

No. 130. An act relating to the posting of medical unprofessional conduct decisions and to investigators of alleged unprofessional conduct.

(H.350)

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

* * * Medical Unprofessional Conduct Decisions * * *

Sec. 1. 26 V.S.A. § 1318 is amended to read:

§ 1318. ACCESSIBILITY AND CONFIDENTIALITY OF DISCIPLINARY
MATTERS

(a) It is the purpose of this section both to protect the reputation of licensees from public disclosure of unwarranted complaints against them and to fulfill the public's right to know of any action taken against a licensee when that action is based on a determination of unprofessional conduct.

(b) All meetings and hearings of the ~~board~~ Board shall be open to the public, except in accord with 1 V.S.A. § 313.

(c)(1) The ~~commissioner of health~~ Commissioner of Health shall prepare and maintain a register of all complaints, which shall be a public record, and which shall show:

~~(A)~~ with respect to all complaints, the following information:

~~(A)~~(i) the date and the nature of the complaint, but not including the identity of the licensee; and

~~(B)~~(ii) a summary of the completed investigation; and

~~(2)~~(B) only with respect to complaints resulting in filing of disciplinary charges or stipulations or the taking of disciplinary action and except as provided in subdivision (2) of this subsection (c), 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~~ State or federal law:

~~(A)~~(i) the name and business addresses of the licensee and complainant;

~~(B)~~(ii) formal charges, provided they have been served or a reasonable effort to serve them has been made;

~~(C)~~(iii) the findings, conclusions, and order of the ~~board~~ Board;

~~(D)~~(iv) the transcript of the hearing, if one has been made, and exhibits admitted at the hearing;

~~(E)~~(v) stipulations presented to the ~~board~~ Board at a public meeting;

~~(F)~~(vi) final disposition of the matter by the ~~appellate officer or the~~ courts; and

(vii) a summary of the final disposition of the matter indicating any charges that were dismissed and any charges resulting in a finding of unprofessional conduct.

(2) The Commissioner shall remove from the register any of the information described in subdivision (1)(B) of this subsection if the final disposition of the matter dismisses all charges filed against a licensee in the same action. The Commissioner shall ensure that the period for appealing an order has expired prior to removing any such information from the register.

and shall remove that information within five business days of the expiration of the appeal period.

(d) ~~The commissioner~~ Commissioner shall not make public any information regarding disciplinary complaints, proceedings, or records, except the information required to be released under this section. The Commissioner shall, upon request, provide information that was maintained on the register under subdivision (c)(1) of this section but which was later removed from the register under the provisions of subdivision (c)(2) of this section.

(e) A licensee or applicant shall have the right to inspect and copy all information in the possession of the ~~department of health~~ Department of Health pertaining to the licensee or applicant, except investigatory files which have not resulted in charges of unprofessional conduct and attorney work product.

(f) ~~For the purposes of~~ As used in 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~~ 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~~ Department of Disabilities, Aging, and Independent Living or the ~~department of financial regulation~~ Department of Financial Regulation 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~~ 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~~ Commissioner nor any person who received documents, material, or information while acting under the authority of the ~~commissioner~~ Commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, material, or information.

Sec. 2. 26 V.S.A. § 1368 is amended to read:

§ 1368. DATA REPOSITORY; LICENSEE PROFILES

(a) A data repository is created within the ~~department of health~~ 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~~ Department shall collect the following information to create individual profiles on all health care professionals licensed, certified, or registered by the ~~department~~ Department,

pursuant to the provisions of this title, in a format created by the Department that shall be available for dissemination to the public:

(1) A description of any criminal convictions for felonies and serious misdemeanors, as determined by the ~~commissioner of health~~ Commissioner of Health, within the most recent 10 years. For the purposes of this subdivision, a person shall be deemed to be convicted of a crime if he or she pleaded guilty or was found or adjudged guilty by a court of competent jurisdiction.

(2) A description of any charges to which a health care professional pleads nolo contendere or where sufficient facts of guilt were found and the matter was continued without a finding by a court of competent jurisdiction.

(3)(A) A description of any formal charges served, findings, conclusions, and orders of the licensing authority, and final disposition of matters by the courts within the most recent 10 years, and a summary of the final disposition of such matters indicating any charges that were dismissed and any charges resulting in a finding of unprofessional conduct.

(B) The Department shall remove from the data repository any charges, findings, conclusions, and order if the final disposition of the matter dismissed all charges filed against the licensee in the same action. The Department shall ensure that the period for appealing an order has expired prior to removing any such information from the data repository, and shall remove that information within five business days of the expiration of the appeal period.

(4)(A) A description of any formal charges served by licensing authorities, findings, conclusions, and orders of such licensing authorities, and final disposition of matters by the courts in other states within the most recent 10 years.

(B) Upon request of the licensee, the Department shall remove from the data repository any charges, findings, conclusions, and order if the final disposition of the matter dismissed all charges filed against the licensee in the same action. The Department shall confirm the dismissal and shall ensure that the period for appealing an order has expired prior to removing any such information from the data repository, and shall remove that information within five business days of the expiration of the appeal period or within five business days of the request of the licensee, whichever is later.

(5) A description of revocation or involuntary restriction of hospital privileges for reasons related to competence or character that has been issued by the hospital's governing body or any other official of the hospital after procedural due process has been afforded, or the resignation from, or nonrenewal of, medical staff membership or the restriction of privileges at a hospital taken in lieu of, or in settlement of, a pending disciplinary case related to competence or character in that hospital. Only cases which have occurred within the most recent 10 years shall be disclosed by the ~~board~~ Board 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~~ Commissioner may, in consultation with the Vermont ~~medical society~~ 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 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 professional has been in practice when considering the data;

(iii) an explanation that an incident giving rise to a malpractice claim may have occurred years before any payment was made, due to the time lawsuits take to move through the legal system;

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

(v) an explanation that malpractice cases may be settled for reasons other than liability.

(C)(i) 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.

(ii) Pending malpractice claims and actual amounts paid by or on behalf of a professional in connection with a malpractice judgment, award, or settlement shall not be disclosed by the ~~commissioner of health~~ 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.

(7) The names of medical professional schools and dates of graduation.

(8) Graduate medical education.

(9) Specialty board certification.

(10) The number of years in practice.

(11) The names of the hospitals where the health care professional has privileges.

(12) Appointments to medical school or professional school faculties, and indication as to whether the health care professional has had a responsibility for teaching graduate medical education within the last 10 years.

(13) Information regarding publications in peer-reviewed medical literature within the last 10 years.

(14) Information regarding professional or community service activities and awards.

(15) The location of the health care professional's primary practice setting.

(16) The identification of any translating services that may be available at the health care professional's primary practice location.

(17) An indication of whether the health care professional participates in the Medicaid program, and is currently accepting new patients.

(b) The ~~department~~ Department shall provide individual health care professionals with a copy of their profiles prior to the initial release to the public and each time a physician's profile is modified or amended. A health care professional shall be provided a reasonable time to correct factual inaccuracies that appear in such profile, and may elect to have his or her profile omit the information required under subdivisions (a)(12) through (14) of this section. In collecting information for such profiles and in disseminating the same, the ~~department~~ Department shall inform health care professionals that they may choose not to provide such information required under subdivisions (a)(12) through (14).

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

* * * Certification of Board of Medical Practice Investigators * * *

Sec. 3. 26 V.S.A. § 1351 is amended to read:

§ 1351. BOARD OF MEDICAL PRACTICE

* * *

(f)(1) Classified ~~state~~ State employees who are employed as investigators by the ~~department of health~~ Department of Health who ~~have successfully met~~

currently meet the standards of training for a full-time law enforcement officer under 20 V.S.A. chapter 151 shall have the same powers as sheriffs in criminal matters and the enforcement of the law and in serving criminal process, and shall have all the immunities and matters of defense now available or hereafter made available to sheriffs in a suit brought against them in consequence for acts done in the course of their employment.

(2) Board of Medical Practice investigators employed by the Department of Health who do not currently meet the standards of training for a full-time law enforcement officer under 20 V.S.A. chapter 151 shall annually obtain a minimum of 25 hours of training regarding the methods of conducting investigations of alleged unprofessional conduct, as approved by the Board.

(3) Any Board of Medical Practice investigator employed by the Department of Health shall obtain as soon as practicable and thereafter maintain certification by a nationally or regionally recognized entity regarding the investigation of licensing cases, as approved by the Board.

* * * Applicability and Effective Dates * * *

Sec. 4. APPLICABILITY OF SECS. 1 AND 2; SUMMARIES OF

FINAL DISPOSITIONS

(a) The provisions of Sec. 1 of this act, 26 V.S.A. § 1318(c)(1)(B)(vii), which require the Commissioner of Health to provide a summary of the final disposition of unprofessional conduct matters, shall only apply to final dispositions entered on and after the effective date of Sec. 1.

(b) The provisions of Sec. 2 of this act, 26 V.S.A. § 1368(a)(3)(A), which require the Department of Health to provide a summary of the final disposition of unprofessional conduct matters, shall only apply to final dispositions entered on and after the effective date of Sec. 2.

Sec. 5. REPORT BY BOARD OF MEDICAL PRACTICE;
INVESTIGATION METHODS

By January 15, 2015, the Board of Medical Practice shall report to the House Committee on Health Care and the Senate Committee on Health and Welfare on its work to review and modify, as appropriate, its policies and procedures for investigating unprofessional conduct cases, after accepting from interested stakeholders any suggestions regarding this issue. The report shall address any changes the Board has made in its policies and procedures regarding those investigations.

Sec. 5a. 18 V.S.A. § 4631a is amended to read:

§ 4631a. EXPENDITURES BY MANUFACTURERS OF PRESCRIBED
PRODUCTS

(a) As used in this section:

(1) “Allowable expenditures” means:

* * *

(H) Sponsorship of an educational program offered by a medical device manufacturer at a national or regional professional society meeting at which programs accredited by the Accreditation Council for Continuing

Medical Education, or a comparable professional accrediting entity, are also offered, provided:

(i) no payment is made directly to a health care professional or pharmacist; and

(ii) the funding is used solely for bona fide educational purposes, except that the manufacturer may provide meals and other food for program participants.

(I) Other reasonable fees, payments, subsidies, or other economic benefits provided by a manufacturer of prescribed products at fair market value.

* * *

(7)(C) “Regularly practices” means to practice at least periodically under contract with, as an employee of, or as the owner of, a medical practice, health care facility, nursing home, hospital, or university located in Vermont.

* * *

(12) “Prescribed product” means a drug ~~or device~~ as defined in section 201 of the federal Food, Drug and Cosmetic Act, 21 U.S.C. § 321, a compound drug or drugs, a medical device as defined in this subsection, a biological product as defined in section 351 of the Public Health Service Act, 42 U.S.C. § 262, for human use, or a combination product as defined in 21 C.F.R. § 3.2(e), but shall not include prescription eyeglasses, prescription sunglasses, or other prescription eyewear.

* * *

(15) “Medical device” means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, that is:

(A) recognized in the official National Formulary or the United States Pharmacopeia, or any supplement to them;

(B) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in humans or other animals; or

(C) intended to affect the structure or any function of the body of humans or other animals, and which does not achieve its primary intended purposes through chemical action within or on such body and which is not dependent upon being metabolized for the achievement of its primary intended purposes.

Sec. 6. EFFECTIVE DATES

This act shall take effect on passage, except:

(1) Secs. 1 (amending 26 V.S.A. § 1318), 3 (amending 26 V.S.A. § 1351), and 5a (amending 18 V.S.A. § 4631a) shall take effect on July 1, 2014; and

(2) Sec. 2 (amending 26 V.S.A. § 1368) shall take effect on July 1, 2015.

Date Governor signed bill: May 20, 2014