

ANNOTATED VERSION

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yellow highlighting = language added to the bill as introduced

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:

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- 1 ~~(1)~~(A) with respect to all complaints, the following information:
- 2 ~~(A)~~(i) the date and the nature of the complaint, but not including the
- 3 identity of the licensee; and
- 4 ~~(B)~~(ii) a summary of the completed investigation; and
- 5 ~~(2)~~(B) only with respect to complaints resulting in filing of disciplinary
- 6 charges or stipulations or the taking of disciplinary action and except as
- 7 provided in subdivision (2) of this subsection, the following additional
- 8 information, except for medical and other protected health information
- 9 contained therein pertaining to any identifiable person that is otherwise
- 10 confidential by state or federal law:
- 11 ~~(A)~~(i) the name and business addresses of the licensee and
- 12 complainant;
- 13 ~~(B)~~(ii) formal charges, provided they have been served or a
- 14 reasonable effort to serve them has been made;
- 15 ~~(C)~~(iii) the findings, conclusions, and order of the ~~board~~ Board;
- 16 ~~(D)~~(iv) the transcript of the hearing, if one has been made, and
- 17 exhibits admitted at the hearing;
- 18 ~~(E)~~(v) stipulations presented to the ~~board~~ Board at a public meeting;
- 19 and

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

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

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

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

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

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

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

18 (i) Neither the ~~commissioner~~ Commissioner nor any person who received
19 documents, material, or information while acting under the authority of the
20 ~~commissioner~~ Commissioner shall be permitted or required to testify in any

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1 private civil action concerning any confidential documents, material, or
2 information.

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

4 § 1368. DATA REPOSITORY; LICENSEE PROFILES

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

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

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

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

12 (4) A description of any formal charges served by licensing authorities,
13 findings, conclusions, and orders of such licensing authorities, and final
14 disposition of matters by the courts in other states within the most recent 10
15 years. The Upon request of the licensee, the Department shall remove from the
16 data repository any charges, findings, conclusions, and order if the ~~order of the~~
17 ~~licensing authority or the~~ final disposition of the matter ~~by the courts~~ dismissed
18 the all charges filed against the licensee in the same action. The Department
19 shall confirm the dismissal and shall ensure that the period for appealing an

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

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

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

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1 malpractice judgment awards and settlements to the experience of other health
2 care professionals within the same specialty within the New England region or
3 nationally. The ~~commissioner~~ Commissioner may, in consultation with the
4 Vermont ~~medical society~~ Medical Society, report comparisons of individual
5 health care professionals covered under this section to all similar health care
6 professionals within the New England region or nationally.

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

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

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

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

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

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

3 (C)(i) Information concerning all settlements shall be accompanied
4 by the following statement: “Settlement of a claim may occur for a variety of
5 reasons which do not necessarily reflect negatively on the professional
6 competence or conduct of the health care professional. A payment in
7 settlement of a medical malpractice action or claim should not be construed as
8 creating a presumption that medical malpractice has occurred.” Nothing herein
9 shall be construed to limit or prevent the licensing authority from providing
10 further explanatory information regarding the significance of categories in
11 which settlements are reported.

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

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

20 (8) Graduate medical education.

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1 (9) Specialty board certification.

2 (10) The number of years in practice.

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

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

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

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

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

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

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

18 (b) The ~~department~~ Department shall provide individual health care
19 professionals with a copy of their profiles prior to the initial release to the
20 public and each time a physician's profile is modified or amended. A health

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1 care professional shall be provided a reasonable time to correct factual
2 inaccuracies that appear in such profile, and may elect to have his or her profile
3 omit the information required under subdivisions (a)(12) through (14) of this
4 section. In collecting information for such profiles and in disseminating the
5 same, the ~~department~~ Department shall inform health care professionals that
6 they may choose not to provide such information required under subdivisions
7 (a)(12) through (14).

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

12 * * * Certification of Investigators of Unprofessional Conduct * * *

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

14 § 2359. SPECIAL CERTIFICATION OF INVESTIGATORS EMPLOYED

15 BY THE SECRETARY OF STATE AND BY THE DEPARTMENT

16 OF HEALTH

17 The Council shall provide special training regarding the methods of
18 conducting investigations of alleged unprofessional conduct to investigators
19 employed by the Secretary of State and Board of Medical Practice
20 investigators employed by the Department of Health and provide a special

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1 certification to an investigator who completes this training. The Council shall
2 by rule adopt the standards for this training and for the provision of the special
3 certification.

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

5 § 1351. BOARD OF MEDICAL PRACTICE

6 * * *

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

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

2 § 123. DUTIES OF OFFICE

3 * * *

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

15 Sec. 6. TRANSITIONAL PROVISIONS; CERTIFICATION OF
16 INVESTIGATORS

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

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

6 * * * Effective Dates * * *

7 Sec. 7. EFFECTIVE DATES

8 (a) Secs. 1 (amending 26 V.S.A. § 1318) and 2 (amending 26 V.S.A.
9 § 1368) of this act shall take effect on July 1, 2013.

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

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

14

15

16 (Committee vote: _____)

17

18

19

Representative [surname]

FOR THE COMMITTEE