

**ANNOTATED VERSION**

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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 (c), 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
- 19 meeting; ~~and~~

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

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

6           (2) The Commissioner shall remove from the register any of the  
7 information described in subdivision (1)(B) of this subsection if the final  
8 disposition of the matter dismisses all charges filed against a licensee in the  
9 same action. The Commissioner shall ensure that the period for appealing an  
10 order has expired prior to removing any such information from the register,  
11 and shall remove that information within five business days of the expiration  
12 of the appeal period.

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

19           (e) A licensee or applicant shall have the right to inspect and copy all  
20 information in the possession of the ~~department of health~~ Department of Health

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1       pertaining to the licensee or applicant, except investigatory files which have  
2       not resulted in charges of unprofessional conduct and attorney work product.

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

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

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

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

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

7 § 1368. DATA REPOSITORY; LICENSEE PROFILES

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

17 (1) A description of any criminal convictions for felonies and serious  
18 misdemeanors, as determined by the ~~commissioner of health~~ Commissioner of  
19 Health, within the most recent 10 years. For the purposes of this subdivision, a

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1 person shall be deemed to be convicted of a crime if he or she pleaded guilty or  
2 was found or adjudged guilty by a court of competent jurisdiction.

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

6 (3) A description of any formal charges served, findings, conclusions,  
7 and orders of the licensing authority, and final disposition of matters by the  
8 courts within the most recent 10 years, and a summary of the final disposition  
9 of such matters indicating any charges that were dismissed and any charges  
10 resulting in a finding of unprofessional conduct. The Department shall remove  
11 from the data repository any charges, findings, conclusions, and order if the  
12 final disposition of the matter dismissed all charges filed against the licensee in  
13 the same action. The Department shall ensure that the period for appealing an  
14 order has expired prior to removing any such information from the data  
15 repository, and shall remove that information within five business days of the  
16 expiration of the appeal period.

17 (4) A description of any formal charges served by licensing authorities,  
18 findings, conclusions, and orders of such licensing authorities, and final  
19 disposition of matters by the courts in other states within the most recent 10  
20 years. Upon request of the licensee, the Department shall remove from the

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

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

16 (6)(A) All medical malpractice court judgments and all medical  
17 malpractice arbitration awards in which a payment is awarded to a complaining  
18 party during the last 10 years, and all settlements of medical malpractice  
19 claims in which a payment is made to a complaining party within the last 10  
20 years. Dispositions of paid claims shall be reported in a minimum of three

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1 graduated categories, indicating the level of significance of the award or  
2 settlement, if valid comparison data are available for the profession or  
3 specialty. Information concerning paid medical malpractice claims shall be put  
4 in context by comparing an individual health care professional's medical  
5 malpractice judgment awards and settlements to the experience of other health  
6 care professionals within the same specialty within the New England region or  
7 nationally. The ~~commissioner~~ Commissioner may, in consultation with the  
8 Vermont ~~medical society~~ Medical Society, report comparisons of individual  
9 health care professionals covered under this section to all similar health care  
10 professionals within the New England region or nationally.

11 (B) Comparisons of malpractice payment data shall be  
12 accompanied by:

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

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



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

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

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

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

17 (ii) Pending malpractice claims and actual amounts paid by or on  
18 behalf of a professional in connection with a malpractice judgment, award, or  
19 settlement shall not be disclosed by the ~~commissioner of health~~ Commissioner  
20 of Health or by the licensing authority to the public. Nothing herein shall be

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1 construed to prevent the licensing authority from investigating and disciplining  
2 a health care professional on the basis of medical malpractice claims that are  
3 pending.

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

5 (8) Graduate medical education.

6 (9) Specialty board certification.

7 (10) The number of years in practice.

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

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

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

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

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

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

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

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

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

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1                 \* \* \* Certification of Investigators of Unprofessional Conduct \* \* \*

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

3                 § 2359. SPECIAL CERTIFICATION OF INVESTIGATORS EMPLOYED

4                         BY THE SECRETARY OF STATE AND BY THE DEPARTMENT

5                         OF HEALTH

6                 The Council shall provide special training regarding the methods of  
7                 conducting investigations of alleged unprofessional conduct to investigators  
8                 employed by the Secretary of State and Board of Medical Practice  
9                 investigators employed by the Department of Health and provide a special  
10                 certification to an investigator who completes this training. The Council shall  
11                 by rule adopt the standards for this training and for the provision of the special  
12                 certification.

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

14                 § 1351. BOARD OF MEDICAL PRACTICE

15   \* \* \*

16                 (f) ~~Classified state employees who are employed as investigators by the~~  
17                 ~~department of health who have successfully met~~ Department of Health shall  
18                 have met the standards of training for a full-time law enforcement officer  
19                 under 20 V.S.A. chapter 151 and shall obtain within 30 days of employment  
20                 the special certification for investigators provided by the Vermont Criminal

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

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

8 § 123. DUTIES OF OFFICE

9 \* \* \*

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

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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                           \* \* \* **Applicability and Effective Dates** \* \* \*

12       **Sec. 7. APPLICABILITY OF SECS. 1 AND 2; SUMMARIES OF**  
13                   **FINAL DISPOSITIONS**

14           The provisions of Sec. 1, 26 V.S.A. § 1318(c)(1)(B)(vii), and  
15 Sec. 2, 26 V.S.A. § 1368(a)(3), which require the Commissioner of Health and  
16 the Department of Health, respectively, to provide a summary of the final  
17 disposition of unprofessional conduct matters, shall only apply to final  
18 dispositions entered on and after the effective dates of Sec. 1 and Sec. 2.

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1       Sec. ~~7~~ **8**. EFFECTIVE DATES

2           (a) Secs. 1 (amending 26 V.S.A. § 1318) and 2 (amending 26 V.S.A.  
3           § 1368) shall take effect on July 1, 2013.

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

6           (c) Sec. 6 (transitional provisions; certification of investigators), **Sec. 7**  
7           (applicability of Secs. 1 and 2; summaries of final dispositions), and this  
8           section shall take effect on passage.

9

10

11

12       (Committee vote: \_\_\_\_\_)

13

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Representative [surname]

FOR THE COMMITTEE