

1 H.562

2 Introduced by Representative Sweaney of Windsor

3 Referred to Committee on

4 Date:

5 Subject: Professions and occupations; Office of Professional Regulation;
6 regulation review; regulation transfer

7 Statement of purpose of bill as introduced: This bill proposes to:

8 (1) provide for the review of professions and occupations by the Office
9 of Professional Regulation (Office);

10 (2) transfer the regulation of alcohol and drug abuse counselors from the
11 Department of Health to the Office; and

12 (3) extend the transitional period for a naturopathic physician to
13 complete the naturopathic pharmacology examination successfully.

14 An act relating to professions and occupations regulated by the Office of
15 Professional Regulation and to the review of professional regulation

16 It is hereby enacted by the General Assembly of the State of Vermont:

17 * * * Professional Regulation Review * * *

18 Sec. 1. 26 V.S.A. chapter 57 is amended to read:

19 CHAPTER 57. REVIEW OF ~~LICENSING STATUTES, BOARDS, AND~~
20 ~~COMMISSIONS~~ REGULATORY LAWS

1 § 3101. POLICY AND PURPOSE

2 (a) It is the policy of the ~~state~~ State of Vermont that regulation be imposed
3 upon a profession or occupation solely for the purpose of protecting the public.
4 The ~~legislature~~ General Assembly believes that all individuals should be
5 permitted to enter into a profession or occupation unless there is a
6 demonstrated need for the ~~state~~ State to protect the interests of the public by
7 restricting entry into the profession or occupation.

8 (b) If such a need is identified, the form of regulation adopted by the ~~state~~
9 State shall be the least restrictive form of regulation necessary to protect the
10 public interest. If regulation is imposed, the profession or occupation may be
11 subject to ~~periodic~~ review by the ~~legislature~~ Office of Professional Regulation
12 and the General Assembly to ~~insure~~ ensure the continuing need for and
13 appropriateness of such regulation.

14 § 3101a. DEFINITIONS

15 ~~The definitions contained in this section shall apply throughout~~ As used in
16 this chapter, unless the context clearly requires otherwise:

17 (1) “Certification” means a voluntary process by which a statutory
18 regulatory entity grants to ~~an individual,~~ a person who has met certain
19 prerequisite qualifications, the right to assume or to use the title of the
20 profession or occupation, or the right to assume or use the term “certified” in

1 conjunction with the title. Use of the title or the term “certified,” as the case
2 may be, by a person who is not certified is unlawful.

3 (2) “Licensing” and “licensure” mean a process by which a statutory
4 regulatory entity grants to ~~an individual~~, a person who has met certain
5 prerequisite qualifications; the right to perform prescribed professional ~~and or~~
6 occupational tasks and to use the title of the profession or occupation. Practice
7 without a license is unlawful.

8 (3) “License” means an individual, nontransferable authorization to
9 carry on an activity based on qualifications such as:

10 (A) satisfactory completion of or graduation from an accredited or
11 approved educational or training program; ~~and or~~

12 (B) acceptable performance on a qualifying examination or series of
13 examinations.

14 (4) “Office” means the Office of Professional Regulation.

15 (5) “Practitioner” means ~~an individual~~ a person who is actively engaged
16 in a specified profession or occupation.

17 (5)(6) “Public member” means an individual who has no material
18 financial interest in the profession or occupation being regulated other than as
19 a consumer.

20 (6)(7) “Registration” means a process ~~which requires~~ requiring that,
21 prior to rendering services, ~~all practitioners~~ a practitioner formally notify a

1 regulatory entity of ~~their~~ his, her, or its intent to engage in the profession or
2 occupation. Notification may include the name and address of the practitioner,
3 the location of the activity to be performed, and a description of the service to
4 be provided.

5 (8) “Regulatory entity” means the statutory entity responsible for
6 regulating a profession or occupation, such as a board or an agency of the
7 State.

8 ~~(7)(9) “Regulatory law” as used in section 3104 of this title, means any~~
9 law in this State that requires a person engaged in a profession or occupation to
10 be registered, certified, or licensed under this title or 4 V.S.A. chapter 23 or
11 that otherwise regulates the operation of that profession or occupation.

12 § 3102. ~~PERIODIC REVIEW REQUIREMENT~~

13 ~~(a) Each licensing law enumerated below in subsection (b) of this section,~~
14 ~~each board related thereto, and the activities resulting shall be subject to~~
15 ~~review, at least once, in the manner provided in section 3104 of this title and~~
16 ~~on the basis of the criteria in section 3105 of this title.~~

17 ~~(b) The following laws are subject to review:~~

18 ~~(1) Chapter 15 of this title on electricians;~~

19 ~~(2) Chapter 39 of this title on plumbers and plumbing;~~

20 ~~(3) Chapter 28 of this title on nursing;~~

21 ~~(4) Chapter 10 of this title on chiropractic;~~

- 1 ~~(5) Chapter 6 of this title on barbers;~~
- 2 ~~(6) Chapter 6 of this title on cosmeticians and hairdressers;~~
- 3 ~~(7) Chapter 23 of this title on medicine and surgery;~~
- 4 ~~(8) Chapter 33 of this title on osteopathic physicians and surgeons;~~
- 5 ~~(9) Chapter 13 of this title on dentists and dental hygienists;~~
- 6 ~~(10) 18 V.S.A. chapter 46 on nursing home administrators;~~
- 7 ~~(11) Chapter 17 of this title on embalmers;~~
- 8 ~~(12) Chapter 21 of this title on funeral directors;~~
- 9 ~~(13) Chapter 44 of this title on veterinary science;~~
- 10 ~~(14) Chapter 1 of this title on accountants;~~
- 11 ~~(15) Chapter 59 of this title on private detectives;~~
- 12 ~~(16) Chapter 55 of this title on psychologists;~~
- 13 ~~(17) Chapter 36 of this title on pharmacy;~~
- 14 ~~(18) Chapter 51 of this title on radiological technologists;~~
- 15 ~~(19) Chapter 41 of this title on real estate brokers and salesmen;~~
- 16 ~~(20) Chapter 20 of this title on engineering;~~
- 17 ~~(21) Chapter 3 of this title on architects;~~
- 18 ~~(22) Chapter 45 of this title on land surveyors;~~
- 19 ~~(23) Chapter 31 of this title on physicians' assistants;~~
- 20 ~~(24) Chapter 7 of this title on podiatry;~~
- 21 ~~(25) 4 V.S.A. chapter 23 on attorneys;~~

- 1 ~~(26) Chapter 47 of this title on opticians;~~
2 ~~(27) Chapter 65 of this title on clinical mental health counselors;~~
3 ~~(28) Chapter 67 of this title on hearing aid dispensers;~~
4 ~~(29) Chapter 79 of this title on tattooists;~~
5 ~~(30) Chapter 81 of this title on naturopathic physicians;~~
6 ~~(31) Chapter 83 of this title on athletic trainers;~~
7 ~~(32) Chapter 87 of this title on audiologists and speech language~~
8 ~~pathologists.~~

9 ~~(e) Any new law to regulate another profession or occupation shall be~~
10 ~~based on the relevant criteria and standards in section 3105 of this title.~~

11 [Repealed.]

12 § 3104. PROCESS FOR REVIEW OF REGULATORY LAWS

13 ~~(a) Either house of the general assembly may designate, by resolution, The~~
14 ~~Office may review a regulatory law ~~or an issue that affects professions and~~~~
15 ~~occupations generally to be reviewed by the legislative council staff that is~~
16 ~~within its jurisdiction, and shall review any regulatory law within or outside its~~
17 ~~jurisdiction upon the request of the House or Senate Committee on~~
18 ~~Government Operations. The ~~staff~~ Office shall base its review on the criteria~~
19 ~~and standards set forth in section 3105 of this ~~title~~ chapter.~~

20 ~~(b) The review ~~may~~ shall also include the following inquiries in the~~
21 ~~discretion of the Office or in response to a Committee request:~~

1 (1) the extent to which ~~the board's~~ a regulatory entity's actions have
2 been in the public interest and consistent with legislative intent;

3 (2) the extent to which the ~~board's rules are complete, concise, and easy~~
4 ~~to understand~~ profession's historical performance, including the actual history
5 of complaints and disciplinary actions in Vermont, indicates that the costs of
6 regulation are justified by the realized benefits to the public;

7 (3) the extent to which the ~~board's standards and procedures are fair and~~
8 ~~reasonable and accurately measure an applicant's qualifications~~ scope of the
9 existing regulatory scheme for the profession is commensurate to the risk of
10 harm to the public;

11 (4) the extent to which the profession's educational training and
12 examination requirements for a license or certification are consistent with the
13 public interest;

14 (5) ~~the way in which the board receives, investigates, and resolves~~
15 ~~complaints from the public~~ the extent to which a regulatory entity's resolutions
16 of complaints and disciplinary actions have been effective to protect the public;

17 (5)(6) the extent to which ~~the board~~ a regulatory entity has sought ideas
18 from the public and from those it regulates, concerning reasonable ways to
19 improve the service of the ~~board~~ entity and the profession or occupation
20 regulated;

1 ~~(6)~~(7) the extent to which ~~the board~~ a regulatory entity gives adequate
2 public notice of its hearings and meetings and encourages public participation;

3 ~~(7)~~(8) whether ~~the board~~ a regulatory entity makes efficient and
4 effective use of its funds; and meets its responsibilities; and

5 ~~(8)~~(9) whether ~~the board~~ a regulatory entity has sufficient funding to
6 carry out its mandate.

7 (c)(1) The ~~legislative council staff Office~~ shall give adequate notice to the
8 public, the ~~board~~ applicable regulatory entity, and the appropriate professional
9 societies that it is reviewing a particular regulatory law and board, as
10 applicable, that regulatory entity. Notice to the ~~board~~ regulatory entity and the
11 professional societies shall be in writing.

12 ~~(2)~~ All The regulatory entity shall provide to the Office the information
13 required under described in section 3107 of this title chapter and available data
14 reasonably requested the Office requests for purposes of the review shall be
15 provided by the boards.

16 ~~(3)~~ The staff Office shall seek comments and information from the
17 public and from members of the profession or occupation. It also shall give the
18 ~~board~~ regulatory entity a chance to present its position and to respond to any
19 matters raised in the review.

20 ~~(4)~~ The staff Office, upon its request, shall have assistance from the
21 ~~department of finance and management~~ Department of Finance and

1 ~~Management, the auditor of accounts~~ Auditor of Accounts, the attorney
2 ~~general, the director of the office of professional regulation~~ Attorney General,
3 the ~~joint fiscal committee~~ Joint Fiscal Committee, or any other state State
4 agency.

5 (d) The ~~legislative council staff~~ Office shall file a separate written report
6 for each review with the ~~speaker of the house and president of the senate and~~
7 ~~with the chairman of the appropriate house or senate committee as provided in~~
8 ~~subsection (f) of this section~~ House and Senate Committees on Government
9 Operations and the applicable regulatory entity. The reports shall contain:

10 (1) findings, alternative courses of action, and recommendations;

11 (2) a copy of the ~~board's~~ regulatory entity's administrative rules; and

12 (3) appropriate legislative proposals.

13 (e) ~~The legislative council staff shall send a copy of the report to the board~~
14 ~~affected, and shall make copies available for public inspection.~~ [Repealed.]

15 (f) ~~The house and senate committees on government operations shall be~~
16 ~~responsible for overseeing the preparation of reports by the legislative council~~
17 ~~staff under this chapter.~~ [Repealed.]

18 (g) ~~After considering a report each committee shall send its findings and~~
19 ~~recommendations, including proposals for legislation, if any, to the house or to~~
20 ~~the senate, as appropriate. Any proposed licensing law shall be drafted~~

1 ~~according to a uniform format recommended in the comprehensive plan.~~

2 [Repealed.]

3 § 3105. CRITERIA AND STANDARDS

4 (a) A profession or occupation shall be regulated by the State only when:

5 (1) it can be demonstrated that the unregulated practice of the profession
6 or occupation can clearly harm or endanger the health, safety, or welfare of the
7 public, and the potential for the harm is recognizable and not remote or
8 speculative;

9 (2) the public can reasonably be expected to benefit from an assurance
10 of initial and continuing professional ability; and

11 (3) the public cannot be effectively protected by other means.

12 (b) After evaluating the criteria in subsection (a) of this section and
13 considering governmental and societal costs and benefits, if the ~~Legislature~~
14 General Assembly finds that it is necessary to regulate a profession or
15 occupation, the least restrictive method of regulation shall be imposed,
16 consistent with the public interest and this section:

17 (1) if existing common law and statutory civil remedies and criminal
18 sanctions are insufficient to reduce or eliminate existing harm, regulation
19 should occur through enactment of stronger civil remedies and criminal
20 sanctions;

1 (2) if a professional or occupational service involves a threat to the
2 public and the service is performed primarily through business entities or
3 facilities that are not regulated, the business entity or the facility should be
4 regulated rather than its employee practitioners;

5 (3) if the threat to the public health, safety, or welfare, including
6 economic welfare, is relatively small, regulation should be through a system of
7 registration;

8 (4) if the consumer may have a substantial interest in relying on the
9 qualifications of the practitioner, regulation should be through a system of
10 certification; or

11 (5) if it is apparent that the public cannot be adequately protected by any
12 other means, a system of licensure should be imposed.

13 (c) Any of the issues set forth in subsections (a) and (b) of this section and
14 section 3107 of this ~~title~~ chapter may be considered in terms of their
15 application to professions or occupations generally.

16 (d) Prior to review under this chapter and consideration by the General
17 Assembly of any bill to regulate a profession or occupation and upon the
18 request of the House or Senate Committee on Government Operations, the
19 ~~Office of Professional Regulation~~ shall make, in writing, a preliminary
20 assessment of whether any particular request for regulation meets the criteria
21 set forth in subsection (a) of this section. The Office shall report its

1 preliminary assessment to the appropriate House or Senate Committee on
2 Government Operations. ~~The provisions of 2 V.S.A. § 20(d) (expiration of~~
3 ~~required reports) shall not apply to the report to be made under this subsection.~~

4 (e) After the review of a proposal to regulate a profession, the Office of
5 ~~Professional Regulation~~ may decline to conduct an analysis and evaluation of
6 the proposed regulation if it finds that:

7 (1) the proposed regulatory scheme appears to regulate fewer than
8 250 individuals; and

9 (2) the Office previously conducted an analysis and evaluation of the
10 proposed regulation of the same profession or occupation, and no new
11 information has been submitted that would cause the Office to alter or modify
12 the recommendations made in its earlier report on ~~the~~ that proposed regulation
13 ~~of the profession.~~

14 § 3106. DIRECTOR OF THE OFFICE OF PROFESSIONAL
15 REGULATION; ANNUAL REPORT

16 (a) Annually, prior to the commencement of each legislative session, the
17 Director of the Office of ~~Professional Regulation~~ shall prepare a concise report
18 on the activities of all boards and advisor professions under his or her
19 jurisdiction. ~~Prior to the commencement of each legislative session, the~~
20 ~~Director shall prepare a report for publication on the Office's website~~
21 ~~containing~~ The report shall include his or her assessments, conclusions, and

1 recommendations ~~with proposals for legislation, if any, to the Speaker of the~~
2 ~~House and to the Chairpersons of the House and Senate Committees on~~
3 ~~Government Operations and the chairpersons of the boards~~ regarding those
4 boards and advisor professions.

5 (b) The ~~Office~~ Director shall publish the report on the Office's website and
6 shall also provide written copies of the report to the House and Senate
7 Committees on Government Operations.

8 (c) The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall
9 not apply to the report to be made under this section.

10 § 3107. INFORMATION REQUIRED

11 Prior to review under this chapter and prior to consideration by the
12 ~~legislature~~ General Assembly of any bill ~~which~~ that proposes to regulate a
13 profession or occupation, the profession or occupation being reviewed or
14 seeking regulation shall explain each of the following factors, in writing, to the
15 extent requested by the ~~appropriate house or senate committees on government~~
16 ~~operations~~ House or Senate Committee on Government Operations:

17 (1) Why regulation is necessary, including:

18 (A) the nature of the potential harm or threat to the public if the
19 profession or occupation is not regulated;

20 (B) specific examples of the harm or threat identified in subdivision
21 (1)(A) of this section;

1 (C) the extent to which consumers will benefit from a method of
2 regulation ~~which~~ that permits identification of competent practitioners,
3 indicating typical employers, if any, of practitioners;

4 (2) The extent to which practitioners are autonomous, as indicated by:

5 (A) the degree to which the profession or occupation requires the use
6 of independent judgment, and the skill or experience required in making such
7 judgment;

8 (B) the degree to which practitioners are supervised;

9 (3) The efforts that have been made to address the concerns that give
10 rise to the need for regulation, including:

11 (A) voluntary efforts, if any, by members of the profession or
12 occupation to:

13 (i) establish a code of ethics;

14 (ii) help resolve disputes between practitioners and consumers;

15 (iii) establish requirements for continuing education.

16 (B) recourse to and the extent of use of existing law;

17 (4) Why the alternatives to licensure specified in this subdivision would
18 not be adequate to protect the public interest:

19 (A) stronger civil remedies or criminal sanctions;

20 (B) regulation of the business entity or facility providing the service
21 rather than the employee practitioners;

- 1 (C) regulation of the program or service rather than the individual
2 practitioners;
- 3 (D) registration of all practitioners;
- 4 (E) certification of practitioners;
- 5 (F) other alternatives;
- 6 (5) The benefit to the public if regulation is granted, including:
- 7 (A) how regulation will result in reduction or elimination of the
8 harms or threats identified under subdivision (1) of this section;
- 9 (B) the extent to which the public can be confident that a practitioner
10 is competent:
- 11 (i) whether the registration, certification, or licensure will carry an
12 expiration date;
- 13 (ii) whether renewal will be based only upon payment of a fee, or
14 whether renewal will involve reexamination, peer review, or other
15 enforcement;
- 16 (iii) the standards for registration, certification, or licensure as
17 compared with the standards of other jurisdictions;
- 18 (iv) the nature and duration of the educational requirement, if any,
19 including, ~~but not limited to,~~ whether such the educational program
20 requirement includes a substantial amount of supervised field experience;
21 whether educational programs exist in this ~~state~~ State; whether there will be an

1 experience requirement; whether the experience must be acquired under a
2 registered, certified, or licensed practitioner; whether there are alternative
3 routes of entry or methods of satisfying the eligibility requirements and
4 qualifications; whether all applicants will be required to pass an examination;
5 and, if an examination is required, by whom it will be developed and how the
6 costs of development will be met;

7 (6) The form and powers of the regulatory entity, including:

8 (A) whether the regulatory entity is or would be a board composed of
9 members of the profession or occupation and public members, or a ~~state~~ State
10 agency, or both, and, if appropriate, their respective responsibilities in
11 administering the system of registration, certification, or licensure;

12 (B) the composition of the board, if any, and the number of public
13 members, if any;

14 (C) the powers and duties of the ~~board or state agency~~ regulatory
15 entity regarding examinations;

16 (D) the system for receiving complaints and taking disciplinary
17 action against practitioners;

18 (7) The extent to which regulation might harm the public, including:

19 (A) whether regulation will restrict entry into the profession or
20 occupation, including:

1 (i) whether the standards are the least restrictive necessary to
2 ~~insure~~ ensure safe and effective performance; and

3 (ii) whether persons who are registered, certified, or licensed in a
4 another jurisdiction ~~which that the board or agency~~ regulatory entity believes
5 has requirements that are substantially equivalent to those of this ~~state~~ State
6 will be eligible for endorsement or some form of reciprocity;

7 (B) whether there are similar professions or occupations ~~which that~~
8 should be included, or portions of the profession or occupation ~~which that~~
9 should be excluded from regulation;

10 (8) How the standards of the profession or occupation will be
11 maintained, including:

12 (A) whether effective quality assurance standards exist in the
13 profession or occupation, such as legal requirements associated with specific
14 programs that define or enforce standards, or a code of ethics; and

15 (B) how the proposed form of regulation will assure quality,
16 including:

17 (i) the extent to which a code of ethics, if any, will be
18 adopted; and

19 (ii) the grounds for suspension, revocation, or refusal to renew
20 registration, certification, or licensure;

1 (b) The Division shall be responsible for the following services:

2 (1) prevention and intervention;

3 (2) ~~licensure of alcohol and drug counselors; [Repealed.]~~

4 (3) project CRASH schools; and

5 (4) alcohol and drug treatment.

6 * * *

7 (e) ~~Under subdivision (b)(4) of this section, the Commissioner of Health~~
8 ~~may contract with the Secretary of State for provision of adjudicative services~~
9 ~~of one or more administrative law officers and other investigative, legal, and~~
10 ~~administrative services related to licensure and discipline of alcohol and drug~~
11 ~~counselors. [Repealed.]~~

12 Sec. 4. 26 V.S.A. chapter 62 is amended to read:

13 CHAPTER 62. ALCOHOL AND DRUG ABUSE COUNSELORS

14 § 3231. DEFINITIONS

15 As used in this chapter:

16 (1) “Alcohol and drug abuse counselor” means a person who engages in
17 the practice of alcohol and drug abuse counseling for compensation.

18 (2) ~~“Commissioner” means the Commissioner of Health~~ “Director”
19 means the Director of the Office of Professional Regulation.

1 (3) ~~“Deputy Commissioner” means the Deputy Commissioner of the~~
2 ~~Division of Alcohol and Drug Abuse Programs~~ “Office” means the Office of
3 Professional Regulation.

4 (4) ~~“Disciplinary action” means any action taken by the administrative~~
5 ~~law officer appointed pursuant to 3 V.S.A. § 129(j) against a licensee or~~
6 ~~applicant based on a finding of unprofessional conduct by the licensee or~~
7 ~~applicant. “Disciplinary action” includes issuance of warnings and all~~
8 ~~sanctions, including denial, suspension, revocation, limitation, or restriction of~~
9 ~~licenses and other similar limitations. [Repealed.]~~

10 (5) “Practice of alcohol and drug abuse counseling” means the
11 application of methods, including psychotherapy, ~~which~~ that assist an
12 individual or group to develop an understanding of alcohol and drug abuse
13 dependency problems and to define goals and plan actions reflecting the
14 individual’s or group’s interests, abilities, and needs as affected by alcohol and
15 drug abuse dependency problems and comorbid conditions.

16 (6) “Supervision” means the oversight of a person for the purposes of
17 teaching, training, or clinical review by a ~~professional in the same area of~~
18 ~~specialized practice~~ licensed alcohol and drug abuse counselor or a qualified
19 supervisor as determined by the Director by rule.

1 § 3232. PROHIBITION; PENALTIES

2 (a) ~~No~~ A person shall not perform either of the following acts:

3 (1) practice or attempt to practice alcohol and drug abuse counseling
4 without a valid license issued in accordance with this chapter, except as
5 otherwise provided in section 3233 of this ~~title~~ chapter; or

6 (2) use in connection with the person's name any letters, words, or
7 insignia indicating or implying that the person is an alcohol and drug abuse
8 counselor, unless the person is licensed or certified in accordance with this
9 chapter.

10 (b) A person who violates any of the provisions of this section shall be
11 subject to the penalties provided in 3 V.S.A. § 127~~(e)~~.

12 § 3233. EXEMPTIONS

13 The provisions of subdivision 3232(a)(1) of this chapter, relating to the
14 practice of alcohol and drug abuse counseling, shall not apply to:

15 (1) the activities and services of a rabbi, priest, minister, Christian
16 Science practitioner, or clergy of any religious denomination or sect when
17 engaging in activities that are within the scope of the performance of the
18 person's regular or specialized ministerial duties and for which no separate
19 charge is made, or when these activities are performed, with or without charge,
20 for or under the auspices or sponsorship, individually or in conjunction with
21 others, of an established and legally recognizable church, denomination, or sect

1 and when the person rendering services remains accountable to the established
2 authority of that church, denomination, or sect;

3 (2) the activities and services of a person licensed, certified, or
4 registered under other laws of this State while acting within the scope of his or
5 her profession or occupation, provided the person does not hold himself or
6 herself out to the public as possessing a license issued pursuant to this chapter;

7 (3) the activities and services of a student intern or trainee in alcohol and
8 drug abuse counseling who is pursuing a course of study in an accredited
9 institution of higher education or a training course approved by the Director,
10 provided these activities are performed under supervision of and constitute a
11 part of an approved course of study;

12 (4) the activities and services of ~~approved alcohol and drug abuse~~
13 ~~counselors~~ an individual certified under this chapter who ~~are~~ is working in a
14 preferred provider program under the supervision of a licensed alcohol and
15 drug abuse counselor; or

16 (5) a person acting as a member of a voluntary group of individuals who
17 offer peer support to each other in recovering from an addiction.

18 § 3234. COORDINATION OF PRACTICE ACTS

19 Notwithstanding any provision of law to the contrary, a person may practice
20 psychotherapy when acting within the scope of a license or certification
21 granted under this chapter, provided he or she does not hold himself or herself

1 out as a practitioner of a profession for which he or she is not licensed
2 or certified.

3 § 3235. ~~DEPUTY COMMISSIONER~~ DIRECTOR; DUTIES

4 (a) ~~The Deputy Commissioner~~ In addition to the authority granted under
5 3 V.S.A. chapter 5, the Director shall:

6 (1) provide general information to applicants for licensure ~~as alcohol~~
7 ~~and drug abuse counselors~~ or certification under this chapter;

8 (2) administer fees collected under this chapter;

9 (3) ~~administer examinations~~ refer complaints and disciplinary matters to
10 an administrative law officer established under 3 V.S.A. § 129(j);

11 (4) explain appeal procedures to licensees, certified individuals, and
12 applicants for licensure or certification under this chapter; and

13 (5) receive applications for licensure or certification under this chapter;
14 issue and renew licenses or certifications; and revoke, suspend, reinstate, or
15 condition licenses or certifications as ordered by an administrative law
16 officer; ~~and~~

17 ~~(6) contract with the Office of Professional Regulation to adopt and~~
18 ~~explain complaint procedures to the public, manage case processing,~~
19 ~~investigate complaints, and refer adjudicatory proceedings to an administrative~~
20 ~~law officer.~~

1 (b) ~~The Commissioner of Health, with the advice of the Deputy~~
2 ~~Commissioner, Director~~ may adopt rules necessary to perform the ~~Deputy~~
3 ~~Commissioner's Director's~~ duties under this section, including rules:

4 (1) Specifying acceptable master's degree requirements.

5 (2) Setting standards for certifying apprentice addiction professionals
6 and alcohol and drug counselors.

7 (3) Requiring completion and documentation of not more than 40 hours
8 of acceptable continuing education every two years as a condition for license
9 or certification renewal.

10 (4) Requiring licensed drug and alcohol counselors to disclose to each
11 client the licensee's professional qualifications and experience, those actions
12 that constitute unprofessional conduct, the method for filing a complaint or
13 making a consumer inquiry, and provisions relating to the manner in which the
14 information shall be displayed and signed by both the licensee and the client.
15 The rules may include provisions for applying or modifying these requirements
16 in cases involving clients of preferred providers, institutionalized clients,
17 minors, and adults under the supervision of a guardian.

18 (5) Regarding ethical standards for individuals licensed or certified
19 under this chapter.

20 (6) Regarding display of license or certification.

1 (7) Regarding reinstatement of a license or certification which has
2 lapsed for more than five years.

3 (8) Regarding supervised practice toward licensure or certification.

4 § 3235a. ADVISOR APPOINTEES

5 (a) The Secretary of State shall appoint three individuals licensed under
6 this chapter to serve as advisors in matters relating to alcohol and drug abuse
7 counselors. Advisors shall be appointed as set forth in 3 V.S.A. § 129b. Two
8 of the initial appointments may be for less than a full term.

9 (b) Appointees shall not have less than three years' licensed experience as
10 an alcohol and drug abuse counselor in Vermont.

11 (c) The Director shall seek the advice of the advisors appointed under this
12 section in carrying out the provisions of this chapter.

13 § 3236. LICENSED ALCOHOL AND DRUG ABUSE COUNSELOR

14 ELIGIBILITY

15 (a) To be eligible for licensure as an alcohol and drug abuse counselor, an
16 applicant shall:

17 (1) have received a master's degree or doctorate in a human services
18 field from an accredited educational institution, including a degree in
19 counseling, social work, psychology, or ~~in~~ an allied mental health field, or a
20 master's degree or higher in a health care profession regulated under this title
21 or Title 33, after having successfully completed a course of study with course

1 work, including theories of human development, diagnostic and counseling
2 techniques, and professional ethics, and ~~which includes~~ a supervised clinical
3 practicum; and

4 ~~(2)(A) have been awarded an approved counselor credential from the~~
5 ~~Division of Alcohol and Drug Abuse Programs in accordance with rules~~
6 ~~adopted by the Commissioner~~ hold or be qualified to hold a current alcohol and
7 drug counselor certification from the Office; or

8 (B) hold an International Certification and Reciprocity Consortium
9 certification from another U.S. or Canadian jurisdiction or a U.S. or Canadian
10 national certification organization approved by the Director;

11 (3) successfully pass the examination approved by the Director; and

12 (4) complete 2,000 hours of supervised practice as set forth in rule.

13 (b) A person who is engaged in supervised practice toward licensure who is
14 not within the preferred provider network shall be registered on the roster of
15 nonlicensed and noncertified psychotherapists.

16 § 3236a. CERTIFICATION OF APPRENTICE ADDICTION

17 PROFESSIONALS AND ALCOHOL AND DRUG ABUSE

18 COUNSELORS

19 (a) The Director may certify an individual who has met requirements set by
20 the Director by rule as:

21 (1) an apprentice addiction professional; or

1 (2) an alcohol and drug abuse counselor.

2 (b) The Director may seek cooperation with the International Certification
3 and Reciprocity Consortium or other recognized alcohol and drug abuse
4 provider credentialing organizations as a resource for examinations and
5 rulemaking.

6 § 3236b. LICENSURE OR CERTIFICATION BY ENDORSEMENT

7 The Director may issue a license or certification to an individual under this
8 chapter if the individual holds a license or certification from a U.S. or
9 Canadian jurisdiction that the Director finds has requirements for licensure or
10 certification that are substantially equivalent to those required under this
11 chapter.

12 § 3237. APPLICATION

13 ~~An individual may apply for a license under this chapter by filing, with the~~
14 ~~Deputy Commissioner, an application provided by the Deputy Commissioner.~~
15 ~~The application shall be accompanied by the required fees and evidence of~~
16 ~~eligibility. [Repealed.]~~

17 § 3238. BIENNIAL RENEWALS

18 (a) Licenses and certifications shall be renewed every two years on a
19 schedule set by the Office upon:

20 (1) payment of the required fee, provided the person applying for
21 renewal completes; and

1 ~~(2) documentation that the applicant has completed~~ at least 40 hours of
2 continuing education, approved by the ~~Deputy Commissioner, during the~~
3 ~~preceding two year period. The Deputy Commissioner shall establish, by rule,~~
4 ~~guidelines and criteria for continuing education credit~~ Director.

5 (b) ~~Biennially, the Deputy Commissioner shall forward a renewal form to~~
6 ~~each license holder. Upon receipt of the completed form and the renewal fee,~~
7 ~~the Deputy Commissioner shall issue a new license. [Repealed.]~~

8 (c) Any application for ~~renewal~~ reinstatement of a license ~~which or~~
9 certification that has expired shall be accompanied by the ~~renewal fee and a~~
10 ~~reinstatement fee~~ appropriate fees. A person shall not be required to pay
11 renewal fees for years during which the license or certifications was lapsed.

12 (d) ~~The Commissioner of Health may, after notice and opportunity for~~
13 ~~hearing, revoke a person's right to renew a license if the license has lapsed for~~
14 ~~five or more years. [Repealed.]~~

15 § 3239. UNPROFESSIONAL CONDUCT

16 The following conduct and the conduct set forth in 3 V.S.A. § 129a, by a
17 person authorized to provide alcohol and drug abuse services under this
18 chapter or an applicant for licensure or certification, constitutes unprofessional
19 conduct:

20 (1) violation of any provision of this chapter or rule adopted under this
21 chapter;

1 (2) failing to use a complete title in professional activity;

2 (3) conduct which evidences moral unfitness to practice alcohol and
3 drug abuse counseling;

4 (4) negligent, incompetent, or wrongful conduct in the practice of
5 alcohol and drug abuse counseling; or

6 (5) harassing, intimidating, or abusing a client; ~~or~~

7 ~~(6) agreeing with any other person or organization or subscribing to any~~
8 ~~code of ethics or organizational bylaws when the intent or primary effect of~~
9 ~~that agreement, code, or bylaw is to restrict or limit the flow of information~~
10 ~~concerning alleged or suspected unprofessional conduct to the Director.~~

11 § 3240. ~~REGULATORY FEE FUND~~

12 ~~(a) An Alcohol and Drug Counselor Regulatory Fee Fund is created. All~~
13 ~~counselor licensing and examination fees received by the Division shall be~~
14 ~~deposited into the Fund and used to offset the costs incurred by the Division~~
15 ~~for these purposes and for the costs of investigations and disciplinary~~
16 ~~proceedings.~~

17 ~~(b) To ensure that revenues derived by the Division are adequate to offset~~
18 ~~the cost of regulation, the Commissioner of Health and the Deputy~~
19 ~~Commissioner shall review fees from time to time and present proposed fee~~
20 ~~changes to the General Assembly. [Repealed.]~~

1 § 3241. FEES

2 In addition to the fees otherwise authorized by law, the ~~Deputy~~
3 ~~Commissioner~~ Director may charge the following fees:

4 ~~(1) Late renewal penalty, \$25.00 for a renewal submitted less than 30~~
5 ~~days late. Thereafter, the Deputy Commissioner may increase the late renewal~~
6 ~~penalty by \$5.00 for every additional month or fraction of a month, provided~~
7 ~~that the total penalty for a late renewal shall not exceed \$100.00.~~

8 ~~(2) Reinstatement of revoked or suspended license, \$20.00.~~

9 ~~(3) Replacement of license, \$20.00.~~

10 ~~(4) Verification of license, \$20.00.~~

11 ~~(5) An examination fee established by the Deputy Commissioner, which~~
12 ~~shall be no greater than the costs associated with examinations.~~

13 ~~(6) Licenses granted under rules adopted pursuant to 3 V.S.A.~~
14 ~~§ 129(a)(10), \$20.00.~~

15 ~~(7) Application for registration, \$75.00.~~

16 ~~(8) Application for licensure or certification, \$100.00.~~

17 ~~(9) Biennial renewal, \$135.00.~~

18 ~~(10) Limited temporary license or work permit, \$50.00 for professions~~
19 ~~regulated by the Director as set forth in 3 V.S.A. § 125.~~

1 Sec. 5. TRANSITIONAL PROVISION; CURRENT CERTIFICATION

2 Notwithstanding the provisions of 26 V.S.A. § 3236a(a) set forth in Sec. 4
3 of this act, an individual currently certified by the Vermont Alcohol and Drug
4 Abuse Certification Board as an apprentice addiction professional or an
5 alcohol and drug abuse counselor may renew his or her certification as if
6 previously granted to him or her by the Director of the Office of Professional
7 Regulation pursuant to rules adopted by the Director.

8 Sec. 6. DIRECTOR OF THE OFFICE OF PROFESSIONAL
9 REGULATION; REQUIRED RULEMAKING

10 The Director of the Office of Professional Regulation may adopt any rules
11 necessary to implement the provisions of Secs. 4 and 5 of this act, prior to the
12 effective date of those sections.

13 * * * Naturopathic Physicians * * *

14 Sec. 7. 2012 Acts and Resolves No. 116, Sec. 64(e), as amended by 2015 Acts
15 and Resolves No. 38, Sec. 42, is amended to read:

16 Sec. 42. 2012 Acts and Resolves No. 116, Sec. 64(e) (transitional
17 provisions) is amended to read:

18 (e) Formulary sunset; transition to examination.

19 (1) Subsection (c) of this section (formulary authorization) shall be
20 repealed on July 1, ~~2016~~ 2017.

