

H.506

An act relating to professions and occupations regulated by the Office of Professional Regulation

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

* * * Office of Professional Regulation * * *

Sec. 1. 3 V.S.A. § 123 is amended to read:

§ 123. DUTIES OF OFFICE

(a) The Office shall provide administrative, secretarial, financial, investigatory, inspection, and legal services to the boards. The ~~administrative~~ services provided by the Office shall include:

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(h) Notwithstanding any provision of Title 26 of the Vermont Statutes Annotated to the contrary, the Office, on behalf of the Director or a board, may use electronic mail to send notices and reminders that would otherwise be sent by mail, except certified mail, and may use online services to elicit information and sworn attestations that would otherwise be obtained on a paper form.

(i)(1) The Director shall actively monitor the actions of boards attached to the Office and shall ensure that all board actions pursued are lawful, consistent with State policy, reasonably calculated to protect the public, and not an undue restraint of trade.

(2) If the Director finds a board action does not meet those standards, the Director may, except in the case of disciplinary actions:

(A) provide written notice to the board explaining the perceived inconsistency, which notice shall have the effect of staying that action;

(B) schedule a public meeting with the board to resolve questions about the action and explore alternatives; and

(C) within 60 days following that meeting, issue a written directive finding that:

(i) the action is consistent with State policy, in which case the action shall be reinstated;

(ii) the action is inconsistent with State policy in form, but may be modified to achieve consistency, in which case the board may issue a modified action consistent with the Director's recommendation; or

(iii) the action is inconsistent with State policy in purpose, in which case the board shall terminate efforts to implement the action and shall not spend further funds toward its implementation.

(j)(1) The Office may inquire into the criminal background histories of applicants for licensure and for biennial license renewal for the following professions:

(A) licensed nursing assistants, licensed practical nurses, registered nurses, and advanced practice registered nurses licensed under 26 V.S.A. chapter 59;

(B) private investigators, security guards, and other persons licensed under 26 V.S.A. chapter 59; and

(C) real estate appraisers and other persons or business entities licensed under 26 V.S.A. chapter 69.

(2)(A) The Office may inquire directly of the Vermont Crime Information Center, the Federal Bureau of Investigation, the National Crime Information Center, or other holders of official criminal record information, and may arrange for such inquiries to be made by a commercial service.

(B) Background checks may be fingerprint-supported, and fingerprints so obtained may be retained on file and used to notify the Office of future triggering events.

(3) Applicants subject to background checks shall be notified that a check is required, if fingerprints will be retained on file, and that criminal convictions are not an absolute bar to licensure, and shall be provided such other information as may be required by federal law or regulation.

(k) When, by reason of disqualification, resignation, vacancy, or necessary absence, a board is unable to form a quorum or assign one or more members to assist in the investigation and prosecution of complaints or license

applications, or to adjudicate a contested case, the Secretary of State may appoint ad hoc members, either as voting members to establish a quorum at a specific meeting or as nonvoting members to assist Office investigators and prosecutors.

Sec. 2. 3 V.S.A. § 128 is amended to read:

§ 128. DISCIPLINARY ACTION TO BE REPORTED TO THE ~~BOARD~~
OFFICE

(a)(1) Any hospital, clinic, community mental health center, or other health care institution in which a licensee performs professional services shall report to the ~~appropriate board~~ Office, along with supporting information and evidence, any disciplinary action taken by it or its staff, ~~after an initial investigation or hearing in which the licensee has been afforded the opportunity to participate, which~~ that limits or conditions the licensee's privilege to practice or leads to suspension or expulsion from the institution.

(2) The report shall be made within 10 days of the date the disciplinary action was taken, regardless of whether the action is the subject of a pending appeal, and in the case of a licensee who is employed by, or under contract with, a community mental health center, a copy of the report shall also be sent to the Commissioners of Mental Health and of Disabilities, Aging, and Independent Living.

(3) This section shall not apply to cases of resignation, separation from service, or changes in privileges ~~which~~ that are unrelated to:

~~(1)~~(A) a disciplinary or adverse action;

~~(2)~~(B) an adverse action report to the National Practitioner Data Bank;

~~(3)~~(C) an unexpected adverse outcome in the care or treatment of a patient;

~~(4)~~(D) misconduct or allegations of misconduct;

~~(5)~~(E) the initiation or process of an action to limit, condition, or suspend a licensee's privilege to practice in an institution;

~~(6)~~(F) an action to expel the licensee from an institution; or

~~(7)~~(G) any other action ~~which~~ that could lead to an outcome described in subdivisions ~~(1)~~(A) through ~~(6)~~(F) of this ~~subsection~~ subdivision (3).

(b) Within 30 days of any judgment or settlements involving a claim of professional negligence by a licensee, any insurer of the licensee shall report such information to the ~~appropriate board~~ Office, regardless of whether the action is the subject of a pending appeal.

(c) Information provided to a ~~board~~ Office under this section shall be confidential unless the board decides to treat the report as a complaint in which case the provisions of section 131 of this title shall apply.

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Sec. 3. 3 V.S.A. § 129 is amended to read:

§ 129. POWERS OF BOARDS; DISCIPLINE PROCESS

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(c)(1) A board may assign one or more members of the board to investigate complaints and license applications. These members shall have the assistance of an investigator for the Office and an attorney assigned by the Office of Professional Regulation who shall be responsible for prosecuting disciplinary and licensing cases before the board. In the case of professions which have advisor appointees, the Secretary may designate one or more of the advisor appointees or other licensed or certified members of the profession to assist in the investigation. While acting in this capacity, a board member or advisor appointee shall not sit in adjudication of the case and Boards and administrative law officers sitting in disciplinary cases shall do so impartially and without ex parte knowledge of the case in controversy.

(2) A State prosecuting attorney assigned by the Office of Professional Regulation shall be responsible for prosecuting disciplinary cases before boards or administrative law officers.

(3) The Office may assign one or more board members or advisors to assist Office investigators and the prosecutor in relation to the investigation and prosecution of licensing and disciplinary matters. If a board member has served in this capacity, the member shall not participate in ex parte

communications with other board members regarding the case and shall not participate in deliberating or deciding the case. ~~A board member whose term of office expires while an investigation is pending may continue through the completion of the case. When a board is unable to assign one or more members to investigate complaints or license applications by reason of disqualification, resignation, vacancy, or necessary absence, the Secretary of State may, at the request of the board, appoint ad hoc members to serve on the board for investigation of that matter only. Ad hoc members shall have the same qualifications as required by law for the absent members.~~

* * *

(j) Notwithstanding the provisions of section 130a of this title, hearings involving denials of licensure or disciplinary matters concerning persons in professions that have advisor appointees shall be heard by an administrative law officer appointed by the Secretary of State. ~~A party aggrieved by a final decision of an administrative law officer may appeal to the Superior Court in Washington County which shall review the matter on the basis of the record created before the administrative law officer.~~

* * *

Sec. 4. 3 V.S.A. § 129a is amended to read:

§ 129a. UNPROFESSIONAL CONDUCT

(a) In addition to any other provision of law, the following conduct by a licensee constitutes unprofessional conduct. When that conduct is by an applicant or person who later becomes an applicant, it may constitute grounds for denial of a license or other disciplinary action. Any one of the following items, or any combination of items, whether or not the conduct at issue was committed within or outside the State, shall constitute unprofessional conduct:

* * *

(10) Conviction of a crime related to the practice of the profession or conviction of a felony, whether or not related to the practice of the profession.

(11) Failing to report to the Office a conviction of any felony or ~~any misdemeanor~~ offense ~~related to the practice of the profession~~ in a Vermont District Court, a Vermont Superior Court, a federal court, or a court outside Vermont within 30 days.

* * *

(14) Failing to report to the Office within 30 days a change of name, e-mail, or mailing address.

* * *

(16)(A) Impeding an investigation under this chapter or unreasonably failing to reply, cooperate, or produce lawfully requested records in relation to such investigation.

(B) The patient privilege set forth in 12 V.S.A. § 1612 shall not bar the licensee's obligations under this subsection (a) and a confidentiality agreement entered into in concluding a settlement of a civil claim shall not exempt the licensee from fulfilling his or her obligations under this subdivision.

(17) Advertising, promoting, or recommending a therapy or treatment in a manner tending to deceive the public or to suggest a degree of reliability or efficacy unsupported by competent evidence and professional judgment.

(18) Promotion by a treatment provider of the sale of drugs, devices, appliances, or goods provided for a patient or client in such a manner as to exploit the patient or client for the financial gain of the treatment provider, or selling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes.

(19) Willful misrepresentation in treatments or therapies.

(20) Offering, undertaking, or agreeing to cure or treat a disease or disorder by a secret method, procedure, treatment, or medicine.

(21) Permitting one's name or license to be used by a person, group, or corporation when not actually in charge of or responsible for the professional services provided.

(22) Prescribing, selling, administering, distributing, ordering, or dispensing any drug legally classified as a controlled substance for the licensee's own use or to an immediate family member as defined by rule.

(23) For any professional with prescribing authority, signing a blank or undated prescription form or negligently failing to secure electronic means of prescribing.

(24) For any mental health care provider, use of conversion therapy as defined in 18 V.S.A. § 8351 on a client younger than 18 years of age.

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Sec. 5. 3 V.S.A. § 130a is amended to read:

§ 130a. ~~APPEALS FROM BOARD DECISIONS~~

(a)(1) A party aggrieved by a final decision of a board or administrative law officer may, within 30 days of the decision, appeal that decision by filing a notice of appeal with the Director who shall assign the case to an appellate officer.

(2)(A) The review shall be conducted on the basis of the record created before the board or administrative law officer.

(B) In cases of alleged irregularities in procedure before the board or administrative law officer, not shown in the record, proof on that issue may be taken by the appellate officer.

(b) The appellate officer shall not substitute his or her judgment for that of the board or administrative law officer as to the weight of the evidence on questions of fact. The appellate officer may affirm the decision, or may reverse and remand the matter with recommendations if substantial rights of the appellant have been prejudiced because the board's or administrative law officer's finding, inferences, conclusions, or decisions are:

- (1) in violation of constitutional or statutory provisions;
- (2) in excess of the statutory authority of the board or administrative law officer;
- (3) made upon unlawful procedure;
- (4) affected by other error of law;
- (5) clearly erroneous in view of the evidence on the record as a whole;
- (6) arbitrary or capricious; or
- (7) characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(c) A party aggrieved by a decision of the appellate officer may appeal to the Supreme Court, which shall review the matter on the basis of the records created before the board or administrative law officer and the appellate officer.

Sec. 6. 3 V.S.A. § 131 is amended to read:

§ 131. ACCESSIBILITY AND CONFIDENTIALITY OF DISCIPLINARY
MATTERS

* * *

(c) The Secretary of State, through the Office of Professional Regulation, shall prepare and maintain a register of all complaints, which shall be a public record and which shall show:

* * *

(2) only with respect to complaints resulting in filing of disciplinary charges or stipulations or the taking of disciplinary action, the following additional information:

(A) the name and business addresses of the licensee and complainant;

(B) formal charges, provided that they have been served or a reasonable effort to serve them has been made, and all subsequent pleadings filed by the parties;

(C) the findings, conclusions, rulings, and ~~order~~ orders of the board or administrative law officer;

(D) the transcript of the hearing, if one has been made, and exhibits admitted at the hearing;

(E) stipulations filed with the board or administrative law officer; and

(F) final disposition of the matter by the appellate officer or the courts.

* * *

(d) Neither the Secretary nor the Office shall make public any other information regarding unprofessional conduct complaints, investigations, proceedings, and related records except the information required to be released under this section.

* * *

(g) Nothing in this section shall prohibit the disclosure of any information regarding unprofessional conduct complaints ~~pursuant, or investigations thereof, in response~~ to an order from a court of competent jurisdiction, or to State or federal law enforcement ~~or regulatory~~ agencies, ~~the Department of Health, the Department of Disabilities, Aging, and Independent Living, or the Department of Financial Regulation in the course of their investigations,~~ provided the receiving agency or department:

(1) agrees to maintain the confidentiality and privileged status of the information as provided in subsection (d) of this section; and

(2) has jurisdiction over the subject matter in question.

* * * Pharmacy * * *

Sec. 7. 18 V.S.A. § 4215 is amended to read:

§ 4215. AUTHORIZED SALES BY PHARMACISTS

* * *

(b)(1) The pharmacist filling a schedule II prescription shall write the date of filling and the pharmacist's own signature on the face of the prescription, or if an electronic prescription, shall enter the date of filling and the pharmacist's name into the electronic record.

(2) Pharmacists shall be subject to the requirements of 21 U.S.C. chapter 13.

(3) Notwithstanding the ~~foregoing~~ provisions of subdivision (1) or (2) of this subsection, ~~no~~ a prescription for a schedule II drug written without a future fill date ~~may~~ shall not be filled more than 30 days after the date the prescription was issued. ~~No~~ A prescription for a schedule II drug written to be filled at a future date ~~may~~ shall not be filled more than 90 days after the date the prescription was issued.

(4) A physician who dispenses regulated drugs as part of his or her regular fee or for an additional fee shall be subject to the same requirements as a pharmacist for the purposes of this section.

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* * * Accountants * * *

Sec. 8. 26 V.S.A. § 13 is amended to read:

§ 13. DEFINITIONS

~~For the purposes of~~ As used in this chapter:

(1)(A) “Attest services” means providing the following ~~financial statement~~ services:

(i) any audit or other engagement to be performed in accordance with the Statements on Auditing Standards (SAS);

(ii) any review of a financial statement or compilation of a financial statement to be performed in accordance with the Statement on Standards for Accounting and Review Services (SSARS);

(iii) any examination of prospective financial information to be performed in accordance with the Statements on Standards for Attestation Engagements (SSAE); ~~or~~

(iv) any engagement to be performed in accordance with the auditing standards of the Public Company Accounting Oversight Board (PCAOB); or

(v) any examination, review, or agreed upon procedures engagement to be performed in accordance with the SSAE, other than an examination described in subdivision (iii) of this subdivision (1)(A).

(B) The statements on standards specified in this section shall be adopted by reference by the board pursuant to rulemaking, and shall be those developed for general application by the American Institute of Certified Public Accountants.

* * *

(13) “Report” when used with reference to ~~financial statements~~ any attest or compilation service, means an opinion, report, or other form of language that states or implies assurance as to the reliability of ~~any~~ the attested information or compiled financial statements and that also includes or is accompanied by any statement or implication that the person or firm issuing it has special knowledge or competence in accounting or auditing.

(A) A statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that the person or firm is an accountant or auditor, or from the language of the report itself.

(B) The term “report” includes any form of language ~~which~~ that disclaims an opinion when the form of language is conventionally understood to imply any positive assurance as to the reliability of the attested information or compiled financial statements referred to or special competence on the part of the person or firm issuing the language; and it includes any other form of

language that is conventionally understood to imply such assurance or such special knowledge or competence.

* * *

Sec. 9. 26 V.S.A. § 74 is amended to read:

§ 74. FIRMS; REGISTRATION AND OWNERSHIP

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(b) A firm that does not have an office in this ~~state~~ State may perform those services set forth in subdivision 13(1)(A)(ii), 13(1)(A)(v), or 13(3) of this ~~title~~ chapter for a client with a home office in this ~~state~~ State may otherwise practice public accounting as authorized under this chapter, and may use the title “CPA” or “CPA firm” without a registration issued only if the firm:

(1) meets the qualifications set forth in subsections (c) and (d) of this section;

(2) meets the requirements of section 75c of this title; and

(3) performs services through an individual with practice privileges set forth under section 74c of this title.

* * *

(e) Any individual licensee who is responsible for supervising attest services and signs or authorizes someone to sign the accountant’s report ~~on financial statements~~ on behalf of the firm; shall meet the experience and

competency requirements set out in the professional standards for such services.

(f) Any individual exercising practice privileges pursuant to section 74c of this title, and who is responsible for supervising attest services and signs or authorizes someone to sign the accountant's report ~~on financial statements~~ on behalf of the firm, shall meet the experience and competency requirements set forth in the professional standards for those services.

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* * * Dental Therapists * * *

Sec. 10. 26 V.S.A. § 612 is amended to read:

§ 612. LICENSE BY ENDORSEMENT

(a) The Board may grant a license as a dental therapist to an applicant who:

(1) is currently licensed in good standing to practice as a dental therapist in any jurisdiction of the United States or Canada that has licensing requirements deemed by the Board to be at least substantially equivalent to those of this State;

(2) has passed an examination testing the applicant's knowledge of the Vermont statutes and rules relating to the practice of dentistry approved by the Board;

(3) has successfully completed an emergency office procedure course approved by the Board;

(4) has met active practice requirements and any other requirements established by the Board by rule; and

(5) pays the application fee set forth in section 662 of this chapter.

~~(b) Notwithstanding the provisions of subdivision 611(a)(2) of this subchapter that require an applicant for dental therapist licensure by examination to be a Vermont licensed dental hygienist, an applicant for dental therapist licensure by endorsement under this section shall not be required to obtain Vermont dental hygienist licensure if the Board determines that the applicant otherwise meets the requirements for dental therapist licensure.~~

[Repealed.]

* * * Funeral Directors * * *

Sec. 11. 26 V.S.A. § 1252 is amended to read:

§ 1252. APPLICATION; QUALIFICATIONS

~~(a)(1)~~ Funeral director.

(1) Any person holding a high school certificate or its equivalent shall be entitled to take an examination as a funeral director provided that he or she has:

(A) graduated from a school of funeral service accredited or approved by the American Board of Funeral Service Education in a course of instruction of not less than two academic years, or graduated from a school of funeral service accredited or approved by the American Board of Funeral

Service Education in a course of instruction of not less than one academic year or its equivalent as determined by the Board, with 30 additional credit hours in subjects approved by the Board and obtained in a college or university approved by the Board; and

* * *

(3) Notwithstanding the provisions of subdivision (1)(A) of this subsection (a), the Board may by rule prescribe an alternative pathway to licensure for individuals who have not attended a school of funeral service but who have demonstrated through an approved program of apprenticeship and study the skills deemed necessary by the Board to ensure competence as a funeral director.

(b)~~(4)~~ Embalmer.

(1) Any person holding a high school certificate or its equivalent shall be entitled to take an examination in embalming provided that he or she has:

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* * * Pharmacy * * *

Sec. 12. 26 V.S.A. § 2041 is amended to read:

§ 2041. UNLAWFUL PRACTICE

* * *

(b)(1) Any person who shall be found by the ~~board~~ Board after hearing to have unlawfully engaged in the practice of pharmacy shall be subject to disciplinary action.

(2) For the purpose of enforcing this section, the ~~attorney general~~ Attorney General or a ~~state's attorney~~ State's Attorney or an attorney assigned by the ~~office of professional regulation~~ Office of Professional Regulation may commence a criminal action against any person unlawfully engaging in the practice of pharmacy, and upon conviction, the person shall be subject to the penalties provided in 3 V.S.A. § 127(~~e~~).

Sec. 13. 26 V.S.A. § 2061 is amended to read:

§ 2061. REGISTRATION AND LICENSURE

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(h) Each individual licensee and each business licensed under this chapter shall provide to the Office of Professional Regulation a working, readily accessible e-mail address permitting communication with the Office.

* * * Real Estate Brokers * * *

Sec. 14. 26 V.S.A. § 2292 is amended to read:

§ 2292. ELIGIBILITY

* * *

(b)(1) A license as a real estate salesperson shall be granted to a person who satisfies all of the following:

(1)(A) ~~Has~~ has passed an examination as required by the commission;

(2)(B) ~~Is~~ is at least 18 years ~~old.~~ of age;

(3)(C) ~~Has~~ has been employed by or become associated with a brokerage firm and that firm's principal broker; and

(4)(D) ~~Has~~ has completed a course of instruction, approved by the commission, of at least 40 hours.

(2)(A) An initial salesperson license shall expire 90 days from issuance.

(B) The license of a salesperson who has provided documentation to the Commission showing successful completion of eight hours of instruction addressing topics specified by the Commission relating to the salesperson's postlicensure practice of the profession shall be renewed without application or fee and remain valid until the end of the biennial licensing period.

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Sec. 15. 26 V.S.A. § 2293 is amended to read:

§ 2293. RENEWAL OF LICENSE; ~~LAPSED~~ EXPIRED LICENSE

(a)(1) Licenses shall be renewed every two years without examination and on payment of the required fees, provided that the person applying for renewal completes at least 24 hours of instruction for brokers and 16 hours of instruction for salespersons, approved by the Commission, during the

preceding two-year period. Four hours of this continuing education instruction shall address legislation and other topics specified by the Commission for each renewal period.

~~(2) In addition to the 16 hours of required continuing education for salespersons, within 90 days from the issuance of an initial salesperson license, the salesperson shall complete eight hours of instruction addressing topics specified by the Commission related to the salesperson's practice of the profession post licensure.~~

(b)(1) A broker or salesperson applying for reinstatement of a license that has ~~lapsed~~ expired shall be assessed both the renewal fee and late renewal penalty established by the Director of the Office of Professional Regulation and shall not be assessed renewal fees for the years during which the license was ~~lapsed~~ expired.

(2) Reinstatement shall not take place until the applicant completes the continuing education required for the previous renewal period.

(c)(1) If a broker or salesperson's license has ~~lapsed~~ expired for greater than five consecutive years, the broker or salesperson shall apply for reinstatement in accordance with the initial licensure requirements as set forth in section 2292 of this chapter, including a course of instruction and examination.

(2) The Commission may waive the reinstatement requirements based upon licensed practice in another state.

* * *

Sec. 16. 26 V.S.A. § 2296 is amended to read:

§ 2296. UNPROFESSIONAL CONDUCT; ~~DISCIPLINE OF LICENSEE~~

(a) Unprofessional conduct means the following conduct and the conduct set forth in 3 V.S.A. § 129a:

* * *

(5) commingles money or other property to which the licensee's clients or other persons are entitled with the licensee's own, except to the extent nominal sums of the licensee's funds may be required to maintain an open trust account;

(6) fails to inform clients, establish trust and escrow accounts, maintain records, and otherwise act in accordance with the provisions of section 2214 of this chapter with respect to all monies received by the licensee as a real estate broker, or as escrow agent, or as the temporary custodian of the funds of others, in a real estate transaction;

(7) fails promptly to segregate any properties received which are to be held for the benefit of others;

(8) is found by the Commission to have engaged in any act or conduct, whether of the same or different character as that described in this section,

which contributes to or demonstrates incompetency or dishonest fraudulent dealings;

(9) fails to fully disclose to a buyer all material facts within the licensee's knowledge concerning the property being sold;

(10) fails to fully disclose to a buyer the existence of an agency relationship between the licensee and the seller.

~~(b) The maintenance of nominal amounts of a licensee's funds in a trust account to meet bank service charges is not a violation of this chapter.~~

~~(c) The Commission shall accept written complaints from any member of the public, any licensee, any state or federal agency, or the Attorney General. The Commission may initiate disciplinary action in response to any complaint against a licensee.~~

~~(d) The burden of proof shall be on the State to show by a preponderance of the evidence that the licensee has engaged in unprofessional conduct.~~

~~(e) After hearing and upon a finding of unprofessional conduct, the Commission may:~~

~~(1) revoke a license;~~

~~(2) suspend a license; or~~

~~(3) issue a warning or reprimand or both to a licensee.~~

~~(f) Before or after hearing, the Commission may approve a negotiated agreement between the prosecutor and the licensee when it is in the best interest of the public health, safety, or welfare to do so.~~

~~(1) Such an agreement may include any of the following conditions or restrictions which may be in addition to or in lieu of suspension:~~

~~(A) a requirement that a licensee submit to care or counseling;~~

~~(B) a restriction that a licensee practice only under supervision of a named person or a person with specified credentials;~~

~~(C) a requirement that a licensee participate in continuing education in order to overcome specified practical deficiencies;~~

~~(D) a requirement that the scope of practice permitted be restricted to a specified extent.~~

~~(2) Such an agreement may be modified by agreement of the prosecutor and the licensee, after obtaining the approval of the Commission.~~

~~(g) A complainant, the prosecutor, or the licensee may petition the Commission for modification of the terms of an order under this section.~~

~~(h) Where a license has been revoked, the Commission may reinstate the license on terms and conditions it deems proper.~~

~~(i) In the event the Commission takes disciplinary action, its findings and decision shall be in writing and signed by the Chairperson. A certified copy of the findings and decision either shall be served on the licensee in the same~~

~~manner as a subpoena, or shall be mailed to the licensee at the licensee's last known address by certified mail, return receipt requested.~~

* * * Veterinarians * * *

Sec. 17. 26 V.S.A. chapter 44 is amended to read:

CHAPTER 44. VETERINARY MEDICINE

Subchapter 1. General Provisions

§ 2401. DEFINITIONS

As used in this chapter:

* * *

(5) "Practice of veterinary medicine" means:

(A) for a consideration, to diagnose, treat, correct, change, relieve, or prevent animal disease, deformity, defect, injury, or other physical or mental conditions; including the prescription or administration of any drugs, biologic, apparatus, application, anesthetic, or other therapeutic or diagnostic substance or technique and the use of any manual or mechanical procedure for testing for pregnancy or for correcting sterility, or infertility, or to render advice or recommendation with regard to any of the ~~above~~ acts described in this subdivision (A);

(B) to represent, directly or indirectly, publicly or privately, an ability and willingness to do any act described in subdivision ~~(5)(A)~~ of this ~~section~~ subdivision (5);

(C) to use any title, words, abbreviation, or letters in a manner or under circumstances which induce the belief that the person using them is qualified to do any act described in subdivision ~~(5)(A)~~ of this ~~section~~ subdivision (5), except where such a person is a veterinarian;

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Subchapter 4. Unprofessional Conduct and Discipline

* * *

§ 2433. VETERINARIAN-CLIENT-PATIENT RELATIONSHIP;

VETERINARIAN OF RECORD

(a) The veterinarian-client-patient relationship (VCPR) exists when all of the following conditions have been met:

(1) The veterinarian has assumed the responsibility for making clinical judgments regarding the health of one or more animals and the need for medical treatment, and the client, who is the owner of the animals or their caretaker, has agreed to follow the veterinarian's instructions;

(2) The veterinarian has sufficient knowledge of those animals to initiate at least a general or preliminary diagnosis of the medical condition of the animals. This means that the veterinarian has recently seen and is personally acquainted with the keeping and care of the animals by virtue of an examination of the animals or by medically appropriate and timely visits to the premises where the animals are kept; and

(3) The veterinarian is readily available or has arranged for emergency coverage for follow-up evaluation of those animals in the event of adverse reactions or failure of the treatment regimen.

(b) Only a licensed veterinarian with a valid VCPR may:

(1) authorize the dispensing of veterinary prescription drugs;

(2) issue a valid veterinary feed directive;

(3) authorize drug distributors to deliver veterinary prescription drugs to a specific client; or

(4) prescribe, order, or otherwise authorize a pharmacist to dispense veterinary prescription drugs to a specific client.

(c)(1) The veterinarian of record (VOR) is the food animal veterinarian responsible for providing appropriate oversight of drug use on a farm premises for specific animals or group of animals.

(2) If more than one veterinarian or veterinary practice has a working relationship on a farm premises, then the VCPR agreement shall establish which veterinarian has the responsibility for specific animals or animal groups.

(3) A veterinarian who is not the VOR, when providing professional services, is responsible for making provisions for emergency follow-up care and must notify the VOR of his or her findings and recommendations.

(d) Prescriptions from veterinarians are subject to Vermont prescription drug cost containment statutes set forth in 18 V.S.A. chapter 91.

(e) Establishment of a VCPR for the sole purpose of the sale of drugs or increased sales of a particular brand of drug product is not a valid or ethical reason for having a VCPR.

* * * Opticians * * *

Sec. 18. 26 V.S.A. § 2665 is amended to read:

§ 2665. POWERS AND DUTIES OF THE DIRECTOR

(a) The Director shall:

(1) adopt only those rules necessary for the full and efficient performance of its duties;

* * *

(3) establish standards of education required of applicants for licensing and establish, by appropriate rules ~~and regulations~~, the minimum standards for any school presenting a course for present or future opticians;

* * *

(b) The Director shall not:

(1) adopt any rules ~~or regulations~~ prohibiting lawful advertising, the display of ophthalmic materials or merchandise, or limiting the place or location where opticians may practice; or

* * *

* * * Radiologic Technology * * *

Sec. 19. 26 V.S.A. § 2804 is amended to read:

§ 2804. COMPETENCY REQUIREMENTS OF CERTAIN LICENSED
PRACTITIONERS

(a) Unless the requirements of subdivision 2803(1) of this chapter have been satisfied, a physician, as defined in chapter 23 of this title, podiatrist, as defined in chapter 7 of this title, chiropractic physician, as defined in chapter 10 of this title, osteopathic physician, as defined in chapter 33 of this title, or naturopathic physician, as defined in chapter 81 of this title, shall not apply ionizing radiation to human beings without first having satisfied the Board of his or her competency to do so.

* * *

Sec. 20. 26 V.S.A. § 2821b is amended to read:

§ 2821b. LICENSE FOR POSTPRIMARY MODALITIES

(a) The board recognizes and follows the ARRT and NMTCB postprimary certification process for the following postprimary practice categories: mammography, computed tomography (~~“CT”~~) (CT), cardiac-interventional radiography, ~~and~~ vascular-interventional radiography, and positron emission tomography (PET).

(b) In order for a licensee who has obtained one of the three primary ARRT or NMTCB certifications set forth in section 2821a of this subchapter to

practice in one of the postprimary modalities set forth in subsection (a) of this section, the licensee must first obtain postprimary certification from ARRT or NMTCB for that category, except:

(1) a person with a primary license in radiation therapy may perform CT for treatment simulation; and

(2) a person with a primary license in nuclear medicine technology may perform CT for attenuation correction on hybrid imaging equipment, such as PET/CT and SPECT/CT scanners.

* * *

* * * Private Investigative and Security Services * * *

Sec. 21. 26 V.S.A. chapter 59 is amended to read:

CHAPTER 59. PRIVATE INVESTIGATIVE AND SECURITY SERVICES

* * *

Subchapter 3. Licensing

* * *

§ 3173. PRIVATE INVESTIGATOR LICENSES

* * *

(b) ~~The Board may inquire of the Vermont Crime Information Center for any information on criminal records of the applicant, and the Center shall provide such information to the Board. The Board, through the Vermont Crime Information Center, may also inquire of the appropriate state criminal record~~

~~repositories in all states in which it has reason to believe an applicant has resided or been employed, and it may also inquire of the Federal Bureau of Investigation, for any information on criminal records of the applicant. The applicant shall bear the costs associated with fingerprinting. The Board may also make additional inquiries it deems necessary into the character, integrity, and reputation of the applicant.~~

* * *

§ 3174. SECURITY GUARD LICENSES

* * *

(b) ~~The board may inquire of the Vermont criminal information center for any information on criminal records of the applicant, and the center shall provide such information to the board. The board, through the Vermont criminal information center, may also inquire of the appropriate state criminal record repositories in all states in which it has reason to believe an applicant has resided or been employed, and it may also inquire of the Federal Bureau of Investigation, for any information on criminal records of the applicant. When fingerprinting is required, the applicant shall bear all costs. The board Board may also make additional inquiries it deems necessary into the character, integrity, and reputation of the applicant.~~

* * *

§ 3176. EMPLOYEES OF AGENCIES

* * *

~~(d) The Board may inquire of the Vermont Crime Information Center for any information on criminal records of all agency employees registering with the Board, and the Center shall provide such information to the Board. The Board, through the Vermont Crime Information Center, may also inquire of the appropriate state criminal record repositories in all states in which it has reason to believe an employee has resided or been employed, and it may also inquire of the Federal Bureau of Investigation for any information on criminal records of the employee. The Board may also make such additional inquiries it deems necessary into the character, integrity, and reputation of the employee.~~

* * *

§ 3178. RENEWALS AND REINSTATEMENT

~~(a) A license or registration issued under this chapter shall be renewed biennially upon payment of the required fee.~~

~~(b) If an individual or agency fails to renew in a timely manner, the individual or agency may renew the license within one year of the renewal date by satisfying all the requirements for renewal and payment of an additional late renewal penalty.~~

~~(c) An individual or agency whose license or registration has lapsed or been terminated for more than one year may be reinstated upon filing a new~~

~~application and meeting all requirements for initial issuance of the license or registration.~~

* * *

* * * Real Estate Appraisers * * *

Sec. 22. 26 V.S.A. § 3314 is amended to read:

§ 3314. BOARD; POWERS AND DUTIES

* * *

(b) In addition to its other powers and duties under this chapter, the Board shall:

* * *

~~(5) Inquire of the Vermont Crime Information Center for any information on criminal records of any and all applicants, and the Center shall provide such information to the Board. The Board, through the Vermont Crime Information Center, shall also inquire of the appropriate state criminal record repositories in all states in which it has reason to believe an applicant has resided or been employed, and it shall also inquire of the Federal Bureau of Investigation for any information on criminal records of applicants. The Board shall obtain fingerprints of the applicant, in digital form if practicable, and any appropriate identifying information for submission to the Federal Bureau of Investigation in connection with a state and national background check. Applicants shall bear all costs associated with background screening. The~~

Board may ~~also~~ make ~~additional~~ inquiries it deems necessary into the character, integrity, and reputation of the applicant.

(6) Perform other functions and duties as may be necessary to carry out the provisions of this chapter or to comply with the requirements of the Act, including, at the Board's discretion, adopting rules defining appraisal management companies in a manner consistent with the Act and requiring that such appraisal management companies register with the Board prior to doing business in this State.

Sec. 23. 26 V.S.A. § 3320a is amended to read:

§ 3320a. APPRAISAL MANAGEMENT COMPANIES

~~(a) An appraisal management company acts as a broker in acquiring finished appraisals from real estate appraisers and supplying the appraisals to third parties, but appraisal management companies are not licensed to perform real estate appraisals under this chapter. Acting as an appraisal management company includes:~~

- ~~(1) administering or assigning work to licensed real estate appraisers;~~
- ~~(2) receiving requests for real estate appraisals from clients;~~
- ~~(3) receiving a fee paid by clients for acquiring real estate appraisals; or~~
- ~~(4) entering into an agreement with one or more real estate appraisers to perform appraisals.~~

~~(b) An appraisal management company does not include:~~

~~(1) a government agency;~~

~~(2) a bank, credit union, licensed lender, or savings institution;~~

~~(3) a person or entity that has as its primary business the performance of appraisals in accordance with this chapter but who or which, in the normal course of business, engages the services of a licensed appraiser to perform appraisals or related services that the person or entity cannot perform because of the location or type of property in question, workload, scope of practice required by an assignment, or to otherwise maintain professional responsibility to clients.~~

~~(e) An appraisal management company shall register with the Board prior to conducting business in this State. An application shall include a registration fee and information required by the Board that is necessary to determine eligibility for registration.~~

~~(d) When contracting for the performance of real estate appraisal services, an appraisal management company shall only engage the professional services of an appraiser licensed and in good standing to practice pursuant to this chapter.~~

~~(e) A registrant's employee reviewing finished appraisals shall be certified or licensed in good standing in one or more states and shall be certified at a level that corresponds with or is higher than the level of licensure required to perform the appraisal. The Board shall determine whether the regulation of~~

appraisal management companies is in the interest of the public and may adopt rules regulating appraisal management companies in conformity with the Act.

Sec. 24. BOARD OF REAL ESTATE APPRAISERS; RULEMAKING
AUTHORITY

The Board of Real Estate Appraisers may adopt the rules described in 26 V.S.A. § 3320a (appraisal management companies) in Sec. 23 of this act prior to the effective date of that section.

* * * Acupuncturists * * *

Sec. 25. 26 V.S.A. § 3402 is amended to read:

§ 3402. PROHIBITIONS; OFFENSES; EXEMPTIONS; EVALUATING
NONACUPUNCTURISTS

* * *

(g) The Director, with cooperation of the relevant professional regulatory boards, shall monitor and evaluate whether nonacupuncturists employing acupuncture as a therapeutic modality are doing so safely, within their scopes of practice, and in a manner consistent with the public health, safety, and welfare.

Sec. 26. REPEAL

2016 Acts and Resolves No. 111, Sec. 1a (Director of Professional Regulation; evaluating nonacupuncturists) is repealed.

Sec. 27. 26 V.S.A. § 3405 is amended to read:

§ 3405. ELIGIBILITY FOR LICENSURE

To be eligible for licensure as an acupuncturist, an applicant shall be at least 18 years of age and shall furnish satisfactory proof that he or she has:

(1)~~(A)~~ completed a program in acupuncture and Oriental medicine and has received a degree or diploma from an educational institution in candidacy or accredited by the Accreditation Commission for Acupuncture and Oriental Medicine or an equivalent or successor accrediting organization approved by the United States Department of Education and the director. The training received in the program shall be for a period of not less than three academic years, and shall include a minimum of 800 hours of supervised clinical practice; or

~~(2)~~~~(B)~~ completed a training program no later than December 31, 2010 with a preceptor approved by the director where the training program is approved by the director and begun prior to December 31, 2007 and which shall include earning a minimum of 40 points earned in any one of the following categories or combination of categories:

~~(A)~~~~(i)~~ self-directed study—10 points for study equivalent to one year of full-time academic work in acupuncture and Oriental medicine, for a maximum of two years or 20 points;

~~(B)~~(ii) apprenticeship—10 points for each 1,000 documented contact hours, up to a maximum of 13.5 points per year;

~~(C)~~(iii) completed academic work in an accredited acupuncture program as described in subdivision (1) of this section—five points for each six-month period of completed academic study in the field of acupuncture and Oriental medicine, up to a maximum of four periods or 20 points;

~~(D)~~(iv) preceptors shall be licensed and in good standing and meet the standards of the National Certification Commission for Acupuncture and Oriental Medicine in order to be approved, with no preceptor having more than two apprentices at any one time; and

~~(3)~~(2) passed the examination described in section 3406 of this title.

Sec. 28. [Deleted.]

* * * Tattooists, Body Piercers, and Permanent Cosmetologists * * *

Sec. 29. 26 V.S.A. chapter 79 is amended to read:

CHAPTER 79. TATTOOISTS AND BODY PIERCERS

§ 4101. DEFINITIONS

As used in this chapter:

* * *

(3) “Disciplinary action” includes any action taken by an administrative law officer against a ~~registered~~ licensed tattooist or applicant premised on a finding of unprofessional conduct. Disciplinary action includes all appropriate

remedies, including denial of an application for or renewal of a ~~registration~~
license, suspension or revocation of a ~~registration~~ license, limiting or
conditioning of a ~~registration~~ license, issuing reprimands or warnings, and
adopting consent orders.

* * *

(4) “Operator” means any person who practices tattooing ~~or~~ body
piercing, or permanent cosmetics.

* * *

§ 4102. PROHIBITIONS

(a) ~~No~~ A person shall not practice tattooing, permanent cosmetics, or body
piercing unless that person is ~~registered~~ licensed in accordance with the
provisions of this chapter.

(b) ~~No~~ A person under ~~the age of 18~~ may years of age shall not practice
tattooing, permanent cosmetics, or body piercing.

* * *

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

§ 4103. DIRECTOR; FUNCTION; COMMISSIONER OF HEALTH; RULES

(a) The ~~director~~ Director shall administer the requirements of this chapter
and shall:

(1) Provide general information to applicants for ~~registration~~ licensure as an operator.

* * *

(3) Explain appeal procedures to ~~registered~~ licensed operators and applicants and complaint procedures to the public.

(4) Receive applications for ~~registration~~ licensure, ~~register~~ license applicants pursuant to this chapter, renew ~~registrations~~ licenses, and revoke, reinstate, or condition ~~registrations~~ licenses as ordered by an administrative law officer.

* * *

(c) The ~~director~~ Director may adopt rules necessary to perform his or her duties pursuant to this chapter. These rules may include provisions governing the supervision and temporary licensure of tattoo artists, body piercers, and permanent cosmetologists, as may be necessary to allow this State to be a venue for appropriately regulated special events such as conventions, festivals, or professional conferences.

* * *

§ 4104. ~~ADVISORY~~ ADVISOR APPOINTEES

(a)(1) The Secretary of State shall appoint:

(A) a professional in the field of public health and medicine from a list of persons provided by the Commissioner of Health; and

(B) two ~~registered~~ licensed operators who have been practicing tattooing and body piercing for at least the three years immediately preceding appointment and who shall actively be engaged in the practice of tattooing and body piercing in Vermont during incumbency.

* * *

§ 4105. ~~REGISTRATION;~~ APPRENTICESHIP REQUIREMENTS FOR
LICENSURE

(a) Initial registration.

(1) A person who intends to engage in the practice of tattooing, permanent cosmetics, or body piercing in this State shall register with the Office of Professional Regulation and shall pay the required fee.

(2) Registration shall be in the form required by the Director and shall include such information as the Director may require concerning the location of the registrant's practice, the registrant's qualification, and the nature of the services offered.

(b) Tattooists and body piercers.

(1)(A) As a prerequisite to ~~registration~~ licensure, a tattooist or body piercer applicant shall provide proof of an apprenticeship of at least 1,000 hours of experience obtained within two calendar years working under the direct supervision of a body piercer or tattooist ~~registered~~ licensed and in good

standing with this State or the state in which he or she is regulated, and who has been in practice a minimum of three years.

(B) Proof may be in the form of a sworn affidavit from the supervising tattooist or body piercer, including information as the Director may reasonably require on forms provided by the Director.

* * *

(4) As used in this subsection, “good standing” shall mean that the tattooist or body piercer supervisor holds a current, unrestricted ~~registration~~ license in this State or an unrestricted authorization to practice tattooing or body piercing in another state. A tattooist or body piercer who holds a restricted ~~registration~~ license or restricted authorization to practice may petition the Director for permission to be a tattooist or body piercer supervisor, which may be granted by the Director for good cause shown.

(c) Permanent cosmetologists.

(1)(A) As a prerequisite to ~~registration~~ licensure for the practice of permanent cosmetics, an applicant shall provide proof of a course of approved study lasting at least 60 hours.

(B)(i) In addition, the applicant shall obtain at least 40 hours of practical experience, within two calendar years preceding the application, working under the direct supervision of a tattooist or permanent cosmetologist

~~registered~~ licensed and in good standing with this State or the state in which he or she is regulated, and who has been in practice a minimum of three years.

(ii) Proof may be in the form of a sworn affidavit from the supervising permanent cosmetologist or tattooist, including information as the Director may reasonably require on forms provided by the Director.

* * *

(4) As used in this subsection, “in good standing” shall mean that the permanent cosmetologist or tattooist supervisor holds a current, unrestricted ~~registration~~ license in this State or an unrestricted authorization to practice permanent cosmetics or tattooing in another state. A permanent cosmetologist or tattooist who holds a restricted ~~registration~~ license or restricted authorization to practice may petition the Director for permission to be a supervisor, which the Director may grant for good cause shown.

(d) Shops. ~~No~~ A shop shall not operate in this State without first registering with the Office of Professional Regulation and paying a fee of \$100.00. Registration shall be in the form required by the Director.

(1) ~~No~~ A shop shall not be granted registration unless the shop complies with this chapter and rules adopted under this chapter.

(2) All shops shall designate a person, who is ~~registered~~ licensed under this chapter in the practice of tattooing or body piercing, who shall be responsible for overall cleanliness and sanitation of the shop.

(3) The practice of tattooing or body piercing shall be permitted only in registered shops.

(4) The practice of permanent cosmetics may be performed anywhere the practice of tattooing is permitted, on the premises of a health care professional licensed pursuant to this title, or on premises meeting the sanitation requirements of this chapter as determined by the Director or as set forth by rule.

§ 4106. RENEWALS

(a) ~~Registrations~~ Licenses and registrations shall be renewed every two years upon payment of the required fee.

(b) ~~Biennially, the director shall forward a renewal form to each registered operator. Upon receipt of the completed form and the renewal fee, the director shall issue a registration. [Repealed.]~~

(c) As a condition of renewal, a licensee or registrant shall submit to the ~~director~~ Director proof of at least three hours of continuing education in the area of universal precautions and infectious diseases.

§ 4108. UNPROFESSIONAL CONDUCT

(a) A licensed or registered operator or applicant shall not engage in unprofessional conduct.

* * *

(c) After hearing and upon a finding of unprofessional conduct, an administrative law officer may take disciplinary action against a licensed or registered tattooist operator or applicant.

§ 4109. DISCLOSURE INFORMATION

The ~~director~~ Director shall adopt rules requiring ~~registered~~ licensed operators to disclose to each new client before the first treatment, the operator's professional qualifications and experience, the infection control procedures and public health practices to be followed to protect the public from communicable diseases, the actions that constitute unprofessional conduct, the method for filing a complaint or making a consumer inquiry, and provisions relating to the manner in which the information shall be displayed and signed by both the operator and the client.

Sec. 30. TRANSITIONAL PROVISION; TATTOOISTS, BODY PIERCERS,
AND PERMANENT COSMETOLOGISTS; LICENSURE

On the effective date of this act, a tattooist, body piercer, or permanent cosmetologist registered under 26 V.S.A. chapter 79 shall be considered to be licensed under that chapter in accordance with Sec. 29 of this act.

* * * Athletic Trainers * * *

Sec. 31. 26 V.S.A. § 4151 is amended to read:

§ 4151. DEFINITIONS

As used in this chapter:

* * *

(3) “Athletic training” means the application of principles and methods of conditioning, the prevention, immediate care, recognition, evaluation, assessment, and treatment of athletic and orthopedic injuries within the scope of education and training, the organization and administration of an athletic training program, and the education and counseling of athletes, coaches, family members, medical personnel, and communities in the area of care and prevention of athletic and orthopedic injuries. Athletic training may only be applied in the “traditional setting” and the “clinical setting”:

(A) Without further referral, to athletes participating in organized sports or athletic teams at an interscholastic, intramural, instructional, intercollegiate, amateur, or professional level.

(B) With a referral from a physician, osteopathic physician, advanced practice registered nurse, physician assistant, dentist, or chiropractor, to athletes or the physically active who have an athletic or orthopedic injury and have been determined, by a physician’s examination, to be free of an underlying pathology that would affect treatment.

* * *

* * * Speech-Language Pathologists * * *

Sec. 32. 26 V.S.A. § 4456 is amended to read:

§ 4456. DIRECTOR DUTIES

(a) The Director shall administer the application and renewal process for all licensees under this chapter, and shall:

* * *

(6) with the advice of the advisor appointees, adopt rules necessary to implement the provisions of this chapter, which may include rules providing for the issuance of a restricted, provisional license to a person in the process of completing the postgraduate professional training required by subdivision 4457(3) of this chapter;

* * *

* * * APRN Services in Nursing Homes * * *

Sec. 33. 33 V.S.A. chapter 71, subchapter 3 is redesignated to read:

Subchapter ~~34~~. Receivership Proceedings

Sec. 34. 33 V.S.A. chapter 71, subchapter 3 is added to read:

Subchapter 3. Health Care Services

§ 7151. ADVANCED PRACTICE REGISTERED NURSES; SCOPE OF PRACTICE

Except to the extent prohibited under federal law for purposes of federal financial participation, a nursing home shall permit a licensed advanced

practice registered nurse providing services at the nursing home to perform all services within the advanced practice registered nurse's scope of practice, including:

(1) when providing primary care services, serving as the primary care provider of record;

(2) performing acts of medical diagnosis, including ordering and interpreting diagnostic tests and procedures;

(3) prescribing medications;

(4) prescribing medical, therapeutic, and corrective measures;

(5) initiating written and verbal orders to other health care providers; and

(6) managing and evaluating care.

* * * Effective Dates * * *

Sec. 35. EFFECTIVE DATES

This act shall take effect on July 1, 2017, except:

(1) Sec. 23, 26 V.S.A. § 3320a (appraisal management companies) shall take effect on August 10, 2018; and

(2) this section and the following sections shall take effect on passage:

(A) Sec. 24 (Board of Real Estate Appraisers; rulemaking authority); and

(B) Secs. 33 and 34 (regarding APRN services in nursing homes).