

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 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 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

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

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. Upon request of the licensee, the Department shall remove from the
16 data repository any charges, findings, conclusions, and order if the final
17 disposition of the matter dismissed all charges filed against the licensee in the
18 same action. The Department shall confirm the dismissal and shall ensure that
19 the period for appealing an order has expired prior to removing any such
20 information from the data repository, and shall remove that information within
21 five business days of the expiration of the appeal period.

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.

* * * Applicability and Effective Dates * * *

Sec. 7. APPLICABILITY OF SECS. 1 AND 2; SUMMARIES OF

FINAL DISPOSITIONS

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

Sec. 8. EFFECTIVE DATES

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

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

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

(Committee vote: _____)

(Draft No. 2.1 – H.350)
1/17/2014 - BAW - 09:50 AM
DRAFT; NOT YET EDITED

Page 15 of 15

1

2

Representative [surname]

3

FOR THE COMMITTEE