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Office of the Secretary of State**

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**Sarah Copeland Hanzas, Secretary of State  
S. Lauren Hibbert, Deputy Secretary**

**March 21, 2023**

**To: Hon. Ruth Hardy, Chair  
Senate Committee on Government Operations**

**From: S. Lauren Hibbert, Deputy Secretary of State**

**Re: H.305**

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### **Introduction to OPR**

The Office of Professional Regulation, commonly known as "OPR," is a division of the Secretary of State's Office responsible for supporting the regulatory programs for 51 professions and occupations - everything from Accountants and Acupuncturists to Tattooists and Veterinarians. Within those 51 professions and occupations, there are 167 different profession types and a total of just over 85,000 licensees.

OPR is headed by a Director who oversees a staff of 40 people, including licensing specialists and administrators, an assistant director, a general counsel and two staff attorneys, case managers, investigators, inspectors, and prosecutors.

The General Assembly established OPR as an "umbrella" agency to oversee professionals and to protect the public through a system of licensure and enforcement. Title 3 of the Vermont Statutes Annotated contains general provisions for the operation of OPR. It lists the professions regulated, sets forth the powers and duties of professional boards and advisors to OPR, enumerates grounds for unprofessional conduct applicable to all licensed professions, and covers other matters of broad application to every profession. Title 26 of the Vermont Statutes Annotated contains laws specific to each profession regulated through OPR. These statutes address the unique aspects of each profession.

Regulation of a profession assures that practitioners meet minimum standards for initial licensure, continue to meet minimum competency requirements, and are held responsible if they engage in unprofessional conduct. To achieve these goals, OPR provides a variety of diverse services, including

- 1) Administrative services facilitating licensure and renewals, regular public board and meetings, and regulation and statutory reform;
- 2) Enforcement services, providing investigation and prosecutor staff necessary to receive complaints from the public and protect the public from incompetent, unethical, or otherwise unprofessional licensees in a regulated professions;

- 3) Tribunal services implementing a quasi-judicial system for addressing unprofessional conduct; and
- 4) Policy services, collaborating with licensees, government agencies, professional associations, and other stakeholders to develop and adopt policies that protect the public while reducing barriers for professionals.

With 51 professions that are consistently changing – responding to federal law changes, consumer demands, and marketplace conditions – the Office of Professional Regulation regularly seeks an “OPR Bill” through the House Committee on Government Operations and Military Affairs. OPR seeks these changes with three primary goals:

- 1) To ensure that laws and regulations enable licensees or registrants to practice in a manner consistent with their training and education without placing unnecessary barriers to real-world practice;
- 2) To clarify or modify existing practices within professions or OPR operationally; and
- 3) To emphasize and deliver on OPR’s public protection mission.

H.305 is a House Committee on Government Operations and Military Affairs bill. The Committee voted unanimously to introduce the bill on February 16, 2023. You will notice that some changes are minor housekeeping matters and others are more substantive and comprehensive

### **Title 3**

#### **\*\*\*General OPR Provisions\*\*\***

#### Section 1; 3 V.S.A. §129(e)

- This provision streamlines our denial process for applications. OPR denies applications for two core reasons:
  - 1) for past or current *unprofessional conduct* that the applicant engaged in; or
  - 2) because the applicant does not meet the *qualifications* for licensure.
- The changes before you clarify the processes for denying applications.
  - (e)(1): If a license application is being denied because of past or current *unprofessional conduct*,
    - The Office will send a notice to the applicant that the board or the office intends to deny the application (a “*preliminary denial*” notice);
    - The applicant may elect to challenge the denial of their license;
    - If the denial is challenged, a hearing will be held before the relevant professional board or an administrative law officer (ALO);
    - OPR’s prosecutors would represent the State’s interest in the hearing;
    - The applicant would have the burden of demonstrating why they should be granted a license and/or under what conditions they should have that license.
    - The Board or ALO would then decide whether to grant the license to the applicant and, if so, whether to impose any sanctions on the license.
    - The applicant would have a right to appeal this decision to an appellate officer (appointed by OPR but distinct from the board and the ALO).
    - The applicant could appeal the decision of the appellate officer to the Vermont Supreme Court.

- (e)(2): This is a new section that distinguishes the process for denying a license application based on the *qualifications* of an applicant.
  - The proposed bill would allow the board or the Office to issue a *final* decision denying a license application when the applicant has not met the qualifications for licensure. Notice of the reasons for the denial would be sent to the applicant.
  - The requirements for denials based on conduct and those based on qualifications should be distinct because the boards and the Office undertake significantly different review processes for each reason for denial. Unlike in a matter involving a preliminary denial based on unprofessional conduct, a board or the Office denies an application based on qualifications only after many months of thorough review and discussions with the applicant. In turn, having a preliminary denial hearing (as described in the unprofessional conduct preliminary denial section) before the board or Office is procedurally confusing and redundant: the Board is asked to “hear the evidence for the first time” after having reviewed it many times before, and OPR staff is asked to shift from a role of assisting the Board in reviewing the application to the role of defending the state’s interest in a contested hearing. The proposed amendment would reduce this confusion and redundancy by eliminating the preliminary denial hearing before the board for applicants being denied based on qualifications.
  - The applicant would still have two opportunities to appeal the board or OPR’s decision to deny an application based on the qualifications of the applicant: one appeal would be to an appellate officer within the Office and, following that, the next appeal could be to the Vermont Supreme Court.

Section 1 (cont.); 3 V.S.A. §129(n)

- This section allows a board to appoint a hearing panel of three board members (at least one professional member and at least one public member) to hear a disciplinary matter.
- This would provide professional boards with a third option for conducting hearings, in addition to hearing the matter as a full board and delegating the matter to an administrative law officer.
- Occasionally, OPR must conduct multi-day hearings. OPR’s volunteer board members cannot always take this amount of time off work. However, the professional knowledge of the board members is often invaluable in hearing these cases. The option to delegate the hearing of the matter to a smaller panel of board members and an administrative law officer provides the board the opportunity to remain involved in the hearing of the case when a quorum of the board is not available to hear the matter.
- The Board of Medical Practice currently has this authority and uses it to hear cases. The proposed bill would permit OPR to use the process, as well.

Section 2; 3 V.S.A. §136

- Amends § 136 to permit professionals to use synchronous, virtual coursework (i.e., live, remote, digital courses) to fulfill continuing education requirements for renewing a license.
- Act 117 (2022) permitted mental health professional licensees to use “synchronous, virtual” coursework to fulfill continuing education requirements for license renewal. This was in response to a shift that occurred during the COVID-19 state of emergency. Some professional regulations

require professionals to obtain a certain number of continuing education credits from live, in-person courses. This was not possible during COVID-19 and the Office issued a temporary policy (under the state of emergency) allowing these requirements to be fulfilled using synchronous (i.e., live), virtual education.

- Act 117 allowed this practice to continue post-state-of-emergency for the mental health professions. The proposed amendment in H. 305 would extend this change to all other OPR-regulated professions.

## **Title 26**

### **\*\*\*Profession Specific Provisions\*\*\***

#### Section 3; 26 V.S.A. § 281 (BARBERS AND COSMETOLOGY)

- Amends the section to permit State correctional facilities to offer courses of instruction in cosmetology, as well as barbering, without having to obtain a certificate of approval from OPR.
- State correctional facilities are already permitted to offer courses in barbering without obtaining a certificate from OPR. The proposed language would extend this to include cosmetology courses, as well.

#### Sections 4 and 5; 26 V.S.A. § 624 and Session Law Related to Implementation (DENTAL)

- This section authorizes public health dental hygienists (i.e., dental hygienists with at least three years of licensed experience) with approved training to perform a procedure called silver-modified atraumatic restorative technique (SMART). This procedure stops decay and would be used to fill cavities.
- Allowing public health dental hygienists to perform this procedure would likely help address issues with access to dental care, particularly for low-income Vermonters.
- Under the proposal, public health dental hygienists would be required to complete training in the performance of the SMART procedure that is approved by the Vermont Commissioner of Health. Additionally, the Board of Dental Examiners would need to adopt rules governing the procedure and public health hygienists' use of the procedure prior to public health hygienists being permitted to treat patients using the procedure.

#### Section 6; 26 V.S.A. § 1836 (OSTEOPATHY)

- Amends chapter to reflect OPR's current application and reinstatement processes, and to eliminate the osteopathy-specific continuing education requirement.
- Since this law was last updated, OPR has eliminated the use of paper forms and instituted a fully digital application process. The amendments to this chapter reflect these updated procedures by eliminating references to submitting forms to the Office. The amendments also incorporate references to the other requirements for initial licensure and the renewal of a license. These processes are already occurring and authorized in Title 3. The proposed change in language in the chapter reflects those processes.
- The proposed amendment creates a pathway for osteopathic physicians who have left practice or had their Vermont license expire for more than three years to return to the profession.
- Finally, the proposal would remove the requirement that, of the 30 hours of continuing education an osteopath must complete to renew their license, 40% must be in osteopathic medicine. The proposed amendment reflects the significant overlap between the current practices of allopathic and osteopathic medicine. There is little distinction between the current practices of allopathic

and osteopathic medicine. Requiring osteopathic physicians to obtain osteopathy-specific education forces osteopathic physicians to obtain continuing education that does not relate to their practice of the profession and, in turn, does not serve to protect the public. Further, there are few osteopathy-specific course offerings available. Eliminating this requirement would remove an unnecessary and inefficient barrier to practice for osteopathic physicians.

#### Section 7; 26 V.S.A. 2022 (PHARMACY)

- This section amends two definitions in the pharmacist-specific laws: pharmacy technician and self-administered hormonal contraceptives.
- The definition of a pharmacy technician is amended to expand the scope of pharmacy technicians to include the administration of immunizations and the performance of COVID tests.
  - During the COVID-19 state of emergency, federal law permitted pharmacy technicians to administer immunizations and perform COVID tests. This federal authorization is due to expire on May 11, 2023, with the national state of emergency.
  - Pharmacy technicians' ability to administer immunizations and perform COVID tests has been instrumental and essential to the state's public health efforts. Without their assistance, pharmacists and physicians would quickly be overwhelmed by requests for immunizations and tests and patient access to these services would be significantly restricted. Finally, with the proper training and oversight, pharmacy technicians can provide these services safely.
  - Amendments to 26 V.S.A. § 2042a, described below, establish the required training and oversight for pharmacy technicians administering immunizations and performing COVID-19 tests.
- The definition of self-administered hormonal contraceptives is amended to include subcutaneous administration.
  - Stakeholders, including pharmacists and physicians, support including depo Provera contraception in the list of medications that pharmacists can prescribe under a State protocol approved by the Commissioner of Health. This would improve access to contraception. To authorize this, the definition of "self-administered hormonal contraception" needed to be modified to include "subcutaneous" administration, which is how Depo Provera is administered.

#### Section 8; 26 V.S.A. § 2023(b)(2)(A) (PHARMACY)

- This amendment would add to the list of medications pharmacists may dispense or administer pursuant to a State protocol approved by the Commissioner of Health. Specifically, the amendment would authorize appropriately trained pharmacists to dispense depo Provera contraception and administer any immunization for patients 18 years or older that is approved by the CDC's Advisory Committee on Immunization Practices (ACIP).
- These amendments help to improve patient access to immunizations and contraceptives while ensuring the protection of the public through appropriate training and oversight.

#### Section 9; 26 V.S.A. § 2042a (PHARMACY)

- The amendment establishes the training and oversight requirements for pharmacy technicians administering immunizations and performing COVID-19 tests.
- To perform these services, pharmacy technicians would need to register with OPR, complete an educational training program, and hold a CPR certification. Once these qualifications are met, a

pharmacy technician would be permitted to administer vaccinations when a trained pharmacist is present to patients 18-years old or older and in accordance with the ACIP-recommended schedule and practices. Pharmacy technicians would be limited to administering only those immunizations that are ACIP approved and that licensed pharmacists are permitted to administer under a State protocol approved by the Commissioner of Health.

Section 10; 26 V.S.A. § 3286 (AUDIOLOGISTS AND HEARING AID DISPENSERS)

- This amendment exempts hearing aid distributors from licensure requirements when the hearing aid distributor is selling and dispensing only over-the-counter hearing aids.
- The U.S. Food and Drug Administration adopted a rule this past year preempting state law and prohibiting state licensure of hearing aid dispensers who are dispensing only over-the-counter hearing aids.
- This proposed amendment ensures that Vermont law complies with the FDA's new rule and federal law.
- The proposed language includes citations to the amended federal rules to ensure that the exemption from state licensure only applies to those hearing aid dispensers and hearing aid types exempted under the federal regulations.

Section 11; 26 V.S.A. § 5361 (NOTARIES)

- This amendment addresses an incorrect citation in the notary public statutes.
- The General Assembly amended the notary public statutes significantly in 2022. The citation of the "notarial acts" definition changed because of these amendments but the reference to the "notarial acts" definition citation in § 5361 was not updated. This amendment updates the reference in § 5361 to the current citation.

**\* \* \* Effective Dates \* \* \***

Sec. 12. EFFECTIVE DATE. This act shall take effect on passage.

