

2016 -- H 7818

=====
LC004618
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

—————
A N A C T

RELATING TO BUSINESSES AND PROFESSIONS - BOARD OF MEDICAL LICENSURE
AND DISCIPLINE

Introduced By: Representatives McKiernan, Carson, O'Brien, Carnevale, and Slater

Date Introduced: March 02, 2016

Referred To: House Health, Education & Welfare

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 5-37-1.3 and 5-37-5.2 of the General Laws in Chapter 5-37
2 entitled "Board of Medical Licensure and Discipline" are hereby amended to read as follows:

3 **5-37-1.3. Board of medical licensure and discipline -- Powers and duties. --** The board
4 has the following duties and powers:

5 (1) To adopt, amend, and rescind rules and regulations, with the approval of the director,
6 necessary to carry out the provisions of this chapter;

7 (2) To investigate all complaints and charges of unprofessional conduct against any
8 licensed physician or limited registrant and hold hearings to determine whether those charges are
9 substantiated or unsubstantiated;

10 (3) To direct the director of the department of health to license qualified applicants;

11 (4) To appoint one or more members of the board to act for the members of the board in
12 investigating the conduct or competence of any licensed physician or limited registrant;

13 (5) To direct the director to revoke or suspend licenses or registrations, or implement
14 other disciplinary action against persons licensed or registered under this chapter;

15 (6) To issue subpoenas and administer oaths in connection with any investigations,
16 hearing, or disciplinary proceedings held under the authority of this chapter; as follows:

17 (i) All subpoenas issued pursuant to this section shall only be issued by a vote of either
18 the investigating committee or the full board;

1 (ii) All subpoenas issued by the board or the investigating committee shall be served by a
2 disinterested party or by a constable authorized by the courts to serve process;

3 (iii) Subpoenas issued by either the investigating committee or the full board shall have a
4 reasonable return date that will allow the recipient an opportunity to review the subpoena, consult
5 with counsel, and prepare a response to the subpoena; and

6 (iv) All subpoenas shall be in compliance with the Rhode Island health care
7 confidentiality act;

8 (7) To take or cause depositions to be taken as needed in any investigation, hearing, or
9 proceeding;

10 (8) To summon and examine witnesses during any investigation, hearing, or proceeding
11 conducted by the board;

12 (9) To adopt and publish, with the approval of the director, rules of procedure and other
13 regulations in accordance with the Administrative Procedure Act, chapter 35 of title 42.

14 (10) (i) To require a licensee to undergo a physical or psychiatric examination by a
15 physician acceptable to the board, from a list provided to the licensee by the board, if probable
16 cause exists to believe that allegations of misconduct against a licensee are caused by an
17 impairment which has directly affected the ability of the licensee to conduct his or her practice
18 professionally.

19 (ii) The investigating committee and the board may not discriminate on the basis of
20 disability in the administration of the licensing program, nor subject qualified individuals with
21 disabilities to any discrimination on the basis of disability in its complaint procedure. All
22 decisions of the investigating committee and the board shall be based on the allegation of
23 unprofessional conduct and not due to probable cause of the conduct being related to the
24 disability of the licensee.

25 (11) To advise the licensee of the availability of the physicians health committee of the
26 Rhode Island Medical Society, and in appropriate instances, to refer licensees to that committee
27 for evaluation by appropriate medical professionals.

28 **5-37-5.2. Complaints.** -- (a) Any person, firm, corporation, or public officer may submit
29 a written complaint to the board charging the holder of a license to practice medicine or limited
30 registrant with unprofessional conduct, specifying the grounds for the complaint. The board shall
31 review all complaints.

32 (b) If the board determines that the complaint merits consideration, or if the board, on its
33 own initiative without a formal complaint, has reason to believe that any holder of a license or
34 limited registration to practice medicine may be guilty of unprofessional conduct, the chairperson

1 shall designate three (3) members of the board at least one of whom shall be a public member, to
2 serve as a committee to investigate the complaint. If the complaint relates to a procedure
3 involving osteopathic manipulative treatment (OMT), at least one member of the investigating
4 committee shall be an osteopathic physician member of the board.

5 (c) The investigating committee shall conduct its deliberations and make
6 recommendations regarding the complaint to the board. In conducting an investigation of such
7 complaints that require an inspection of a licensee's office:

8 (1) Either the investigating committee or the full board shall make a finding that an
9 inspection is required and this finding must be evidenced by recorded minutes showing the vote
10 to conduct an inspection;

11 (2) The scope and manner of conducting any such inspection shall be reasonably related
12 to the written complaint received. Any licensee whose office is the subject of such inspection
13 shall be provided by either the investigating committee or the full board with a copy of the
14 complaint or a written summary of all pertinent allegations prior to or at the commencement of
15 the inspection;

16 (3) At the conclusion of the inspection and prior to leaving the licensee's office premises,
17 the board's inspectors shall provide the licensee whose office has been inspected with a copy of
18 the completed inspection form, noting areas of deficiency or follow-up;

19 (4) Unless there is a real potential of imminent, unreasonable harm to patients or staff, the
20 licensee shall have ten (10) days to remedy any deficiencies found during the inspection; and

21 (5) All inspections shall be carried out so as not to interfere with direct patient care.

22 (d) No member of the board who participated in the investigation may participate in any
23 subsequent hearing or action taken by the remainder of the board. Investigations shall remain
24 confidential and all initial hearings, investigatory hearings, and full hearings before the board
25 shall remain confidential.

26 (e) (1) If the recommendation is no unprofessional conduct, the remaining members of
27 the board shall review the relevant data and vote a final recommendation.

28 (2) If the investigating committee has probable cause to believe the alleged
29 unprofessional conduct of the licensee is caused by an impairment which has directly affected the
30 ability of the licensee to conduct his or her practice professionally, the committee may use its
31 authority under § 5-37-1.3(10) to assist in further deliberations regarding the alleged misconduct
32 of the licensee.

33 (3) In the event of a determination by the investigating committee of probable cause for a
34 finding of unprofessional conduct, the accused may request a hearing (see §§ 5-37-5.3 and 5-37-

1 5.4). A hearing committee shall be designated by the chairperson consisting of three (3) other
2 members of the board, at least one of whom shall be a physician member and at least one of
3 whom is a public member. If the complaint relates to a procedure involving osteopathic
4 manipulative treatment (OMT), at least one member of the investigating committee shall be an
5 osteopathic physician member of the board. The hearing shall be conducted by a hearing officer
6 appointed by the director of the department of health. The hearing officer shall be responsible for
7 conducting the hearing and writing a proposed findings of fact and conclusions of law along with
8 a recommendation of a sanction, if warranted. The hearing committee shall read the transcript and
9 review the evidence and, after deliberation, the hearing committee shall issue a final decision
10 including conclusions of fact and of law. The board shall make public all decisions including all
11 conclusions against a license holder as listed in § 5-37-6.3.

12 SECTION 2. This act shall take effect upon passage.

=====
LC004618
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO BUSINESSES AND PROFESSIONS - BOARD OF MEDICAL LICENSURE
AND DISCIPLINE

1 This act would add certain procedural requirements relating to the issuance of subpoenas
2 and the inspection of a licensee's office to the disciplinary and oversight powers of the board of
3 medical licensure and discipline.

4 This act would take effect upon passage.

=====
LC004618
=====