

H.684

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 services provided by the Office shall include:

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(9) Standardizing, to the extent feasible and with the advice of the boards, all applications, licenses, and other related forms and procedures, and adopting uniform procedural rules governing the investigatory and disciplinary process for all boards set forth in section 122 of this chapter.

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(11) Assisting the boards in ~~adopting, amending, and repealing~~ developing rules consistent with the principles set forth in 26 V.S.A. chapter 57. Notwithstanding any provision of law to the contrary, the Secretary of State shall serve as the adopting authority for those rules.

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(g) The Office of Professional Regulation shall ~~create a process~~ establish uniform procedures applicable to all of the professions and boards set forth in section 122 of this chapter, providing for:

(1) ~~accepting appropriate recognition of~~ education, training, or service completed by a member of the U.S. Armed Forces toward the requirements of professional licensure or certification; and

(2) ~~creating a process for educational institutions under the supervision of a licensing board to award educational credits to a member of the U.S. Armed Forces for courses taken as part of the member's military training or service that meet the standards of the American Council on Education; and~~

(3) ~~expediting the~~ expedited issuance of a professional license to a person who is licensed in good standing in another regulatory jurisdiction and:

(A) ~~who is certified or licensed in another state;~~

(B) whose spouse is a member of the U.S. Armed Forces and who has been subject to a military transfer to Vermont; and

(C)(B) who left employment to accompany his or her spouse to Vermont.

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Sec. 2. 3 V.S.A. § 125 is amended to read:

§ 125. FEES

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(b) Unless otherwise provided by law, the following fees shall apply to all professions regulated by the Director in consultation with advisor appointees under Title 26:

(1) Application for registration, \$75.00.

(2) Application for licensure or certification, \$100.00, except application for barbering or cosmetology schools and shops, \$300.00.

(3) Optician trainee registration, \$50.00.

(4) Biennial renewal, \$200.00, except:

(A) Biennial renewal for independent clinical social workers and master's social workers, \$150.00.

(B) Biennial renewal for occupational therapists and assistants, \$150.00.

(C) Biennial renewal for physical therapists and assistants, \$100.00.

(D) Biennial renewal for optician trainees, \$100.00.

(E) Biennial renewal for barbers, cosmetologists, nail technicians, and estheticians, \$130.00.

(F) Biennial renewal for schools of barbering or cosmetology, \$300.00.

(5) Limited temporary license or work permit, \$50.00.

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Sec. 3. 3 V.S.A. § 127 is amended to read:

§ 127. UNAUTHORIZED PRACTICE

(a) When the Office receives a complaint of unauthorized practice, the Director shall refer the complaint to ~~the appropriate board for investigation~~ Office investigators and prosecutors.

(b)(1) A person practicing a regulated profession without authority or an employer permitting such practice may, upon the complaint of the Attorney General or a State's Attorney or an attorney assigned by the Office of Professional Regulation, be enjoined ~~there from~~ therefrom by the Superior Court where the violation occurred or the Washington County Superior Court and may be assessed a civil penalty of not more than \$1,000.00.

(2)(A) The Attorney General or an attorney assigned by the Office of Professional Regulation may elect to bring an action seeking only a civil penalty of not more than \$1,000.00 for practicing or permitting the practice of a regulated profession without authority before the board having regulatory authority over the profession or before an administrative law officer.

(B) Hearings shall be conducted in the same manner as disciplinary hearings.

(3)(A) A civil penalty imposed by a board or administrative law officer under this subsection (b) shall be deposited in the Professional Regulatory Fee Fund established in section 124 of this ~~title~~ chapter for the purpose of providing education and training for board members and advisor appointees.

(B) The Director shall detail in the annual report receipts and expenses from these civil penalties.

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(d)(1) A person whose license has expired for not more than one biennial period may reinstate the license by meeting renewal requirements for the profession, paying the profession's renewal fee, and paying the following nondisciplinary reinstatement penalty:

(A) if reinstatement occurs within 30 days after the expiration date, \$100.00; or

(B) if reinstatement occurs more than 30 days after the expiration date, an amount equal to the renewal fee increased by \$40.00 for every additional month or fraction of a month, provided the total penalty shall not exceed \$1,500.00.

(2) Fees assessed under this subsection shall be deposited into the Regulatory Fee Fund and credited to the appropriate fund for the profession of the reinstating licensee.

(3) A licensee seeking reinstatement may submit a petition for relief from the reinstatement penalty, which a board may grant only upon a finding of exceptional circumstances or extreme hardship to the licensee; provided, however, that fees under this subsection shall not be assessed for any period during which a licensee was a member of the U.S. Armed Forces on active duty.

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Sec. 4. 3 V.S.A. § 128 is amended to read:

§ 128. DISCIPLINARY ACTION TO BE REPORTED TO THE OFFICE

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(c) Information provided to the Office under this section shall be confidential unless the ~~board~~ Office 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. 5. 3 V.S.A. § 129 is amended to read:

§ 129. POWERS OF BOARDS; DISCIPLINE PROCESS

(a) In addition to any other provisions of law, a board may exercise the following powers:

(1) ~~Adopt procedural~~ Consistent with other law and State policy, develop administrative rules governing the investigatory and disciplinary process establishing evidence-based standards of practice appropriate to secure

and promote the public health, safety, and welfare; open and fair competition within the marketplace for professional services; interstate mobility of professionals; and public confidence in the integrity of professional services.

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Sec. 6. 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:

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(25) For providers of clinical care to patients, failing to have in place a plan for responsible disposition of patient health records in the event the licensee should become incapacitated or unexpectedly discontinue practice.

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Sec. 7. 3 V.S.A. § 134 is added to read:

§ 134. LICENSE RENEWAL

(a) A license expires if not renewed biennially on a schedule assigned by the Office, or in the case of a provisional or temporary license, on the date assigned by the Office.

(b) Practice with an expired license is unlawful and exposes a practitioner to the penalties set forth in section 127 of this chapter.

Sec. 8. 3 V.S.A. § 135 is added to read:

§ 135. UNIFORM STANDARD FOR RENEWAL FOLLOWING

EXTENDED ABSENCE

(a) Notwithstanding any provision of law to the contrary, when an applicant seeks to renew an expired or lapsed license after fewer than five years of absence from practice, readiness to practice shall be inferred from completion of any continuing education that would have been required if the applicant had maintained continuous licensure or by any less burdensome showing set forth in administrative rules specific to the profession.

(b) When an applicant seeks to renew an expired or lapsed license after five or more years of absence from practice, the Director may, notwithstanding any provision of law to the contrary and as appropriate to ensure the continued competence of the applicant, determine that the applicant has either:

(1) demonstrated retention of required professional competencies and may obtain an unencumbered license; or

(2) not demonstrated retention of all required professional competencies and should be reexamined or required to reapply in like manner to a new applicant.

(c) The Director may consult with a relevant board or advisor appointees for guidance in assessing continued competence under this section.

Sec. 9. 3 V.S.A. § 136 is added to read:

§ 136. UNIFORM CONTINUING EDUCATION EVALUATION

If continuing education is required by law or rule, the Office shall apply uniform standards and processes that apply to all professions regulated by the Office for the assessment and approval or rejection of continuing education offerings, informed by profession-specific policies developed in consultation with relevant boards and advisor appointees.

Sec. 10. LICENSING FOR IMMIGRANTS SETTLING IN VERMONT;

REPORT

The Director of the Office of Professional Regulation, in consultation with the State Refugee Coordinator, shall examine means of reducing unnecessary barriers to professional licensure for qualified immigrants to Vermont from foreign countries. On or before January 15, 2019, the Director shall submit to

the House and Senate Committees on Government Operations a report of his or her findings and any recommendations for legislative action.

* * * Pollution Abatement Facility Operators * * *

Sec. 11. 10 V.S.A. § 1263 is amended to read:

§ 1263. DISCHARGE PERMITS

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(d) A discharge permit shall:

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(2) Require proper operation and maintenance of any pollution abatement facility necessary in the treatment or processing of the waste by qualified personnel in accordance with standards established by the Secretary and the Director of the Office of Professional Regulation. The Secretary may require that a pollution abatement facility be operated by persons licensed under 26 V.S.A. chapter ~~97~~ 99 and may prescribe the class of license required. The Secretary may require a laboratory quality assurance sample program to ensure qualifications of laboratory analysts.

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* * * Barbers and Cosmetologists * * *

Sec. 12. 26 V.S.A. chapter 6 is amended to read:

CHAPTER 6. BARBERS AND COSMETOLOGISTS

Subchapter 1. General Provisions

§ 271. DEFINITIONS

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

(1) “Barbering” means engaging in the continuing performance, for compensation, of any of the following activities: cutting, shampooing, or styling hair; shaving the face, shaving around the vicinity of the ears and neckline, or trimming facial hair; facials, skin care, or scalp massages, and bleaching, coloring, straightening, ~~permanent waving or permanent-waving~~ hair, or similar work by any means, with hands or mechanical or electrical apparatus or appliances. Barbering also includes esthetics.

(2) ~~“Board” means the board of barbers and cosmetologists.~~

(3) “Cosmetology” means engaging in the continuing performance, for compensation, of any of the following activities:

(A) Work on the hair of any person, including dressing, curling, waving, cleansing, cutting, bleaching, coloring, or similar work by any means, with hands or mechanical or electrical apparatus or appliances.

(B) Esthetics.

(C) Manicuring.

(3) “Director” means the Director of the Office of Professional Regulation.

(4) ~~“Disciplinary action” or “disciplinary cases” includes any action taken by the board against a licensee, registrant, or applicant premised upon a~~

~~finding of wrongdoing or unprofessional conduct by the licensee or applicant.
It includes all sanctions of any kind, excluding obtaining injunctions, but
including issuing warnings, other similar sanctions and ordering restitution.~~

(5) “Esthetics” means massaging, cleansing, stimulating, manipulating, beautifying, or otherwise working on the scalp, face, or neck; by using cosmetic preparations, antiseptics, tonics, lotions, or creams. “Esthetics” does not include the sale or application of cosmetics to customers in retail stores or customers’ homes.

~~(6) “Financial interest” means being:~~

~~(A) a licensed barber;~~

~~(B) a licensed cosmetologist; or~~

~~(C) a person who has invested anything of value in a business that provides barbering or cosmetology services.~~

(5) “Manicuring” or “nail technician practice” means the nonmedical treatment of a person’s fingernails or toenails or the skin in the vicinity of the nails; and includes the use of cosmetic preparations or appliances.

(6) “School of barbering or cosmetology” means a facility or facilities regularly used to train or instruct persons in the practice of barbering or cosmetology.

(7) “Shop” means a facility or facilities regularly used to offer or provide barbering or cosmetology.

§ 272. PROHIBITIONS; OFFENSES

(a) ~~Ne~~ A person shall not practice or attempt to practice barbering or cosmetology or use in connection with the person's name any letters, words, title, or insignia indicating or implying that the person is a barber or cosmetologist unless the person is licensed in accordance with this chapter.

(b) ~~Ne~~ A person who owns or controls a shop or school of barbering or cosmetology shall not permit the practice of barbering or cosmetology unless the shop or school is registered in accordance with this chapter.

(c) A person who violates a provision of this section shall be subject to the penalties provided in 3 V.S.A. § 127.

§ 273. EXEMPTIONS

The provisions of this chapter regulating barbers and cosmetologists shall not:

(1) affect or prevent the practice of barbering or cosmetology by a student at a school recognized by the ~~board~~ Director;

* * *

(3) prohibit a licensee from providing barbering or cosmetology services outside a licensed shop so long as those services are limited to only:

(A) patients or residents within a hospital, nursing home, community care home, or any similar facility;

(B) persons who are homebound, disabled, or in a hospice or similar program, or to deceased persons in a funeral home;

(C) persons as part of a special ~~occasion~~ event ~~so long as those services are limited to hair styling and makeup and,~~ provided the sanitation standards expected of licensees in licensed shops are followed;

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(5) affect or prevent the practice of barbering or cosmetology outside a registered shop or school by licensees in accordance with rules adopted by the ~~board~~ Director;

(6) affect or prevent the practice of barbering or cosmetology within the confines of a State correctional facility by a person incarcerated therein, who has completed training acceptable to the Commissioner of Corrections; or

(7) affect or prevent the practice of natural hair braiding or styling, provided such practice does not involve cutting; the application of chemicals, dyes, or heat; or other changes to the structure of hair.

§ 274. ~~PENALTY~~

~~A person who violates any provision of section 272 of this title shall be subject to the penalties provided in 3 V.S.A. § 127(e). [Repealed.]~~

Subchapter 2. Administration

~~§ 275. CREATION OF BOARD~~

~~(a) A board of barbers and cosmetologists is created, consisting of five members. Members shall be appointed by the governor pursuant to 3 V.S.A. §§ 129b and 2004. Members shall be residents of this state.~~

~~(b) One member of the board shall be a member of the public who has no financial interest in barbering or cosmetology other than as a consumer or possible consumer of its services. He or she shall have no financial interest personally or through a spouse, parent, child, brother or sister.~~

~~(c) Two members of the board shall be licensed cosmetologists.~~

~~(d) One member of the board shall be a licensed barber.~~

~~(e) The remaining member shall be a person licensed under this chapter or a public member.~~

~~(f) A majority of the members of the board shall constitute a quorum for transacting business, and all action shall be taken upon a majority vote of the members present and voting. [Repealed.]~~

~~§ 276. GENERAL POWERS AND DUTIES OF THE BOARD DIRECTOR~~

~~(a) The board Director shall:~~

~~(1) Adopt adopt rules that:~~

(A) ~~Prescribe~~ prescribe sanitary and safety standards for shops, schools, and other facilities used for the practice of barbering and cosmetology;

(B) ~~Prescribe~~ prescribe safe and sanitary practices for the performance of activities related to the practice of barbering and cosmetology;

(C) ~~Establish~~ establish standards for apprenticeships, courses, and examinations to be completed by an applicant for licensure under this chapter;

(D) establish qualifications for licensure under this chapter as:

(i) a barber, provided mandated formal training shall not exceed 750 hours;

(ii) a cosmetologist, provided mandated formal training shall not exceed 1,000 hours;

(iii) an esthetician, provided mandated formal training shall not exceed 500 hours; and

(iv) a nail technician, provided mandated formal training shall not exceed 200 hours; and

(E)(i) establish criteria for apprenticeships that would enable a person seeking licensure under this chapter to train under an appropriately qualified Vermont licensee in order to attain licensure without mandated formal training; and

(ii) limit the duration of a required apprenticeship to not more than 150 percent of the duration of the corresponding formal training.

(b)(1) ~~The board~~ Director may inspect shops and schools and other places used for the practice of barbering and cosmetology.

(2) ~~No~~ A fee shall not be charged for initial inspections under this subsection; however, if the ~~board~~ Director determines that it is necessary to inspect the same premises in the same ownership more than once in any two-year period, the ~~board~~ Director shall charge a reinspection fee.

(3) The ~~board~~ Director may waive all or a part of the reinspection fee in accordance with criteria established by rule.

§ 276a. ADVISOR APPOINTEES

(a)(1) The Secretary of State shall appoint one barber and one cosmetologist for five-year staggered terms to serve at the Secretary's pleasure as advisors in matters relating to barbering and cosmetology. One of the initial appointments shall be for less than a five-year term.

(2) An appointee shall have not less than three years' experience as a barber or cosmetologist immediately preceding appointment; shall be licensed as a barber or cosmetologist in Vermont; and shall be actively engaged in the practice of barbering or cosmetology in this State during incumbency.

(b) The Director shall seek the advice of the advisor appointees in carrying out the provisions of this chapter.

Subchapter 3. Licenses

§ 277. ~~QUALIFICATIONS; BARBER~~

~~(a) A person shall be eligible for licensure as a barber if the person is at least 18 years of age, has a high school or general educational development diploma, and has satisfactorily completed an accredited barber school program; or has satisfactorily completed an apprenticeship of not less than 12 months and not more than 36 months consisting of a minimum of 2,000 hours and a maximum of 3,000 hours in a manner prescribed by the board in addition to areas of study, prescribed by the board, by rule, has a high school or general educational development diploma, and has passed the examination described in section 283 of this title.~~

~~(b) The board shall issue a limited barbering license, with an endorsement for cutting, shampooing, and styling hair and for mustache and beard trimming, to any person incarcerated in a state correctional facility who completes, while under the direct personal supervision of a barber licensed by the board, a course of training of not less than 10 hours in cutting, shampooing, and styling hair and trimming of mustache and beard. Such limited license shall be valid only within a state correctional facility. No fees shall be charged for a limited license issued under this subsection. [Repealed.]~~

§ 278. ~~QUALIFICATIONS; COSMETOLOGIST~~

~~A person shall be eligible for licensure as a cosmetologist if the person is at least 18 years of age, has a high school or general educational development diploma, and has satisfactorily completed the following:~~

~~(1) a course of study of at least 1,500 hours at a school of cosmetology approved by an accrediting body recognized by the United States Department of Education or approved by the board under standards that the board has adopted by rule and passage of the examination described in section 283 of this title; or~~

~~(2) an apprenticeship of not less than 12 months and not more than 36 months consisting of not less than 2,000 hours and a maximum of 3,000 hours in a manner prescribed by the board in addition to courses, as prescribed by the board by rule, and passage of the examination described in section 283 of this title. [Repealed.]~~

§ 279. ~~QUALIFICATIONS; ESTHETICIAN~~

~~A person shall be eligible for licensure as an esthetician if the person is at least 18 years of age, has a high school or general educational development diploma, and has satisfactorily completed the following:~~

~~(1) a course of study in esthetics of at least 600 hours at a school of cosmetology approved by an accrediting body recognized by the United States~~

~~Department of Education or approved by the board under standards that the board has adopted by rule; or~~

~~(2) an apprenticeship of not less than 12 months and not more than 18 months, consisting of a minimum of 800 hours and a maximum of 1,200 hours, as prescribed by the board by rule; and has passed the examination described in section 283 of this title. [Repealed.]~~

§ 280. QUALIFICATIONS; NAIL TECHNICIAN

~~A person shall be eligible for licensure as a nail technician if the person is at least 18 years of age, has a high school or general educational development diploma, and has satisfactorily completed:~~

~~(1) a course of study in manicuring of at least 400 hours at a school of cosmetology approved by an accrediting body recognized by the United States Department of Education or approved by the board under standards that the board has adopted by rule; or~~

~~(2) an apprenticeship of not less than six months and not more than 12 months consisting of a minimum of 600 hours and a maximum of 900 hours, as prescribed by the board by rule, and has passed the examination described in section 283 of this title. [Repealed.]~~

§ 280a. ELIGIBILITY FOR LICENSURE

An applicant for licensure as a barber, cosmetologist, esthetician, or nail technician shall meet the qualifications for licensure established by the Director under the provisions of subchapter 2 of this chapter.

§ 281. POSTSECONDARY SCHOOL OF BARBERING AND
COSMETOLOGY; CERTIFICATE OF APPROVAL

(a) ~~No~~ A school of barbering or cosmetology shall not be granted a certificate of approval unless the school:

* * *

(4) Requires a school term of training:

~~(A) in the case of a school of barbering, of not less than 1,000 hours for a complete course that includes all or the majority of the practices of barbering, and includes practical demonstrations and theoretical studies in sanitation, sterilization, the use of antiseptics, and electrical appliances, consistent with the practical and theoretical requirements applicable to barbering or any practice of barbering; and~~

~~(B) in the case of a school of cosmetology, requires a school term of training of not less than 1,500 hours for a complete course that includes all or the majority of the practices of cosmetology, and includes practical demonstrations and theoretical studies in sanitation, sterilization, the use of antiseptics, cosmetics, and electrical appliances, consistent with the practical~~

~~and theoretical requirements applicable to cosmetology or any practice of~~
~~cosmetology~~ consistent with formal training requirements established by rule,
which shall include practical demonstrations and theoretical studies in
sanitation, sterilization, the use of antiseptics, and the use of appliances,
devices, treatments, and preparations relevant to the field of licensure.

(b) Regional vocational centers may offer courses of instruction in
barbering or cosmetology without a certificate of approval from the ~~Board~~
Director, and State correctional facilities may offer courses of instruction in
barbering without a certificate of approval from the ~~Board~~ Director; however,
credits for licensing ~~will~~ shall only be given for courses that meet the ~~Board's~~
Director's standards for courses offered in postsecondary schools of barbering
or cosmetology certified by the ~~Board~~ Director.

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§ 282. SHOP; LICENSE

(a) ~~No~~ A shop shall not be granted a license unless the shop complies with
the rules of the ~~board~~ Director and has a designated licensee responsible for
overall cleanliness, sanitation, and safety of the shop.

(b) The practices of barbering and cosmetology shall be permitted only in
shops licensed by the ~~board~~ Director, except as provided in sections 273 and
281 of this ~~title~~ chapter and the rules of the ~~board~~ Director.

§ 283. EXAMINATION

(a) An applicant who is otherwise eligible for licensure and has paid the required fees shall be examined.

(b)(1) The examination for a license shall include both practical demonstrations and written or oral tests in the area of practices for which a license is applied and other related studies or subjects as the ~~board~~ Director may determine necessary.

(2) The examination shall not be confined to any specific system or method and shall be consistent with a prescribed curriculum as provided by this chapter.

(c) The ~~board~~ Director may limit, by rule, the number of times a person may take an examination.

§ 284. ISSUANCE OF LICENSE

(a) The ~~board~~ Director shall issue a license to an applicant who has passed the examination as determined by the ~~board~~ Director, has paid the required fee, and has completed all the requirements for the particular license.

(b) The ~~board~~ Director shall issue a license to the person who owns or controls a shop or school of barbering or cosmetology who has paid the required fee and is in compliance with the rules of the ~~board~~ Director and the provisions of this chapter.

(c) The license shall be conspicuously displayed for the customer in the licensee's principal office, place of business, or place of employment.

§ 285. LICENSES FROM OTHER JURISDICTIONS

Without requiring an examination, the ~~board~~ Director shall issue an appropriate license to a person who is licensed or certified in good standing under the laws of another jurisdiction with requirements ~~that the board~~ considers to be:

(1) substantially equal to those of this state State; or

(2) materially less rigorous than those of this State, if the person has had 1,500 documented hours of practice in not less than one year.

§ 286. ~~RENEWAL AND REINSTATEMENT~~

~~The holder of a license issued by the board pursuant to this chapter may biennially renew the license upon payment of the renewal fee. A license that has not been renewed by the renewal date shall expire. Within three years of the date of expiration, the holder of the expired license may apply for reinstatement upon the payment of the renewal fee and a renewal penalty. If a license is not reinstated within three years of expiration, the applicant shall meet the requirements of section 284 or 285 of this title before the license may be reinstated. [Repealed.]~~

§ 287. ~~FEES~~

~~Applicants and persons regulated under this chapter shall pay the following fees:~~

~~(1) Application:~~

(A) Barber	\$110.00
(B) Cosmetologist	\$110.00
(C) Nail technician	\$110.00
(D) Shop	\$330.00
(F) School	\$330.00

~~(2) Biennial renewal:~~

(A) Barber	\$130.00
(B) Cosmetologist	\$130.00
(C) Nail technician	\$130.00
(D) Esthetician	\$130.00
(E) Shop	\$225.00
(F) School	\$330.00

(3) Reinspection	\$100.00
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[Repealed.]

§ 288. UNPROFESSIONAL CONDUCT

~~The conduct listed in this section and in 3 V.S.A. § 129a constitutes unprofessional conduct when committed by a licensee. 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:~~

~~(1) Practicing or offering to practice beyond the scope permitted by law.~~

~~(2) Willfully materially misrepresenting the qualifications or experience of an applicant in the practice of the occupation, whether by commission or omission.~~

~~(3) Failing to adequately supervise employees who are engaged in any of the practices of barbering or cosmetology and nail technician practice.~~

~~(4) Harassing, intimidating, or abusing a client or customer.~~

~~(5) Performing treatments or providing services which a licensee is not qualified to perform or which are beyond the licensee's education, training, capabilities, experience, or scope of practice. [Repealed.]~~

~~§ 289. LICENSURE BY ENDORSEMENT~~

~~The board may issue a license to an individual who is currently licensed or certified in another jurisdiction in good standing, provided the individual has been in active practice for at least three years immediately preceding application or has 2,000 documented hours of practice in not less than one year. [Repealed.]~~

Sec. 13. DIRECTOR OF PROFESSIONAL REGULATION; BARBERS
AND COSMETOLOGISTS; RULEMAKING

Prior to the effective date of Sec. 12 of this act, the Director of the Office of Professional Regulation shall adopt rules in accordance with the amendments to 26 V.S.A. chapter 6 (barbers and cosmetologists) contained in that section.

* * * Dentistry * * *

Sec. 14. 26 V.S.A. chapter 12 is amended to read:

CHAPTER 12. DENTISTS, DENTAL THERAPISTS, DENTAL
HYGIENISTS, AND DENTAL ASSISTANTS

* * *

Subchapter 3. Dentists

§ 601. LICENSE BY EXAMINATION

To be eligible for licensure as a dentist, an applicant shall:

- (1) have attained the age of majority;
- (2) be a graduate of:

(A) a dental college accredited by the Commission on Dental Accreditation of the American Dental Association; or
(B) a program of foreign dental training and a postgraduate program accredited by the Commission on Dental Accreditation of the American Dental Association that is acceptable to the Board; and

(3) meet the certificate, examination, and training requirements established by the ~~board~~ Board by rule.

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Subchapter 6. Renewals, Continuing Education, and Fees

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§ 663. ~~LAPSED LICENSES OR REGISTRATIONS~~

~~(a) Failure to renew a license by the renewal date shall result in a lapsed license subject to late renewal penalties pursuant to 3 V.S.A. § 125(a)(1).~~

~~(b) A person whose license or registration has lapsed may not practice and may be subject to disciplinary action.~~

~~(c) Notwithstanding the provisions of subsection (a) of this section, a person shall not be required to pay renewal fees or late renewal penalties for years spent on active duty in the armed forces of the United States. A person who returns from active duty shall be required to pay only the most current biennial renewal fee. [Repealed.]~~

* * * Nursing * * *

Sec. 15. 26 V.S.A. chapter 28 is amended to read:

CHAPTER 28. NURSING

Subchapter 1. General Provisions

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§ 1573. VERMONT STATE BOARD OF NURSING

(a) There is hereby created a the Vermont State Board of Nursing consisting of six registered nurses, including at least two licensed as advanced practice registered nurses; two practical nurses; one nursing assistant; and two public members. Board members shall be appointed by the Governor pursuant to 3 V.S.A. §§ 129b and 2004.

* * *

~~(d) Six members of the Board shall constitute a quorum.~~

§ 1579. ~~ISSUANCE AND DURATION OF LICENSES~~

~~Licenses and endorsements shall be renewed every two years on a schedule determined by the Office of Professional Regulation. [Repealed.]~~

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§ 1584. PROHIBITIONS; OFFENSES

(a) It shall be a violation of this chapter for any person, including any corporation, association, or individual, to:

* * *

~~(8) [Deleted.]~~

(b) Any person violating this section shall be subject to the penalties provided in 3 V.S.A. § 127(e).

~~(e) [Deleted.]~~

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Subchapter 2. Advanced Practice Registered Nurses

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§ 1612. ~~PRACTICE GUIDELINES~~

~~(a) APRN licensees who intend to or are engaged in clinical practice as an APRN shall submit for review individual practice guidelines and receive Board approval of the practice guidelines. Practice guidelines shall reflect current standards of advanced nursing practice specific to the APRN's role, population focus, and specialty.~~

~~(b) Licensees shall submit for review individual practice guidelines and receive Board approval of the practice guidelines:~~

~~(1) prior to initial employment;~~

~~(2) if employed or practicing as an APRN, upon application for renewal of an APRN's registered nurse license; and~~

~~(3) prior to a change in the APRN's employment or clinical role, population focus, or specialty. [Repealed.]~~

§ 1613. TRANSITION TO PRACTICE

(a) ~~Graduates~~ An APRN with fewer than 24 months and 2,400 hours of licensed active advanced nursing practice in an initial role and population focus or fewer than 12 months and ~~1,600~~ 1,200 hours for any additional role and population focus shall ~~have~~ be required in accordance with Board rule to:

(1) establish a formal agreement with a collaborating provider as required by board rule. APRNs shall have and maintain signed and dated copies of all required collaborative provider agreements as part of the practice guidelines. An APRN required to practice with a collaborative provider agreement may not engage in solo practice, except with regard to a role and population focus in which the APRN has met the requirements of this subsection; or

(2) document that the APRN's place of employment is a clinic, hospital, or practice group that employs two or more additional individuals who have been licensed for four or more years to practice medicine under chapter 23 or 33 of this title or advanced practice registered nursing under this chapter. One of those more experienced licensees shall be primarily located on site when the APRN is providing clinical health care services and accessible by phone or otherwise by alternative means, as defined by Board rule.

(b) An APRN who satisfies the requirements to engage in solo practice pursuant to subsection (a) of this section shall notify the ~~board~~ Board that these requirements have been met.

§ 1614. APRN RENEWAL

An APRN license renewal application shall include:

~~(1)~~ documentation of completion of the APRN practice requirement;

~~(2) and possession of a current certification by a national APRN specialty certifying organization;~~

~~(3) current practice guidelines; and~~

~~(4) a current collaborative provider agreement if required for transition to practice.~~

§ 1615. ADVANCED PRACTICE REGISTERED NURSES;

REGULATORY AUTHORITY; UNPROFESSIONAL CONDUCT

(a) In addition to the provisions of 3 V.S.A. § 129a and section 1582 of this chapter, the Board may deny an application for licensure, renewal, or reinstatement; or may revoke, suspend, or otherwise discipline an advanced practice registered nurse upon due notice and opportunity for hearing if the person engages in the following conduct:

* * *

~~(4) Practice beyond those acts and situations that are within the practice guidelines approved by the Board for an APRN and within the limits of the knowledge and experience of the APRN, and, for an APRN who is practicing under a collaborative agreement, practice beyond those acts and situations that are within both the usual scope of the collaborating provider's practice and the terms of the collaborative agreement.~~

~~(5) For an APRN who acts as the collaborating provider for an APRN who is practicing under a collaboration agreement, allowing the mentored~~

~~APRN to perform a medical act that is outside the usual scope of the mentor's own practice or that the mentored APRN is not qualified to perform by training or experience or that is not consistent with the requirements of this chapter and the rules of the Board. [Repealed.]~~

* * *

Subchapter 3. Registered Nurses and Practical Nurses

* * *

§ 1622. REGISTERED NURSE LICENSURE BY ENDORSEMENT

To be eligible for licensure as a registered nurse by endorsement, an applicant shall:

(1) hold a current license to practice registered nursing in another U.S. jurisdiction based on education in a ~~U.S.~~ nursing program acceptable to the Board; and

(2) meet practice requirements set by the Board by rule.

* * *

§ 1626. PRACTICAL NURSE LICENSURE BY ENDORSEMENT

To be eligible for licensure as a practical nurse by endorsement, an applicant shall:

(1) hold a current license to practice practical nursing in another U.S. jurisdiction based on education in a ~~U.S.~~ nursing program acceptable to the Board; and

(2) meet practice requirements set by the Board by rule.

* * *

Subchapter 4. Nursing Assistants

* * *

§ 1645. RENEWAL

(a) To renew a license, a nursing assistant shall meet active practice requirements set by the Board by rule.

(b) The Board shall credit as active practice those activities, regardless of title or obligation to hold a license, that reasonably tend to reinforce the training and skills of a licensee.

* * *

Sec. 16. NURSING COMPACT ASSESSMENT

(a) The Board of Nursing and the Office of Professional Regulation shall assess the costs and benefits of participation in licensure compacts for nurses at various levels of licensure.

(b) On or before March 15, 2019, the Office shall report its assessment to the House and Senate Committees on Government Operations. The report may be in verbal form.

* * * Pharmacy * * *

Sec. 17. 26 V.S.A. chapter 36 is amended to read:

CHAPTER 36. PHARMACY

Subchapter 1. General Provisions

* * *

§ 2022. DEFINITIONS

As used in this chapter:

* * *

(4) “Disciplinary action” or “disciplinary cases” includes any action taken by the Board against a licensee or others premised upon a finding of ~~wrongdoing or~~ unprofessional conduct by the licensee. It includes all sanctions of any kind, including obtaining injunctions, issuing warnings, and other similar sanctions.

* * *

(7) “Drug outlet” means all pharmacies, ~~nursing homes, convalescent homes, extended care facilities, drug abuse treatment centers, family planning clinics, retail stores, hospitals,~~ wholesalers, manufacturers, ~~any authorized treatment centers, and mail order vendors~~ other entities that are engaged in the dispensing, delivery, or distribution of prescription drugs.

* * *

(10) “Manufacturer” means ~~anyone who is engaged in manufacturing, preparing, propagating, compounding, processing, packaging, repackaging, or labeling of a prescription drug~~ a person, regardless of form, engaged in the manufacturing of drugs or devices.

(11)(A) “Manufacturing” means the production, preparation, propagation, conversion, or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis.

(B) “Manufacturing” includes the packaging or repackaging of a drug or device or the labeling or relabeling of the container of a drug or device for resale by a pharmacy, practitioner, or other person.

(12) “Nonprescription drugs” means nonnarcotic medicines or drugs that may be sold without a prescription and that are prepackaged for use by the consumer and labeled in accordance with the requirements of the statutes and regulations of this State and the federal government.

~~(12)~~(13) “Pharmacist” means an individual licensed under this chapter.

~~(13)~~(14) “Pharmacy technician” means an individual who performs tasks relative to dispensing only while assisting, and under the supervision and control of, a licensed pharmacist.

~~(14)~~(15)(A) “Practice of pharmacy” means:

- (i) ~~the interpretation~~ interpreting and ~~evaluation of~~ evaluating prescription orders;
- (ii) ~~the~~ compounding, dispensing, and labeling of drugs and legend devices (except labeling by a manufacturer, packer, or distributor of nonprescription drugs and commercially packaged legend drugs and legend devices);
- (iii) ~~the participation~~ participating in drug selection and drug utilization reviews;
- (iv) ~~the proper and safe storage of~~ properly and safely storing drugs and legend devices, and ~~the maintenance of~~ maintaining proper records therefor;
- (v) ~~the responsibility for~~ advising, where necessary or where regulated, of therapeutic values, content, hazards, and use of drugs and legend devices;
- (vi) ~~the~~ providing of patient care services within the pharmacist's authorized scope of practice;
- (vii) ~~the~~ optimizing of drug therapy through the practice of clinical pharmacy; and
- (viii) ~~the offering or performing of~~ or offering to perform those acts, services, operations, or transactions necessary in the conduct, operation, management, and control of pharmacy.

(B) “Practice of clinical pharmacy” or “clinical pharmacy” means:

* * *

(ii) ~~the provision of~~ providing patient care services within the pharmacist’s authorized scope of practice, including medication therapy management, comprehensive medication review, and postdiagnostic disease state management services; or

(iii) ~~the practice of pharmacy by a pharmacist practicing pharmacy~~ pursuant to a collaborative practice agreement.

(C) ~~A rule shall not be adopted by the~~ The Board under this chapter ~~that shall require~~ not adopt any rule requiring that pharmacists or pharmacies be involved in the sale and distribution of nonprescription drugs by a licensed pharmacist or under the supervision of a licensed pharmacist or otherwise interfere with the sale and distribution of such medicines; provided, however, that nothing in this subdivision (C) shall limit the authority of the Board to adopt rules applicable to the elective sale or distribution of nonprescription drugs by pharmacists or pharmacies.

~~(15)~~(16) “Practitioner” means an individual authorized by the laws of the United States or its jurisdictions or Canada to prescribe and administer prescription drugs in the course of his or her professional practice and permitted by that authorization to dispense, conduct research with respect to, or

administer drugs in the course of his or her professional practice or research in his or her respective state or province.

~~(16)~~(17) “Prescription drug” means any human drug required by federal law or regulation to be dispensed only by a prescription, including finished dosage forms and active ingredients subject to Section 503(b) of the Federal Food, Drug and Cosmetic Act.

~~(17)~~(18) “Wholesale distribution” means distribution of prescription drugs to persons other than a consumer or patient, but does not include:

* * *

~~(18)~~(19) “Wholesale ~~drug~~ distributor” means any person who is engaged in wholesale distribution of prescription drugs, but does not include any ~~for hire~~ for-hire carrier or person hired solely to transport prescription drugs.

~~(19)~~(20) “Collaborative practice agreement” means a written agreement between a pharmacist and a health care facility or prescribing practitioner that permits the pharmacist to engage in the practice of clinical pharmacy for the benefit of the facility’s or practitioner’s patients.

* * *

Subchapter 2. Board of Pharmacy

§ 2031. CREATION; APPOINTMENT; TERMS; ORGANIZATION

(a)(1) There is hereby created the ~~board of pharmacy~~ Board of Pharmacy to enforce the provisions of this chapter.

(2) The ~~board~~ Board shall consist of seven members, five of whom shall be pharmacists licensed under this chapter with five years of experience in the practice of pharmacy in this ~~state~~ State. Two members shall be members of the public having no financial interest in the practice of pharmacy.

(b) Members of the ~~board~~ Board shall be appointed by the ~~governor~~ Governor pursuant to 3 V.S.A. §§ 129b and 2004. ~~A majority of members shall constitute a quorum, and all action shall be taken upon a majority vote of the members present and voting.~~

* * *

Subchapter 3. Licensing

§ 2041. UNLAWFUL PRACTICE

(a) It shall be unlawful for any person to engage in the practice of pharmacy unless licensed to so practice under the provisions of this chapter; provided, however, physicians, dentists, veterinarians, osteopaths, or other practitioners of the healing arts who are licensed under the laws of this State may dispense and administer prescription drugs to their patients in the practice of their respective professions where specifically authorized to do so by statute of this State.

(b)(1) ~~Any person who shall be found by the 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 or a State's Attorney or an attorney assigned by the Office of Professional Regulation may commence a criminal action against any person unlawfully engaging in the practice of pharmacy, and upon conviction, the person, including a business entity, violating this section shall be subject to the penalties provided in 3 V.S.A. § 127.~~

* * *

§ 2042b. PHARMACY TECHNICIANS; NONDISCRETIONARY TASKS;
SUPERVISION

* * *

(f)(1) A pharmacist on duty shall be directly responsible for the conduct of a pharmacy technician.

(2) A pharmacist responsible for a pharmacy technician shall be on the premises at all times, or in the case of a remote pharmacy approved by the Board, immediately available by a functioning videoconference link.

(3) A pharmacist shall verify a prescription before medication is provided to the patient.

* * *

§ 2044. ~~RENEWAL OF LICENSES~~

~~Each person or entity licensed or regulated under the provisions of this chapter shall apply for renewal biennially by a date established by the director of the office of professional regulation. [Repealed.]~~

§ 2045. ~~REINSTATEMENT~~

~~(a) The board may renew a license which has lapsed upon payment of the required fee and the late renewal penalty, provided all the requirements for renewal set by the board by rule, have been satisfied. The board shall not require payment of renewal fees for years during which the license was lapsed.~~

~~(b) As a condition of renewal, the board may by rule set reinstatement requirements for those whose licenses have lapsed for more than five years. [Repealed.]~~

* * *

Subchapter 4. ~~Discipline~~

§ 2051. ~~UNPROFESSIONAL CONDUCT~~

~~The board of pharmacy may refuse to issue or renew, or may suspend, revoke, or restrict the licenses of any person, pursuant to the procedures set forth in section 2052 of this title, upon one or more of the following grounds and upon the grounds set forth in 3 V.S.A. § 129a:~~

~~(1) Unprofessional conduct as that term is defined by the rules and regulations of the board;~~

~~(2) Incapacity of a nature that prevents a pharmacist from engaging in the practice of pharmacy with reasonable skill, competence, and safety to the public;~~

~~(3) Fraud or intentional misrepresentation by a licensee in securing the issuance or renewal of a license;~~

~~(4) Engaging or aiding and abetting an individual to engage in the practice of pharmacy without a license or to falsely use the title of pharmacist;~~

~~(5) Being found by the board to be in violation of any of the provisions of this chapter or rules and regulations adopted pursuant to this chapter.~~

~~§ 2052. PENALTIES AND REINSTATEMENT~~

~~(a)(1) Upon the finding, after notice and opportunity for hearing, of the existence of grounds for discipline of any person or any drug outlet holding a license, under the provisions of this chapter, the board of pharmacy may impose one or more of the following penalties:~~

~~(A) Suspension of the offender's license for a term to be determined by the board;~~

~~(B) Revocation of the offender's license;~~

~~(C) Restriction of the offender's license to prohibit the offender from performing certain acts or from engaging in the practice of pharmacy in a particular manner for a term to be determined by the board;~~

~~(D) Placement of the offender under the supervision of the board for a period to be determined and under conditions set by the board;~~

~~(E) A requirement to perform up to 100 hours of public service, in a manner and at a time and place to be determined by the board;~~

~~(F) A requirement of a course of education or training;~~

~~(G) An administrative penalty as provided in 3 V.S.A. § 129a(d).~~

~~(2) [Deleted.]~~

~~(b) Any person or drug outlet whose license to practice pharmacy in this state has been suspended, revoked, or restricted pursuant to this chapter, whether voluntarily or by action of the board, shall have the right, at reasonable intervals, to petition the board for reinstatement of such license. Such petition shall be made in writing and in the form prescribed by the board. Upon hearing, the board may in its discretion grant or deny such petition or it may modify its original finding to reflect any circumstances which have changed sufficiently to warrant such modifications.~~

~~(c) Nothing herein shall be construed as barring criminal prosecutions for violations of this chapter where such violations are deemed as criminal offenses in other statutes of this state or of the United States.~~

~~(d) All final decisions by the board shall be subject to review pursuant to 3 V.S.A. § 130a. [Repealed.]~~

Subchapter 5. Registration of Facilities

§ 2061. REGISTRATION AND LICENSURE

- (a) All drug outlets shall biennially register with the Board of Pharmacy.
- (b) Each drug outlet shall apply for a license in one or more of the

following classifications:

- (1) Retail ~~drug outlet~~.
- (2) Institutional ~~drug outlet~~.
- (3) ~~Manufacturing drug outlet~~ Manufacturer.
- (4) Wholesale ~~drug outlet or wholesale drug~~ distributor.
- (5) Investigative and research projects.
- (6) Compounding.
- (7) Outsourcing.
- (8) Home infusion.
- (9) Nuclear.

§ 2064. VIOLATIONS AND PENALTIES

(a) ~~No~~ A drug outlet designated in section 2061 of this ~~title~~ subchapter shall not be operated until a license has been issued to ~~said~~ that outlet by the ~~board~~ Board. ~~Upon the finding of a violation of this section, the board may impose one or more of the penalties enumerated in section 2052 of this title.~~

(b) ~~Reinstatement of a license that has been suspended, revoked, or restricted by the board may be granted in accordance with the procedures~~

~~specified by subsection 2052(b) of this title~~ Unauthorized operation of a drug outlet may be penalized as provided in 3 V.S.A. § 127 and shall constitute unprofessional conduct by the licensees involved.

Subchapter 6. Wholesale ~~Drug~~ Distributors

§ 2067. WHOLESALE ~~DRUG~~ DISTRIBUTOR; LICENSURE REQUIRED

(a) A person who is not licensed under this subchapter shall not engage in wholesale ~~drug~~ distribution in this State.

(b) [Repealed.]

* * *

(d) An agent or employee of any licensed wholesale ~~drug~~ distributor shall not be required to obtain a license under this subchapter and may lawfully possess pharmaceutical drugs when that agent or employee is acting in the usual course of business or employment.

* * *

§ 2071. APPLICATION OF FEDERAL GUIDELINES

(a) The requirements set forth in sections 2068 and 2069 of this ~~title~~ chapter shall conform to wholesale ~~drug~~ distributor licensing guidelines formally adopted by the ~~United States~~ U.S. Food and Drug Administration (FDA).

(b) In case of conflict between any wholesale ~~drug~~ distributor licensing requirement imposed by the ~~board~~ Board under this chapter and any FDA wholesale ~~drug~~ distributor licensing guideline, the latter shall control.

§ 2072. ~~LICENSE RENEWAL~~

~~Licenses and registrations shall be renewed biennially on a schedule as determined by the office of professional regulation. [Repealed.]~~

§ 2073. RULES

(a) The ~~board~~ Board may adopt rules necessary to carry out the purposes of the provisions of this subchapter.

(b) All rules adopted under this subchapter shall conform to wholesale ~~drug~~ distributor licensing guidelines formally adopted by the ~~Federal Drug Administration~~ FDA at 21 C.F.R. Part 205.

§ 2074. ~~COMPLAINTS~~

~~Complaints arising under this subchapter shall be handled according to the policies and procedures for handling complaints adopted by the director of the office of professional regulation. [Repealed.]~~

§ 2075. ~~PENALTIES~~

~~After notice and opportunity for hearing, the board may suspend, revoke, limit, or condition a license granted under this subchapter if the board finds that the licensee:~~

~~(1) violated a provision of this subchapter or a rule adopted by the board under this subchapter; or~~

~~(2) has been convicted of a violation of a federal or state drug law.~~

[Repealed.]

§ 2076. INSPECTION POWERS; ACCESS TO WHOLESALE DRUG
DISTRIBUTOR RECORDS

(a) A person authorized by the ~~board~~ Board may enter, during normal business hours, all open premises purporting or appearing to be used by a wholesale ~~drug~~ distributor for purposes of inspection.

(b)(1) Wholesale ~~drug~~ distributors may keep records regarding purchase and sales transactions at a central location apart from the principal office of the wholesale ~~drug~~ distributor or the location at which the drugs were stored and from which they were shipped, provided that such records shall be made available for inspection within two working days of a request by the ~~board~~ Board.

(2) Records may be kept in any form permissible under federal law applicable to prescription drugs ~~record-keeping~~ record keeping.

* * *

Sec. 18. CREATION OF POSITION WITHIN THE OFFICE OF
PROFESSIONAL REGULATION; PHARMACY

(a) There is created within the Secretary of State's Office of Professional Regulation one new position: Executive Officer of Pharmacy.

(b) Any funding necessary to support the position created in subsection (a) of this section shall be derived from the Office's Professional Regulatory Fee Fund, with no General Fund dollars.

* * * Real Estate Brokers and Salespersons * * *

Sec. 19. 26 V.S.A. § 2211 is amended to read:

§ 2211. DEFINITIONS

(a) ~~When~~ As used in this chapter, the following definitions shall have the following meanings except where the context clearly indicates that another meaning is intended:

* * *

(4) "Real estate broker" or "broker" means any person who, for another, for a fee, commission, salary, or other consideration, or with the intention or expectation of receiving or collecting such compensation from another, engages in or offers or attempts to engage in, either directly or indirectly, by a continuing course of conduct, any of the following acts:

* * *

(5) “Real estate salesperson” or “salesperson” means any person who for a fee, compensation, salary, or other consideration, or in the expectation or upon the promise thereof, is employed by or associated with a licensed real estate broker to do any act or deal in any transaction as provided in subdivision (4) of this subsection ~~(a)~~ for or on behalf of ~~such a~~ a licensed real estate broker.

(b) The terms “real estate broker,” “real estate salesperson,” or “broker” shall not ~~be held to~~ include:

(1) Any person, partnership, association, or corporation who as a bona fide owner performs any of the ~~aforesaid~~ acts set forth in subdivision (a)(4) of this section with reference to property owned by them, nor shall it apply to regular employees thereof, ~~where~~ when such acts are performed in the regular course of or as an incident to the management of such property and the investment therein. This subdivision (1) shall not apply to licensees.

* * *

* * * Radiologic Technicians * * *

Sec. 20. 26 V.S.A. § 2803 is amended to read:

§ 2803. EXEMPTIONS

The prohibitions in section 2802 of this chapter shall not apply to dentists licensed under chapter 12 of this title and actions within their scope of practice nor to:

* * *

(5) Any of the following when operating dental radiographic equipment to conduct intraoral radiographic examinations under the general supervision of a licensed practitioner; and, any of the following when operating dental radiographic equipment to conduct specialized radiographic examinations, including tomographic, cephalometric, or temporomandibular joint examinations, if the person has completed a course in radiography approved by the Board of Dental Examiners and practices under the general supervision of a licensed practitioner:

(A) a licensed dental therapist;

~~(B)~~ a licensed dental hygienist;

~~(B)~~(C) a registered dental assistant who has completed a course in radiography approved by the Board of Dental Examiners; or

~~(C)~~(D) a student of dental therapy, dental hygiene, or dental assisting as part of the training program when directly supervised by a licensed dentist, ~~certified~~ licensed dental therapist, licensed dental hygienist, or a registered dental assistant.

* * *

* * * Private Investigators and Security Guards * * *

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

CHAPTER 59. PRIVATE INVESTIGATIVE AND SECURITY SERVICES

Subchapter 1. General Provisions

§ 3151. DEFINITIONS

As used in this chapter:

* * *

~~(5) “Qualifying agent” means a licensed private investigator who is responsible for a private investigative services agency or combination agency, or a licensed security guard who is responsible for a private security services agency or combination agency. A sole proprietor shall be the qualifying agent of his or her agency and shall meet all qualifying agent licensure requirements.~~

~~(6) “Combination agency” means an agency that provides both private investigative and private security services to the public.~~

§ 3151a. EXEMPTIONS

(a) The term “private investigator” shall not include:

* * *

(3) Persons regularly employed as investigators, exclusively by one employer in connection with the affairs of that employer only, provided that the employer is not a private investigative agency and the employee is engaged directly as part of the ordinary payroll for tax, accounting, and insurance purposes.

* * *

(b) The term “security guard” shall not include:

* * *

(3) Persons regularly employed as security guards exclusively by one employer in connection with the affairs of that employer only, provided that the employer is not a security agency and the employee is engaged directly as part of the ordinary payroll for tax, accounting, and insurance purposes.

Subchapter 2. State Board of Private Investigative and Security Services

* * *

§ 3162. ~~POWERS AND DUTIES~~ BOARD RULEMAKING AUTHORITY

The Board may:

~~(1) Adopt~~ adopt rules necessary for the performance of its duties, including rules prescribing minimum standards and qualifications for:

(1) security guards who may:

(A) practice independently or head agencies; or

(B) practice within the hierarchy of an agency;

(2) private investigators who may:

(A) practice independently or head agencies; or

(B) practice within the hierarchy of an agency;

(3) agencies; and

(4) recognized trainers and training programs.

~~(2) Conduct any necessary hearings in connection with the issuance, renewal, denial, suspension, or revocation of a license or registration or otherwise related to the disciplining of a licensee, registrant, or applicant.~~

~~(3) Receive and investigate complaints and charges of unprofessional conduct against any holder of a license or registration, or any applicant. The Board shall investigate all complaints in which there are reasonable grounds to believe that unprofessional conduct has occurred.~~

~~(4) Conduct examinations and pass upon the qualifications of applicants for a license or registration.~~

~~(5) Issue subpoenas and administer oaths in connection with any authorized investigation, hearing, or disciplinary proceeding.~~

~~(6) Take or cause depositions to be taken as needed in any investigation, hearing, or proceeding.~~

~~(7)(A) Adopt rules establishing a security guard or private investigator training program, consisting of not fewer than 40 hours of training, as a prerequisite to registration.~~

~~(B) Full-time employees shall complete the training program prior to being issued a permanent registration.~~

~~(C)(i) Part-time employees shall complete not fewer than eight hours of training prior to being issued a part-time employee temporary registration, which shall be valid for not more than 180 days from the date of issuance. The remaining training hours for part-time employees shall be completed within the temporary registration period of 180 days or before the employee has worked 500 hours, whichever occurs first. The part-time employee temporary~~

~~registration may be issued only once and shall expire after 180 days or 500 hours.~~

~~(ii) As used in this subdivision (C), "part time employee" means an employee who works no more than 80 hours per month.~~

~~(iii) The Board may prioritize training subjects to require that certain subject areas are covered in the initial eight hours of training required for part time employees.~~

~~(8) Adopt rules establishing continuing education requirements and establish or approve continuing education programs to assist a licensee or registrant in meeting these requirements.~~

§ 3163. FUNCTIONING OF LICENSING BOARD

~~(a) Annually, the board shall elect a chairperson, a vice chairperson, and a secretary.~~

~~(b) Meetings may be called by the chairperson and shall be called upon the request of two other members.~~

~~(c) Meetings shall be warned and conducted in accordance with 1 V.S.A. chapter 5.~~

~~(d) A majority of the members of a board shall constitute a quorum, and all action shall be taken upon a majority vote of the members present and voting.~~

~~(e), (f) [Deleted.] [Repealed.]~~

* * *

Subchapter 3. Licensing

* * *

§ 3173. PRIVATE INVESTIGATOR LICENSES

(a) A person shall not engage in the business of private investigation or provide private investigator services in this State without first obtaining a license. The Board shall issue a license to a private investigator after obtaining and approving all of the following:

* * *

(4) evidence that the applicant has successfully passed ~~the~~ any examination required by ~~section 3175 of this title~~ rule.

* * *

(c) The Board shall require that ~~the~~ a person licensed to practice independently has had appropriate experience in investigative work, for a period of not less than two years, as determined by the Board. Such experience may include having been regularly employed as a private detective licensed in another state or as an investigator for a private detective licensed in this or another state; or ~~has~~ having been a sworn member of a federal, state, or municipal law enforcement agency.

(d) An application for a license may be denied upon failure of the applicant to provide information required; upon a finding that the applicant does not

meet a high standard as to character, integrity, and reputation; or for unprofessional conduct defined in section 3181 of this ~~title~~ chapter.

* * *

§ 3174. SECURITY GUARD LICENSES

(a) ~~No~~ A person shall not engage in the business of a security guard or provide guard services in this State without first obtaining a license. The Board shall issue a license after obtaining and approving all of the following:

* * *

(4) Evidence that the applicant has successfully passed ~~the~~ any examination required by ~~section 3175 of this title~~ rule.

* * *

(c) The Board shall require that ~~the~~ a person licensed to practice independently has had experience satisfactory to the Board in security work, for a period of not less than two years. Such experience may include having been licensed as a security guard in another state or regularly employed as a security guard for a security agency licensed in this or another state; or having been a sworn member of a federal, state, or municipal law enforcement agency.

(d) An application for a license may be denied upon failure of the applicant to provide information required; upon a finding that the applicant does not meet a high standard as to character, integrity, and reputation; or for unprofessional conduct defined in section 3181 of this ~~title~~ chapter.

* * *

§ 3176b. ~~TEMPORARY REGISTRATION FOR EMPLOYEES OF
AGENCIES~~

~~(a) A 60-day temporary registration may be issued to a person who applies for registration as an employee of a licensed private investigator or a licensed security guard under section 3176 of this title. A temporary registration shall authorize a person to work as an unarmed private investigator or unarmed security guard while employed by a private investigator agency or security guard agency licensed by the board.~~

~~(b) Temporary registrations shall expire at the end of the 60-day period or by final action on the application, whichever occurs first. For good cause shown, the board may extend a temporary registration one time for an additional period of 60 days. [Repealed.]~~

§ 3176c. ~~TEMPORARY EMERGENCY REGISTRATION~~

~~(a) If the board determines that the public health, safety, or welfare so requires, it may grant to an applicant a temporary registration to practice as a security guard. To qualify under this section, an applicant shall have a license in good standing to practice as a security guard in another jurisdiction within the United States that regulates the practice. The person seeking the temporary registration shall document to the board's satisfaction that the applicant will otherwise meet all state and federal requirements necessary to perform the~~

~~specific security duties arising out of the emergency circumstances warranting temporary licensure.~~

~~(b) The board may restrict or condition a temporary registration issued under this section, as it deems appropriate in light of the specific emergency, to a particular facility, industry, geographic area, or scope of duty.~~

~~(c) Duration of practice under a temporary registration shall be determined by the board but shall not exceed 60 days unless the person granted a temporary registration has submitted an application for full registration under this chapter, prior to the expiration of the term of the temporary registration, and the board finds the emergency to be ongoing. [Repealed.]~~

* * *

§ 3178. ~~RENEWALS AND REINSTATEMENT~~

~~A license or registration issued under this chapter shall be renewed biennially upon payment of the required fee. [Repealed.]~~

* * *

§ 3179. PENALTIES

(a) A person who engages in the practice or business of a private investigator or security guard without being licensed under ~~to~~ this chapter shall be subject to the penalties provided in 3 V.S.A § 127(e).

* * *

Subchapter 4. Unprofessional Conduct and Discipline

§ 3181. UNPROFESSIONAL CONDUCT

* * *

~~(e) After conducting a hearing and upon a finding that a licensee, registrant, or applicant engaged in unprofessional conduct, the board may take disciplinary action. Discipline for unprofessional conduct may include denial of an application, revocation or suspension of a license or registration, supervision, reprimand, warning, or the required completion of a course of action.~~

* * * Clinical Mental Health Counselors * * *

Sec. 22. 26 V.S.A. chapter 65 is amended to read:

CHAPTER 65. CLINICAL MENTAL HEALTH COUNSELORS

* * *

§ 3262a. BOARD OF ALLIED MENTAL HEALTH PRACTITIONERS

(a) ~~A~~ The Board of Allied Mental Health Practitioners is established.

* * *

~~(e) A majority of the members of the Board shall constitute a quorum for transacting business, and all action shall be taken upon a majority vote of the members present and voting.~~

* * *

§ 3265. ELIGIBILITY

To be eligible for licensure as a clinical mental health counselor an applicant shall ~~satisfy all of the following~~ have:

(1) ~~Shall have completed a minimum of 60 graduate hours and received~~ Received a master's degree or higher degree in counseling or a related field, from an accredited educational institution, after having successfully completed a course of study as ~~defined by the board, by rule, which included~~ requiring a minimum number of graduate credit hours established by the Board by rule and a supervised practicum, internship, or field experience, as defined by the ~~board,~~ Board by rule, in a mental health counseling setting.

(2) ~~Shall have documented~~ Documented a minimum of 3,000 hours of supervised work in clinical mental health counseling ~~over~~ during a minimum of two years of post-master's experience. ~~Persons engaged in supervised work shall be entered on the roster of nonlicensed, noncertified psychotherapists and shall comply with the laws of that profession, and shall have documented a minimum of, including at least 100 hours of face-to-face supervision over during a minimum of two years of~~ post-master's experience. Clinical work shall be performed under the supervision of a licensed physician certified in psychiatry by the American Board of Medical Specialties, a licensed psychiatric nurse practitioner, a licensed psychologist, a licensed clinical social worker, a licensed marriage and family therapist, a licensed clinical mental

~~health counselor, or a person certified or licensed in another jurisdiction in one of these professions or in a profession which is the substantial equivalent, or a supervisor trained by a regional or national organization which has been approved by the board~~ Persons engaged in supervised work shall be registered on the roster of nonlicensed, noncertified psychotherapists and shall comply with the laws applicable to registrants.

(3) ~~Shall pass~~ Passed the examinations required by ~~board~~ Board rules as provided in section 3267 of this title.

§ 3266. APPLICATION

~~To apply for licensure as a clinical mental health counselor, a person shall apply to the board on a form furnished by the board. The application shall be accompanied by payment of the specified fee and evidence of eligibility as requested by the board. [Repealed.]~~

§ 3267. EXAMINATION

~~(a) The board or its designee shall conduct written examinations under this chapter at least twice a year, except that examinations need not be conducted when no one has applied to be examined.~~

~~(b) Examinations administered by the board and the procedures of administration shall be fair and reasonable and shall be designed and implemented to ensure that all applicants are granted licensure if they demonstrate that they possess the minimal occupational qualifications which~~

~~are consistent with the public health, safety, and welfare. They shall not be designed or implemented for the purpose of limiting the number of license holders. The board with the advice of the clinical mental health counselors who are members of the special panel, shall establish, by rule, fixed criteria for passing the examination that shall apply to all persons taking the examination.~~

~~(c) The board may contract with independent testing services, licensed clinical mental health counselors, or others to assist in the administration of written examinations. [Repealed.]~~

* * *

§ 3269. RENEWALS

~~(a) Licenses shall be renewed every two years upon payment of the required fee, provided the person applying for renewal completes at least 40 hours fees and proof of such continuing education, approved by the board, during the preceding two-year period. The board shall establish, as the Board may require by rule, guidelines and criteria for continuing education credit.~~

~~(b) Biennially, the director shall forward a renewal form to each license holder. Upon receipt of the completed form and the renewal fee, the director shall issue a new license.~~

~~(c) Any application for renewal of a license which has expired shall be accompanied by the renewal fee and a reinstatement fee. A person shall not be required to pay renewal fees for years during which the license was lapsed.~~

~~(d) [Deleted.]~~

* * * Acupuncturists * * *

Sec. 23. 26 V.S.A. chapter 75 is amended to read:

CHAPTER 75. ACUPUNCTURISTS

§ 3401. DEFINITIONS

As used in this chapter:

(1)(A) “Acupuncture” or the “practice of acupuncture” means ~~the insertion of fine needles through the skin at certain points on the body, with or without the application of electric current or the application of heat to the needles or skin, or both, for the purpose of promoting health and balance as defined by traditional and modern Oriental theories. Acupuncture involves the use of traditional and modern Oriental diagnostic techniques, acupuncture therapy, and adjunctive therapies, including but not limited to: nonprescription remedies, exercise, nutritional and herbal therapies, therapeutic massage, and lifestyle counselling~~ treatment by means of mechanical, thermal, or electrical stimulation effected by the insertion and manipulation of solid or filiform needles to the human body; evaluation and management to determine a plan of acupuncture care for the purpose of promoting health and well-being; and development of a corresponding plan of acupuncture care, which may include adjunctive therapies such as manual therapy, nonprescription remedies,

nutritional and herbal therapies, thermal therapies, therapeutic massage, exercises, activities, and lifestyle counseling.

(B) “Acupuncture” or the “practice of acupuncture” does not include medical diagnosis or medical management of illness.

* * *

§ 3408. RENEWALS

~~(a) Licenses shall be renewed every two years upon payment of the required fee and furnishing satisfactory evidence of having completed 30 hours of approved continuing education credit during the preceding two years. The director may adopt rules for the approval of continuing education programs and the awarding of credit.~~

~~(b) Biennially, the director shall forward a renewal form to each licensed acupuncturist. Upon receipt of the completed form and the renewal fee, the director shall issue a new license.~~

~~(c) A license that has expired for three years or less shall be renewed upon meeting the renewal requirements and paying a late renewal penalty. A license that has expired for more than three years shall not be renewed; the applicant shall be required to apply for reinstatement. The director may adopt rules relating to reinstatement to assure that the applicant is professionally qualified.~~

* * *

§ 3410. UNPROFESSIONAL CONDUCT

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

(b) Unprofessional conduct means any of the conduct listed in this section and 3 V.S.A. § 129a, whether committed by a licensed acupuncturist or an applicant, and inappropriate sexual conduct toward a patient or former patient

~~(1) Using dishonest or misleading advertising.~~

~~(2) Addiction to narcotics, habitual drunkenness, or rendering professional services to a patient if the acupuncturist is intoxicated or under the influence of drugs.~~

~~(3) Sexual harassment of a patient.~~

~~(4) Engaging in sexual intercourse or other sexual conduct with a patient with whom the licensed acupuncturist has had a professional relationship within the previous two years.~~

~~(e) After hearing and upon a finding of unprofessional conduct, an administrative law officer appointed under 3 V.S.A. § 129(j) may take disciplinary action against a licensed acupuncturist or applicant.~~

* * *

§ 3412. ~~ACUPUNCTURE DETOXIFICATION; SPECIALIZED
CERTIFICATION~~

~~(a) A person not licensed under this chapter may obtain a specialized certification as an acupuncture detoxification technician to practice auricular acupuncture according to the National Acupuncture Detoxification Association protocol from the board for the purpose of the treatment of alcoholism, substance abuse, or chemical dependency if he or she provides documentation of successful completion of a board approved training program in acupuncture for the treatment of alcoholism, substance abuse, or chemical dependency which meets or exceeds standards of training established by the National Acupuncture Detoxification Association.~~

~~(b) Treatment permitted under this section may only take place in a state, federal, or board approved site under the supervision of an individual licensed under this chapter and certified by the National Acupuncture Detoxification Association.~~

~~(c) A person practicing under this section shall be subject to the requirements of section 3410 of this title.~~

~~(d) Nothing in this section shall be construed to modify any of the requirements for licensure of acupuncturists contained in this chapter, nor shall it grant any rights to practice acupuncture which exceed the scope of this section.~~

~~(e) The fee for obtaining a specialized certification or renewal of a specialized certification under this section shall be that established in 3 V.S.A. § 125(b).~~

~~(f) Anyone certified under this section, while practicing the National Acupuncture Detoxification Association protocol, shall be referred to as an acupuncture detoxification technician. [Repealed.]~~

Sec. 24. TRANSITIONAL PROVISION; ACTIVE CERTIFIED

ACUPUNCTURE DETOXIFICATION TECHNICIANS; ABILITY
TO RENEW CERTIFICATION

Notwithstanding the repeal of 26 V.S.A. § 3412 (acupuncture detoxification; specialized certification) in Sec. 21 of this act, on the effective date of this act, a person actively certified by the Office of Professional Regulation as an acupuncture detoxification technician may renew that certification biennially upon payment of the required fee and for as long as he or she maintains continuous certification, may provide auricular acupuncture consistent with National Acupuncture Detoxification Association protocol under the supervision of a licensed acupuncturist within an Office-approved setting as a complement to comprehensive addiction-treatment services.

* * * Effective Dates * * *

Sec. 25. EFFECTIVE DATES

This act shall take effect on July 1, 2018, except:

(1) this section and Sec. 13 (Director of Professional Regulation; barbers and cosmetologists; rulemaking) shall take effect on passage;

(2) Secs. 2, amending 3 V.S.A. § 125 (fees), and 12, amending 26 V.S.A. chapter 6 (barbers and cosmetologists), shall take effect on January 1, 2019, except that in Sec. 2, 3 V.S.A. § 125, subdivision (b)(4)(A) (social workers) shall take effect on passage; and

(3) Sec. 6 shall take effect on July 1, 2019.