

CHAPTER 416

PROFESSIONS AND OCCUPATIONS

SENATE BILL 10-124

BY SENATOR(S) Carroll M., Boyd, Tochtrop;
 also REPRESENTATIVE(S) Ryden, Ferrandino, Frangas, Merrifield, Miklosi, Pommer, Schafer S., Solano, Todd, Tyler.

AN ACT

CONCERNING A REQUIREMENT THAT CERTAIN HEALTH CARE PROVIDERS DISCLOSE INFORMATION
 ABOUT THEIR PRACTICE HISTORY, AND MAKING AN APPROPRIATION THEREFOR.

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

SECTION 1. Part 1 of article 34 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION CONTAINING A RELOCATED PROVISION, WITH AMENDMENTS, to read:

24-34-110. [Formerly 12-36-111.5] Medical transparency act of 2010 - disclosure of information about health care licensees - fines - rules - short title - legislative declaration. (1) This section shall be known and may be cited as the "Michael Skolnik Medical Transparency Act OF 2010".

(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~~ A HEALTH CARE PROFESSION in this state in order to make informed decisions when choosing a ~~medical~~ HEALTH care provider and determining whether to proceed with a particular regimen of care recommended by a ~~medical~~ HEALTH 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~~ CERTAIN HEALTH CARE PROFESSIONS in this state to assist citizens in making informed health care decisions.

(b) The general assembly further finds and declares that it is important to make information about persons engaged in the practice of ~~medicine~~ A HEALTH CARE

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

PROFESSION 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~~ DIVISION OF REGISTRATIONS electronically, to the extent possible.

(3) (a) AS USED IN THIS SECTION, "APPLICANT" MEANS A PERSON APPLYING FOR A NEW, ACTIVE LICENSE, CERTIFICATION, OR REGISTRATION OR TO RENEW, REINSTATE, OR REACTIVATE AN ACTIVE LICENSE, CERTIFICATION, OR REGISTRATION TO PRACTICE:

(I) AUDIOLOGY PURSUANT TO PART 1 OF ARTICLE 5.5 OF TITLE 12, C.R.S.;

(II) AS A LICENSED HEARING AID PROVIDER PURSUANT TO PART 2 OF ARTICLE 5.5 OF TITLE 12, C.R.S.;

(III) ACUPUNCTURE PURSUANT TO ARTICLE 29.5 OF TITLE 12, C.R.S.;

(IV) PODIATRY PURSUANT TO ARTICLE 32 OF TITLE 12, C.R.S.;

(V) CHIROPRACTIC PURSUANT TO ARTICLE 33 OF TITLE 12, C.R.S.;

(VI) DENTISTRY PURSUANT TO ARTICLE 35 OF TITLE 12, C.R.S.;

(VII) DENTAL HYGIENE PURSUANT TO ARTICLE 35 OF TITLE 12, C.R.S.;

(VIII) MEDICINE PURSUANT TO ARTICLE 36 OF TITLE 12, C.R.S.;

(IX) AS A PHYSICIAN ASSISTANT PURSUANT TO ARTICLE 36 OF TITLE 12, C.R.S.;

(X) DIRECT-ENTRY MIDWIFERY PURSUANT TO ARTICLE 37 OF TITLE 12, C.R.S.;

(XI) PRACTICAL NURSING, PROFESSIONAL NURSING, OR ADVANCED PRACTICE NURSING PURSUANT TO ARTICLE 38 OF TITLE 12, C.R.S.;

(XII) OPTOMETRY PURSUANT TO ARTICLE 40 OF TITLE 12, C.R.S.;

(XIII) PHYSICAL THERAPY PURSUANT TO ARTICLE 41 OF TITLE 12, C.R.S.;

(XIV) PSYCHOLOGY PURSUANT TO PART 3 OF ARTICLE 43 OF TITLE 12, C.R.S.;

(XV) SOCIAL WORK PURSUANT TO PART 4 OF ARTICLE 43 OF TITLE 12, C.R.S.;

(XVI) MARRIAGE AND FAMILY THERAPY PURSUANT TO PART 5 OF ARTICLE 43 OF TITLE 12, C.R.S.;

(XVII) PROFESSIONAL COUNSELING PURSUANT TO PART 6 OF ARTICLE 43 OF TITLE 12, C.R.S.; AND

(XVIII) ADDICTION COUNSELING PURSUANT TO PART 8 OF ARTICLE 43 OF TITLE 12, C.R.S.

(b) "APPLICANT" INCLUDES AN UNLICENSED THERAPIST ENGAGED IN THE PRACTICE OF PSYCHOTHERAPY WHO IS OBLIGATED TO COMPLY WITH RECORDING REQUIREMENTS PURSUANT TO SECTION 12-43-702.5, C.R.S.

(3) (4) On and after January 1, 2008, any person applying for a new license or to renew, reinstate, or reactivate a license to practice medicine in this state, AND ON AND AFTER JULY 1, 2011, EACH APPLICANT FOR A NEW LICENSE, CERTIFICATION, OR REGISTRATION OR TO RENEW, REINSTATE, OR REACTIVATE A LICENSE, CERTIFICATION, OR REGISTRATION IN THIS STATE, shall provide the following information to the ~~board~~ DIRECTOR OF THE DIVISION OF REGISTRATIONS, 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)~~ DIRECTOR, AS APPLICABLE TO EACH PROFESSION:

(a) (I) The applicant's full name, including any known aliases;

(II) THE APPLICANT'S current address of record and telephone number;

(III) THE APPLICANT'S LOCATION OF PRACTICE, IF DIFFERENT THAN THE ADDRESS OF RECORD;

(IV) THE APPLICANT'S EDUCATION AND TRAINING RELATED TO HIS OR HER PROFESSION;

(V) Information pertaining to any license, CERTIFICATION, OR REGISTRATION to practice ~~medicine held by the applicant at any time~~ IN THE PROFESSION FOR WHICH THE APPLICANT SEEKS LICENSURE, CERTIFICATION, OR REGISTRATION, ISSUED OR HELD DURING THE IMMEDIATELY PRECEDING TEN YEARS, including the license, ~~number, type~~ CERTIFICATION, OR REGISTRATION status ~~original issue date, last renewal date,~~ and ~~expiration date~~ YEAR OF ISSUANCE;

(VI) Any board certifications and specialties, if applicable;

(VII) Any affiliations with OR CLINICAL PRIVILEGES HELD IN hospitals or health care facilities;

(VIII) Any health care-related business ownership interests;

(IX) INFORMATION PERTAINING TO THE APPLICANT'S EMPLOYER, IF ANY, INCLUDING NAME, CURRENT ADDRESS, AND TELEPHONE NUMBER; and

(X) Information pertaining to any health care-related employment contracts or contracts establishing an independent contractor relationship with any entities if the annual aggregate value of the contracts exceeds five thousand dollars, as adjusted by the ~~board~~ DIRECTOR during each license, CERTIFICATION, OR REGISTRATION renewal cycle to reflect changes in the United States department of labor, bureau of labor statistics, consumer price index for Denver-Boulder-Greeley, all items, all urban consumers, or its successor index. NOTHING IN THIS SUBPARAGRAPH (X) REQUIRES AN APPLICANT TO REPORT SUCH INFORMATION REGARDING CONTRACTS WITH INSURANCE CARRIERS FOR REIMBURSEMENT OF HEALTH CARE SERVICES PROVIDED TO PATIENTS.

(b) Any public disciplinary action taken against the applicant by the DIRECTOR, THE APPLICABLE STATE board THAT REGULATES THE APPLICANT'S PROFESSION, 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~~ DIRECTOR at the time the application is made.

(c) Any agreement or stipulation entered into between the APPLICANT AND THE DIRECTOR, THE APPLICABLE STATE board THAT REGULATES THE APPLICANT'S PROFESSION, 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 DIRECTOR OR board order restricting or suspending the applicant's ~~medical~~ license, CERTIFICATION, OR REGISTRATION. The applicant shall provide a copy of the agreement, stipulation, or order to the ~~board~~ DIRECTOR at the time the application is made.

(d) (I) Any final action that results in an involuntary limitation or probationary status on, or a reduction, nonrenewal, denial, revocation, or suspension of, the applicant's medical staff membership or clinical privileges at any hospital or health care facility occurring on or after September 1, 1990. The applicant shall not be required to report a precautionary or administrative suspension of medical staff membership or clinical privileges, as defined by the ~~board~~ DIRECTOR by rule, unless the applicant resigns his or her medical staff membership or clinical privileges while the precautionary or administrative suspension is pending. To report the information required by this paragraph (d), the applicant shall complete a form developed by the ~~board~~ DIRECTOR 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 ~~this~~ title 12, ~~and~~ article 3 of title 25, C.R.S., AND ANY PROVISION OF LAW TO THE CONTRARY, the form completed by the applicant pursuant to this paragraph (d) ~~shall be~~ IS a public record and ~~shall~~ IS not ~~be~~ confidential. Compliance with this paragraph (d) ~~shall~~ DOES not constitute a waiver of any privilege or confidentiality conferred by any applicable state or federal law.

(e) ANY FINAL ACTION OF AN EMPLOYER THAT RESULTS IN THE APPLICANT'S LOSS OF EMPLOYMENT WHERE THE GROUNDS FOR TERMINATION CONSTITUTE A VIOLATION OF THE LAWS GOVERNING THE APPLICANT'S PRACTICE. TO REPORT THE INFORMATION REQUIRED BY THIS PARAGRAPH (e), THE APPLICANT SHALL COMPLETE A FORM DEVELOPED BY THE DIRECTOR THAT REQUIRES THE APPLICANT TO REPORT ONLY THE FOLLOWING INFORMATION REGARDING THE ACTION:

(I) THE NAME OF THE EMPLOYER THAT TERMINATED THE EMPLOYMENT; AND

(II) THE DATE THE TERMINATION OCCURRED OR BECAME EFFECTIVE.

~~(e)~~ (f) 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~~ DIRECTOR at the time the application is made.

~~(f)~~ (g) 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 at any time after the person has been issued a license, CERTIFICATION, OR REGISTRATION to practice ~~medicine~~ HIS OR HER HEALTH CARE PROFESSION in any state or country. The applicant shall provide a copy of the final conviction or plea arrangement to the ~~board~~ DIRECTOR at the time the application is made.

~~(g)~~ (h) Any final judgment against, settlement entered into by, or arbitration award paid on behalf of the applicant on or after September 1, 1990, for ~~medical malpractice~~. To report the information required by this paragraph ~~(g)~~ (h), the applicant shall complete a form developed by the ~~board~~ DIRECTOR 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)~~ (i) Any refusal by an issuer of ~~medical malpractice~~ PROFESSIONAL LIABILITY 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~~ DIRECTOR at the time the application is made.

(5) IN ADDITION TO THE INFORMATION REQUIRED BY SUBSECTION (4) OF THIS SECTION, AN APPLICANT MAY SUBMIT INFORMATION REGARDING AWARDS AND RECOGNITIONS HE OR SHE HAS RECEIVED OR CHARITY CARE HE OR SHE HAS PROVIDED. THE DIRECTOR MAY REMOVE INFORMATION REGARDING AWARDS AND RECOGNITIONS THAT THE DIRECTOR FINDS TO BE UNRELATED TO THE APPLICANT'S PROFESSION OR OFFENSIVE OR INAPPROPRIATE.

~~(4)~~ (6) The ~~board~~ DIRECTOR shall make the information specified in ~~subsection~~ ~~(3)~~ SUBSECTIONS (4) AND (5) 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, IF APPLICABLE, or city of the ~~licensee's~~ APPLICANT'S address of record. The ~~board~~ DIRECTOR may satisfy

this requirement by posting and allowing the ability to search the information on the ~~board's~~ DIRECTOR'S WEB SITE OR ON THE web site FOR THE STATE REGULATORY BOARD THAT OVERSEES THE APPLICANT'S PRACTICE. If the information is made available on ~~its~~ EITHER web site, the ~~board~~ DIRECTOR shall ~~update~~ ENSURE THAT the web site IS UPDATED at least monthly and ~~shall indicate on the web site~~ THAT the date ~~when the information was last updated~~ ON WHICH THE UPDATE OCCURS IS INDICATED ON THE WEB SITE.

~~(5)~~ (7) When disclosing information regarding a ~~licensee or~~ AN applicant to the public, the DIRECTOR OR APPLICABLE STATE board THAT REGULATES THE APPLICANT'S PROFESSION 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~~ [INSERT APPLICABLE TYPE OF HEALTH CARE PROVIDER]'S competence. At the same time, the ~~state board of medical examiners~~ [DIRECTOR OR BOARD OF _____, AS APPLICABLE] 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~~ HEALTH CARE PROVIDER based solely on malpractice history. When considering malpractice data, please keep in mind:

Malpractice histories tend to vary by PROFESSION AND, AS APPLICABLE, BY specialty. Some PROFESSIONS OR specialties are more likely than others to be the subject of litigation.

You should take into account how long the ~~doctor~~ HEALTH CARE PROVIDER has been in practice when considering malpractice averages.

The incident causing the malpractice claim may have happened years before a ~~payment~~ MALPRACTICE ACTION is finally ~~made~~ RESOLVED. Sometimes, it takes a long time for a malpractice lawsuit to move through the legal system.

Some ~~doctors~~ HEALTH CARE PROVIDERS work primarily with high-risk patients. These ~~doctors~~ HEALTH CARE PROVIDERS 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~~ HEALTH CARE PROVIDER. 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~~ [DIRECTOR OR BOARD OF _____, AS APPLICABLE], and malpractice generally, with your ~~doctor~~ HEALTH CARE PROVIDER.

The information posted on the ~~state board of medical examiner's~~ [DIRECTOR'S OR BOARD OF _____]'S, AS APPLICABLE] web site was provided by

applicants for a ~~medical~~ license and applicants for renewal, reinstatement, or reactivation of a ~~medical~~ license.

~~(6)~~ (8) (a) ~~A person licensed by the board pursuant to this article~~ EXCEPT AS SPECIFIED IN PARAGRAPH (b) OF THIS SUBSECTION (8), AN APPLICANT, LICENSEE, CERTIFICATE HOLDER, OR REGISTRANT shall ensure that the information required by subsection ~~(3)~~ (4) of this section is current and shall report any updated information and provide copies of the required documentation to the ~~board~~ DIRECTOR within thirty days after the date of the action described in said subsection ~~(3)~~ (4) or as otherwise ~~determined by the board by rule~~ PROVIDED IN THE ARTICLE OF TITLE 12, C.R.S., THAT REGULATES THE APPLICANT'S, LICENSEE'S, CERTIFICATE HOLDER'S, OR REGISTRANT'S PROFESSION to ensure that the information provided to the public is as accurate as possible.

(b) ~~Notwithstanding the requirements of paragraph (a) of this subsection (6), a licensee~~ AN APPLICANT shall report updated information regarding THE APPLICANT'S EMPLOYER, any health care-related business ownership interests, and any health care-related employment contracts or contracts establishing an independent contractor relationship, as required by paragraph (a) of subsection ~~(3)~~ (4) of this section, within one year after a change in that information.

~~(7)~~ (9) (a) The ~~board~~ DIRECTOR may impose an administrative fine not to exceed five thousand dollars against an applicant, LICENSEE, CERTIFICATE HOLDER, OR REGISTRANT who fails to comply with this section. THE DIRECTOR SHALL NOTIFY THE APPLICABLE STATE BOARD THAT REGULATES THE PROFESSION WHEN THE DIRECTOR IMPOSES A FINE PURSUANT TO THIS SUBSECTION (9). ANY FINE IMPOSED PURSUANT TO THIS SUBSECTION (9) SHALL BE DEPOSITED IN THE GENERAL FUND.

(b) The imposition of an administrative fine pursuant to this subsection ~~(7)~~ (9) shall not constitute a disciplinary action pursuant to ~~section 12-36-118~~ THE LAWS GOVERNING THE APPLICANT'S, LICENSEE'S, CERTIFICATE HOLDER'S, OR REGISTRANT'S PRACTICE AREA and shall not preclude the STATE REGULATORY board THAT OVERSEES THE APPLICANT'S, LICENSEE'S, CERTIFICATE HOLDER'S, OR REGISTRANT'S PRACTICE AREA from taking disciplinary action against an applicant, LICENSEE, CERTIFICATE HOLDER, OR REGISTRANT 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~~ A LICENSE, CERTIFICATION, OR REGISTRATION SHALL NOT BE ISSUED, RENEWED, REINSTATED, OR REACTIVATED IF THE APPLICANT has failed to pay a fine imposed pursuant to this subsection ~~(7)~~ (9).

(c) FAILURE OF AN APPLICANT, LICENSEE, CERTIFICATE HOLDER, OR REGISTRANT TO COMPLY WITH THIS SECTION CONSTITUTES UNPROFESSIONAL CONDUCT OR GROUNDS FOR DISCIPLINE UNDER THE SPECIFIC ARTICLE OF TITLE 12, C.R.S., THAT REGULATES THE APPLICANT'S, LICENSEE'S, CERTIFICATE HOLDER'S, OR REGISTRANT'S PROFESSION.

(10) NOTHING IN THIS SECTION RELIEVES AN APPLICANT, LICENSEE, CERTIFICATE HOLDER, OR REGISTRANT FROM HIS OR HER OBLIGATION TO REPORT ADVERSE ACTIONS TO THE DIRECTOR OR APPLICABLE STATE BOARD THAT REGULATES THE APPLICANT'S PROFESSION, AS REQUIRED BY THE APPLICABLE LAWS IN TITLE 12, C.R.S., REGULATING THAT PROFESSION.

~~(8)~~ (11) The ~~board~~ DIRECTOR may adopt rules, as necessary, to implement this section.

SECTION 2. Repeal of provision being relocated in this act. 12-36-111.5, Colorado Revised Statutes, is repealed.

SECTION 3. 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 division of registrations, for the fiscal year beginning July 1, 2010, the sum of ninety-eight thousand eight hundred seventy-three dollars (\$98,873) cash funds and 1.0 FTE, 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 to the department of law, for the fiscal year beginning July 1, 2010, the sum of seven thousand five hundred thirty-eight dollars (\$7,538), 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 reappropriated funds received from the department of regulatory agencies out of the appropriation made in subsection (1) of this section.

SECTION 4. Act subject to petition - effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 11, 2010, if adjournment sine die is on May 12, 2010); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part shall not take effect unless approved by the people at the general election to be held in November 2010 and shall take effect on the date of the official declaration of the vote thereon by the governor.

Approved: June 10, 2010