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Act No. 158 (H.870). An act relating to professions and occupations regulated by the Office of Professional Regulation

Subjects: Professions and occupations

This act makes miscellaneous changes to statutes regulating certain professions and occupations under the charge of the Office of Professional Regulation (“OPR”).

General Provisions of the Office of Professional Regulation

Sec. 1 amends 3 V.S.A. § 127 (unauthorized practice) so that funds derived from civil penalties for violations involving the unauthorized practice of regulated professions, which are deposited in the Professional Regulatory Fund, no longer need to be expended only on “providing education and training for board members and advisor appointees.”

Sec. 1a amends 3 V.S.A. § 123 (duties of office), allowing OPR to inquire into the criminal background histories for psychologist license applicants.

Sec. 2 amends 3 V.S.A. § 129a (unprofessional conduct) to include ‘impeding an inspection’ in what constitutes “unprofessional conduct.”

Naturopathic Physicians Filing of Birth and Death Certificates

Sec. 2a amends 18 V.S.A. § 4999 (definitions), enabling naturopathic physicians to sign death certificates.

Sec. 2b amends 18 V.S.A. § 5071 (birth certificates; who to make; return), enabling naturopathic physicians to file a report of birth.

Naturopathic Physicians Filing Technical Advisory Group

Sec. 2c creates the Naturopathic Physicians Technical Advisory Group to discuss the potential integration of naturopathic physicians into statewide policies regarding Vermont’s Patient Choice at End of Life laws (18 V.S.A. chapter 113), do not resuscitate (DNR) orders and advanced directives, and the creation of clinician orders for life-sustaining treatment (COLST). The Technical Advisory Group shall also consider the requirements of integrating naturopathic physicians into statewide policies.

Barbers and Cosmetologists

In general, Secs. 3–8 amend statutes regulating barbering and cosmetology so that “esthetics and manicuring” are included as well.

Sec. 3 amends 26 V.S.A. § 271 (definitions) the definition of “esthetics,” and specifically excludes: “any practice, activity, or treatment that constitutes the practice

of medicine . . . including injections of any substance and the use of lasers; or the application of permanent cosmetics.” The definition of “shop” is also modified to be “a facility or facilities regularly used to offer or provide barbering, cosmetology, esthetics, or manicuring.”

Sec. 4 amends 26 V.S.A. § 272 (prohibitions; offenses) so that a person may not practice esthetics and manicuring without a license, like barbering or cosmetology. Similarly, a person cannot let this occur in their shop.

Sec. 5 amends 26 V.S.A. § 276 (general powers and duties of the director) so that the Director of OPR shall adopt rules for the sanitary and safety standards for shops and practice of esthetics and manicuring without a license, like barbering or cosmetology.

Sec. 6 amends 26 V.S.A. § 282 (shop; license) so that the practice of esthetics and manicuring may only be permitted in licensed shops, like barbering or cosmetology.

Sec. 7 amends 26 V.S.A. § 283 (examination) so that licensing examinations be in whatever form approved by the OPR Director rather than necessarily be “both practical demonstrations and written or oral tests.”

Sec. 8 amends 26 V.S.A. § 284 (issuance of license) so that shops offering esthetics and manicuring that have paid their fees and are in compliance with OPR rules shall be issued a license, like barbering or cosmetology shops.

Nursing

Sec. 9 modifies the placement of subchapter titles concerning nursing statutes, so the chapter (26 V.S.A. chapter 28 (nursing)) is amended as a whole. Sections 1622–1628 are moved from subchapter 4 (nursing assistants) to subchapter 3 (registered nurses and practical nurses). It will be clearer that statutes regarding licensure examination, endorsement, and renewal apply to both registered nurses and practical nurses. Sec. 9 also creates consistency in terminology by changing “active practice requirements” to “continued competency requirements.”

Osteopathy

Sec. 10 amends 26 V.S.A. § 1753 (exemptions) so that enrolled osteopathy students may practice in supervised clinical training programs.

Radiology

Sec. 11 amends 26 V.S.A. § 2801 (definitions) so that “holders of limited temporary licenses to practice medicine” are included as regulated licensed radiology practitioners.

Sec. 12 amends 26 V.S.A. § 2803 (exemptions) so that “holders of limited temporary licenses to practice medicine” are not prohibited from practicing radiology.

Tattooists and Body Piercers

In general, Secs. 13–17 amend statutes regulating tattooing and body piercing so that “permanent cosmetics” are included as well.

Sec. 13 amends 26 V.S.A. § 4101 (definitions) to remove definitions for “disciplinary action” and “special panel,” and to modify the definition of “shop” to include the practice of permanent cosmetics. Note: An administrative law officer could still take disciplinary action against a licensed electrologist or applicant, pursuant to 26 V.S.A. § 4411 and 3 V.S.A. § 129.

Sec. 14 amends 26 V.S.A. § 4103 (Director; function; Commissioner of Health; rules) so that the Director of OPR may adopt rules pertaining to tattooist, body piercer, and permanent cosmetologist apprenticeships and shops.

Sec. 15 amends 26 V.S.A. § 4104 (advisor appointees) so that the Secretary of State will appoint three advisors, which shall include one licensed operator practicing tattooing, one licensed operator practicing body piercing, and one licensed operator practicing permanent cosmetics.

Sec. 16 amends 26 V.S.A. § 4105 (license requirements) so that the OPR Director may adopt rules to require additional information to prove completion of an apprenticeship for tattooists, body piercers, and permanent cosmetologists. Subsection (d) is modified so that all shops shall designate a supervisor who is at least one of the professions being practiced in the shop, be it tattooing, body piercing, or permanent cosmetics, rather than a designee from each category. Subdivision (d)(4) permits stand-alone licensed permanent cosmetic shops and cosmetology shops to practice permanent cosmetics. Subdivision (d)(6) requires shops to notify OPR of any location changes, which may trigger a new inspection.

Sec. 17 amends 26 V.S.A. § 4108 (unprofessional conduct) removes from what constitutes unprofessional conduct “addiction to narcotics, habitual drunkenness, or rendering professional services to a client if the operator is intoxicated or under the influence of drugs.” It also removes subsection (c) regarding disciplinary action. But, again, an administrative law officer could still take disciplinary action against a licensee pursuant to 26 V.S.A. § 4411 and 3 V.S.A. § 129.

Electrologists

Sec. 18 amends 26 V.S.A. § 4402 (definitions), changing the definition of “electrology” and clarifying that the use of lasers is to be “solely for the purpose of hair removal” and excluding any practice, activity, or treatment that constitutes the practice of medicine (including injections and permanent cosmetics).

Office of Professional Regulation Funding Structure Study

Sec. 18a directs OPR to conduct a study reviewing the funding structure of their office and report to the General Assembly with an assessment of the benefits and challenges of the current funding model for the Office of Professional Regulation, as established in 3 V.S.A. § 124 (Professional Regulatory Fee Fund), and with any recommendations for alternative models for funding the Office of Professional Regulation.

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