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H.506

Introduced by Committee on Government Operations

Date:

Subject: Professions and occupations; Office of Professional Regulation;
miscellaneous

Statement of purpose of bill as introduced: This bill proposes to make
miscellaneous amendments to statutes governing professions and occupations
regulated by the Office of Professional Regulation.

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

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

* * * Office of Professional Regulation * * *

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

§ 123. DUTIES OF OFFICE

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

* * *

(h) Notwithstanding any provision of Title 26 of the Vermont Statutes
Annotated to the contrary, the Office, on behalf of the Director or a board, may

1 use electronic mail to send notices and reminders that would otherwise be sent
2 by mail, except certified mail, and may use online services to elicit
3 information and sworn attestations that would otherwise be obtained on a
4 paper form.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (3) Applicants subject to background checks shall be notified that a

1 check is required, if fingerprints will be retained on file, and that criminal
2 convictions are not an absolute bar to licensure, and shall be provided such
3 other information as may be required by federal law or regulation.

4 (k) When, by reason of disqualification, resignation, vacancy, or necessary
5 absence, a board is unable to form a quorum or assign one or more members to
6 assist in the investigation and prosecution of complaints or license
7 applications, or to adjudicate a contested case, the Secretary of State may
8 appoint ad hoc members, either as voting members to establish a quorum at a
9 specific meeting or as nonvoting members to assist Office investigators and
10 prosecutors.

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

12 § 128. DISCIPLINARY ACTION TO BE REPORTED TO THE BOARD

13 OFFICE

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

21 (2) The report shall be made within 10 days of the date the disciplinary

1 action was taken, regardless of whether the action is the subject of a pending
2 appeal, and in the case of a licensee who is employed by, or under contract
3 with, a community mental health center, a copy of the report shall also be sent
4 to the Commissioners of Mental Health and of Disabilities, Aging, and
5 Independent Living.

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

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

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

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

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

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

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

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

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

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

4 * * *

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

6 § 129. POWERS OF BOARDS; DISCIPLINE PROCESS

7 * * *

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

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

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

§ 129a. UNPROFESSIONAL CONDUCT

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

* * *

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

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

* * *

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

* * *

(16)(A) Impeding an investigation under this chapter or unreasonably

1 failing to reply, cooperate, or produce lawfully requested records in relation to
2 such investigation.

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

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

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

16 (19) Willful misrepresentation in treatments or therapies.

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

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

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

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

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

30 * * *

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

1 § 130a. APPEALS FROM BOARD DECISIONS

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

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

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

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

17 (1) in violation of constitutional or statutory provisions;

18 (2) in excess of the statutory authority of the board or administrative
19 law officer;

20 (3) made upon unlawful procedure;

21 (4) affected by other error of law;

- 1 (5) clearly erroneous in view of the evidence on the record as a whole;
2 (6) arbitrary or capricious; or
3 (7) characterized by abuse of discretion or clearly unwarranted exercise
4 of discretion.

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

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

9 § 131. ACCESSIBILITY AND CONFIDENTIALITY OF DISCIPLINARY
10 MATTERS

11 * * *

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

15 * * *

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

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

20 (B) formal charges, provided that they have been served or a

21 reasonable effort to serve them has been made, and all subsequent pleadings

1 filed by the parties;

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

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

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

7 and

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

10 * * *

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

15 * * *

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

1 provided the receiving agency or department:

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

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

5 * * * Pharmacy * * *

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

7 § 4215. AUTHORIZED SALES BY PHARMACISTS

8 * * *

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

13 (2) Pharmacists shall be subject to the requirements of
14 21 U.S.C. chapter 13.

15 (3) Notwithstanding the ~~foregoing~~ provisions of subdivision (1) or (2)
16 of this subsection, nō a prescription for a schedule II drug written without a
17 future fill date ~~may~~ shall not be filled more than 30 days after the date the
18 prescription was issued. ~~Nō A~~ A prescription for a schedule II drug written to be
19 filled at a future date ~~may~~ shall not be filled more than 90 days after the date
20 the prescription was issued.

21 (4) A physician who dispenses regulated drugs as part of his or her

1 regular fee or for an additional fee shall be subject to the same requirements as
2 a pharmacist for the purposes of this section.

3 * * *

4 * * * Accountants * * *

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

6 § 13. DEFINITIONS

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

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

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

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

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

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

21 (v) any examination, review, or agreed upon procedures

1 engagement to be performed in accordance with the SSAE, other than an
2 examination described in subdivision (iii) of this subdivision (1)(A).

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

7 * * *

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

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

18 (B) The term “report” includes any form of language ~~which~~ that
19 disclaims an opinion when the form of language is conventionally understood
20 to imply any positive assurance as to the reliability of the attested information
21 or compiled financial statements referred to or special competence on the part

1 of the person or firm issuing the language; and it includes any other form of
2 language that is conventionally understood to imply such assurance or such
3 special knowledge or competence.

4 * * *

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

6 § 74. FIRMS; REGISTRATION AND OWNERSHIP

7 * * *

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

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

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

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

19 * * *

20 (e) Any individual licensee who is responsible for supervising attest
21 services and signs or authorizes someone to sign the accountant’s report on

1 ~~financial statements~~ on behalf of the firm, shall meet the experience and
2 competency requirements set out in the professional standards for such
3 services.

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

9 * * *

10 * * * Dental Therapists * * *

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

12 § 612. LICENSE BY ENDORSEMENT

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

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

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

21 (3) has successfully completed an emergency office procedure course

1 approved by the Board;

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

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

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

11 [Repealed.]

12 * * * Funeral Directors * * *

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

14 § 1252. APPLICATION; QUALIFICATIONS

15 (a)(1) Funeral director.

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

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

1 funeral service accredited or approved by the American Board of Funeral
2 Service Education in a course of instruction of not less than one academic year
3 or its equivalent as determined by the Board, with 30 additional credit hours in
4 subjects approved by the Board and obtained in a college or university
5 approved by the Board; and

6 * * *

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

13 (b)(1) Embalmer.

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

16 * * *

17 * * * Pharmacy * * *

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

19 § 2041. UNLAWFUL PRACTICE

20 * * *

21 (b)(1) Any person who shall be found by the ~~board~~ Board after hearing to

1 have unlawfully engaged in the practice of pharmacy shall be subject to
2 disciplinary action.

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

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

10 § 2061. REGISTRATION AND LICENSURE

11 * * *

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

15 * * * Real Estate Brokers * * *

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

17 § 2292. ELIGIBILITY

18 * * *

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

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

1 § 2296. UNPROFESSIONAL CONDUCT; ~~DISCIPLINE OF LICENSEE~~

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

4 * * *

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

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

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

16 (8) is found by the Commission to have engaged in any act or conduct,
17 whether of the same or different character as that described in this section,
18 which contributes to or demonstrates incompetency or dishonest fraudulent
19 dealings;

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

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

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

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

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

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

13 ~~(1) revoke a license;~~

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

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

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

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

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

1 § 2401. DEFINITIONS

2 As used in this chapter:

3 * * *

4 (5) “Practice of veterinary medicine” means:

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

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

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

20 * * *

21 Subchapter 4. Unprofessional Conduct and Discipline

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§ 2433. VETERINARIAN-CLIENT-PATIENT RELATIONSHIP;

VETERINARIAN OF RECORD

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

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

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

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

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

(1) authorize the dispensing of veterinary prescription drugs;

(2) issue a valid veterinary feed directive;

1 (a) The Director shall:

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

4 * * *

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

8 * * *

9 (b) The Director shall not:

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

13 * * *

14 * * * Radiologic Technology * * *

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

16 § 2804. COMPETENCY REQUIREMENTS OF CERTAIN LICENSED
17 PRACTITIONERS

18 (a) Unless the requirements of subdivision 2803(1) of this chapter have
19 been satisfied, a physician, as defined in chapter 23 of this title, podiatrist, as
20 defined in chapter 7 of this title, chiropractic physician, as defined in chapter
21 10 of this title, osteopathic physician, as defined in chapter 33 of this title, or

1 naturopathic physician, as defined in chapter 81 of this title, shall not apply
2 ionizing radiation to human beings without first having satisfied the Board of
3 his or her competency to do so.

4 * * *

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

6 § 2821b. LICENSE FOR POSTPRIMARY MODALITIES

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

12 (b) In order for a licensee who has obtained one of the three primary
13 ARRT or NMTCB certifications set forth in section 2821a of this subchapter to
14 practice in one of the postprimary modalities set forth in subsection (a) of this
15 section, the licensee must first obtain postprimary certification from ARRT or
16 NMTCB for that category, except:

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

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

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* * * Private Investigative and Security Services * * *

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

CHAPTER 59. PRIVATE INVESTIGATIVE AND SECURITY SERVICES

* * *

Subchapter 3. Licensing

* * *

§ 3173. PRIVATE INVESTIGATOR LICENSES

* * *

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

* * *

§ 3174. SECURITY GUARD LICENSES

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

* * *

§ 3176. EMPLOYEES OF AGENCIES

* * *

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

1 ~~of the employee.~~ The Board may also make such additional inquiries it deems
2 necessary into the character, integrity, and reputation of the employee.

3 * * *

4 § 3178. RENEWALS AND REINSTATEMENT

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

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

11 ~~(c) An individual or agency whose license or registration has lapsed or~~
12 ~~been terminated for more than one year may be reinstated upon filing a new~~
13 ~~application and meeting all requirements for initial issuance of the license or~~
14 ~~registration.~~

15 * * *

16 * * * Real Estate Appraisers * * *

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

18 § 3314. BOARD; POWERS AND DUTIES

19 * * *

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

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

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

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

1 § 3320a. APPRAISAL MANAGEMENT COMPANIES

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

7 ~~(1) administering or assigning work to licensed real estate appraisers;~~

8 ~~(2) receiving requests for real estate appraisals from clients;~~

9 ~~(3) receiving a fee paid by clients for acquiring real estate appraisals; or~~

10 ~~(4) entering into an agreement with one or more real estate appraisers to~~
11 ~~perform appraisals.~~

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

13 ~~(1) a government agency;~~

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

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

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

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

9 ~~(e) A registrant's employee reviewing finished appraisals shall be certified~~
10 ~~or licensed in good standing in one or more states and shall be certified at a~~
11 ~~level that corresponds with or is higher than the level of licensure required to~~
12 ~~perform the appraisal. The Board shall determine whether the regulation of~~
13 ~~appraisal management companies is in the interest of the public and may adopt~~
14 ~~rules regulating appraisal management companies in conformity with the Act.~~

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

16 AUTHORITY

17 The Board of Real Estate Appraisers may adopt the rules described in
18 26 V.S.A. § 3320a (appraisal management companies) in Sec. 23 of this act
19 prior to the effective date of that section.

20 * * * Acupuncturists * * *

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

1 § 3402. PROHIBITIONS; OFFENSES; EXEMPTIONS; EVALUATING
2 NONACUPUNCTURISTS

3 * * *

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

9 Sec. 26. REPEAL

10 2016 Acts and Resolves No. 111, Sec. 1a (Director of Professional
11 Regulation; evaluating nonacupuncturists) is repealed.

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

13 § 3405. ELIGIBILITY FOR LICENSURE

14 To be eligible for licensure as an acupuncturist, an applicant shall be at least
15 18 years of age and shall furnish satisfactory proof that he or she has:

16 (1)(A) completed a program in acupuncture and Oriental medicine and
17 has received a degree or diploma from an educational institution in candidacy
18 or accredited by the Accreditation Commission for Acupuncture and Oriental
19 Medicine or an equivalent or successor accrediting organization approved by
20 the United States Department of Education and the director. The training
21 received in the program shall be for a period of not less than three academic

1 years, and shall include a minimum of 800 hours of supervised clinical
2 practice; or

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

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

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

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

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

21 ~~(3)~~(2) passed the examination described in section 3406 of this title.

1 Sec. 28. [Deleted.]

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

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

4 CHAPTER 79. TATTOOISTS AND BODY PIERCERS

5 § 4101. DEFINITIONS

6 As used in this chapter:

7 * * *

8 (3) “Disciplinary action” includes any action taken by an administrative
9 law officer against a ~~registered~~ licensed tattooist or applicant premised on a
10 finding of unprofessional conduct. Disciplinary action includes all appropriate
11 remedies, including denial of an application for or renewal of a ~~registration~~
12 license, suspension or revocation of a ~~registration~~ license, limiting or
13 conditioning of a ~~registration~~ license, issuing reprimands or warnings, and
14 adopting consent orders.

15 * * *

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

18 * * *

19 § 4102. PROHIBITIONS

20 (a) ~~No~~ A person shall not practice tattooing, permanent cosmetics, or body
21 piercing unless that person is ~~registered~~ licensed in accordance with the

1 provisions of this chapter.

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

4 * * *

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

7 § 4103. DIRECTOR; FUNCTION; COMMISSIONER OF HEALTH; RULES

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

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

12 * * *

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

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

19 * * *

20 (c) The ~~director~~ Director may adopt rules necessary to perform his or her
21 duties pursuant to this chapter. These rules may include provisions governing

1 the supervision and temporary licensure of tattoo artists, body piercers, and
2 permanent cosmetologists, as may be necessary to allow this State to be a
3 venue for appropriately regulated special events such as conventions, festivals,
4 or professional conferences.

5 * * *

6 § 4104. ~~ADVISORY~~ ADVISOR APPOINTEES

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

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

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

14 * * *

15 § 4105. ~~REGISTRATION; APPRENTICESHIP REQUIREMENTS FOR~~
16 LICENSURE

17 (a) Initial registration.

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

21 (2) Registration shall be in the form required by the Director and shall

1 include such information as the Director may require concerning the location
2 of the registrant's practice, the registrant's qualification, and the nature of the
3 services offered.

4 (b) Tattooists and body piercers.

5 (1)(A) As a prerequisite to ~~registration~~ licensure, a tattooist or body
6 piercer applicant shall provide proof of an apprenticeship of at least 1,000
7 hours of experience obtained within two calendar years working under the
8 direct supervision of a body piercer or tattooist ~~registered~~ licensed and in good
9 standing with this State or the state in which he or she is regulated, and who
10 has been in practice a minimum of three years.

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

14 * * *

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

1 (c) Permanent cosmetologists.

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

5 (B)(i) In addition, the applicant shall obtain at least 40 hours of
6 practical experience, within two calendar years preceding the application,
7 working under the direct supervision of a tattooist or permanent cosmetologist
8 ~~registered~~ licensed and in good standing with this State or the state in which he
9 or she is regulated, and who has been in practice a minimum of three years.

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

13 * * *

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

21 (d) Shops. No A shop shall not operate in this State without first

1 registering with the Office of Professional Regulation and paying a fee of
2 \$100.00. Registration shall be in the form required by the Director.

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

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

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

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

15 § 4106. RENEWALS

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

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

21 (c) As a condition of renewal, a licensee or registrant shall submit to the

1 ~~director~~ Director proof of at least three hours of continuing education in the
2 area of universal precautions and infectious diseases.

3 § 4108. UNPROFESSIONAL CONDUCT

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

6 * * *

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

10 § 4109. DISCLOSURE INFORMATION

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

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

21 On the effective date of this act, a tattooist, body piercer, or permanent

1 cosmetologist registered under 26 V.S.A. chapter 79 shall be considered to be
2 licensed under that chapter in accordance with Sec. 29 of this act.

3 * * * Athletic Trainers * * *

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

5 § 4151. DEFINITIONS

6 As used in this chapter:

7 * * *

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

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

19 (B) With a referral from a physician, osteopathic physician, advanced
20 practice registered nurse, physician assistant, dentist, or chiropractor, to
21 athletes or the physically active who have an athletic or orthopedic injury and

1 have been determined, by a physician's examination, to be free of an
2 underlying pathology that would affect treatment.

3 * * *

4 * * * Speech-Language Pathologists * * *

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

6 § 4456. DIRECTOR DUTIES

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

9 * * *

10 (6) with the advice of the advisor appointees, adopt rules necessary to
11 implement the provisions of this chapter, which may include rules providing
12 for the issuance of a restricted, provisional license to a person in the process of
13 completing the postgraduate professional training required by subdivision
14 4457(3) of this chapter;

15 * * *

16 * * * APRN Services in Nursing Homes * * *

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

18 Subchapter ~~34~~. Receivership Proceedings

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

20 Subchapter 3. Health Care Services

21 § 7151. ADVANCED PRACTICE REGISTERED NURSES; SCOPE OF

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

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