

**ANNOTATED VERSION**

Key: ~~red-strikethrough~~ = language removed from Amendment Draft 2.1  
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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~~ 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                   ~~(F)~~(vi) final disposition of the matter by the ~~appellate officer or the~~
- 20 courts; and

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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.

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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

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

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

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

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

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

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

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

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

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

17 (ii) a statement that the report reflects data for the last 10 years,  
18 and the recipient should take into account the number of years the professional  
19 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 ~~30 days of employment the special certification for investigators provided by~~  
2 ~~the Vermont Criminal Justice Training Council as set forth in 20 V.S.A.~~  
3 ~~§ 2359. These investigators shall~~ have the same powers as sheriffs in criminal  
4 matters and the enforcement of the law and in serving criminal process, and  
5 shall have all the immunities and matters of defense now available or hereafter  
6 made available to sheriffs in a suit brought against them in consequence for  
7 acts done in the course of their employment.

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

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

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

19 ~~§ 123. DUTIES OF OFFICE~~

20 ~~\*\*\*~~

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

12       ~~Sec. 6. TRANSITIONAL PROVISIONS; CERTIFICATION OF \_\_\_\_\_~~  
13       ~~\_\_\_\_\_ INVESTIGATORS~~

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

17       ~~(b) Any investigator employed by the Secretary of State or any Board of~~  
18       ~~Medical Practice investigator employed by the Department of Health on~~  
19       ~~July 1, 2014 shall have until October 1, 2014 to meet the standards of training~~

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1 ~~for a full time law enforcement officer under 20 V.S.A. chapter 151 and to~~  
2 ~~obtain the special certification set forth in Sec. 3 of this act.~~

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

4 Sec. ~~7~~4. APPLICABILITY OF SECS. 1 AND 2; SUMMARIES OF  
5 FINAL DISPOSITIONS

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

10 (b) The provisions of Sec. 2 of this act, 26 V.S.A. § 1368(a)(3)(A), which  
11 require the ~~Commissioner of Health and the~~ Department of Health,  
12 ~~respectively,~~ to provide a summary of the final disposition of unprofessional  
13 conduct matters, shall only apply to final dispositions entered on and after the  
14 effective dates of ~~Sec. 1 and~~ Sec. 2.

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

16 INVESTIGATION METHODS

17 By January 15, 2015, the Board of Medical Practice shall report to the  
18 House Committee on Health Care and the Senate Committee on Health and  
19 Welfare on its work to review and modify, as appropriate, its policies and  
20 procedures for investigating unprofessional conduct cases, after accepting from

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1 interested stakeholders any suggestions regarding this issue. The report shall  
2 address any changes the Board has made in its policies and procedures  
3 regarding those investigations.

4 Sec. ~~8~~6. EFFECTIVE DATES

5 This act shall take effect on passage, except:

6 ~~(a)(1) Secs. Sec. 1 (amending 26 V.S.A. § 1318) and shall take effect on~~  
7 ~~July 1, 2014;~~

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

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

13 (2) Sec. 2 (amending 26 V.S.A. § 1368) shall take effect on ~~July 1, 2013~~  
14 ~~July 1, 2015; and~~

15 (3) Sec. 3 (amending 26 V.S.A. § 1351) shall take effect on July 1,  
16 ~~2014.~~

17 (Committee vote: \_\_\_\_\_)

18 \_\_\_\_\_  
19 Representative [surname]  
20 FOR THE COMMITTEE