

Act 126 of 2020 Updates Laws Regarding the Vermont Board of Medical Practice



On July 1, 2020, Governor Scott signed into law a bill passed by the General Assembly that updates several different parts of the laws that create the Board of Medical Practice and define how members of the professions under the Board's jurisdiction are licensed and regulated. Many licensees may have heard about the legislation when it was being discussed in the Statehouse as bill H.438. Once it was signed and became law, its designation changed to Act 126. The text of the law is available on the General Assembly's website [here](#).

Many of the changes are technical in nature and most licensees will not notice immediate impacts. A by-topic summary of the more substantive changes follows.

Exemption from License Requirement for Students

Clarifying language was added to the 26 V.S.A. § 1313 list of exemptions to the requirement to be licensed to engage in acts that constitute the practice of medicine. A new subsection explicitly states that students in accredited educational programs that satisfy the educational requirements for professions regulated by the Board may engage in acts that constitute practice of medicine while supervised by a medical professional licensed in Vermont. This section applies to students in MD, PA, DPM, AA, and RA programs who participate in practice rotations in Vermont as part of a degree-granting program. The exemption does not apply to graduate medical education trainees (residents), who are still required to obtain a limited training license.

Reporting Employer Discipline

Vermont law has long required employers of professionals licensed by the Board to report certain disciplinary actions taken against those professionals. 26 V.S.A. § 1317. However, there was some ambiguity in the old language that defined which disciplinary events needed to be reported. That could cause inconsistent compliance with the law, which could be unfair and frustrate the intent behind the law. The Board worked at length with VMS, VAHHS, and healthcare employers to find language to propose to the General Assembly that would be fairer to licensees and better serve the purpose of the law, which is ultimately to protect the public by avoiding instances in which badly behaved or less skilled licensees might move from one employer to another without coming to the Board's attention. The improved wording more precisely defines reportable events, while also adding incentives for licensees to participate in remedial training, counseling, or treatment that employers suggest to ameliorate performance or conduct.

Authority to Obtain Criminal Background Checks

A revision to the language that authorizes the Board to obtain and use criminal background checks was necessary to support full participation in the Interstate Medical Licensure Compact (IMLC). The law that makes Vermont an IMLC state became effective on January 1, 2020, and physicians from other IMLC states have been able to obtain Vermont licenses through the Compact since then. However, in order for Vermont physicians to obtain licenses through the Compact, the physician must submit a request for a fingerprint-supported national background check and the Board must receive the background check from the National Crime Information Center to confirm that the applicant has no disqualifying conviction. The Board applied to receive background checks in 2019, but the federal Department of Justice has not yet approved the Board's

application; it is believed that updated wording about the Board's access to and use of background checks will facilitate the process for getting access to the checks.

That will in turn allow the Board to begin processing IMLC applications for licenses in additional states for qualifying Vermont physicians. As soon as that can be implemented licensees will be notified.

Investigation and Hearing Process

The provisions describing the Board's processes for investigation and hearings had developed over many decades and were in need of updating. The piecemeal development had led to some inconsistencies and ambiguities with regard to how these important parts of the Board's mission are carried out. From the beginning, the intent was not to radically transform the processes, but to set forth the framework for investigations and hearings in a more consistent and user-friendly fashion. After much work and input by the legislative staff, House Healthcare Committee, Senate Government Operations Committee, Senate Health & Welfare Committee, and Vermont Medical Society, we believe that the goals were met. One improvement of interest to licensees is the inclusion of specified rights for licensees who are charged with unprofessional conduct, such as the right to move to depose witnesses.

Another new feature is an option that can result in licensees avoiding investigations and the possibility of public discipline for matters that constitute administrative infractions. The Board will be allowed to offer licensees the option of paying a modest non-disciplinary and non-public penalty (no more than \$250 per infraction) for matters of an administrative nature. One example would be failure to make a timely report of an adverse outcome in a malpractice case. Even when offered that option, licensees will have the right to decline and instead challenge the allegation in the discipline process. Finally, the law calls on the Board to formally publish its internal guidelines for investigation process so that licensees will have additional information about how the investigation process is carried out.

Qualifications for Licensure

One area of the law that was extensively revised in this process was licensure. When states began to regulate the practice of medicine the individual states developed and administered their own medical licensing examinations. That was the case in Vermont when the Board began in 1905. However, over the second half of the 20th century standardized, national examinations were developed and testing evolved to its current form, with the USMLE being the single test relied upon by all US states and territories. Vermont law on this subject was quite outdated; it still included requirements for creation of the exam. The standards for licensure for both full and training licenses were completely rewritten to reflect modern practice (while still allowing flexibility to accommodate the few more experienced physicians who entered medicine decades ago and apply for a Vermont license now).

The revised law was designed to make a comprehensive and easily understood statement of exactly what is required to obtain a medical license. The goal was transparency, consistency, fairness, and continued protection of Vermont patients through use of appropriate standards. We believe that the goal was met.

Implementation of Changes

Now that the law has been updated, the Board's administrative rules will need to be revised as well. As is typical, in some areas the laws regarding the Board are painted with a broad brush, leaving out the details that are to be provided in the form of administrative rules. Notices will be given to both the general public and to interested stakeholders throughout the process to establish updated rules. The Board encourages all licensees to give input in that process.