIEW BY DIRECTOR OF THE OFFICE OF PROFESSIONAL
12 REGULATION; REPEAL

13 (a) Sec. 3 of this act shall be repealed on ~~July 1, 2014~~ January 1, 2012.

14 * * *

15 ~~Sec. 15. STAKEHOLDER WORKGROUP~~

16 ~~Not later than July 1, 2011, the Vermont board of nursing shall convene a~~
17 ~~workgroup consisting of representatives from nursing homes, the agency of~~
18 ~~human services, and nursing assistant educators to make recommendations to~~
19 ~~the board on the standards for medication nursing assistant education and~~
20 ~~competency. The board shall submit a report to the general assembly on the~~
21 ~~status of efforts to establish these standards not later than January 15, 2012.~~

~~Sec. 15~~ 14. STAKEHOLDER WORKGROUP

Not later than July 1, 2011, the Vermont board of nursing shall convene a workgroup consisting of representatives from nursing homes, hospice agencies, the agency of human services, and nursing assistant educators to make recommendations to the board on the standards for administration of medication by medication nursing assistants as well as standards for education and competency of medication nursing assistants. The board shall submit a report to the general assembly on the status of efforts to establish these standards not later than January 15, 2012.

1 ~~Sec. 16~~. EFFECTIVE DATE

2 ~~This act shall take effect on passage.~~

Sec. ~~16~~ 15. 17 V.S.A. § 2121 is amended to read:

§ 2121. ELIGIBILITY OF VOTERS

(a) Any person may register to vote in the town of his or her residence in any election held in a political subdivision of this state in which he or she resides who, on election day:

- (1) is a citizen of the United States;
- (2) is a resident of the state of Vermont;
- (3) has taken the voter's oath; and
- (4) is 18 years of age or more

~~may register to vote in the town of his residence in any election held in a political subdivision of this state in which he resides.~~

(b) Any person meeting the requirements of subdivisions (a)(1)–(3) of this section who will be 18 years of age on or before the date of a general election may register and vote in the primary election immediately preceding that general election.

Sec. ~~17~~ 16. 17 V.S.A. § 2702 is amended to read:

§ 2702. NOMINATING PETITION

The name of any person shall be printed upon the primary ballot as a candidate for nomination by any major political party if petitions signed by at least one thousand voters in accordance with sections 2353, 2354, and 2358 of this title are filed with the secretary of state, together with the written consent of the person to the printing of the person's name on the ballot. Petitions shall be filed not later than 5:00 p.m. on the ~~third~~ first Monday after the first Tuesday of January preceding the primary election. The petition shall be in a

form prescribed by the secretary of state. A person's name shall not be listed as a candidate on the primary ballot of more than one party in the same election. Each petition shall be accompanied by a filing fee of \$2,000.00 to be paid to the secretary of state and deposited by the secretary of state into the general fund. However, if the petition of a candidate is accompanied by the affidavit of the candidate, which shall be available for public inspection, that the candidate and the candidate's campaign committee are without sufficient funds to pay the filing fee, the secretary of state shall waive all but \$300.00 of the payment of the filing fee by that candidate.

Sec. ~~18~~ 17. EFFECTIVE DATE

This act shall take effect on passage.