

Amendment to HB 518

1 Amend RSA 310:2, I(c) as inserted by section 1 of the bill by replacing it with the following:

2
3 (c) "Investigation" shall mean ~~[procedures for]~~ investigation of allegations and
4 complaints of misconduct in accordance with RSA 310:9.

5
6 Amend RSA 310:8, II as inserted by section 3 of the bill by replacing it with the following:

7
8 II. Licenses shall be valid for 2 years from the date of issuance except for those apprentices
9 licensed for one year in accordance with rules adopted pursuant to 541-A, provided that timely and
10 complete application for license renewal by eligible applicants shall continue the validity of the
11 licenses being renewed until the office has acted on the renewal application, ***or, in matters***
12 ***appealed pursuant to RSA 310:14, until the office has issued a final decision.***

13
14 Amend RSA 310:10, V as inserted by section 4 of the bill by replacing it with the following:

15
16 V. ~~[The presiding officer]~~ In disciplinary and non-disciplinary remedial proceedings,
17 ***including those held pursuant to this section, RSA 310:12, IV, and RSA 310:13, the***
18 ***presiding officer*** may issue subpoenas for persons, relevant documents, and relevant materials in
19 accordance with the following conditions:

20 (a) Subpoenas for persons shall not require compliance in less than 48 hours after
21 receipt of service.

22 (b) Subpoenas for documents and materials shall not require compliance in fewer than
23 15 days after receipt of service.

24 (c) Service shall be made on licensees ~~[and certified individuals]~~ by certified mail to the
25 address on file with the office or by hand and shall not entitle them to witness or mileage fees.

26 (d) Service shall be made on persons who are not licensees ~~[or certified individuals]~~ in
27 accordance with the procedures and fee schedules of the superior court, and the subpoenas served on
28 them shall be annotated "Fees Guaranteed by the New Hampshire Office of Professional Licensure
29 and Certification."

30
31 Amend RSA 310:10, X as inserted by section 4 of the bill by replacing it with the following:

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X. Except as otherwise provided by RSA 541-A:30, the ~~board~~ **office** shall furnish the respondent at least 15 days' written notice ~~[-of the date, time and place]~~ of a hearing ***in accordance with RSA 541-A:31, III.*** Such notice shall include an itemization of the issues to be heard, and, in the case of a disciplinary hearing, a statement as to whether the action has been initiated by a written complaint or upon the board's own motion, or both. If a written complaint is involved, the notice shall provide the complainant with a reasonable opportunity to intervene as a party.

Amend RSA 310:10, XV as inserted by section 4 of the bill by replacing it with the following:

XV. In instances where a board lacks sufficient members to meet quorum, the executive director, or designee, may initiate proceedings held pursuant to RSA 310 or RSA 541-A and direct that evidence be received solely by the presiding officer who, in addition to exercising the authority given to the presiding officer under RSA 310 and RSA 541-A, shall be charged with making findings of fact, determining appropriate sanctions or action, or denying or accepting settlement agreements.

Amend the bill by replacing section 10 with the following:

10 Physicians and Surgeons; Continuing Medical Education Requirement. Amend RSA 329:16-g as follows:

329:16-g Continuing Medical Education Requirement. ~~[As a condition of renewal of license,]~~ The board shall require each licensee to show proof at least at every biennial license renewal that the licensee has completed 100 hours of approved continuing medical education program within the preceding 2 years. For the purposes of this section, an approved continuing medical education program is a program designed to continue the education of the licensee in current developments, skills, procedures, or treatment in the licensee's field of practice, which has been certified by a national, state, or county medical society or college or university. ~~[There shall be a complete audit of all continuing education credits annually by the New Hampshire Medical Society.]~~ Each licensee shall submit a continuing medical education report with copies of continuing medical education course certificates earned by the licensee and other documents which establish that continuing medical education course requirements have been met, using a form approved by the board. ~~[The complete audit shall include the collection, review, verification, and preservation of the continuing medical education documentation of each licensed physician and a report which records the credits awarded to each licensee during the 2-year period applicable to each licensee. The fee charged to licensees for continuing medical education verification shall not exceed 125 percent of the actual cost of providing the service. The New Hampshire Medical Society is prohibited from using any~~

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~~information from this program for promotional purposes or any other purpose not necessary for continuing education verification.]~~

Amend the bill by replacing all after section 10 with the following:

11 Disciplinary Action; Remedial Proceedings. Amend RSA 329:17 to read as follows:

329:17 Disciplinary Action; Remedial Proceedings.

I. ~~[Repealed].~~

I-a. ~~[Repealed].~~

~~II.]~~ Every clerk of the superior court shall report to the board the filing and final disposition of any action for medical injury as defined in paragraph III within 30 days after such filing and within 30 days after such final disposition.

~~III.]~~ **II.** Every insurer, including self-insurers, providing professional liability insurance to a licensee of the board shall send a complete report to the board as to all reservable claims coincident with medical injury that take place in this state or in any other state within 30 days after establishing the reserve. For the purpose of this paragraph, medical injury means any adverse, untoward or undesired consequences arising out of or sustained in the course of professional services rendered by a medical care provider, whether resulting from negligence, error or omission in the performance of such services; from rendition of such services without informed consent or in breach of warranty or in violation of contract; from failure to diagnose; from premature abandonment of a patient or of a course of treatment; from failure properly to maintain equipment or appliances necessary to the rendition of such services; or otherwise arising out of or sustained in the course of such services.

~~III-a. The board shall instruct the medical review subcommittee to conduct an investigation of any person licensed by the board who has had 3 reservable claims, written complaints, or actions for medical injury, as defined by paragraph I, II, or III, or any combination thereof, which pertain to 3 different acts or events within any consecutive 5-year period.~~

~~III-b.]~~ **III.(a)** *The office shall investigate* any referral by the insurance commissioner under RSA 420-J:5-e, VIII or any complaint alleging that a medical director has committed misconduct as set forth in paragraph ~~[VI]~~ **VII** of this section shall be received and reviewed by the board in accordance with the provisions of this section for potential disciplinary action. For the purposes of this paragraph, "medical director" means a physician licensed under this chapter who is employed by a health carrier or medical utilization review entity and is responsible for the utilization review techniques and methods of the health carrier or medical utilization review entity and their administration and implementation.

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(b) Any complaint received by the ~~[board]~~ **office** regarding an insurance coverage decision by a medical director shall be forwarded ~~[by the board]~~ to the insurance commissioner for review.

IV. Every facility administrator, or designee, for any licensed hospital, health clinic, ambulatory surgical center, or other health care facility within the state shall report to the ~~[board]~~ **office** any disciplinary or adverse action, within 30 days after such action is taken, including situations in which allegations of misconduct are settled by voluntary resignation without adverse action, against a ~~[person]~~ licensed ~~[by the board]~~ **individual**. Disciplinary or adverse action shall include the requirement that a licensee undergo counseling or be subject to any policy with regard to disruptive behavior.

V. Every professional society within the state comprised primarily of ~~[persons licensed by the board]~~ **licensees** shall report to the ~~[board]~~ **office** any disciplinary action against a member relating to professional ethics, medical incompetence, ~~[moral turpitude,]~~ or drug or alcohol abuse within 30 days after such disciplinary action is taken.

~~[V-a. A medical review subcommittee of 13 members shall be nominated by the board of medicine and appointed by the governor and council. The subcommittee shall consist of 13 persons, 9 of whom shall be physicians, one of whom shall be a physician assistant, and 3 of whom shall be public members. One of the physician members shall practice in the area of pain medicine and anesthesiology. No public member of the subcommittee shall be or ever have been a member of the medical profession or the spouse of a member of the medical profession. No public member shall have or ever have had a material financial interest in either the provision of medical services or an activity directly related to medicine, including the representation of the board or profession for a fee. The terms of the public members shall be staggered so that no 2 public members' terms expire in the same year. The subcommittee members shall be appointed for 3-year terms, and shall serve no more than 2 terms. Upon referral by the board, the subcommittee shall review disciplinary actions reported to the board under paragraphs II-V of this section, except that matters concerning a medical director involved in a current internal or external grievance pursuant to RSA 420-J shall not be reviewed until the grievance process has been completed. Following review of each case, the subcommittee shall make recommendations to the board. The state of New Hampshire, by the board and the office of professional licensure and certification, and with the approval of governor and council, shall contract with a qualified physician to serve as a medical review subcommittee investigator.]~~

~~[V-b]~~ VI. When a threat to public health, safety, or welfare may exist, the ~~[board of medicine]~~ **office** shall notify the facility, a practice's managing physician or administrator, or the hospital chief executive officer of any pending disciplinary proceedings, non-disciplinary remedial proceedings, recommended corrective actions, or concerns for informational purposes or referral to the facility, practice, or hospital's credentials and quality assurance committees or their equivalent.

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1 The entity receiving notification shall report back to the board of medicine with a progress or final
2 report within 45 days.

3 [VI.] **VII.** The board, after hearing, may take disciplinary action against any person licensed
4 by it upon finding that the person:

5 (a) Has knowingly provided false information during any application for professional
6 licensure or hospital privileges, whether by making any affirmative statement which was false at the
7 time it was made or by failing to disclose any fact material to the application.

8 (b) Is a habitual user of drugs or intoxicants.

9 (c) Has displayed medical practice which is incompatible with the basic knowledge and
10 competence expected of persons licensed to practice medicine or any particular aspect or specialty
11 thereof.

12 (d) Has engaged in dishonest or unprofessional conduct or has been grossly or repeatedly
13 negligent in practicing medicine or in performing activities ancillary to the practice of medicine or
14 any particular aspect or specialty thereof, or has intentionally injured a patient while practicing
15 medicine or performing such ancillary activities.

16 (e) Has employed or allowed an unlicensed person to practice in the licensee's office.

17 (f) Has failed to provide adequate safeguards in regard to aseptic techniques or radiation
18 techniques.

19 (g) Has included in advertising any statement of a character tending to deceive or
20 mislead the public or any statement claiming professional superiority.

21 (h) Has advertised the use of any drug or medicine of an unknown formula or any
22 system of anesthetic that is unnamed, misnamed, misrepresented, or not in reality used.

23 (i) Has willfully or repeatedly violated any provision of this chapter or any substantive
24 rule of the board.

25 (j) Has been convicted of a felony under the laws of the United States or any state.

26 (k) Has failed to maintain adequate medical record documentation on diagnostic and
27 therapeutic treatment provided or has unreasonably delayed medical record transfer, or violated
28 RSA 332-I.

29 (l) Has knowingly obtained, attempted to obtain or assisted a person in obtaining or
30 attempting to obtain a prescription for a controlled substance without having formed a valid
31 physician-patient relationship pursuant to RSA 329:1-c.

32 [VI-a.] **VIII.** The board may take non-disciplinary remedial action against any person
33 licensed by it upon finding that the person is afflicted with physical or mental disability, disease,
34 disorder, or condition deemed dangerous to the public health. Upon making an affirmative finding,
35 the board, may take non-disciplinary remedial action:

36 (a) By suspension, limitation, or restriction of a license for a period of time as
37 determined reasonable by the board.

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(b) By revocation of license.

(c) By requiring the person to submit to the care, treatment, or observation of a physician, counseling service, health care facility, professional assistance program, or any combination thereof which is acceptable to the board.

(d) By requiring the person to practice under the direction of a physician in a public institution, public or private health care program, or private practice for a period of time specified by the board.

~~[VI-b]~~ **IX.** The state of New Hampshire confirms its strong support for shared decision making between health care professionals and their patients. A licensee may lawfully prescribe an FDA approved drug product for an off-label indication and be held to the same standard of care as when prescribing for on-label indication when:

(a) Off-label use of the drug product for this indication has longstanding common use;

(b) There is medical evidence to support this use and no known evidence contraindicating such use, including but not limited to, peer reviewed studies and practice guidelines from relevant medical societies; or

(c) The licensee has provided and the patient, or if the patient is a minor, the patient's parent or guardian, has signed an informed consent form that includes the known potential benefits, known potential risks, alternative treatment options, expected prognosis without treatment, and a disclosure that a prescription is for an off-label indication. The signed informed consent form shall remain part of the patient's medical record.

~~[VII. [Repealed.]~~

~~VII-a. [Repealed.]~~

~~VIII. [Repealed.]~~

~~[IX]~~ **X.** No civil action shall be maintained against the board or any member of the board or its agents or employees with regard to any action or activity taken in the performance of any duty or authority established by this chapter. No civil action shall be maintained against any organization or its members or against any other person for or by reason of any good faith statement, report, communication, or testimony to the board or determination by the board in relation to proceedings under this chapter.

~~[IX-a.]~~ **XI.** Any persons who have had their licenses to practice medicine revoked or suspended shall be barred from practicing any other human health care activities, including psychotherapy, whether or not such other activity is licensed or certified by another licensing agency.

~~[X, XI. [Repealed.]~~

~~XII. [Repealed.]~~

~~XIII. [Repealed.]~~

12 Inspectors. Amend RSA 313-A:21, III to read as follows:

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1 III. Sanitary inspections of all salons, barbershops, and schools shall be made at least
2 ~~[twice]~~ **once** each year.

3 13 Directors; Appointments and Salaries. Amend RSA 310:3, IV-V to read as follows:

4 IV. The executive director shall nominate for appointment by the governor and council the
5 unclassified positions of ~~[agency]~~ chief legal officer and ~~[board]~~ chief ~~[legal officer]~~ **of staff**. Each
6 officer shall be qualified for the position by reason of education, competence, and experience and
7 shall serve at the pleasure of the executive director.

8 V. The salaries of the executive director, each division director, ~~[each]~~ **chief** legal officer,
9 **chief of staff**, the chief pharmacy investigator, and each pharmacy investigator shall be as specified
10 in RSA 94:1-a.

11 14 Executive Director Responsibilities. Amend RSA 310:4, II(a) to read as follows:

12 (a) Supervision of the division directors, ~~[and]~~ chief legal ~~[officers]~~ **officer, and chief of**
13 **staff**.

14 15 Effective Date. This act shall take effect 60 days after its passage.