

1 H.350

2 Introduced by Representatives Webb of Shelburne and Till of Jericho

3 Referred to Committee on

4 Date:

5 Subject: Professions and occupations; Board of Medical Practice; Secretary of  
6 State; unprofessional conduct; charges; investigators

7 Statement of purpose of bill as introduced: This bill proposes to require the  
8 Board of Medical Practice to remove from its register and data repository  
9 unprofessional conduct documents when unprofessional conduct charges are  
10 ultimately dismissed and to require Board of Medical Practice investigators  
11 employed by the Department of Health and investigators employed by the  
12 Secretary of State to be certified as law enforcement officers and to obtain an  
13 additional special investigation certification from the Vermont Criminal Justice  
14 Training Council.

15 An act relating to the posting of medical unprofessional conduct decisions  
16 and to investigators of alleged unprofessional conduct

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

2 \* \* \* Medical Unprofessional Conduct Decisions \* \* \*

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

4 § 1318. ACCESSIBILITY AND CONFIDENTIALITY OF DISCIPLINARY  
5 MATTERS

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

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

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

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

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

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

19 ~~(2)(B)~~ only with respect to complaints resulting in filing of disciplinary  
20 charges or stipulations or the taking of disciplinary action and except as  
21 provided in subdivision (2) of this subsection, the following additional

1 information, except for medical and other protected health information  
2 contained therein pertaining to any identifiable person that is otherwise  
3 confidential by state or federal law:

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

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

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

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

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

12 and

13 ~~(F)~~(vi) final disposition of the matter by the appellate officer or the  
14 courts.

15 (2) The Commissioner shall remove from the register any of the  
16 information described in subdivision (1)(B) of this subsection if the order of  
17 the Board or the final disposition of the matter by the appellate officer or the  
18 courts dismisses the charges filed against a licensee.

19 (d) The ~~commissioner~~ Commissioner shall not make public any  
20 information regarding disciplinary complaints, proceedings, or records, except  
21 the information required to be released under this section. The Commissioner

1 shall, upon request, provide information that was maintained on the register  
2 under subdivision (c)(1) of this section but which was later removed from the  
3 register under the provisions of subdivision (c)(2) of this section.

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

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

11 (g) Nothing in this section shall prohibit the disclosure of information by  
12 the ~~commissioner~~ Commissioner regarding disciplinary complaints to Vermont  
13 or other state or federal law enforcement or regulatory agencies in the  
14 execution of its duties authorized by statute or regulation, including the  
15 ~~department of disabilities, aging, and independent living~~ Department of  
16 Disabilities, Aging, and Independent Living or the ~~department of financial~~  
17 ~~regulation~~ Department of Financial Regulation in the course of its  
18 investigations about an identified licensee, provided the agency or department  
19 agrees to maintain the confidentiality and privileged status of the information  
20 as provided in subsection (d) of this section.

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

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

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

11 § 1368. DATA REPOSITORY; LICENSEE PROFILES

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

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

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

9           (3) A description of any formal charges served, findings, conclusions,  
10 and orders of the licensing authority, and final disposition of matters by the  
11 courts within the most recent 10 years. The Department shall remove from the  
12 data repository any charges, findings, conclusions, and order if the order of the  
13 licensing authority or the final disposition of the matter by the courts dismissed  
14 the charges.

15           (4) A description of any formal charges served by licensing authorities,  
16 findings, conclusions, and orders of such licensing authorities, and final  
17 disposition of matters by the courts in other states within the most recent 10  
18 years. The Department shall remove from the data repository any charges,  
19 findings, conclusion, and order if the order of the licensing authority or the  
20 final disposition of the matter by the courts dismissed the charges.

1           (5) A description of revocation or involuntary restriction of hospital  
2           privileges for reasons related to competence or character that has been issued  
3           by the hospital's governing body or any other official of the hospital after  
4           procedural due process has been afforded, or the resignation from, or  
5           nonrenewal of, medical staff membership or the restriction of privileges at a  
6           hospital taken in lieu of, or in settlement of, a pending disciplinary case related  
7           to competence or character in that hospital. Only cases which have occurred  
8           within the most recent 10 years shall be disclosed by the ~~board~~ Board to the  
9           public.

10           (6)(A) All medical malpractice court judgments and all medical  
11           malpractice arbitration awards in which a payment is awarded to a complaining  
12           party during the last 10 years, and all settlements of medical malpractice  
13           claims in which a payment is made to a complaining party within the last 10  
14           years. Dispositions of paid claims shall be reported in a minimum of three  
15           graduated categories, indicating the level of significance of the award or  
16           settlement, if valid comparison data are available for the profession or  
17           specialty. Information concerning paid medical malpractice claims shall be put  
18           in context by comparing an individual health care professional's medical  
19           malpractice judgment awards and settlements to the experience of other health  
20           care professionals within the same specialty within the New England region or  
21           nationally. The ~~commissioner~~ Commissioner may, in consultation with the

1 Vermont ~~medical society~~ Medical Society, report comparisons of individual  
2 health care professionals covered under this section to all similar health care  
3 professionals within the New England region or nationally.

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

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

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

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

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

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

19 (C)(i) Information concerning all settlements shall be accompanied  
20 by the following statement: "Settlement of a claim may occur for a variety of  
21 reasons which do not necessarily reflect negatively on the professional

1 competence or conduct of the health care professional. A payment in  
2 settlement of a medical malpractice action or claim should not be construed as  
3 creating a presumption that medical malpractice has occurred.” Nothing herein  
4 shall be construed to limit or prevent the licensing authority from providing  
5 further explanatory information regarding the significance of categories in  
6 which settlements are reported.

7 (ii) Pending malpractice claims and actual amounts paid by or on  
8 behalf of a professional in connection with a malpractice judgment, award, or  
9 settlement shall not be disclosed by the ~~commissioner of health~~ Commissioner  
10 of Health or by the licensing authority to the public. Nothing herein shall be  
11 construed to prevent the licensing authority from investigating and disciplining  
12 a health care professional on the basis of medical malpractice claims that are  
13 pending.

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

15 (8) Graduate medical education.

16 (9) Specialty board certification.

17 (10) The number of years in practice.

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

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

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

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

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

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

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

14          (b) The ~~department~~ Department shall provide individual health care  
15          professionals with a copy of their profiles prior to the initial release to the  
16          public and each time a physician's profile is modified or amended. A health  
17          care professional shall be provided a reasonable time to correct factual  
18          inaccuracies that appear in such profile, and may elect to have his or her profile  
19          omit the information required under subdivisions (a)(12) through (14) of this  
20          section. In collecting information for such profiles and in disseminating the  
21          same, the ~~department~~ Department shall inform health care professionals that

1 they may choose not to provide such information required under subdivisions  
2 (a)(12) through (14).

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

7 \* \* \* Certification of Investigators of Unprofessional Conduct \* \* \*

8 Sec. 3. 20 V.S.A. § 2359 is added to read:

9 § 2359. SPECIAL CERTIFICATION OF INVESTIGATORS EMPLOYED

10 BY THE SECRETARY OF STATE AND BY THE DEPARTMENT  
11 OF HEALTH

12 The Council shall provide special training regarding the methods of  
13 conducting investigations of alleged unprofessional conduct to investigators  
14 employed by the Secretary of State and Board of Medical Practice  
15 investigators employed by the Department of Health and provide a special  
16 certification to an investigator who completes this training. The Council shall  
17 by rule adopt the standards for this training and for the provision of the special  
18 certification.

1 Sec. 4. 26 V.S.A. § 1351 is amended to read:

2 § 1351. BOARD OF MEDICAL PRACTICE

3 \* \* \*

4 (f) Classified state employees who are employed as investigators by the  
5 ~~department of health who have successfully met~~ Department of Health shall  
6 have met the standards of training for a full-time law enforcement officer  
7 under 20 V.S.A. chapter 151 and shall obtain within 30 days of employment  
8 the special certification for investigators provided by the Vermont Criminal  
9 Justice Training Council as set forth in 20 V.S.A. § 2359. These investigators  
10 shall have the same powers as sheriffs in criminal matters and the enforcement  
11 of the law and in serving criminal process, and shall have all the immunities  
12 and matters of defense now available or hereafter made available to sheriffs in  
13 a suit brought against them in consequence for acts done in the course of their  
14 employment.

15 Sec. 5. 3 V.S.A. § 123 is amended to read:

16 § 123. DUTIES OF OFFICE

17 \* \* \*

18 (f) Classified state employees who are employed as investigators by the  
19 ~~secretary of state who have successfully met~~ Secretary of State shall have met  
20 the standards of training for a full-time law enforcement officer under 20  
21 V.S.A. chapter 151 and shall obtain within 30 days of employment the special

1 certification for investigators provided by the Vermont Criminal Justice  
2 Training Council as set forth in 20 V.S.A. § 2359. These investigators shall  
3 have the same powers as sheriffs in criminal matters and the enforcement of  
4 the law and in serving criminal process, and shall have all the immunities and  
5 matters of defense now available or hereafter made available to sheriffs in a  
6 suit brought against them in consequence for acts done in the course of their  
7 employment.

8 Sec. 6. TRANSITIONAL PROVISIONS; CERTIFICATION OF  
9 INVESTIGATORS

10 (a) The Vermont Criminal Justice Training Council shall adopt the rules  
11 regarding and establish the special investigator training and certification  
12 required by Sec. 3 (adding 20 V.S.A. § 2359) of this act by July 1, 2014.

13 (b) Any investigator employed by the Secretary of State or any Board of  
14 Medical Practice investigator employed by the Department of Health on  
15 July 1, 2014 shall have until October 1, 2014 to meet the standards of training  
16 for a full-time law enforcement officer under 20 V.S.A. chapter 151 and to  
17 obtain the special certification set forth in Sec. 3 of this act.

18 \* \* \* Effective Dates \* \* \*

19 Sec. 7. EFFECTIVE DATES

20 (a) Secs. 1 (amending 26 V.S.A. § 1318) and 2 (amending 26 V.S.A.  
21 § 1368) of this act shall take effect on July 1, 2013.

1        (b) Secs. 3 (adding 20 V.S.A. § 2359), 4 (amending 26 V.S.A. § 1351),  
2        and 5 (amending 3 V.S.A. § 123) of this act shall take effect on July 1, 2014.

3        (c) Sec. 6 (transitional provisions; certification of investigators) and this  
4        section of this act shall take effect on passage.