

1 H.305

2 Introduced by Committee on Government Operations and Military Affairs

3 Date:

4 Subject: Professions and occupations

5 Statement of purpose of bill as introduced: This bill proposes to modify the
6 misconduct discipline processes. It will add cosmetology to what State
7 correctional facilities may offer as courses of instruction without a certificate
8 of approval from the Director. It will modify biennial license renewal
9 requirements for osteopathic physicians. This bill will update duties and
10 abilities of pharmacy technicians and add specificity to what pharmacists may
11 prescribe regarding self-administered hormonal contraceptives and
12 vaccinations. It will exempt persons dispensing over-the-counter hearing aids
13 from provisions for audiologists and hearing aid dispensers. This bill will also
14 correct an incorrect cross-reference regarding the authority to perform notarial
15 acts in the State of Vermont.

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

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

2 * * * Office of Professional Regulation * * *

3 Sec. 1. 3 V.S.A. § 129 is amended to read:

4 § 129. POWERS OF BOARDS OR OF DIRECTOR IN ADVISOR

5 PROFESSIONS; DISCIPLINE PROCESS

6 * * *

7 (e)(1) When a board or the Director, in the case of professions that have
8 advisor appointees, intends to deny an application for a license based on the
9 applicant's past or current unprofessional conduct or based on an ongoing
10 investigation of the applicant, in Vermont or elsewhere, for unprofessional
11 conduct, the board or Director shall send the applicant written notice of the
12 decision by certified mail. The notice shall include a statement of the reasons
13 for the action and shall advise the applicant that the applicant may file a
14 petition within 30 days of after the date on which the notice is mailed with the
15 board or the Director for review of ~~its or his or her~~ the board's or Director's
16 preliminary decision.

17 (2)(A) At the review hearing, the applicant shall bear the burden of
18 proving that the preliminary denial should be reversed and that the license
19 should be granted.

20 (3)(B) After the hearing, the board or Director shall affirm or reverse
21 the preliminary denial, explaining the reasons therefor in writing.

1 (2) The decision of a board or the Director, in the case of professions
2 that have advisor appointees, to deny an application for a license based on a
3 finding by the board or the Director that the applicant has not fulfilled the
4 qualifications or met the standards required for licensure shall be a final
5 decision of the board or Director.

6 (A) Upon such a final decision by the board or the Director, the
7 board or Director shall send the applicant written notice of the decision by
8 certified mail. The notice shall include a statement of the reasons for the
9 action and shall advise the applicant that the applicant may appeal the decision
10 of the board or Director to deny the application by filing a notice of appeal
11 with the Director, who shall assign the case to an appellate officer.

12 (B) Appeals of decisions by the board or Director to deny an
13 application for licensure based on the qualifications of an applicant shall be
14 conducted in accordance with 3 V.S.A. § 130a. The record in the appeal shall
15 include the applicant’s application for the professional license, the written
16 notice of the decision to deny the application, and any other materials
17 established in rules adopted in accordance with 3 V.S.A. chapter 25.

18 * * *

19 (n)(1) A board may designate a hearing panel consisting of less than a
20 quorum of the board to conduct hearings that would otherwise be heard by the
21 full board. A hearing panel shall consist of at least three members, including

1 at least one professional member of the board and at least one public member
2 of the board. No member of the hearing panel shall have been a board
3 member who was assigned, in accordance with subdivision (c)(3) of this
4 section, to assist the Office investigators and prosecutor in relation to the
5 investigation and prosecution of the matter being heard. The Director shall
6 establish by rule the process for designating a hearing panel.

7 (2) If there is an insufficient number of board members to serve on a
8 hearing panel by reason of disqualification, resignation, vacancy, or necessary
9 absence, the Director may appoint ad hoc members to serve on the hearing
10 panel for that matter only.

11 (3) If a board is unable to convene in a timely manner to hear a
12 disciplinary matter or to appoint a hearing panel, the Director may designate a
13 hearing panel to hear a matter that would otherwise be heard by the full board.
14 If the Director appoints a hearing panel, the Director shall follow the
15 requirements of subdivisions (1) and (2) of this subsection.

16 (4) A hearing panel shall be designated solely upon the request and
17 decision of the board or the Director and in accordance with this subsection
18 and rules adopted by the Director in accordance with 3 V.S.A. chapter 25.

19 Sec. 2. 3 V.S.A. § 136 is amended to read:

20 § 136. UNIFORM CONTINUING EDUCATION EVALUATION; ~~SUNSET~~

21 REVIEW AND FORUM

1 (a)(1) If continuing education is required by law or rule, the Office shall
2 apply uniform standards and processes that apply to all professions regulated
3 by the Office for the assessment and approval or rejection of continuing
4 education offerings, informed by profession-specific policies developed in
5 consultation with relevant boards and advisor appointees.

6 ~~(b)(1)(2)(A)~~ Not less than once every five years, each profession attached
7 to the Office shall review its continuing education or other continuing
8 competency requirements. The review results shall be in writing and address
9 the following:

10 ~~(A)~~(i) the renewal requirements of the profession;

11 ~~(B)~~(ii) the renewal requirements in other jurisdictions, particularly in
12 the Northeast region;

13 ~~(C)~~(iii) the cost of the renewal requirements for the profession's
14 licensees;

15 ~~(D)~~(iv) an analysis of the utility and effectiveness of the renewal
16 requirements with respect to public protection; and

17 ~~(E)~~(v) recommendations to the Director on whether the continuing
18 education or other continuing competency requirements should be modified.

19 ~~(2)~~(B) The Director shall respond to the profession within 45 days ~~of~~
20 after its submitted review results. The Director may require a profession to

1 reduce, modify, or otherwise change the renewal requirements, including by
2 proposing any necessary amendments to statute or rule.

3 (b) When completion of continuing education is required for renewal of a
4 license regulated under this title, synchronous virtual continuing education
5 courses shall qualify as live, in-person training and be accepted for renewal of
6 the professional license.

7 * * * Barbers and Cosmetologists * * *

8 Sec. 3. 26 V.S.A. § 281 is amended to read:

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

11 * * *

12 (b) Regional vocational centers may offer courses of instruction in
13 barbering or cosmetology without a certificate of approval from the Director,
14 and State correctional facilities may offer courses of instruction in barbering
15 and cosmetology without a certificate of approval from the Director; however,
16 hours for licensing shall only be given for courses that meet the Director's
17 standards for courses offered in postsecondary schools of barbering or
18 cosmetology certified by the Director.

19 * * *

1 * * * Dental Hygienist * * *

2 Sec. 4. 26 V.S.A. § 642 is amended to read:

3 § 624. PRACTICE

4 * * *

5 (b) A public-health hygienist, who shall be a dental hygienist with no fewer
6 than three years of experience, may perform tasks in out-of-office settings,
7 including residences, schools, nursing home and long-term care facilities,
8 clinics, hospitals, medical facilities, community health centers licensed or
9 approved by the Department of Health, Head Start programs, and any other
10 facilities or programs deemed appropriate by the Department of Health in a
11 manner consistent with ~~guidelines~~ rules adopted by the Board ~~by rule~~.

12 * * *

13 (d) A public health hygienist, who has completed training approved by the
14 Vermont Department of Health in the silver modified atraumatic restorative
15 technique (SMART), may use SMART to treat patients in a manner consistent
16 with rules adopted by the Board.

17 Sec. 5. IMPLEMENTATION OF 26 V.S.A. Sec. 624(d)

18 Public health hygienists shall not be permitted to use silver modified
19 atraumatic restorative technique (SMART) to treat patients in accordance with
20 26 V.S.A. Sec. 624(d) until the Board of Dental Examiners adopts rules
21 governing the procedure.

* * * Osteopathy * * *

Sec. 6. 26 V.S.A. § 1836 is amended to read:

§ 1836. BIENNIAL RENEWAL OF LICENSE; CONTINUING
EDUCATION

(a)(1) ~~Licenses shall be renewed every two years.~~ A license issued under this chapter shall be renewed every two years upon application, payment of the required fee, and proof of completion of required continuing education.
Failure to comply with the provisions of this section shall result in the suspension of all privileges granted to the licensee, beginning on the expiration date of the license.

(2) A license that has lapsed shall be renewed upon payment of the biennial renewal fee and the late renewal penalty.

(b) ~~Biennially, the Board shall forward a renewal form to each licensee.~~
~~Upon receipt of the completed form, evidence of compliance with the provisions of subsection (c) of this section, and the renewal fee, the Board shall issue a new license.~~ The Director may adopt rules necessary for the protection of the public to assure that an applicant whose license has lapsed or who has not worked for more than three years as an osteopathic physician is professionally qualified for license renewal. Conditions imposed under this subsection shall be in addition to the requirements of subsection (a) of this section.

1 (c) As a condition of renewal, a licensee shall complete a minimum of 30
2 hours of continuing medical education, ~~approved by the Board by rule,~~ during
3 the preceding two-year period. ~~At least 40 percent of these hours must be~~
4 ~~osteopathic medical education.~~ The 30 hours of continuing medical education
5 shall meet the requirements established by the Board by rule.

6 * * *

7 * * * Pharmacy * * *

8 Sec. 7. 26 V.S.A. § 2022 is amended to read:

9 § 2022. DEFINITIONS

10 As used in this chapter:

11 * * *

12 (14) “Pharmacy technician” means an individual who, only while
13 assisting and under the supervision of a licensed pharmacist, performs tasks
14 relative to dispensing ~~only while assisting and under the supervision and~~
15 ~~control of a licensed pharmacist~~ prescription drugs, administering
16 immunizations, and performing tests for SARS-CoV. Pharmacy technicians
17 shall administer immunizations and perform tests for SARS-CoV in
18 compliance and accordance with section 2042a of this title.

19 * * *

20 (21) “Self-administered hormonal contraceptive” means a contraceptive
21 medication or device approved by the U.S. Food and Drug Administration that

1 prevents pregnancy by using hormones to regulate or prevent ovulation and
2 that uses an oral, transdermal, subcutaneous, or vaginal route of
3 administration.

4 Sec. 8. 26 V.S.A. § 2023 is amended to read:

5 § 2023. CLINICAL PHARMACY; PRESCRIBING

6 * * *

7 (b) A pharmacist may prescribe in the following contexts:

8 * * *

9 (2) State protocol.

10 (A) A pharmacist may prescribe, order, or administer in a manner
11 consistent with valid State protocols that are approved by the Commissioner of
12 Health after consultation with the Director of Professional Regulation and the
13 Board and the ability for public comment:

14 * * *

15 (v) self-administered hormonal contraceptives, including
16 subcutaneous depot medroxyprogesterone acetate;

17 * * *

18 (vii) influenza vaccines for patients 18 years of age or older,
19 vaccinations recommended by the Centers for Disease Control and
20 Prevention's Advisory Committee on Immunization Practices (ACIP) and

1 administered consistently with the ACIP-approved immunization schedules, as
2 may be amended from time to time;

3 * * *

4 Sec. 9. 26 V.S.A. § 2042a is amended to read:

5 § 2042a. PHARMACY TECHNICIANS; QUALIFICATIONS FOR
6 REGISTRATION

7 (a) No person shall perform the duties of a pharmacy technician unless
8 registered with the Board. To obtain a registration as a pharmacy technician,
9 an applicant shall:

10 * * *

11 (b) Pharmacy technicians administering immunizations shall meet the
12 following requirements:

13 (1) hold a registration as a pharmacy technician in accordance with
14 subsection (a) of this section;

15 (2) hold a current CPR certification;

16 (3) have successfully completed an Accreditation Council of Pharmacy
17 Education–accredited training program approved by the Board; and

18 (4) successfully complete two hours of immunization-related continuing
19 education approved by the Accreditation Council for Pharmacy Education
20 every two-year licensing period.

21 (c) Pharmacy technicians shall only administer immunizations:

1 (1) to patients 18 years of age or older;

2 (2) pursuant to the schedules and recommendations of the Advisory

3 Committee on Immunization Practices' recommendations for the

4 administration of immunizations, as those recommendations may be updated

5 from time to time; and

6 (3) when a licensed pharmacist who is trained to immunize is present

7 and able to assist with the immunization, as needed.

8 (d) Pharmacy technicians shall administer only those immunizations that:

9 (1) are recommended by the Centers for Disease Control and

10 Prevention's Advisory Committee on Immunization Practices (ACIP); and

11 (2) licensed pharmacists are permitted to administer under the State

12 clinical pharmacy protocol, as established in subdivision 2023(b)(2) of this

13 title.

14 (e) Pharmacy technicians performing SARS-CoV tests shall do so only:

15 (1) when a licensed pharmacist who is trained to perform SARS-CoV

16 tests is present and able to assist with the test, as needed;

17 (2) in accordance with a State protocol adopted under subdivision

18 2023(b)(2)(A)(x) of this title; and

19 (3) in accordance with rules adopted by the Board.

1 (f) The Board may adopt rules regarding the administration of
2 immunizations and the performance of SARS-CoV tests by pharmacy
3 technicians.

4 * * * Audiologists and Hearing Aid Dispensers * * *

5 Sec. 10. 26 V.S.A. § 3286 is amended to read:

6 § 3286. EXEMPTIONS

7 (a) The provisions of section 3285 of this chapter shall not apply to a
8 person enrolled in a course of study leading to a degree or certificate in
9 audiology at a school accredited by the American Speech-Language Hearing
10 Association, provided:

11 * * *

12 (b) In accordance with 21 C.F.R. § 800.30, persons dispensing over-the-
13 counter hearing aids, as defined in 21 C.F.R. § 800.30(b) and meeting the
14 standards established in 21 C.F.R. § 800.30(c)–(f), including self-fitting air-
15 conduction hearing aids, as defined in 21 C.F.R. § 874.3325, shall be exempt
16 from this chapter.

17 * * * Notaries * * *

18 Sec. 11. 26 V.S.A. § 5361 is amended to read:

19 § 5361. NOTARIAL ACTS IN THIS STATE; AUTHORITY TO PERFORM

1 (a) A notarial act, as defined in subdivision ~~5304(7)(A)~~ 5304(10) of this
2 chapter, may only be performed in this State by a notary public commissioned
3 under this chapter.

4 * * *

5 * * * Effective Date * * *

6 Sec. 12. EFFECTIVE DATE

7 This act shall take effect on passage.