

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Health Care to which was referred House Bill No. 350
3 entitled “An act relating to the posting of medical unprofessional conduct
4 decisions and to investigators of alleged unprofessional conduct” respectfully
5 reports that it has considered the same and recommends that the bill be
6 amended by striking out all after the enacting clause and inserting in lieu
7 thereof the following:

8 * * * Medical Unprofessional Conduct Decisions * * *

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

10 § 1318. ACCESSIBILITY AND CONFIDENTIALITY OF DISCIPLINARY
11 MATTERS

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

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

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

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

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

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

4 ~~(2)~~(B) only with respect to complaints resulting in filing of disciplinary
5 charges or stipulations or the taking of disciplinary action and except as
6 provided in subdivision (2) of this subsection (c), the following additional
7 information, except for medical and other protected health information
8 contained therein pertaining to any identifiable person that is otherwise
9 confidential by state or federal law:

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

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

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

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

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

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

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

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

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

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

19 (g) Nothing in this section shall prohibit the disclosure of information by
20 the ~~commissioner~~ Commissioner regarding disciplinary complaints to Vermont
21 or other state or federal law enforcement or regulatory agencies in the

1 execution of its duties authorized by statute or regulation, including the
2 ~~department of disabilities, aging, and independent living~~ Department of
3 Disabilities, Aging, and Independent Living or the ~~department of financial~~
4 ~~regulation~~ Department of Financial Regulation in the course of its
5 investigations about an identified licensee, provided the agency or department
6 agrees to maintain the confidentiality and privileged status of the information
7 as provided in subsection (d) of this section.

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

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

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

18 § 1368. DATA REPOSITORY; LICENSEE PROFILES

19 (a) A data repository is created within the ~~department of health~~ Department
20 of Health which will be responsible for the compilation of all data required
21 under this section and any other law or rule which requires the reporting of

1 such information. Notwithstanding any provision of law to the contrary,
2 licensees shall promptly report and the ~~department~~ Department shall collect the
3 following information to create individual profiles on all health care
4 professionals licensed, certified, or registered by the ~~department~~ Department,
5 pursuant to the provisions of this title, in a format created by the Department
6 that shall be available for dissemination to the public:

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

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

15 (3) A description of any formal charges served, findings, conclusions,
16 and orders of the licensing authority, and final disposition of matters by the
17 courts within the most recent 10 years. The Department shall remove from the
18 data repository any charges, findings, conclusions, and order if the final
19 disposition of the matter dismissed all charges filed against the licensee in the
20 same action. The Department shall ensure that the period for appealing an

1 order has expired prior to removing any such information from the data
2 repository.

3 (4) A description of any formal charges served by licensing authorities,
4 findings, conclusions, and orders of such licensing authorities, and final
5 disposition of matters by the courts in other states within the most recent 10
6 years. Upon request of the licensee, the Department shall remove from the
7 data repository any charges, findings, conclusions, and order if the final
8 disposition of the matter dismissed all charges filed against the licensee in the
9 same action. The Department shall confirm the dismissal and shall ensure that
10 the period for appealing an order has expired prior to removing any such
11 information from the data repository.

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

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

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

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

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

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

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

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

11 (C)(i) Information concerning all settlements shall be accompanied
12 by the following statement: "Settlement of a claim may occur for a variety of
13 reasons which do not necessarily reflect negatively on the professional
14 competence or conduct of the health care professional. A payment in
15 settlement of a medical malpractice action or claim should not be construed as
16 creating a presumption that medical malpractice has occurred." Nothing herein
17 shall be construed to limit or prevent the licensing authority from providing
18 further explanatory information regarding the significance of categories in
19 which settlements are reported.

20 (ii) Pending malpractice claims and actual amounts paid by or on
21 behalf of a professional in connection with a malpractice judgment, award, or

1 settlement shall not be disclosed by the ~~commissioner of health~~ Commissioner
2 of Health or by the licensing authority to the public. Nothing herein shall be
3 construed to prevent the licensing authority from investigating and disciplining
4 a health care professional on the basis of medical malpractice claims that are
5 pending.

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

7 (8) Graduate medical education.

8 (9) Specialty board certification.

9 (10) The number of years in practice.

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

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

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

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

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

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

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

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

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

1 shall have the same powers as sheriffs in criminal matters and the enforcement
2 of the law and in serving criminal process, and shall have all the immunities
3 and matters of defense now available or hereafter made available to sheriffs in
4 a suit brought against them in consequence for acts done in the course of their
5 employment.

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

7 § 123. DUTIES OF OFFICE

8 * * *

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

1 Sec. 6. TRANSITIONAL PROVISIONS; CERTIFICATION OF
2 INVESTIGATORS

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

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

11 * * * Effective Dates * * *

12 Sec. 7. EFFECTIVE DATES

13 (a) Secs. 1 (amending 26 V.S.A. § 1318) and 2 (amending 26 V.S.A.
14 § 1368) shall take effect on July 1, 2013.

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

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

19
20
21

1 (Committee vote: _____)

2

3

Representative [surname]

4

FOR THE COMMITTEE