

CHAPTER 284

PROFESSIONS AND OCCUPATIONS

HOUSE BILL 07-1331

BY REPRESENTATIVE(S) Carroll M. and Stafford, Borodkin, Buescher, Butcher, Carroll T., Gagliardi, Garcia, Gibbs, Green, Hodge, Jahn, Kefalas, Labuda, Levy, Liston, Madden, McGihon, Peniston, Primavera, Riesberg, Rose, Solano, Stephens, and Todd;
also SENATOR(S) Tochtrop, Boyd, Fitz-Gerald, Groff, and Williams.

AN ACT

CONCERNING INFORMATION REQUIRED TO BE DISCLOSED REGARDING PERSONS LICENSED BY THE STATE BOARD OF MEDICAL EXAMINERS, AND, IN CONNECTION THEREWITH, CREATING THE "MICHAEL SKOLNIK MEDICAL TRANSPARENCY ACT", AND MAKING AN APPROPRIATION THEREFOR.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Part 1 of article 36 of title 12, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

12-36-111.5. Michael Skolnik medical transparency act - disclosure of information about licensees - rules. (1) THIS SECTION SHALL BE KNOWN AND MAY BE CITED AS THE "MICHAEL SKOLNIK MEDICAL TRANSPARENCY ACT".

(2) (a) THE GENERAL ASSEMBLY HEREBY FINDS AND DETERMINES THAT:

(I) THE PEOPLE OF COLORADO NEED TO BE FULLY INFORMED ABOUT THE PAST PRACTICES OF PERSONS PRACTICING MEDICINE IN THIS STATE IN ORDER TO MAKE INFORMED DECISIONS WHEN CHOOSING A MEDICAL CARE PROVIDER AND DETERMINING WHETHER TO PROCEED WITH A PARTICULAR REGIMEN OF CARE RECOMMENDED BY A MEDICAL CARE PROVIDER.

(II) THE PURPOSE OF THIS SECTION IS TO PROVIDE TRANSPARENCY TO THE PUBLIC REGARDING THE COMPETENCY OF PERSONS ENGAGED IN THE PRACTICE OF MEDICINE IN THIS STATE TO ASSIST CITIZENS IN MAKING INFORMED HEALTH CARE DECISIONS.

(b) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT IT IS

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

IMPORTANT TO MAKE INFORMATION ABOUT PERSONS ENGAGED IN THE PRACTICE OF MEDICINE AVAILABLE TO THE PUBLIC IN A MANNER THAT IS EFFICIENT, COST-EFFECTIVE, AND MAINTAINS THE INTEGRITY OF THE INFORMATION, AND TO THAT END, THE GENERAL ASSEMBLY ENCOURAGES PERSONS TO FILE THE REQUIRED INFORMATION WITH THE STATE BOARD OF MEDICAL EXAMINERS ELECTRONICALLY, TO THE EXTENT POSSIBLE.

(3) ON AND AFTER THE EFFECTIVE DATE OF THIS SECTION, ANY PERSON APPLYING FOR A NEW LICENSE OR TO RENEW, REINSTATE, OR REACTIVATE A LICENSE TO PRACTICE MEDICINE IN THIS STATE SHALL PROVIDE THE FOLLOWING INFORMATION TO THE BOARD, IN A FORM AND MANNER DETERMINED BY THE BOARD THAT IS CONSISTENT WITH THE REQUIREMENTS OF SECTION 12-36-111 (1) OR 12-36-123 (1):

(a) THE APPLICANT'S FULL NAME, INCLUDING ANY KNOWN ALIASES; CURRENT ADDRESS OF RECORD AND TELEPHONE NUMBER; INFORMATION PERTAINING TO ANY LICENSE TO PRACTICE MEDICINE HELD BY THE APPLICANT AT ANY TIME, INCLUDING THE LICENSE NUMBER, TYPE, STATUS, ORIGINAL ISSUE DATE, LAST RENEWAL DATE, AND EXPIRATION DATE; ANY BOARD CERTIFICATIONS AND SPECIALTIES, IF APPLICABLE; ANY AFFILIATIONS WITH HOSPITALS OR HEALTH CARE FACILITIES; ANY BUSINESS OWNERSHIP INTERESTS; AND INFORMATION PERTAINING TO ANY EMPLOYMENT CONTRACTS WITH ANY ENTITIES;

(b) ANY PUBLIC DISCIPLINARY ACTION TAKEN AGAINST THE APPLICANT BY THE BOARD OR BY THE BOARD OR LICENSING AGENCY OF ANY OTHER STATE OR COUNTRY. THE APPLICANT SHALL PROVIDE A COPY OF THE ACTION TO THE BOARD AT THE TIME THE APPLICATION IS MADE.

(c) ANY AGREEMENT OR STIPULATION ENTERED INTO BETWEEN THE BOARD OR THE BOARD OR LICENSING AGENCY OF ANY OTHER STATE OR COUNTRY AND THE APPLICANT WHEREBY THE APPLICANT AGREES TO TEMPORARILY CEASE OR RESTRICT HIS OR HER PRACTICE OF MEDICINE OR ANY BOARD ORDER RESTRICTING OR SUSPENDING THE APPLICANT'S MEDICAL LICENSE. THE APPLICANT SHALL PROVIDE A COPY OF THE AGREEMENT, STIPULATION, OR ORDER TO THE BOARD AT THE TIME THE APPLICATION IS MADE.

(d) (I) ANY INVOLUNTARY LIMITATION OR PROBATIONARY STATUS ON OR REDUCTION, NONRENEWAL, DENIAL, REVOCATION, OR SUSPENSION OF THE APPLICANT'S MEDICAL STAFF MEMBERSHIP OR CLINICAL PRIVILEGES AT ANY HOSPITAL OR HEALTH CARE FACILITY. TO REPORT THE INFORMATION REQUIRED BY THIS PARAGRAPH (d), THE APPLICANT SHALL COMPLETE A FORM DEVELOPED BY THE BOARD THAT REQUIRES THE APPLICANT TO REPORT ONLY THE FOLLOWING INFORMATION REGARDING THE ACTION:

(A) THE NAME OF THE FACILITY OR ENTITY THAT TOOK THE ACTION;

(B) THE DATE THE ACTION WAS TAKEN;

(C) THE TYPE OF ACTION TAKEN, INCLUDING ANY TERMS AND CONDITIONS OF THE ACTION;

(D) THE DURATION OF THE ACTION; AND

(E) WHETHER THE APPLICANT HAS FULFILLED THE TERMS OR CONDITIONS OF THE ACTION, IF APPLICABLE.

(II) NOTWITHSTANDING ARTICLE 36.5 OF TITLE 12, C.R.S., AND ARTICLE 3 OF TITLE 25, C.R.S., THE FORM COMPLETED BY THE APPLICANT PURSUANT TO THIS PARAGRAPH (d) SHALL BE A PUBLIC RECORD AND SHALL NOT BE CONFIDENTIAL. COMPLIANCE WITH THIS PARAGRAPH (d) SHALL NOT CONSTITUTE A WAIVER OF ANY PRIVILEGE OR CONFIDENTIALITY CONFERRED BY ANY APPLICABLE STATE OR FEDERAL LAW.

(e) ANY INVOLUNTARY SURRENDER OF THE APPLICANT'S UNITED STATES DRUG ENFORCEMENT ADMINISTRATION REGISTRATION. THE APPLICANT SHALL PROVIDE A COPY OF THE ORDER REQUIRING THE SURRENDER OF SUCH REGISTRATION TO THE BOARD AT THE TIME THE APPLICATION IS MADE.

(f) ANY FINAL CRIMINAL CONVICTION OR PLEA ARRANGEMENT RESULTING FROM THE COMMISSION OR ALLEGED COMMISSION OF A FELONY OR CRIME OF MORAL TURPITUDE IN ANY JURISDICTION. THE APPLICANT SHALL PROVIDE A COPY OF THE FINAL CONVICTION OR PLEA ARRANGEMENT TO THE BOARD AT THE TIME THE APPLICATION IS MADE.

(g) ANY FINAL JUDGMENT AGAINST, SETTLEMENT ENTERED INTO BY, OR ARBITRATION AWARD PAID ON BEHALF OF THE APPLICANT FOR MEDICAL MALPRACTICE. TO REPORT THE INFORMATION REQUIRED BY THIS PARAGRAPH (g), THE APPLICANT SHALL COMPLETE A FORM DEVELOPED BY THE BOARD THAT REQUIRES THE APPLICANT TO REPORT ONLY THE FOLLOWING INFORMATION REGARDING THE MEDICAL MALPRACTICE ACTION:

(I) WHETHER THE ACTION WAS RESOLVED BY A FINAL JUDGMENT AGAINST, SETTLEMENT ENTERED INTO BY, OR ARBITRATION AWARD PAID ON BEHALF OF THE APPLICANT;

(II) THE DATE OF THE JUDGMENT, SETTLEMENT, OR ARBITRATION AWARD;

(III) THE LOCATION OR JURISDICTION IN WHICH THE ACTION OCCURRED OR WAS RESOLVED; AND

(IV) THE COURT IN WHICH THE FINAL JUDGMENT WAS ORDERED, THE MEDIATOR THAT AIDED IN THE SETTLEMENT, IF APPLICABLE, OR THE ARBITRATOR THAT GRANTED THE ARBITRATION AWARD.

(h) ANY REFUSAL BY AN ISSUER OF MEDICAL MALPRACTICE INSURANCE TO ISSUE A MEDICAL MALPRACTICE INSURANCE POLICY TO THE APPLICANT DUE TO PAST CLAIMS EXPERIENCE. THE APPLICANT SHALL PROVIDE A COPY OF THE REFUSAL TO THE BOARD AT THE TIME THE APPLICATION IS MADE.

(4) THE BOARD SHALL MAKE THE INFORMATION SPECIFIED IN SUBSECTION (3) OF THIS SECTION THAT IS SUBMITTED BY AN APPLICANT READILY AVAILABLE TO THE PUBLIC IN A MANNER THAT ALLOWS THE PUBLIC TO SEARCH THE INFORMATION BY NAME, LICENSE NUMBER, BOARD CERTIFICATION OR SPECIALTY AREA, OR CITY OF THE LICENSEE'S ADDRESS OF RECORD. THE BOARD MAY SATISFY THIS REQUIREMENT

BY POSTING AND ALLOWING THE ABILITY TO SEARCH THE INFORMATION ON THE BOARD'S WEBSITE. IF THE INFORMATION IS MADE AVAILABLE ON ITS WEBSITE, THE BOARD SHALL UPDATE THE WEBSITE AT LEAST MONTHLY AND SHALL INDICATE ON THE WEBSITE THE DATE WHEN THE INFORMATION WAS LAST UPDATED.

(5) WHEN DISCLOSING INFORMATION REGARDING A LICENSEE OR APPLICANT TO THE PUBLIC, THE BOARD SHALL INCLUDE THE FOLLOWING STATEMENT OR A SIMILAR STATEMENT THAT COMMUNICATES THE SAME MEANING:

SOME STUDIES HAVE SHOWN THAT THERE IS NO SIGNIFICANT CORRELATION BETWEEN MALPRACTICE HISTORY AND A DOCTOR'S COMPETENCE. AT THE SAME TIME, THE STATE BOARD OF MEDICAL EXAMINERS BELIEVES THAT CONSUMERS SHOULD HAVE ACCESS TO MALPRACTICE INFORMATION. TO MAKE THE BEST HEALTH CARE DECISIONS, YOU SHOULD VIEW THIS INFORMATION IN PERSPECTIVE. YOU COULD MISS AN OPPORTUNITY FOR HIGH QUALITY CARE BY SELECTING A DOCTOR BASED SOLELY ON MALPRACTICE HISTORY. WHEN CONSIDERING MALPRACTICE DATA, PLEASE KEEP IN MIND:

*** MALPRACTICE HISTORIES TEND TO VARY BY SPECIALTY. SOME SPECIALTIES ARE MORE LIKELY THAN OTHERS TO BE THE SUBJECT OF LITIGATION.**

*** YOU SHOULD TAKE INTO ACCOUNT HOW LONG THE DOCTOR HAS BEEN IN PRACTICE WHEN CONSIDERING MALPRACTICE AVERAGES.**

*** THE INCIDENT CAUSING THE MALPRACTICE CLAIM MAY HAVE HAPPENED YEARS BEFORE A PAYMENT IS FINALLY MADE. SOMETIMES, IT TAKES A LONG TIME FOR A MALPRACTICE LAWSUIT TO MOVE THROUGH THE LEGAL SYSTEM.**

*** SOME DOCTORS WORK PRIMARILY WITH HIGH-RISK PATIENTS. THESE DOCTORS MAY HAVE MALPRACTICE HISTORIES THAT ARE HIGHER THAN AVERAGE BECAUSE THEY SPECIALIZE IN CASES OR PATIENTS WHO ARE AT VERY HIGH RISK FOR PROBLEMS.**

*** SETTLEMENT OF A CLAIM MAY OCCUR FOR A VARIETY OF REASONS THAT DO NOT NECESSARILY REFLECT NEGATIVELY ON THE PROFESSIONAL COMPETENCE OR CONDUCT OF THE PHYSICIAN. A PAYMENT IN SETTLEMENT OF A MEDICAL MALPRACTICE ACTION OR CLAIM SHOULD NOT BE CONSTRUED AS CREATING A PRESUMPTION THAT MEDICAL MALPRACTICE HAS OCCURRED.**

YOU MAY WISH TO DISCUSS INFORMATION PROVIDED BY THE BOARD, AND MALPRACTICE GENERALLY, WITH YOUR DOCTOR.

THE INFORMATION POSTED ON THE STATE BOARD OF MEDICAL EXAMINER'S WEBSITE WAS PROVIDED BY APPLICANTS FOR A MEDICAL LICENSE AND APPLICANTS FOR RENEWAL, REINSTATEMENT, OR REACTIVATION OF A MEDICAL LICENSE.

(6) A PERSON LICENSED BY THE BOARD PURSUANT TO THIS ARTICLE SHALL

ENSURE THAT THE INFORMATION REQUIRED BY SUBSECTION (3) OF THIS SECTION IS CURRENT AND SHALL REPORT ANY UPDATED INFORMATION AND PROVIDE COPIES OF THE REQUIRED DOCUMENTATION TO THE BOARD WITHIN THIRTY DAYS AFTER THE DATE OF THE ACTION DESCRIBED IN SAID SUBSECTION OR AS OTHERWISE DETERMINED BY THE BOARD BY RULE TO ENSURE THAT THE INFORMATION PROVIDED TO THE PUBLIC IS AS ACCURATE AS POSSIBLE.

(7) THE BOARD MAY IMPOSE AN ADMINISTRATIVE FINE NOT TO EXCEED FIVE THOUSAND DOLLARS AGAINST AN APPLICANT WHO FAILS TO COMPLY WITH THIS SECTION. THE IMPOSITION OF AN ADMINISTRATIVE FINE PURSUANT TO THIS SUBSECTION (7) SHALL NOT CONSTITUTE A DISCIPLINARY ACTION PURSUANT TO SECTION 12-36-118 AND SHALL NOT PRECLUDE THE BOARD FROM TAKING DISCIPLINARY ACTION AGAINST AN APPLICANT FOR FAILURE TO COMPLY WITH THIS SECTION. THE BOARD SHALL NOT ISSUE A LICENSE TO OR RENEW, REINSTATE, OR REACTIVATE THE LICENSE OF AN APPLICANT WHO HAS FAILED TO PAY A FINE IMPOSED PURSUANT TO THIS SUBSECTION (7).

(8) THE BOARD MAY ADOPT RULES, AS NECESSARY, TO IMPLEMENT THIS SECTION.

SECTION 2. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the division of registrations cash fund created in section 24-34-105 (2) (b) (I), Colorado Revised Statutes, not otherwise appropriated, to the department of regulatory agencies, for allocation to the executive director's office, for legal services, for the fiscal year beginning July 1, 2007, the sum of five thousand four hundred twenty-two dollars (\$5,422), or so much thereof as may be necessary, for the implementation of this act.

(2) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the division of registrations cash fund created in section 24-34-105 (2) (b) (I), Colorado Revised Statutes, not otherwise appropriated, to the department of regulatory agencies, for allocation to the division of registrations, for regulation of persons licensed by the state board of medical examiners, for the fiscal year beginning July 1, 2007, the sum of one hundred fifty-seven thousand six hundred ninety-seven dollars (\$157,697) and 1.0 FTE, or so much thereof as may be necessary, for the implementation of this act.

(3) In addition to any other appropriation, there is hereby appropriated to the department of law, for the fiscal year beginning July 1, 2007, the sum of five thousand four hundred twenty-two dollars (\$5,422), or so much thereof as may be necessary, for the provision of legal services to the department of regulatory agencies related to the implementation of this act. Said sum shall be from cash funds exempt received from the executive director's office out of the appropriation made in subsection (1) of this section.

SECTION 3. Effective date. (1) This act shall take effect January 1, 2008.

(2) However, if a referendum petition is filed against this act or an item, section, or part of this act during the 90-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, then the act, item, section, or part, shall not

take effect unless approved by the people at a biennial regular general election and shall take effect on the date specified in subsection (1) or on the date of the official declaration of the vote thereon by proclamation of the governor, whichever is later.

Approved: May 24, 2007