

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~~ 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 meeting;

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

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

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

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

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

1 (f) ~~For the purposes of~~ As used in this section, “disciplinary action” means
2 action that suspends, revokes, limits, or conditions licensure or certification in
3 any way, 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

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.

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

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

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

13 (4)(A) A description of any formal charges served by licensing
14 authorities, findings, conclusions, and orders of such licensing authorities, and
15 final disposition of matters by the courts in other states within the most recent
16 10 years.

17 (B) Upon request of the licensee, the Department shall remove from
18 the 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 confirm the dismissal and shall ensure that
21 the period for appealing an order has expired prior to removing any such

1 information from the data repository, and shall remove that information within
2 five business days of the expiration of the appeal period.

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
21 malpractice judgment awards and settlements to the experience of other health

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

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

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

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

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

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

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

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

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

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

18 (8) Graduate medical education.

19 (9) Specialty board certification.

20 (10) The number of years in practice.

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

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

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

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

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

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

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

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

1 section. In collecting information for such profiles and in disseminating the
2 same, the ~~department~~ Department shall inform health care professionals that
3 they may choose not to provide such information required under subdivisions
4 (a)(12) through (14).

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

9 * * * Certification of Board of Medical Practice

10 Investigators * * *

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

12 § 1351. BOARD OF MEDICAL PRACTICE

13 * * *

14 (f)(1) Classified ~~state~~ State employees who are employed as investigators
15 by the ~~department of health~~ Department of Health who have successfully met
16 the standards of training for a full-time law enforcement officer under
17 20 V.S.A. chapter 151 shall have the same powers as sheriffs in criminal
18 matters and the enforcement of the law and in serving criminal process, and
19 shall have all the immunities and matters of defense now available or hereafter
20 made available to sheriffs in a suit brought against them in consequence for
21 acts done in the course of their employment.

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

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

11 * * * Applicability and Effective Dates * * *

12 Sec. 4. APPLICABILITY OF SECS. 1 AND 2; SUMMARIES OF
13 FINAL DISPOSITIONS

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

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

1 Sec. 5. REPORT BY BOARD OF MEDICAL PRACTICE;

2 INVESTIGATION METHODS

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

10 Sec. 6. EFFECTIVE DATES

11 This act shall take effect on passage, except:

12 (1) Sec. 1 (amending 26 V.S.A. § 1318) shall take effect on July 1,

13 2014;

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

15 2015; and

16 (3) Sec. 3 (amending 26 V.S.A. § 1351) shall take effect on July 1,

17 2014.

18
19 (Committee vote: _____)

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Representative [surname]

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FOR THE COMMITTEE