SPONSOR: Rep. Ulbrich;
Reps. Hudson, Schwartzkopf, Valihura, Viola; Sens. Copeland, Peterson, Sokola

HOUSE OF REPRESENTATIVES

142nd GENERAL ASSEMBLY

HOUSE BILL NO. 388

AN ACT TO AMEND TITLE 16 AND TITLE 24 OF THE DELAWARE CODE RELATING TO THE MEDICAL PRACTICES ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 17, Title 24 of the Delaware Code by striking Subchapters I through VII of Chapter 17 in their entireties and by substituting in lieu thereof the following:

"CHAPTER 17. MEDICAL PRACTICES ACT

Subchapter I. General Provisions.

§1701. Statement of purpose.

Recognizing that the practice of medicine and the practices of certain other healthcare professions are privileges and not natural rights, it is hereby considered a matter of policy in the interests of public health, safety, and welfare to provide laws covering the granting of those privileges and their subsequent use and control, and to provide regulations to the end that the public health, safety, and welfare are promoted and that the public is properly protected from the unprofessional, improper, unauthorized, or unqualified practice of medicine and practice of certain other healthcare professions and from unprofessional conduct by persons authorized to practice medicine or to practice certain other healthcare professions.

§1702. Definitions.

The following definitions apply to this chapter unless otherwise expressly stated or implied by the context.

(1) 'Board' means the Board of Medical Practice.

(2) 'Certificate to practice medicine' means a document awarded by the Board to a person who qualifies to practice medicine in this State by meeting the requirements of this chapter.

(3) 'Division' means the Division of Professional Regulation.

(4) 'Executive Director' means the Executive Director of the Board of Medical Practice.

(5) 'Healthcare institution' means a facility or agency licensed, certified, or otherwise authorized by law to provide, in the ordinary course of business, treatments, services, or procedures to maintain, diagnose, or otherwise affect a person's physical or mental condition.

(6) 'Medicine' means the science of restoring or preserving health and includes allopathic medicine and surgery, osteopathic medicine and surgery, and all the respective branches of the foregoing.

(7) 'Physician' means an allopathic doctor of medicine and surgery or a doctor of osteopathic medicine and surgery who is registered and certified to practice medicine pursuant to this chapter.

(8) 'Practice of medicine' or 'practice medicine' includes:

a. advertising, holding out to the public, or representing in any manner that one is authorized to practice medicine in this State;

b. offering or undertaking to prescribe, order, give, or administer any drug or medicine for the use of another person;

c. offering or undertaking to prevent or to diagnose, correct, and/or treat in any manner or by any means, methods, or devices a disease, illness, pain, wound, fracture, infirmity, defect, or abnormal physical or mental condition of another person, including the management of pregnancy and parturition;

d. offering or undertaking to perform a surgical operation upon another person;

e. rendering a written or otherwise documented medical opinion concerning the diagnosis or treatment of a person or the actual rendering of treatment to a person within the State by a physician located outside the State as a result of transmission of the person’s medical data by electronic or other means from within the State to the physician or to the physician's agent;

f. rendering a determination of medical necessity or a decision affecting or modifying the diagnosis and/or treatment of a person;

g. using the designation Doctor, Doctor of Medicine, Doctor of Osteopathy, physician, surgeon, physician and surgeon, Dr., M.D., or D.O., or a similar designation, or any combination thereof, in the conduct of an occupation or profession pertaining to the prevention, diagnosis, or treatment of human disease or condition, unless the designation additionally contains the description of another branch of the healing arts for which one holds a valid license in the State.

For the purposes of this chapter, in order that the full resources of the State are available for the protection of persons using the services of physicians, the act of the practice of medicine occurs where a person is located at the time a physician practices medicine upon the person.

(9) 'Registration' means the entry of a certificate to practice medicine into the records of the Board of Medical Practice pursuant to the regulations of the Board.

(10) 'Unauthorized practice of medicine' means the practice of medicine as defined in subsection (8) of this section by a person not authorized under this chapter to perform an act set forth in that subsection, unless excepted by §1703 of this chapter.

§1703. Nonapplicability of certain provisions.

Provisions of this chapter pertaining to the practice of medicine do not apply to:

(1) a person providing service in an emergency, where no fee or other consideration is contemplated, charged, or received;

(2) physicians of any civilian or military branch of the United States government in the discharge of their official duties;

(3) advanced practice nurses, barbers, chiropodists, chiropractors, cosmetologists, dental hygienists, dentists, emergency medical technicians, optometrists, pharmacists, physical therapists, physician assistants, podiatrists, practical nurses, professional nurses, psychologists, respiratory care practitioners, veterinarians, or persons engaged in other professions or occupations who are certified, licensed, or registered according to law and are acting within the scope of the activity for which they are certified, licensed, or registered.

(4) a person administering a lawful domestic or family remedy to a member of his or her family;

(5) a person fully certified, licensed, or otherwise authorized to practice medicine in another state of the United States who briefly renders emergency medical treatment or briefly provides critical medical service at the specific lawful direction of a medical institution or federal agency that assumes full responsibility for the treatment or service and is approved by the Board of Medical Practice;

(6) a person who has earned a doctorate degree from a recognized college or university and who uses the designation of 'Dr.' in connection with his or her name or calls himself or herself 'Doctor', except in matters related to medicine or health, in which case the type of doctorate held must be specified;

(7) the mechanical application of glasses;

(8) the practice of massage;

(9) the business of manicuring;

(10) the practice of ritual circumcision performed pursuant to the requirements or tenets of a religion; provided, however, that a person certified and registered to practice medicine in this State certifies in writing to the Board that, in the person's opinion, the circumcision practitioner has sufficient knowledge and competence to perform a ritual circumcision according to accepted medical standards;

(11) the practice of healing by spiritual means in accordance with the tenets and practice of a religion by an accredited practitioner of the religion. In the practice of healing by spiritual means, an accredited practitioner may not use medical titles or other designations which imply or designate that the practitioner is certified to practice medicine in this State. A person engaged in the practice of healing by spiritual means may not perform surgical operations or prescribe medications, nor may a pharmacist or pharmacy honor a prescription drawn by the person. A person engaged in the practice of healing by spiritual means must observe all State and federal public health laws;

(12) a physician from another state or jurisdiction who is in this State to testify in a judicial or quasi judicial proceeding;

(13) the performing of delegated medical acts pursuant to Subchapter VI of this chapter by a person who is licensed by the Board as a physician assistant;

(14) a person rendering medical, surgical, or other health services who is functioning as a member of an organized emergency program which has been approved by the Board of Medical Practice; who has successfully completed an emergency medical course; and who is acting under the supervision and control of a person certified and registered to practice medicine in this State or in a state contiguous to this State;

(15) a licensed registered nurse making a pronouncement of death and signing all forms or certificates registering the death as permitted or required by the State, but only if the nurse is an attending nurse caring for a terminally ill patient (i) in the patient's home or place of residence as part of a hospice program or a certified home healthcare agency program; (ii) in a skilled nursing facility; (iii) in a residential community associated with a skilled nursing facility; (iv) in an extended care facility; or (v) in a hospice; and only if the attending physician of record has agreed in writing to permit the attending licensed registered nurse to make a pronouncement of death in that case;

(16) the provisions of Subchapter II, Chapter 27 of Title 16, the Uniform Anatomical Gift Act;

(17) a medical student who is engaged in training.

§1704. State requirement for services of a physician or surgeon.

If a law, rule, or regulation of this State requires the services or qualifications of a physician or surgeon, the requirement may be met only by a person registered and certified to practice medicine under this chapter.

Subchapter II. The Board of Medical Practice.

§1710. Composition.

(a) The Board of Medical Practice has the sole authority in this State to issue certificates to practice medicine and is the State's supervisory, regulatory, and disciplinary body for the practice of medicine. The Board also has the sole authority in this State to issue authorizing documents to practice other specified professions or occupations regulated by this chapter, and to supervise, regulate, and discipline members of those professions and occupations.

(b) The Board consists of 16 voting members appointed by the Governor, 6 of whom are persons certified and registered to practice medicine in this State (but are not osteopathic physicians) and have their primary place of practicing medicine in New Castle County; 2 of whom are persons certified and registered to practice medicine in this State (but are not osteopathic physicians) and have their primary place of practicing medicine in Kent County; 2 of whom are persons certified and registered to practice medicine in this State (but are not osteopathic physicians) and have their primary place of practicing medicine in Sussex County; 1 of whom is an osteopathic physician certified and registered to practice medicine in this State; and 5 of whom are public members. A public member may not be nor may ever have been certified, licensed, or registered in any health-related field; may not be the spouse of someone certified, licensed, or registered in any health-related field; at the time of appointment may not be a member of the immediate family of someone certified, licensed, or registered in any health-related field; may not be employed by a company engaged in a directly health-related business; and may not have a material financial interest in providing goods or services to persons engaged in the practice of medicine.

(c) The Medical Society of Delaware and the Delaware State Osteopathic Medical Society may submit lists of their resident members and any recommendations to the Governor by January 1 of each year under the seal of and signed by the Secretary of the Society to aid the Governor in the appointment of new members to the Board.

(d) On or after June 7, 1990, the Governor shall appoint to the Board 1 public member whose principal place of residence is in New Castle County and whose term expires 1 year after the member's initial appointment, 1 public member whose principal place of residence is in Kent County and whose term expires 2 years after the member's initial appointment, and 1 public member whose principal place of residence is in Sussex County and whose term expires 3 years after the

member's initial appointment. An appointment made after the initial classification and appointment of these 3 public members is for a full term of 3 years to succeed the member whose term has expired.

(e) A physician-appointee to the Board must be a certified and registered physician in good standing, and must have practiced medicine under the laws of this State for a period of not less than 5 years prior to his or her appointment to the Board.

(f) The Governor shall fill vacancies on the Board and, after a hearing, may remove a member of the Board for cause due to the member's neglect of the duties required by this chapter, or, after a hearing, on the recommendation of the Board due to the member's unprofessional or dishonorable conduct.

(g) A member of the Board may not serve more than 2 full, consecutive 3-year terms, which is not diminished by serving an unexpired term. Upon serving 2 full, consecutive 3-year terms, a former member is eligible for reappointment to the Board no earlier than 1 year after the expiration of the last term served on the Board by the former member.

(h) While serving on the Board, a member may not be an officer of any state or local allopathic or osteopathic medical society.

(i) While serving on the Board, a member of the Board may not be a member of the board of directors of a professional review organization.

(j) A member of the Board is eligible to be reimbursed for travel to and from each meeting. However, a member may receive not more than $50 for each meeting attended, and not more than a total of $500 for meetings attended in any calendar year.

§1711. Organization.

(a) The Board shall organize annually within 30 days of its appointment and shall elect from among its members a president, a vice-president, and a secretary, and such other officers as it considers necessary, 2 of whom may be the same person.

(b) The Board may, with the concurrence of the Director of the Division, set job duties for the Board’s Executive Director and other necessary staff. The Executive Director may not be a Board member. The Executive Director and other necessary staff are employees of the Division.

(c) The Board shall establish and maintain an office within this State.

(d) The Board shall meet at least 8 times a year at a public place and at a time as the Board determines, subject to guidelines established or approved by the Division of Professional Regulation.

(e) Unless otherwise provided in this chapter, meetings of the Board are open to the public and may be closed to the public only in accordance with the provisions contained in §10004 of Title 29.

§1712. Quorum.

(a) A quorum for the transaction of business consists of 9 members of the Board entitled to vote. An affirmative vote of at least 5 members of the quorum is required to take any action that the Board has the power to take, unless otherwise expressly provided in this chapter, including the express provisions in subsection (b) of this section.

(b) An affirmative vote of at least 7 members of the Board present and voting at a meeting is required to adopt a regulation which can deprive a physician of the physician's certificate to practice medicine or subject a physician to disciplinary action.

§1713. Powers and duties of the Board.

(a) The Board has the following powers and duties, in addition to other powers and duties set forth elsewhere in this chapter:

(1) To investigate, through the Executive Director, the character of each applicant for a certificate to practice medicine, or for a certificate, license, or other authorizing document to practice any other profession or occupation regulated by this chapter, to determine if the applicant has previously engaged in unprofessional conduct pursuant to §1731(b) of this chapter, and to investigate the physical and mental capability of physicians to engage in the practice of medicine, or of members of other professions or occupations regulated by this chapter to engage in the practice of their professions or occupations, with reasonable skill and safety to patients pursuant to §1731(c) of this chapter;

(2) To conduct or approve of professional or occupational examinations as it deems necessary and proper to determine the professional or occupational qualifications of each person who applies for a certificate to practice medicine in this State, or who applies for a certificate, license, or other authorizing document to practice any other profession or occupation regulated under this chapter;

(3) To investigate, through the Executive Director, complaints or charges of unprofessional conduct against the holder of a certificate to practice medicine, or such complaints or charges against the holder of any certificate, license, or other authorizing document issued under this chapter;

(4) To investigate, through the Executive Director, complaints and charges of the inability of a person to practice medicine, or to practice any other profession or occupation regulated under this chapter, with

reasonable skill or safety to patients due to the person's physical, mental, or emotional illness or incompetence, including but not limited to deterioration through the aging process, or loss of motor skill, or excessive use or abuse of drugs, including alcohol;

(5) To investigate, through the Executive Director, complaints of the unauthorized practice of medicine or the unauthorized practice of any other profession or occupation regulated under this chapter;

(6) To levy fines not to exceed $5,000, and to grant, deny, restrict, revoke, suspend, reinstate, or reissue a certificate to practice medicine or a certificate, license, or other authorizing document to practice any profession or occupation regulated under this chapter;

(7) To issue subpoenas, compel the attendance of witnesses, and administer oaths;

(8) To require the production of and receive information regarding changes in hospital privileges as a result of disciplinary or other adverse action taken by a hospital, or regarding disciplinary or other adverse action taken by a medical society against any person certified under this chapter to practice medicine;

(9) To reprimand, censure, take other appropriate disciplinary action, or restrict professional or occupational activities with respect to any person certified to practice medicine in this State or any other person certified, licensed, or otherwise authorized to practice a profession or occupation regulated under this chapter;

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

(11) To hold hearings;

(12) To promulgate rules and regulations not inconsistent with or beyond the scope of this chapter or other laws of this State for carrying out the powers and duties required by this chapter;

(13) By resolution passed by a majority of the members of the Board, to designate 1 or more committees, with each committee to include 1 or more of the members of the Board and such other person or persons as may be appropriate; provided, however, that a committee may not levy a fine, or grant or refuse to grant, restrict, revoke, suspend, reinstate, or reissue a certificate to practice medicine or a certificate, license, or other authorizing document to practice another profession or occupation issued under this chapter;

(14) To designate records of the Board confidential and exempt from public disclosure, in accordance with §10002 of Title 29;

(15) To designate 3 members of the Board to act as a hearing panel for the purpose of hearing charges of unprofessional conduct as set forth in §1731(b) of this title or charges of the inability to practice medicine as set forth in §1731(c) of this title, or for the purpose of making determinations of fact in connection with the temporary suspension of a certificate to practice medicine pursuant to §1738 of this title, or for necessary purposes relating to disciplinary or other action against the holder of a certificate, license, or other authorizing document issued under this chapter;

(16) To perform duties regarding emergency medical services systems and paramedic services set forth in Chapters 97 and 98 of Title 16.

(b) A member of the Board or a member of any committee designated by the Board pursuant to subsection (a)(13) of this section is immune from claim, suit, liability, damages, or any other recourse, civil or criminal, arising from any act or omission under the authority of this chapter so long as the member acted in good faith and without gross or wanton negligence, with good faith being presumed until proven otherwise, and gross or wanton negligence required to be shown by the complainant.

(c) A member of the Board may not discriminate, by reason of gender, race, color, creed, religion, age, disability, or national origin, against a person holding or applying for a certificate to practice medicine, or for an authorizing document to practice another occupation or profession pursuant to this chapter.

(d) The Board shall provide by rule or regulation for continuing education for persons certified to practice medicine or other professions or occupations pursuant to this chapter.

§1714. Fees.

The amount of a fee imposed under this chapter by the Division of Professional Regulation must approximate and reasonably reflect the reasonable projected costs of services or activities provided by the Board, as well as the proportional expenses incurred by the Division for services or activities provided on behalf of the Board. A separate fee may be charged for each service or activity, but a fee may not be charged for a purpose not specified in this chapter. The application fee for a certificate to practice medicine, or for a certificate, license, or other authorizing document to practice any other profession or occupation regulated by this chapter, may not be combined with any other fee or charge. At the beginning of each calendar year, the Division, or another State agency acting in its behalf, shall compute the fee for each separate service or activity that the Board or the Division expects to provide during that calendar year.

§1715. Records.

The Division of Professional Regulation shall keep a register of all approved applications for certificates to practice medicine, approved applications for authorization to practice any profession or occupation regulated under this chapter, for registrations and renewal of registrations of certificates to practice medicine, for licenses and renewals of licenses to practice as physician assistants, for licenses and renewals of licenses to practice respiratory therapy, and for all other certificates, licenses, registrations, or other authorizing documents to practice any profession or occupation regulated under this chapter and their renewals, granted by the Board. In addition, the Director shall maintain complete records relating to meetings of the Board, examinations, rosters, changes and additions to the Board's rules and regulations, complaints, hearings, and such other documents as the Board determines. Records of Board proceedings kept by the Division are prima facie evidence of the proceedings of the Board. An applicant, certificate holder, registrant, or licensee must notify the Division of Professional Regulation of a change in his or her address or in any other information on his or her application, registration, or renewal form within 15 days of the change.

Subchapter III. Certificate to Practice Medicine; Registration of Certificate; Renewal of Registration.

§1720. Certification requirements to practice medicine.

(a) A person may not practice medicine in this State unless the person (i) has a certificate to practice medicine issued by the Board of Medical Practice; (ii) registers the certificate to practice medicine and renews it biennially; and (iii), if required, has an occupational license pursuant to Part III of Title 30.

(b) To receive a certificate to practice medicine in this State, an applicant for a certificate must:

(1) have a working ability to read, write, speak, understand, and be understood in the English language;

(2) possess the following educational credentials:

a. a degree of Doctor of Medicine or Doctor of Osteopathy, or an equivalent degree, from a legally incorporated medical college or school located in the United States or Canada, which medical college or school has been approved by the appropriate accrediting body of the American Medical Association or the American Osteopathic Association; or

b. a degree of Doctor of Medicine or Doctor of Osteopathy, or an equivalent degree, from a legally incorporated medical college or school located in a country other than the United States or Canada, medical college or school which is listed in the International Medical Education

Directory (IMED), along with documentary proof that the applicant successfully passed the examination administered by the Educational Council for Foreign Medical Graduates; or

c. a degree of Doctor of Medicine or Doctor of Osteopathy, or an equivalent degree, from a legally incorporated medical college or school located in a country other than the United States or Canada, which medical college or school is not listed in the International Medical Education Directory (IMED), but the applicant has completed 3 years of postgraduate training in a residency program which has been approved by the Accreditation Council for Graduate Medical Education and has successfully passed the examination administered by the Educational Council for Foreign Medical Graduates;

d. documentary proof that all clinical rotations served by the applicant in the United States or Canada as part of training received in a medical college or school were conducted in institutions that are formal parts, such as a primary hospital, of a medical college or school or that have formal affiliation with a medical college or school approved by the appropriate accrediting body of the American Medical Association or the American Osteopathic Association, or that the clinical rotations were served in hospitals which had, at the time the rotations were served, a residency training program approved by the Accreditation Council for Graduate Medical Education in the subject matter of the clinical rotation;

(3) have satisfactorily completed an internship or equivalent training in an institution, which internship or equivalent training and institution are approved by the Board;

(4) submit to the Board a sworn or affirmed statement that he or she (i) has not been convicted of a felony; (ii) has not been professionally penalized for or convicted of drug addiction; (iii) has not had his or her license or certificate or other authorizing document to practice allopathic medicine or osteopathic medicine in any other state, territory, or foreign nation revoked, suspended, restricted, limited, or subjected to disciplinary or other action by the certifying or licensing authority thereof, or an application to practice denied; (iv) has not been removed, suspended, expelled, or disciplined by any professional medical association or society when the removal, suspension, expulsion, or discipline was based upon what the association or society found to be unprofessional conduct, professional incompetence, or professional malpractice; (v) has not been disciplined by a licensed hospital or by the medical staff of the hospital, including the removal, suspension, or limitation of hospital privileges, the

nonrenewal of privileges for cause, the resignation of privileges under pressure of investigation or other disciplinary action, if the discipline was based upon what the hospital or medical staff found to be unprofessional conduct, professional incompetence, or professional malpractice; (vi) has not engaged in the practice of medicine without a certificate or license or other authorization to practice medicine; (vii) has not unlawfully prescribed narcotic drugs; (ix) has not willfully violated the confidence of a patient, except under legal requirement; or (x) has not been professionally penalized or convicted of fraud;

(5) submit to the Board a sworn or affirmed statement that he or she is, at the time of application, physically and mentally capable of engaging in the practice of medicine according to generally accepted standards, and submit to such examination as the Board may deem necessary to determine his or her capability;

(6) submit, at his or her expense, to the Board a certified copy of his or her State and federal criminal history record from the Delaware State Bureau of Investigation. An applicant may not be certified to practice medicine until his or her criminal history reports have been produced. An applicant whose record shows a prior criminal conviction may not be certified by the Board unless a waiver is granted pursuant to subsection (e) of this section;

(7) pass the professional examination pursuant to §1721 of this chapter, unless excepted under §1722 of this chapter or waived as provided in subsection (e) of this section; and

(8) submit to a personal interview by a Board member.

(c) An applicant for a certificate to practice medicine in this State must submit to the Board an application in writing in such form as the Board requires.

(d) An applicant for a certificate to practice medicine in this State must fulfill the requirements of subsection (b) of this section in accord with the form and manner required by the Board in its rules and regulations. The applicant must also pay the application fee set by the Division, and, unless an exception in §1722 of this chapter applies, the applicant must pass a professional examination pursuant to §1721 of this chapter.

(e) The Board, by the affirmative vote of 10 of its members, may waive any of the requirements of this section if it finds all of the following:

(1) the applicant's education, training, qualifications, and conduct have been sufficient to overcome the deficiency or deficiencies in meeting the requirements of this section;

(2) the applicant is capable of practicing medicine in a competent and professional manner; and

(3) the granting of the waiver will not endanger the public health, safety, or welfare.

(f) In determining if an applicant qualifies for certification to practice medicine, the Board may rely upon relevant decisions made by the appropriate authority in other states and may not permit a collateral attack upon those decisions.

§1721. Professional examination.

(a) The Board shall require written and/or clinical professional examination of each applicant for a certificate to practice medicine in accordance with the Board's rules and regulations.

(b) A professional examination issued pursuant to this section must be in the English language, must be comprehensive in character, and must be designed to determine an applicant's fitness to practice medicine. It must cover those general subjects and topics, a knowledge of which is commonly and generally required of candidates for the degree of Doctor of Medicine or Doctor of Osteopathy conferred by approved medical colleges or schools in the United States.

(c) The Board shall include in its rules and regulations the number of times and the conditions under which an applicant who has failed 1 or more professional examinations conducted pursuant to this section may again apply for a certificate to practice medicine under this chapter.

§1722. Waiver of professional examination for temporary certification, for hospital or institution staff, for physicians licensed in another jurisdiction, and for physicians passing an alternative exam.

(a) The Board may adopt rules and regulations that waive the professional examination required pursuant to §1721 of this chapter for the issuance of a certificate to practice medicine in the following cases:

(1) The applicant for whom the examination is to be waived is licensed, certified, registered, or otherwise legally qualified to practice medicine in another state of the United States or in another jurisdiction, and seeks a temporary certificate to practice medicine for not less than 2 weeks nor more than 3 months for the purpose of taking charge of the practice of a person certified and registered to practice medicine in this State during the person's temporary illness or absence from this State. The Board may, in its discretion, extend a temporary certificate to practice medicine pursuant to this paragraph for an additional 3 months, but not longer. A temporary certificate may be issued pursuant to this paragraph to an applicant by the Board upon the written request of a person certified and registered to practice medicine in this State and upon the payment of a fee established for such purpose by the Division of Professional Regulation. The written request must contain an affirmation that the purpose of the temporary certificate is to allow the applicant to take charge of the practice of a person certified and

registered to practice medicine in this State during the person's temporary illness or absence from the State;

(2) The applicant for whom the examination is to be waived (i) is employed in this State as an intern, resident, house physician, or fellow in a hospital accredited by the Joint Commission on the Accreditation of Hospitals or by the American Osteopathic Hospital Association, or (ii) is a staff physician employed in a governmental institution in this State and is applying for a certificate to practice medicine for a period of time not to exceed the length of time of employment in the hospital or governmental institution. A certificate issued pursuant to this paragraph is subject to yearly renewal and restricts the applicant to practice only in the hospital or institution where the applicant is employed;

(3) The applicant for whom the examination is to be waived is licensed, certified, registered, or otherwise legally authorized to practice medicine by competent authority in any other of the United States or in any other jurisdiction approved by the Board;

(4) The applicant for whom the examination is to be waived has satisfactorily passed the examination given by the National Board of Medical Examiners or by the National Board of Examiners for Osteopathic Physicians and Surgeons.

(b) When a certificate to practice medicine is issued to an applicant pursuant to this section and the applicant registers with the Board and obtains an occupational license pursuant to Chapter 23 of Title 30, the applicant may practice medicine in this State, but only for the time and only under the conditions, if any, specified in the certificate.

§1723. Issuance of certificate to practice; registration and registration renewal; reactivating inactive status.

(a) The Board shall issue a certificate to practice medicine in this State and register the certificate for an applicant who meets the requirements of this chapter.

(b) The Division shall keep a current register of all persons certified to practice medicine in this State. Each such person shall inform the Division of any change in the information in his or her application, registration, certification, licensing, or other authorizing document within 15 days of the change.

(c) The registration of a certificate to practice medicine must be renewed biennially, through a procedure determined by the Division. The procedure must include payment of an appropriate registration renewal fee; submission of a renewal form provided by the Division; proof that the certified person has met the continuing medical education requirements established by the Board; and the period of time within which a person certified to practice medicine in this State may renew

his or her registration without penalty, notwithstanding the fact that the person failed to renew his or her registration on or before the renewal date; and the penalty for failure to renew registration in a timely manner.

(d) The Board may establish, by class and not by individual, requirements for continuing education or reexamination, or both, for a person issued a certificate to practice medicine, or issued any authorized document to practice another profession or occupation regulated under this chapter, who is on inactive status and wishes to reactivate his or her status.

§1724. Temporary emergency certificate during a public emergency.

The Board may issue a temporary emergency certificate to practice medicine for a period of time not to exceed 12 months, but renewable at the discretion of the Board, to a person whom it finds qualified to practice medicine in this State. A temporary emergency certificate may be issued only during a public emergency declared by the President of the United States, the Governor of the State, or by the unanimous vote of the entire Board and only if the issuance of the certificate is directly related to the availability of and the need for persons who practice medicine. When an occupational license is issued by the Director of Revenue pursuant to Chapter 23 of Title 30, if such license is required, and the temporary emergency certificate is registered by the Board, the holder of the temporary emergency certificate may, during the term specified on the certificate unless sooner revoked, practice medicine in this State, subject to all the laws of this State and to the regulations and restrictions which the Board may adopt, including, but not limited to, location limitations and limitations on the nature of the practice of medicine within the State.

§1725. Temporary certificate pending certification.

The Executive Director of the Board may issue a temporary certificate pending certification to practice medicine for a period of time not to exceed 3 months to a person otherwise qualified to practice medicine who has applied for certification to practice medicine. When an occupational license is issued by the Director of Revenue pursuant to Chapter 23 of Title 30, if such license is required, and the temporary certificate pending certification is registered by the Board, the holder of the temporary certificate pending certification may, during the time specified on the certificate unless sooner revoked, practice medicine in this State, subject to all the laws of this State and to the regulations and restrictions which the Board may adopt, including, but not limited to, location limitations and limitations on the nature of the practice of medicine within the State.

§1726. Notice of certification required.

The Executive Director of the Board shall, immediately upon issuing a certificate to practice medicine pursuant to §1722, §1723, or §1724 of this chapter, make available to the director of the Division of Public Health of the Department of

Health and Social Services the full name and address of the person to whom the certificate was issued and the date thereof, and, in the case of the issuance of a certificate pursuant to §1722 or §1724 of this chapter, the length of time for which the certificate authorizes the practice of medicine and the limitation on the authorization, if any.

§1727. Consulting physicians from other states.

This chapter does not prevent a person who is certified, licensed, or otherwise authorized to practice medicine in another state or in a foreign country from engaging in a consultation with a person certified and registered to practice medicine in this State.

Subchapter IV. Disciplinary Regulation; Proceedings of the Board

§1730. Duty to report unprofessional conduct and inability to practice medicine.

(a) Every person to whom a certificate to practice medicine is issued has a duty to report to the Board if he or she is treating professionally another person who possesses a certificate to practice medicine for a condition defined in §1731(c) of this chapter, if, in the reporting person's opinion, the person being treated may be unable to practice medicine with reasonable skill or safety. The reporting person shall provide the Board with a written report which includes the name and address of the person being treated, the exact condition being treated, and the reporting person's opinion of whether or not action should be taken under §1731 of this chapter. A person reporting to the Board or testifying in any proceeding as a result of making a report pursuant to this section is immune from claim, suit, liability, damages, or any other recourse, civil or criminal, so long as the person acted in good faith and without gross or wanton negligence; good faith being presumed until proven otherwise, and gross or wanton negligence required to be shown by the complainant.

(b) Every person to whom a certificate to practice medicine is issued has a duty to report to the Board within 30 days any change in hospital privileges resulting from disciplinary action taken by a hospital and any disciplinary action taken by a medical society against him or her.

(c) Every person to whom a certificate to practice medicine is issued has a duty to report to the Board, within 60 days, all information concerning medical malpractice claims settled or adjudicated to final judgment, as provided in Chapter 68 of Title 18, and, within 30 days, all information required to be reported under §1731A(f) of this chapter.

§1731. Unprofessional conduct and inability to practice medicine.

(a) A person to whom a certificate to practice medicine in this State has been issued may be disciplined by the Board for unprofessional conduct, as defined in subsection (b) of this section, by means of levying a fine, or by the restriction, suspension, or revocation, either permanent or temporary, of his or her certificate to practice medicine, or by other appropriate

action, which may include a requirement that a person who is disciplined must complete specified continuing education courses.

(b) 'Unprofessional conduct' includes but is not limited to any of the following acts or omissions:

(1) the use of any false, fraudulent, or forged statement or document or the use of any fraudulent, deceitful, dishonest, or immoral practice in connection with a certification, registration, or licensing requirement of this chapter, or in connection with the practice of medicine or other profession or occupation regulated under this chapter;

(2) conviction of a felony;

(3) any dishonorable, unethical, or immoral conduct likely to deceive, defraud, or harm the public;

(4) the practice of medicine or other profession or occupation regulated under this chapter under a false or assumed name;

(5) the practice of medicine or other profession or occupation regulated under this chapter without a certificate or other authorizing document or renewal of such document, unless otherwise authorized by this chapter;

(6) the use, distribution, or issuance of a prescription for the use of a dangerous or narcotic drug, other than for therapeutic or diagnostic purposes;

(7) advertising of the practice of medicine or other profession or occupation regulated under this chapter in an unethical or unprofessional manner;

(8) solicitation or acceptance of a fee from a patient or other person by fraudulent representation that a manifestly incurable condition, as determined with reasonable medical certainty, can be permanently cured;

(9) knowing or intentional performance of an act which, unless authorized by this chapter, assists an unauthorized person to practice medicine or other profession or occupation regulated under this chapter;

(10) the failure to provide adequate supervision to an individual working under the supervision of a person who is certified and registered to practice medicine;

(11) misconduct, incompetence, or gross negligence in the practice of medicine or other profession or occupation regulated under this chapter;

(12) willful violation of the confidential relationship with or confidential communications of a patient;

(13) willful failure to report to the Board as required by §1730(a) of this title;

(14) willful failure to report to the Board as required by §1730(b) of this title;

(15) willful failure to report to the Board as required by §1730(c) of this title;

(16) unjustified failure upon request to divulge information relevant to the authorization or competence of a person to practice medicine or other profession or occupation regulated under this chapter to the Board, to any committee thereof, to the Executive Director, or to anyone designated by him or her to request such information;

(17) the violation of a provision of this chapter or the violation of an order or regulation of the Board related to medical procedures or to the procedures of other professions or occupations regulated under this chapter, the violation of which more probably than not will harm or injure the public or an individual;

(18) charging a grossly exorbitant fee for professional or occupational services rendered;

(19) suspension or revocation of a certificate to practice medicine or of the authorizing document to practice another profession or occupation regulated under this chapter, or other disciplinary action taken by the regulatory authority in another state or territory; provided, however, that the underlying grounds for such action in another state have been presented to the Board by either certified record or live testimony and that the Board has determined that the facts found by the regulatory authority in the other state or territory constitute unprofessional conduct as that term is defined in this section. In making its determination, the Board may rely upon decisions made by the appropriate authorities in other states and may not permit a collateral attack on those decisions;

(20) signing the death certificate of a person prior to the actual time of death of the person.

(c) A certificate to practice medicine or an authorizing document to practice another profession or occupation regulated under this chapter is subject to restriction, suspension, or revocation, either temporarily or permanently, in case of the inability of the holder to practice medicine or other profession or occupation with reasonable skill or safety to patients by reason of 1 or more of the following:

(1) mental illness or mental incompetence;

(2) physical illness, including, but not limited to, deterioration through the aging process or loss of motor skill;

(3) excessive use or abuse of drugs, including alcohol.

(d) The Board may establish, by class and not by individual, requirements for continuing education and/or reexamination as a condition for renewal of registration and for recertification to practice medicine or other profession or occupation regulated under this chapter, or as a condition to continue to practice medicine or other profession or occupation regulated under this chapter after disciplinary sanctions are imposed or after inability to practice with reasonable skill or safety to patients has been determined.

(e) A person who files a complaint with the Board or any of its members, the Executive Director, or the Division, or who provides information to the Board or any of its members, the Executive Director, or the Division regarding a complaint, or who testifies as a witness at a hearing before the Board or any of its hearing panels or committees concerning unprofessional conduct by a person certified to practice medicine or other profession or occupation regulated under this chapter in this State or concerning the inability of a person certified to practice medicine or other profession or occupation regulated under this chapter for the reasons set forth in subsection (c) of this section, may not be held liable in any cause of action arising out of the filing of the complaint, the providing of information, or the giving of testimony, provided that the person does so in good faith and without gross or wanton negligence.

(f) The provisions of this section apply to any person to whom a certificate, license, or other authorizing document to practice a profession or occupation has been issued pursuant to this chapter.

§1731A. Duty to report.

(a) Any person may report to the Board, in writing, information that the reporting person reasonably believes indicates that a person certified and registered to practice medicine in this State is or may be guilty of unprofessional conduct or may be unable to practice medicine with reasonable skill or safety to patients by reason of mental illness or mental incompetence; physical illness, including deterioration through the aging process or loss of motor skill; or excessive use or abuse of drugs, including alcohol. The following have an affirmative duty to report, and must report, such information to the Board in writing within 30 days of becoming aware of the information:

(1) all persons certified to practice medicine under this chapter;

(2) all certified, registered, or licensed healthcare providers;

(3) the Medical Society of Delaware;

(4) all healthcare institutions in the State;

(5) all State agencies;

(6) all law enforcement agencies in the State.

(b) If a person certified to practice medicine in this State voluntarily resigns from the staff of a healthcare institution, or voluntarily limits his or her staff privileges at a healthcare institution, or fails to reapply for hospital or staff privileges at a healthcare institution, the healthcare institution and the person shall promptly report in writing such conduct to the Board if the conduct occurs while the person is under formal or informal investigation by the institution or a committee thereof for any reason related to possible unprofessional conduct or possible inability to practice medicine with reasonable skill or safety to patients by reason of mental illness or mental incompetence; physical illness; or excessive use or abuse of drugs, pursuant to §1731 of this chapter.

(c) Upon receiving a report pursuant to subsection (a) or (b) of this section, or on its own motion, the Board shall investigate any evidence which appears to show that the person reported is or may be guilty of unprofessional conduct or may be unable to practice medicine with reasonable skill or safety to patients by reason of mental illness or mental incompetence; physical illness; or excessive use or abuse of drugs, pursuant to §1731 of this chapter.

(d) When an investigation is necessary pursuant to subsection (c) of this section, the Executive Director, with the approval of the assisting Board members who must be or must include a physician and a public member when the investigation relates to the quality of medical care provided by a physician or to the competency of a physician to engage safely in the practice of medicine, has the authority to inquire from any organization which undertakes physician peer review or physician quality assurance evaluations whether or not there has been any peer review, quality assurance, or similar process instituted involving the physician under investigation that has resulted in any adverse action. If adverse action resulted, the Executive Director may, by subpoena, compel the production of a list of the medical records reviewed during the peer review process, a list of the quality assurance indicators, and/or a list of other issues which were the basis for the peer review, quality assurance, or similar process. The lists produced must identify each item with a unique medical identifier to replace the patient's name and specific identifying information. If necessary, after receiving the lists the Executive Director may, by subpoena, compel the production of the medical records relevant to the adverse action. However, the individual, hospital, organization, or institution shall remove the patient's name and specific identifying information from the records prior to complying with the subpoena. If, after having reviewed the records produced, an assisting physician Board member and an assisting public Board member consider it necessary, the Executive Director may, by subpoena, compel the production of the patient's name. An individual, hospital, organization, or institution that furnishes information to the Board pursuant to a subpoena issued pursuant to this subchapter with respect to any patient is not solely by reason of furnishing the information liable in damages to any person or subject to any other recourse, civil or criminal.

(e) The Board shall promptly acknowledge all reports received under this section. Individuals or entities reporting under this section must be promptly informed of the Board's final disposition of the reported matters.

(f) Malpractice insurance carriers and insured persons certified to practice medicine in this State shall file with the Board a report of each final judgment, settlement, or award against the insured persons. A person not covered by a malpractice insurance carrier shall also file a report with the Board. A report required to be filed under this subsection must be made to the Board within 30 days of a final judgment, settlement, or award.

(g) An individual, institution, agency, or organization required to report under this section who does so in good faith is not subject to civil damages or criminal prosecution for reporting.

(h) The Executive Director shall initially review every report made to the Board under this subchapter. The Executive Director may defer the investigation of a report pending a reported licensee's evaluation and treatment for substance abuse or for physical or mental illness, provided sufficient safeguards exist to protect the licensee's patients and the public. Safeguards may include a verifiable, voluntary cessation of the practice of medicine or a limited or monitored practice. Upon completion of the reported licensee's evaluation and treatment, the Executive Director shall resume investigation of the report pursuant to the requirements of this chapter.

The Board may enter into agreements with others to facilitate its duties under this chapter, provided that no expense may be incurred without the approval of the Director of the Division of Professional Regulation.

(i) A person who violates a provision of this section is subject to a fine of not less than $250 nor more than $5,000.

§1731B. Counseling; letter of concern.

(a) If the Executive Director and the president of the Board determine after an investigation that a person certified to practice medicine has violated a provision of this chapter or a regulation enacted pursuant to this chapter, but that the violation does not warrant formal action under §1734 of this chapter, the Executive Director and the president may elect to counsel the person regarding the violation. If counseling is elected, the Executive Director shall notify the person in writing of the Executive Director's and the president's findings and of their decision not to proceed by formal action. The notification must explain the findings of the Executive Director and the president, and request the presence of the person at a counseling session. During the counseling session the Executive Director or president shall discuss the violation with the person, as well as any required corrective action.

(b) Attendance of a person certified to practice medicine at a counseling session pursuant to this section is voluntary; but, if the person fails to be counseled or fails to take the corrective action, if any, required by the Executive

Director or president, the Executive Director's notification letter is evidence that the underlying violation occurred, and the letter may be used in a subsequent hearing regarding the person. If a person challenges the findings set forth in the Executive Director's letter, the person is entitled to a hearing in accordance with §1734 of this title to determine whether the violation occurred. If a person requests a hearing pursuant to this section, the hearing must be conducted as a disciplinary hearing under §1734 of this chapter.

(c) Counseling under this section is not considered disciplinary action. If a person certified to practice medicine attends counseling and complies with any corrective action required by the Executive Director or the president, the fact that the person was counseled may not be considered disciplinary action, nor may it be used in considering disciplinary sanctions in any future hearing unrelated to the incident for which the person was counseled unless a future incident involves the same or similar allegation as that for which the person was counseled.

(d) If the Executive Director and the president of the Board, or a member of the Board designated by the president to assist in an investigation concerning a person certified to practice medicine, determine after the investigation that a violation of this chapter or of regulations enacted pursuant to this chapter which warrants formal disciplinary action under §1734 of this chapter has not occurred, but that an act or omission of the person is a matter of concern and that the person's practice may be improved if the person is made aware of the concern, the Executive Director, with the concurrence of the president or the assisting Board member, may issue a non-disciplinary, confidential letter of concern regarding the person's act or omission.

(e) If a person certified to practice medicine receives 3 or more letters of concern or 3 or more letters of counseling pursuant to this section within a 12-month period, the Executive Director may reasonably require a formal assessment of professional competency pursuant to §1732(e) of this chapter to assess the person's continued ability to protect the health and safety of his or her present or prospective patients.

§1732. Investigations of complaints by the Executive Director.

(a) The Executive Director shall:

(1) investigate by complaint, or by his or her own motion or by the Board's own motion, reported cases of (i) unprofessional conduct or inability to practice medicine with reasonable skill or safety to patients as defined by §1731(b) and (c) of this chapter, (ii) the unauthorized practice of medicine, and (iii) medical malpractice;

(2) formulate charges, if circumstances under paragraph (1) of this subsection warrant, by bringing a formal complaint against a person to whom a certificate to practice medicine in this State has been issued;

(3) present all formal complaints to the Board in accordance with the procedures set forth in this subchapter.

(b) The Executive Director shall appoint at least 1 unbiased member of the Board to assist him or her in investigations concerning charges of unprofessional conduct or medical malpractice. The Executive Director shall also appoint investigators from the Division of Professional Regulation to participate in those investigations, which must stay within the bounds of the charge being investigated unless the Executive Director determines that the investigation itself provides good cause for additional investigation. The Executive Director decides in a timely manner whether a formal complaint should be issued. The Executive Director asks the Attorney General's office to prepare a formal complaint against the person investigated, and the Board accepts or rejects the complaint.

(c) The Executive Director shall appoint at least 1 unbiased member of the Board to assist him or her in investigations concerning inability to practice medicine with reasonable skill or safety to patients. The Executive Director shall also appoint investigators from the Division of Professional Regulation to participate in those investigations, which must stay within the bounds of the charge being investigated unless the Executive Director determines that the investigation itself provides good cause for additional investigation. The Executive Director, or his or her designee, shall conduct an assessment of the investigation to determine whether the person to whom a certificate to practice medicine has been issued is able to practice medicine with reasonable skill and safety to patients, either on a restricted or unrestricted basis. If the Executive Director reasonably believes that a diagnostic mental or physical examination of the person under investigation is necessary, he or she shall order the person to submit to an examination at the person's expense to be conducted by a physician designated by the Executive Director. Every person to whom a certificate to practice medicine has been issued is deemed to have given his or her consent to submit to a diagnostic mental or physical examination when so directed by the Executive Director, and to have waived all objections to the admissibility of the examination report to the Board on the grounds of privileged communication. A person who submits to a diagnostic mental or physical examination as ordered by the Executive Director has the right to designate another physician to be present at the examination and to submit an independent report on the examination to the Board. The Executive Director shall report to the Board in a timely manner his or her activities and provide his or her recommendation as to whether a formal complaint should be issued by the Attorney General.

(d) To assist in an investigation of alleged unprofessional conduct, or medical malpractice, or of inability to practice medicine with reasonable skill or safety to patients, the Executive Director, on behalf of the Board, may, by subpoena, compel the production of necessary patient medical records of and patient medical records reviewed by all hospitals, organizations, and healthcare institutions located in the State and by all quality assurance, peer review, and other similar committees, including the records of the Medical Society of Delaware and its committees. A subpoena issued under this subsection is subject to the subpoena restrictions in §1731A(d) of this chapter.

(e) The Executive Director may require an applicant for or the holder of a certificate to practice medicine, at the applicant or certificate holder's expense, to complete a formal assessment of professional competency if the Executive Director, after consultation with the president of the Board and at least one other physician member of the Board, determines that a formal assessment is warranted to protect the health and safety of present or prospective patients. A formal assessment must be performed by the assessment center established by the Federation of State Medical Boards and the National Board of Medical Examiners, or by another assessment center as the Executive Director directs. A formal assessment may not be required of an applicant or certificate holder by the Executive Director without the written concurrence of the president of the Board and at least one other physician member of the Board that the assessment is warranted pursuant to this subsection.

§1733. Complaints; notice of hearing.

(a) (1) Any member of the public or of the Board, or the Executive Director may file with the Board a complaint concerning any aspect of the practice of medicine against a person to whom a certificate to practice medicine in this State has been issued.

(2) The Executive Director shall acknowledge to the complainant in writing receipt of the complaint within 1 week of receiving the complaint, and shall advise the complainant of the progress of the case at least every 90 days until the case is resolved.

(3) The Executive Director shall communicate with the Department of Justice, as least monthly, regarding the status of complaints filed pursuant to paragraph (1) of this subsection that are in the Department of Justice, and shall report the case status to the Board.

(b) The Executive Director shall investigate in accord with the procedures set forth in §1732 of this chapter each complaint which appears to be valid and well-founded.

(c) A complaint against a person to whom a certificate to practice medicine has been issued must be in writing, and signed by the complaining party. The complaint must set forth with particularity the essential facts constituting the alleged

unprofessional conduct, medical malpractice, or inability to practice medicine with reasonable skill or safety to patients. The Executive Director in his or her discretion may maintain the confidentiality of the complaining party from the Board. In the absence of an Executive Director or acting Executive Director, the Secretary of Administrative Services may exercise that discretion. The Executive Director may also investigate an unwritten complaint at his or her discretion, provided the complaining party is identified.

(d) After investigation, if the Executive Director elects to file a formal written complaint against a person to whom a certificate to practice medicine has been issued, the person must be served personally or by certified mail, return receipt requested, with a copy of the complaint not less than 20 days nor more than 60 days prior to a hearing on the complaint. A formal written complaint under this subsection must describe in detail the allegations upon which the complaint is based.

(e) A notice of hearing must inform the person of the date, time, and place of the hearing; state the statute or regulation allegedly violated and the statutory or regulatory authority which gives the Board authority to act; state that the person has a right to be represented by counsel at the hearing and to present evidence on his or her own behalf; and inform the person that the Board must base its decision solely upon evidence received at the hearing. The person is entitled to file with the Board a written response to the complaint within 20 days of service or of receipt by certified mail of the complaint.

(f) A complaint of the unauthorized practice of medicine must be reported immediately to the Attorney General. A person who files a complaint with or provides information to the Board concerning the unauthorized practice of medicine is not liable in any cause of action arising out of the filing of the complaint or the providing of information, provided that the person does so in good faith and without gross or wanton negligence.

(g) The Office of the Attorney General shall provide legal services to the Board, its committees, and the Executive Director.

§1734. Hearings.

(a) Procedure.

(1) Upon the mailing of a formal complaint by the Executive Director pursuant to this chapter, the Executive Director shall appoint a hearing panel composed of 3 unbiased members of the Board, the 3 members being 2 physician members and 1 public member if practical, who shall hear the evidence concerning alleged charges of unprofessional conduct or inability to practice medicine with reasonable skill or safety to patients. The hearing panel shall convene in executive session to hear the evidence no more than 90 days after the Board accepts a formal complaint unless the Board, in its discretion, grants

a continuance of the hearing date. All evidence at the hearing must be taken under oath or affirmation, but technical rules of evidence do not apply. After the evidence has been heard by the hearing panel, the panel shall make written findings of fact and conclusions of law. Only evidence presented at the hearing may be considered by the hearing panel in reaching its findings of fact and conclusions of law. The findings of fact made by the hearing panel are binding on the parties appearing before it and on the Board. If the hearing panel finds that the allegations made in the complaint are not supported by the evidence, it shall so indicate to the Board, together with its recommendation that no further action be taken and that the person complained about be exonerated of all charges. If a majority of the members of the Board who consider the matter, excluding members who participated in the investigation of the complaint and members on the hearing panel and members who are otherwise biased, vote to accept the hearing panel's conclusions of law and recommendation, no further proceedings may be held before the Board. However, if a majority of the members of the Board who consider the matter, excluding any members who participated in the investigation of the complaint and members on the hearing panel and members who are otherwise biased, vote to reject the hearing panel's conclusions of law and recommendation, a formal hearing must be held before the Board to enable the Board to make its own conclusions of law and determine what discipline, if any, should be imposed. In such a case, the hearing panel's findings of fact are binding upon the Board.

(2) If the hearing panel finds that any of the factual allegations made in the complaint are supported by the evidence it has considered, the Board, excluding members who participated in the investigation of the complaint and members on the hearing panel and members who are otherwise biased, will consider the findings of fact and conclusions of law made by the hearing panel at a formal hearing.

(3) A formal hearing must be held within 60 days after the issuance of the written findings of facts and conclusions of law of the hearing panel pursuant to this subsection; provided, however, that if the hearing panel finds that the person complained about presents a clear and imminent danger to the public health by his or her continued practice of medicine, then the full Board may meet for the formal hearing as soon as possible, but only upon 3 days' written notice of the formal hearing being provided to the person or to his or her attorney. No less than 7 affirmative votes are necessary in order for disciplinary action to be taken by the Board. Upon reaching its conclusions of law and determining the appropriate disciplinary action, if any, the Board shall issue a written decision and order in accordance with §10128

of Title 29. The decision and order must be signed by the Board's president, or, if the president is not available, by another officer of the Board.

(b) Open hearings. A hearing on a complaint conducted by a hearing panel is open to the public only at the request of the person complained about. A formal hearing on a complaint before the Board is open to the public in accordance with the provisions of §10004 of Title 29.

(c) Transcript of proceedings. A stenographic transcript must be made of the formal hearings of the Board and of the hearings of the Board's hearing panels. The person complained about is entitled, upon his or her request, to obtain a copy of the transcript at his or her expense.

(d) Rights of respondent. The person complained about is entitled to be represented by counsel before a hearing panel and before the Board. The person complained about also has the right to cross-examine witnesses against him or her, the right to present his or her own witnesses, and the right to introduce evidence at the hearing panel hearing. In addition, the person complained about has the right to compel the issuance of a subpoena for the attendance of witnesses to appear and testify or for the production of books, records, or other documents at the hearing panel hearing.

(e) Conduct of hearing before the hearing panel. An attorney from the Office of the Attorney General shall present evidence in support of the allegations contained in the formal complaint. He or she may call witnesses and cross-examine any witnesses called on behalf of the person complained about. A member of the Board who participated in the investigation of the complaint under consideration or a member who is biased may not sit on the hearing panel or take part in the deliberations or decisions of the hearing panel. To find that a fact or allegation is supported by evidence, the panel members must unanimously agree. The hearing panel shall make its findings of fact and conclusions of law based solely upon the evidence presented to it at the hearing.

(f) Conduct of formal hearing before the Board. The findings of fact made by a hearing panel on a complaint are binding upon the Board at a formal hearing on the same complaint. At a formal hearing, the Board may not consider additional evidence. The Board shall deliberate and reach its own conclusions of law based upon the findings of fact made by the hearing panel. The Board shall consider the hearing panel's conclusions of law, but is not bound by them. To adopt conclusions of law, 7 Board members must vote in favor of them. After adopting its conclusions of law, the Board shall determine what disciplinary action, if any, against the person complained about is appropriate, based solely upon the record before it. To impose disciplinary action, affirmative votes by the majority of the Board members who considered the matter, but in every case no less than 7 affirmative votes are necessary. The Executive Director, Board members who participated in the investigation of the complaint under consideration, the members of the hearing panel, and any Board members who are

otherwise biased may not participate in the deliberations of the Board concerning a complaint investigated by the Executive Director.

(g) Written decision and order. Upon reaching its conclusion of law and determining the appropriate disciplinary action, if any, the Board shall issue a written decision and order in accordance with §10128 of Title 29. However, notwithstanding the provisions of §10128(c), the decision and order may be issued over the signature of only the president or other officer of the Board. The decision and order must be sent by certified mail, return receipt requested, to the person complained about, with a copy to the Executive Director.

(h) Upon receiving a decision and order pursuant to subsection (g) of this section, the Executive Director shall file the required disciplinary action reports to data banks.

§1735. Revocation or suspension of certificate.

(a) If the Board determines pursuant to this subchapter that a fine and/or the restriction, suspension, or revocation of a certificate to practice medicine and/or any other disciplinary action or other action is warranted, an order describing the Board's action must be served personally or sent by certified mail, return receipt requested, to the certificate holder. In addition, copies of the order must be filed in the office of the Board, in the Division of Professional Regulation, in the Division of Public Health of the Department of Health and Social Services, and with the Director of Revenue. Upon receipt of an order of the Board revoking or suspending a certificate to practice medicine, the Director of Revenue shall forthwith revoke or suspend the occupational license to practice medicine issued by the Director and comply with any terms of the order applicable to the Division of Revenue.

(b) The Director of Revenue may not issue an occupational license or a license renewal to any person whose certificate to practice medicine has been revoked or suspended by the Board, unless issuance is in conformity with the terms and conditions of the order of revocation or suspension, or in conformity with any order of reinstatement issued by the Board, or in accordance with a final judgment in any proceeding for review instituted under this chapter.

§1736. Appeal procedures.

(a) A person against whom a decision of the Board has been rendered may appeal the decision to the Superior Court in the county in which the offense occurred.

(b) An appeal pursuant to this section must be filed within 30 days after the day the written decision and order of the Board is issued.

(c) An appeal pursuant to this section is on the record of the Board hearing, without a trial de novo.

(d) A Board action revoking, suspending, or otherwise restricting a person's certificate to practice medicine is not stayed upon appeal unless so ordered by the Superior Court.

(e) A person whose certificate to practice medicine has been revoked, suspended, or otherwise restricted may, after the expiration of 90 days from the decision of the Superior Court, or of the Supreme Court if the decision of the Superior Court is appealed, or after 90 days from the decision and order of the Board if no appeal is taken, apply to the Board to have the certificate reinstated or reissued for good cause shown.

§1737. Confidentiality of records.

Release of records of the Board is governed by the provisions of the Freedom of Information Act, Chapter 100 of Title 29.

§1738. Temporary suspension pending hearing.

(a) If the Board receives a formal or informal complaint concerning the activity of a person certified to practice medicine and the Board members reasonably believe that the activity presents a clear and immediate danger to the public health, the Board may issue an order temporarily suspending the person's certificate to practice medicine pending a hearing. An order temporarily suspending a certificate to practice medicine may not be issued by the Board unless the person or the person's attorney received at least 24 hours' written or oral notice prior to the temporary suspension so that the person or the person's attorney can be heard in opposition to the proposed suspension, and unless at least 8 members of the Board vote in favor of the temporary suspension. An order of temporary suspension pending a hearing may remain in effect for no longer than 60 days from the date of the issuance of the order unless the temporarily suspended person requests a continuance of the hearing date. If the person requests a continuance, the order of temporary suspension remains in effect until the hearing panel convenes and a decision is rendered.

(b) A person whose certificate to practice medicine has been temporarily suspended pursuant to this section must be notified of the temporary suspension immediately and in writing. Notification consists of a copy of the complaint and the order of temporary suspension pending a hearing personally served upon the person or sent by certified mail, return receipt requested, to the person's last known address.

(c) A person whose certificate to practice medicine has been temporarily suspended pursuant to this section may request an expedited hearing. The Board shall schedule the hearing on an expedited basis, provided that the Board receives the request within 5 calendar days from the date on which the person received notification of the decision of the Board to temporarily suspend his or her certificate to practice medicine.

(d) As soon as possible after the issuance of an order temporarily suspending a person's certificate to practice medicine pending a hearing, the Board shall appoint a 3-member hearing panel consisting of 2 physician members and 1 public member of the Board if practicable. After notice to the person pursuant to subsection (b) of this section, the hearing panel shall convene within 60 days of the date of the issuance of the order of temporary suspension to consider the evidence regarding the matters alleged in the complaint. If the person requests in a timely manner an expedited hearing, the hearing panel shall convene within 15 days of the receipt of the request by the Board. The 3-member panel shall proceed to a hearing in accordance with the procedures set forth in §1734 of this subchapter and shall render a decision within 30 days of the hearing.

(e) In addition to making findings of fact, the hearing panel shall also determine whether the facts found by it constitute a clear and immediate danger to public health. If the hearing panel determines that the facts found constitute a clear and immediate danger to public health, the order of temporary suspension must remain in effect until the Board, pursuant to §1734(f) of this subchapter, deliberates and reaches conclusions of law based upon the findings of fact made by the hearing panel. An order of temporary suspension may not remain in effect for longer than 60 days from the date of the decision rendered by the hearing panel unless the suspended person requests an extension of the order pending a final decision of the Board. Upon the final decision of the Board, an order of temporary suspension is vacated as a matter of law and is replaced by the disciplinary action, if any, ordered by the Board.

§1739. Protection from liability.

Pursuant to the State Early Opt-in provision of 42 U.S.C. §11111(c)(2), the protection from liability set forth in 42 U.S.C. §11111(a) applies to professional review actions, as defined in 42 U.S.C. §11151, commenced on or after September 10, 1988.

Subchapter V. Miscellaneous Provisions

§1760. Determination of death.

(a) An individual who has sustained either (1) irreversible cessation of circulatory and respiratory functions or (2) irreversible cessation of all functions of the entire brain, including the brain stem, is dead. A determination of death pursuant to this section must be made in accordance with accepted medical standards.

(b) A determination of death pursuant to this section may be made by a person certified to practice medicine under this chapter by either:

(1) personal examination of the individual believed to be dead, or

(2) the use of information provided by an EMT-P (paramedic) using telemetric or transtelephonic means in accordance with protocols approved by the Board of Medical Practice, following recommendations of the Board's Advanced Life Support Committee.

(c) This section must be applied and construed to effectuate its general purpose to make uniform the law with respect to the determination of death among states enacting it.

(d) This section may be cited as the Uniform Determination of Death Act.

§1761. Physician discontinuing business or leaving the State; death of a physician; change of physician and transfer of patient records; notification to patients.

(a) A person certified to practice medicine under this chapter who is discontinuing a medical-practice business in this State or who is leaving this State and who is not transferring patient records to another person certified to practice medicine shall notify his or her patients of record by publishing a notice to that effect in a newspaper of daily circulation in the area where the person practices. The notice must be published at least 1 time per month over a 3-month period in advance of discontinuing the business or leaving the State and must explain how a patient can procure his or her patient records. All patients of record who have not requested their records 30 days before the person discontinues the medical-practice business or leaves the State must be notified by first class mail by the person to permit his or her patients to procure their records. Any patient records that have not been procured within 7 years after the person discontinues business or leaves the State may be permanently disposed of in a manner that ensures confidentiality of the records.

(b) If a person certified to practice medicine under this chapter dies and has not transferred patient records to another person certified to practice medicine and has not made provisions for a transfer of patient records to occur upon the person's death, a personal representative of the person's estate shall notify the person's patients of record by publishing a notice to that effect in a newspaper of daily circulation in the area where the person practiced. The notice must be published at least 1 time per month over a 3-month period after the person's death and must explain how a former patient can procure his or her patient records. All former patients who have not requested their records 30 days after such publication must be notified by first class mail by the personal representative of the estate to permit the patients to procure their records. Any patient records that have not been procured within 7 years after the death of the person may be permanently disposed of in a manner that ensures confidentiality of the records.

(c) If a patient changes from the care of one person certified to practice medicine to another person certified to practice medicine, the former person shall transfer a copy of the records of the patient to the current person upon the request of

either the current person or the patient. The former person may charge for the reasonable expenses of copying the patient's records, not to exceed $25. Alternatively, if the patient and current person agree, the former person may forward to the current person a summary of the patient's record, in lieu of transferring the entire record, at no charge to the patient. If a patient changes care from one person certified to practice medicine to another and fails to notify the former person, or leaves the care of the former person for a period of 7 years from the last entry date on the patient's record and fails to notify the former person, or fails to request the transfer of records to the current person, then the former person shall maintain the patient's records for a period of 7 years from the last entry date in the patient's medical record, after which time the records may be permanently disposed of in a manner that insures confidentiality of the records.

(d) This section does not apply to a person certified to practice medicine who has seen or treated a patient on referral from another person certified to practice medicine and who has provided a record of the diagnosis and/or treatment to the other person, or to a hospital or an agency which has provided treatment for the patient.

(e) A person certified to practice medicine or the personal representative of the estate of such person who disposes of patient records in accordance with the provisions of this section is not liable for any direct or indirect loss suffered as a result of the disposal of a patient's records.

§1762. Reports of treatment of certain wounds, injuries, poisonings, or other conditions; failure to report; penalty.

(a) Every person certified to practice medicine who attends to or treats a stab wound; poisoning by other than accidental means; or a bullet wound, gunshot wound, powder burn, or other injury or condition arising from or caused by the discharge of a gun, pistol, or other firearm, or when such injury or condition is treated in a hospital, sanitarium, or other institution, the person, manager, superintendent, or other individual in charge shall report the injury or condition as soon as possible to the appropriate police authority where the attending or treating person was located at the time of treatment or where the hospital, sanitarium, or institution is located. This section does not apply to wounds, burns, poisonings, or injuries or conditions received by a member of the armed forces of the United States or the State while engaged in the actual performance of duty. A person who fails to make a report required by this section shall be fined not less than $100 nor more than $2,500.

(b) A person certified to practice medicine or other individual who makes a report pursuant to this section is immune from liability for the report, provided that the person or other individual acted in good faith and without gross or wanton negligence.

§1763. Reports of persons who are subject to losses of consciousness; limitation on use; failure; penalty.

(a) A person certified to practice medicine who attends to or treats an individual who is subject to loss of consciousness due to a disease shall report within 1 week to the Division of Motor Vehicles the name, age, and address of the individual, unless the individual's infirmity is under sufficient control to permit him or her to operate a motor vehicle with safety to persons and property.

(b) A report filed pursuant to this section must be kept confidential and may be used only for the purpose of determining the eligibility of an individual to operate a motor vehicle on the highways of this State.

(c) A person certified to practice medicine who fails to make a report required by this section shall be fined not less than $100 nor more than $2500 for each report that the person fails to make.

(d) A person who complies with the requirements of this section in good faith and without gross or wanton negligence is immune from any claim, suit, or other recourse arising from such compliance.

§1765. State revenue.

The provisions of this chapter may not be construed to interfere with the operation of the provisions of Title 29 relating to State licenses and taxes.

§1766. Penalties.

(a) A person who practices or attempts to practice medicine contrary to the provisions of this chapter is guilty of a class F felony and shall be fined not less than $1000 nor more than $5000 or imprisoned not more than 3 years, or both.

(b) A person who terminates or attempts to terminate or assists in the termination of a human pregnancy otherwise than by birth, except in accordance with Subchapter IX of this chapter, is guilty of a class C felony and shall be fined not more than $5,000 and imprisoned not less than 2 nor more than 10 years.

(c) A person who violates a provision of this chapter for which a penalty is not specified is guilty of a class B misdemeanor.

(d) The Attorney General of this State or a deputy attorney general shall enforce the provisions of this chapter.

§1767. Emergency care at the scene of an emergency.

A person certified to practice medicine under this chapter who, in good faith and without gross or wanton negligence, renders emergency care at the scene of an emergency is not liable for civil damages as a result of any acts or omissions in rendering the emergency care.

§1768. Immunity of boards of review; confidentiality of review board records.

(a) The Board of Medical Practice and the Medical Society of Delaware, their members, and the members of any committees appointed by the Board or Society; the members of any committee appointed by a certified health maintenance organization; members of hospital and osteopathic medical society committees; members of a professional standards review organization established under federal law; and members of other peer review committees or organizations whose function is the review of medical records, medical care, and physicians' work, with a view to the quality of care and utilization of hospital or nursing home facilities, home visits, and office visits, are immune from claim, suit, liability, damages, or any other recourse, civil or criminal, arising from any act, omission, proceeding, decision, or determination undertaken or performed, or from any recommendation made, so long as the person acted in good faith and without gross or wanton negligence in carrying out the responsibilities, authority, duties, powers, and privileges of the offices conferred by law upon them, with good faith being presumed until proven otherwise, and gross or wanton negligence required to be shown by the complainant.

(b) Unless otherwise provided by this chapter, the records and proceedings of committees and organizations described in subsection (a) of this section are confidential and may be used by those committees or organizations and the members thereof only in the exercise of the proper functions of the committee or organization. The records and proceedings are not public records and are not available for court subpoena, nor are they subject to discovery. A person in attendance at a meeting of any such committee or organization is not required to testify as to what transpired at the meeting. A person certified to practice medicine, or a hospital, organization, or institution furnishing, in good faith and without gross or wanton negligence, information, data, reports, or records to such a committee or organization or a member thereof with respect to any patient examined or treated by a person certified to practice medicine or examined, treated, or confined in the hospital or institution is not, by reason of furnishing such information, data, reports, or records, liable in damages to any person or subject to any other recourse, civil or criminal. Nothing in this subsection prevents the Board from providing information, data, reports, or records in its possession to a medical or osteopathic licensing board of any other state or territory of the United States regarding a person who is certified to practice medicine under this chapter, or who has been certified under this chapter or who has attempted to be certified under this chapter. The Board and its members and employees are not liable in any cause of action arising out of the providing of information, data, reports, or records provided that the person has acted in good faith and without gross or wanton negligence. This section may not be construed to create a privilege or right to refuse to honor a subpoena issued by or on behalf of the Board of Medical Practice pursuant to §1731A(d) of this title.

§1769. Disclosure of laboratory costs.

A person certified to practice medicine who bills patients or third-party payors for individual tests or test series administered by any private or hospital clinical laboratory shall disclose on the bill the name of the laboratory, the amount or amounts charged by the laboratory for individual tests or test series and the amount of any procurement or processing charge made by the person certified to practice medicine for each test or test series. A test or test series performed at a state laboratory or at another laboratory at which no charge is made must be noted on the bill.

§1769A. Required warning to pregnant women of possible effects of using alcohol, cocaine, or other narcotics.

(a) A person certified to practice medicine who treats, advises, or counsels pregnant women shall post warnings and give written and verbal warnings to all pregnant women regarding possible problems, complications, and injuries to themselves and/or to the fetus from the consumption or use of alcohol or cocaine, marijuana, heroin, and other narcotics during pregnancy.

(b) A person certified to practice medicine may designate a licensed nurse to give the warnings required by this section.

(c) The Director of the Division of Public Health shall prescribe the form and content of the warnings required pursuant to this section.

Subchapter VI. Physician Assistants.

§1770. The Regulatory Council for Physician Assistants.

To assist the Board of Medical Practice in the performance of its duties relating to the regulation of physician assistants, the president of the Board, with advice and approval of the Board, shall appoint members to the Regulatory Council for Physician Assistants. The Regulatory Council is chaired by a member of the Board appointed by the president and has 6 other members, including 1 physician who regularly supervises physician assistants appointed by the Board of Medical Practice and 1 pharmacist appointed by the Board of Pharmacy. The 4 remaining members must be physician assistants and must meet the same requirements and be subject to the same limitations and causes for removal as a physician member of the Board, except that the requirement for certification and registration to practice medicine is replaced by licensure as a physician assistant. Terms and limitations of service for members of the Regulatory Council are the same as terms and limitations of service for members of the Board. The chairperson of the Regulatory Council is compensated and reimbursed in the same amount as a Board member is compensated and reimbursed. The other 6 members of the Regulatory Council are compensated at an appropriate and reasonable level as determined by the Division and may be reimbursed for meeting-related travel and expenses at the State's current approved rate. The Regulatory Council shall meet at least quarterly each calendar year to review

the regulation of physician assistants and to advise the Board of policy, rules, and regulations relating to the regulation of physician assistants. The Board may consult Regulatory Council members for advice on particular issues, including issues relating to disciplinary matters for physician assistants. The Board shall determine the specific functions of the Regulatory Council.

§1770A. Physician assistants.

As used in this section:

(1) 'physician assistant' or 'PA' means an individual who (i) has graduated from a physician or surgeon assistant program which is accredited by the Committee on Allied Health Education and Accreditation (CAHEA) of the American Medical Association (AMA), or a successor agency acceptable to and approved by the Board; (ii) has passed a national certifying examination acceptable to the Regulatory Council for Physician Assistants and approved by the Board; (iii) is licensed and registered under this chapter to practice as a physician assistant; and (iv) has completed any continuing education credits required by rules and regulations developed under this chapter;

(2) 'supervision of physician assistants' means the ability of the supervising physician to provide or exercise control and direction over the services, activities, and duties of a physician assistant. The constant physical presence of the supervising physician is not required in the supervision of a physician assistant, provided that the supervising physician is readily accessible by some form of electronic communication and that the supervising physician can be physically present with the physician assistant within 30 minutes, if necessary; and

(3) 'delegated medical acts' means healthcare activities and duties delegated to a physician assistant by a supervising physician.

§1771. Physician's duties in supervision of a physician assistant.

(a) A physician who delegates medical acts to a physician assistant is responsible for the physician assistant's medical acts and must provide adequate supervision.

(b) A supervising physician may not delegate a medical act to a physician assistant who, by statute or professional regulation, is prohibited from performing the act.

(c) A supervising physician may not be involved in patient care in name only.

(d) A supervising physician may not delegate medical acts to a physician assistant that exceed the physician's specialty.

(e) A supervising physician may not at any given time supervise more than 2 physician assistants, unless a regulation of the Board increases or decreases the number.

(f) A physician who supervises a physician assistant in violation of the provisions of this subchapter or of regulations adopted pursuant to this subchapter is subject to disciplinary action by the Board of Medical Practice for permitting the unauthorized practice of medicine.

(g) A supervising physician who has his or her patients followed by a physician assistant shall reevaluate at least every 3 months every patient receiving controlled substances and at least every 6 months every patient receiving other prescription medications or therapeutics.

(h) Prescription and nonprescription medications may be initiated by standing orders if these standing orders have been approved by the supervising physician.

(i) Hospitals, clinics, and other healthcare facilities may employ physician assistants; however, no more than 2 physician assistants may be employed and supervised for each physician practicing in the same facility unless a regulation of the Board increases or decreases the number.

§1772. Prohibited acts by a physician assistant.

(a) A physician assistant may not maintain or manage an office separate and apart from the office of his or her supervising physician.

(b) A physician assistant may not engage in diagnosis, prescribe or dispense legend drugs or therapeutics, or practice medicine or surgery or perform refractions in any setting independent of the supervision of a physician who is certified to practice medicine.

(c) A physician assistant may not assign a delegated medical act to another individual.

(d) A physician assistant may not independently bill a patient for services rendered at the request of the supervising physician.

(e) Nothing in this chapter may be construed to authorize a physician assistant to practice independent of a supervising physician.

(f) Except as otherwise provided in this chapter or in a medical emergency, a physician assistant may not perform any medical act which has not been delegated by a supervising physician.

(g) A physician assistant may not practice as a member of any other health profession regulated under this Code unless the physician assistant is certified, licensed, registered, or otherwise authorized to practice the other profession.

§1773. Regulation of physician assistants.

(a) The Board, in conjunction with the Regulatory Council for Physician Assistants established under §1770 of this chapter, shall adopt regulations regarding activities which may be undertaken by physician assistants, and shall license and register all physician assistants with the Board.

(b) The Board, in conjunction with the Regulatory Council for Physician Assistants, shall define the scope of practice of physician assistants including:

(1) the licensing of physician assistants to allow:

a. the performance of delegated medical acts within the education, training, and experience of physician assistants; and

b. the performance of services customary to the practice of the supervising physician;

(2) delegated medical acts provided by physician assistants to include, but not be limited to:

a. the performance of complete patient histories and physical examinations;

b. the recording of patient progress notes in an outpatient setting;

c. the relaying, transcribing, or executing of specific diagnostic or therapeutic orders, so long as all such notes, orders, and other writings are reviewed and countersigned by the supervising physician within 24 hours, barring extraordinary events or circumstances;

d. delegated medical acts of diagnosis and prescription of therapeutic drugs and treatments within the scope of physician assistant practice, as defined in the regulations promulgated by the Regulatory Council for Physician Assistants and approved by the Board of Medical Practice;

e. prescriptive authority for therapeutic drugs and treatments within the scope of physician assistant practice, as defined in the regulations promulgated by the Regulatory Council for Physician Assistants and approved by the Board of Medical Practice. The physician assistant's prescriptive authority and authority to make medical diagnoses and treatment decisions, if any, are subject to biennial renewal upon application to the Physician Assistant Regulatory Council;

(c) (1) The Board, in conjunction with the Regulatory Council for Physician Assistants, shall suspend, revoke, or restrict the license of a physician assistant or take disciplinary action or other action against a physician

assistant for engaging in unprofessional conduct as defined in §1731(b) of this chapter; or for the inability to render delegated medical acts with reasonable skill or safety to patients because of the physician assistant's physical, mental, or emotional illness or incompetence, including but not limited to deterioration through the aging process, or loss of motor skills, or excessive use of drugs, including alcohol; or for representing himself or herself as a physician, or for knowingly allowing himself or herself to be represented as a physician. Disciplinary action or other action undertaken against a physician assistant must be in accordance with the procedures, including appeal procedures, applicable to disciplinary actions against physicians pursuant to Subchapter IV of this chapter, except that a hearing panel for a complaint against a physician assistant consists of 3 unbiased members of the Regulatory Council, the 3 members being 2 physician assistant members and 1 physician or pharmacist member if practicable.

(2) a. If the Board or the Regulatory Council for Physician Assistants receives a formal or informal complaint concerning the activity of a physician assistant and the Regulatory Council members reasonably believe that the activity presents a clear and immediate danger to the public health, the Regulatory Council may issue an order temporarily suspending the physician assistant's license to practice pending a hearing. An order temporarily suspending a license to practice may not be issued by the Council, with the approval of the Board, unless the physician assistant or the physician assistant's attorney received at least 24 hours' written or oral notice prior to the temporary suspension so that the physician assistant or the physician assistant's attorney can be heard in opposition to the proposed suspension, and unless at least 4 members of the Council and 8 members of the Board vote in favor of the temporary suspension. An order of temporary suspension pending a hearing may remain in effect for no longer than 60 days from the date of the issuance of the order unless the temporarily suspended physician assistant requests a continuance of the hearing date. If the physician assistant requests a continuance, the order of temporary suspension remains in effect until the hearing panel convenes and a decision is rendered.

b. A physician assistant whose license to practice has been temporarily suspended pursuant to this section must be notified of the temporary suspension immediately and in writing. Notification consists of a copy of the complaint and the order of temporary suspension pending a hearing

personally served upon the physician assistant or sent by certified mail, return receipt requested, to the physician assistant's last known address.

c. A physician assistant whose license to practice has been temporarily suspended pursuant to this section may request an expedited hearing. The Council shall schedule the hearing on an expedited basis, provided that the Council receives the request within 5 calendar days from the date on which the physician assistant received notification of the decision of the Council, with the approval of the Board, to temporarily suspend his or her license to practice.

d. As soon as possible after the issuance of an order temporarily suspending a physician assistant's license to practice pending a hearing, the Council president shall appoint a 3-member hearing panel. After notice to the physician assistant pursuant to subsection (b) of this section, the hearing panel shall convene within 60 days of the date of the issuance of the order of temporary suspension to consider the evidence regarding the matters alleged in the complaint. If the physician assistant requests in a timely manner an expedited hearing, the hearing panel shall convene within 15 days of the receipt of the request by the Council. The 3-member panel shall proceed to a hearing in accordance with the procedures set forth in §1734 of this chapter and shall render a decision within 30 days of the hearing.

e. In addition to making findings of fact, the hearing panel shall also determine whether the facts found by it constitute a clear and immediate danger to public health. If the hearing panel determines that the facts found constitute a clear and immediate danger to public health, the order of temporary suspension must remain in effect until the Board, pursuant to §1734(f) of this chapter, deliberates and reaches conclusions of law based upon the findings of fact made by the hearing panel. An order of temporary suspension may not remain in effect for longer than 60 days from the date of the decision rendered by the hearing panel unless the suspended physician assistant requests an extension of the order pending a final decision of the Board. Upon the final decision of the Board, an order of temporary suspension is vacated as a matter of law and is replaced by the disciplinary action, if any, ordered by the Board.

§1774. Temporary licensing of physician assistants.

(a) Notwithstanding any provision of this subchapter to the contrary, the Board may grant a temporary license to an individual who has graduated from a physician or surgeon assistant program which has been accredited by the Committee on Allied Health Education and Accreditation (CAHEA) of the American Medical Association (AMA) and who otherwise meets the qualifications for licensure but who has not yet taken a national certifying examination, provided that the individual is registered to take and takes the next scheduled national certifying examination. A temporary license granted by the Board pursuant to this subsection is valid until the results of the examination are available from the certifying agency. If the individual fails to pass the national certifying examination, the temporary license granted by the Board pursuant to this subsection must be immediately rescinded until the individual successfully qualifies for licensure pursuant to this subchapter.

(b) An individual who is temporarily licensed pursuant to this section may not have a prescriptive practice and may not perform delegated medical acts except in the physical presence of his or her supervising physician.

§1774A. Waiver of licensing requirements.

The Council, by the affirmative vote of 5 of its members and with the approval of the Board within 30 days of the vote, may waive any requirements for licensing and registration if it finds all of the following:

(1) the applicant's education, training, qualifications, and conduct have been sufficient to overcome the deficiency or deficiencies in meeting the requirements for licensing and registration;

(2) the applicant is capable of practicing as a physician assistant in a competent and professional manner; and

(3) the granting of the waiver will not endanger the public health, safety, or welfare.

§1774B. Fees set by Board.

The Division of Professional Regulation shall establish fees for licensing physician assistants, for renewing licenses on a biennial basis, and for other regulatory purposes. The fees must approximate the costs reasonably necessary to defray the actual expenses of the Board and the regulatory council, as well as the proportional expenses incurred by the Division in administering the issuance and renewal of licenses, and other regulation of physician assistants.

§1774C. Prohibited acts; penalties; enforcement.

(a) A person may not practice as a physician assistant in this State or represent that he or she is a physician assistant or knowingly allow himself or herself to be represented as a physician assistant unless the person is licensed under this subchapter, except as otherwise provided in this chapter.

(b) A person who, contrary to the provisions of this subchapter, practices or attempts to practice as a physician assistant within the State or represents that he or she is a physician assistant or knowingly allows himself or herself to be represented as a physician assistant shall be fined not less than $500 nor more than $2,000 or imprisoned not more than 1 year, or both.

(c) The Office of the Attorney General is charged with the enforcement of this subchapter.

§1774D. Procedure or action not prescribed.

This subchapter governs the practice of physician assistants. If a procedure or action is not specifically prescribed in this subchapter, but is prescribed in the subchapters relating to the practice of medicine, and the procedure or action would be useful or necessary for the regulation of physician assistants, the Board or Council may, in its discretion, proceed in a manner prescribed for physicians in the practice of medicine.

Subchapter VII. Respiratory Care Practitioners

§1775. Respiratory Care Advisory Council.

(a) The Respiratory Care Advisory Council (Council) consists of 7 members, one of whom is a physician member of the Board of Medical Practice. The remaining 6 council members are individuals trained in respiratory care who have been licensed and primarily employed in the practice of respiratory care in this State for at least 2 of the 3 years immediately prior to appointment. The Council may elect officers as necessary.

(b) Each Council member is appointed by the Board for a term of 3 years, and may succeed himself or herself for 1 additional 3-year term; provided, however, that if a member is initially appointed to fill a vacancy, the member may succeed himself or herself for only 1 additional 3-year term. A person appointed to fill a vacancy on the Council is entitled to hold office for the remainder of the unexpired term of the former member. Each term of office expires on the date specified in the appointment; however, a Council member whose term of office has expired remains eligible to participate in Council proceedings until replaced by the Board. A person who has never served on the Council may be appointed to the Council for 2 consecutive terms, but the person is thereafter ineligible for appointment to the Council except as hereinafter provided. A person who has been twice appointed to the Council or who has served on the Board for 6 years within any 9-year period may not again be appointed to the Council until an interim period of at least 1 year has expired since the person last served. A member serving on the Council may not be an elected officer or a member of the board of directors of any professional association of respiratory care practitioners.

(c) The Council shall promulgate rules and regulations governing the practice of respiratory care, after public hearing and subject to the approval of the Board of Medical Practice. The Board must approve or reject within 60 days proposed rules or regulations submitted to it by the Council. If the Board fails to approve or reject the proposed rules or regulations within 60 days, the proposed rules or regulations are deemed to be approved by the Board.

(d) The Council shall meet quarterly, and at such other times as license applications are pending. The Council shall, from time to time, present to the Board the names of individuals qualified to be licensed or qualified to receive temporary licenses, and shall recommend disciplinary action against licensees as necessary, and shall suggest changes in operations or regulations.

§1776. Respiratory care practitioners.

(a) As used in this subchapter:

(1) 'respiratory care practitioner' or 'RCP' means an individual who practices respiratory care in accord with the requirements of this subchapter;

(2) 'respiratory care' means the allied health profession, under the direction of a person certified to practice medicine, which is responsible for direct and indirect services in the treatment, management, diagnostic testing, control, and care of patients with deficiencies and abnormalities associated with the cardiopulmonary system. Respiratory care includes inhalation therapy and respiratory therapy.

(b) A respiratory care practitioner works under the general supervision of a person certified to practice medicine, whether by direct observation and monitoring, by protocols approved by a person certified to practice medicine, or by orders written or verbally given by a person certified to practice medicine. A respiratory care practitioner may evaluate patients and make decisions within parameters defined by a person certified to practice medicine and by the Board of Medical Practice. The work performed by a respiratory care practitioner includes, but is not limited to:

(1) collecting samples of blood, secretions, gases, and body fluids for respiratory evaluations;

(2) measuring cardiorespiratory volumes, flows, and pressures;

(3) administering pharmacological agents, aerosols, and medical gases;

(4) inserting and maintaining airways, natural or artificial, for the flow of respiratory gases;

(5) controlling the environment and ventilatory support systems such as hyperbaric chambers and ventilators;

(6) resuscitating individuals with cardiorespiratory failure;

(7) maintaining bronchopulmonary hygiene;

(8) researching and developing protocols in respiratory disorders;

(9) performing pulmonary function studies.

(c) Nothing in this subchapter is intended to limit, preclude, or otherwise interfere with the professional activities of other individuals and healthcare providers formally trained and licensed by the State.

(d) An individual who is licensed pursuant to this subchapter, who is not being investigated or sanctioned in relation to unprofessional conduct or physical, mental, emotional, or other impairment, and who has passed an examination that includes the subject matter of 1 or more of the professional activities included in subsection (b) of this section may not be prohibited from performing those professional activities passed in the examination, provided that the testing body that administered the examination is approved by the Board.

§1777. Licensure.

(a) The requirements for licensure by the Board as a respiratory care practitioner are:

(1) the applicant must successfully complete a national qualifying examination with a passing grade that leads to a credential conferred by the National Board for Respiratory Care, Inc. (NBRC), or its successor organization, as a certified respiratory therapist (CRT) and/or as a registered respiratory therapist (RRT); or

(2) the applicant must possess a current license in a state which has licensing requirements equal to or exceeding the requirements of this subchapter, and there may not be any outstanding or unresolved complaints pending against the applicant;

(3) the applicant (i) may not have been assessed any administrative penalties regarding his or her practice of respiratory care, including but not limited to fines, formal reprimands, license suspension or revocation (except for license suspension or revocation for nonpayment of license renewal fees), and probationary limitations, and (ii) may not have entered into a consent agreement which contains conditions placed by a Board or other authority on his or her professional conduct or practice, including the voluntary surrender of his or her license while under investigation for misconduct. However, the Board may, after a hearing, waive the requirement of subparagraph (i) of this paragraph if the administrative penalty prevents the issuance of a license;

(4) the applicant may not have an impairment related to the current use of drugs or alcohol which substantially impairs the practice of respiratory care with reasonable skill and safety;

(5) the applicant may not have been convicted of a felony;

(6) the applicant may not have a criminal conviction record or a pending criminal charge relating to an offense, the circumstances of which substantially relate to or affect the practice of respiratory care. An applicant who has a criminal conviction record or a pending criminal charge must arrange for information about the record or charge to be provided directly to the Board by the appropriate authorities in sufficient specificity to enable the Board to make a determination of whether the record or charge is substantially related to or affects the practice of respiratory care.

(b) Waiver of requirements. The Respiratory Care Advisory Council, by the affirmative vote of 5 of its members and with the approval of the Board within 30 days of the vote, may waive any of the requirements of subsection (a) of this section if its finds all of the following:

(1) the applicant's education, training, qualifications, and conduct have been sufficient to overcome the deficiency or deficiencies in meeting the requirements of this section;

(2) the applicant is capable of practicing respiratory care in a competent and professional manner; and

(3) the granting of the waiver will not endanger the public health, safety, or welfare.

(c) License denial. If it appears to the Board that an applicant has been intentionally fraudulent or that an applicant has intentionally submitted, or intentionally caused to be submitted, false information as part of the application process, the Board may not issue a license to the applicant and must report the incident of fraud or submitting false information to the Office of the Attorney General for further action.

(d) Temporary license. The Board of Medical Practice, with the concurrence of 1 officer of the Respiratory Care Advisory Council, may issue a temporary permit to an applicant for licensure who has presented a completed application to the Board. A temporary permit issued under this paragraph is valid for a period of not more than 90 days and may not be renewed. Only 1 temporary permit may be issued under this paragraph.

(e) (1) License suspension, revocation, or nonrenewal. The Council, after appropriate notice and hearing, may recommend to the Board of Medical Practice that the Board revoke, suspend, or refuse to issue a license, or place the licensee on probation, or otherwise discipline a licensee found guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, fraud, deceit, incompetence, gross negligence, dishonesty, or other behavior in the licensee's professional activity which is likely to endanger the public

health, safety, or welfare. The Council and Board may take necessary action against a respiratory care practitioner who is unable to render respiratory care services with reasonable skill or safety to patients because of mental illness or mental incompetence, physical illness, or the excessive use of drugs, including alcohol. Disciplinary action or other action taken against a respiratory care practitioner must be in accordance with the procedures for disciplinary and other actions against physicians, including appeals as set forth in Subchapter IV of this chapter, except that a hearing panel for a complaint against a respiratory care practitioner consists of 3 unbiased members of the Regulatory Council, the 3 members being the chair of Council and 2 other members, if practicable.

(2) a. If the Board or the Respiratory Care Advisory Council receives a formal or informal complaint concerning the activity of a respiratory care practitioner and the Council members reasonably believe that the activity presents a clear and immediate danger to the public health, the Council may issue an order temporarily suspending the respiratory care practitioner's license to practice pending a hearing. An order temporarily suspending a license to practice may not be issued by the Council, with the approval of the Board, unless the respiratory care practitioner or the respiratory care practitioner's attorney received at least 24 hours' written or oral notice prior to the temporary suspension so that the respiratory care practitioner or the respiratory care practitioner's attorney can be heard in opposition to the proposed suspension, and unless at least 4 members of the Council and 8 members of the Board vote in favor of the temporary suspension. An order of temporary suspension pending a hearing may remain in effect for no longer than 60 days from the date of the issuance of the order unless the temporarily suspended respiratory care practitioner requests a continuance of the hearing date. If the respiratory care practitioner requests a continuance, the order of temporary suspension remains in effect until the hearing panel convenes and a decision is rendered.

b. A respiratory care practitioner whose license to practice has been temporarily suspended pursuant to this section must be notified of the temporary suspension immediately and in writing. Notification consists of a copy of the complaint and the order of temporary suspension pending a hearing personally served upon the respiratory care practitioner or sent by certified mail, return receipt requested, to the respiratory care practitioner's last known address.

c. A respiratory care practitioner whose license to practice has been temporarily suspended pursuant to this section may request an expedited hearing. The Council shall schedule the hearing on an expedited

basis, provided that the Council receives the request within 5 calendar days from the date on which the respiratory care practitioner received notification of the decision of the Council, with the approval of the Board, to temporarily suspend his or her license to practice.

d. As soon as possible after the issuance of an order temporarily suspending a respiratory care practitioner's license to practice pending a hearing, the Council president shall appoint a 3-member hearing panel. After notice to the respiratory care practitioner pursuant to subsection (b) of this section, the hearing panel shall convene within 60 days of the date of the issuance of the order of temporary suspension to consider the evidence regarding the matters alleged in the complaint. If the respiratory care practitioner requests in a timely manner an expedited hearing, the hearing panel shall convene within 15 days of the receipt of the request by the Council. The 3-member panel shall proceed to a hearing in accordance with the procedures set forth in §1734 of this chapter and shall render a decision within 30 days of the hearing.

e. In addition to making findings of fact, the hearing panel shall also determine whether the facts found by it constitute a clear and immediate danger to public health. If the hearing panel determines that the facts found constitute a clear and immediate danger to public health, the order of temporary suspension must remain in effect until the Board, pursuant to §1734(f) of this chapter, deliberates and reaches conclusions of law based upon the findings of fact made by the hearing panel. An order of temporary suspension may not remain in effect for longer than 60 days from the date of the decision rendered by the hearing panel unless the suspended respiratory care practitioner requests an extension of the order pending a final decision of the Board. Upon the final decision of the Board, an order of temporary suspension is vacated as a matter of law and is replaced by the disciplinary action, if any, ordered by the Board.

§1777A. Procedure or action not prescribed.

This subchapter governs the practice of respiratory care practitioners. If a procedure or action is not specifically prescribed in this subchapter, but is prescribed in the subchapters relating to the practice of medicine, and the procedure or action would be useful or necessary for the regulation of respiratory care practitioners, the Board may, in its discretion, proceed in a manner prescribed for physicians in the practice of medicine.

§1778. Fees; license renewal.

The Division of Professional Regulation shall establish reasonable fees for licensing respiratory care practitioners and for biennial license renewal. A licensee, when renewing a license, shall provide documentation of continuing education related to respiratory care pursuant to the continuing education requirements for respiratory care practitioners established by the Advisory Council.

§1779. Prohibited acts; penalties; enforcement.

(a) A person may not practice respiratory care in this State or represent that he or she is a respiratory care practitioner or knowingly allow himself or herself to be represented as a respiratory care practitioner unless the person is licensed under this subchapter, except as otherwise provided in this chapter.

(b) A person who, contrary to the provisions of this subchapter, practices or attempts to practice respiratory care within the State or represents that he or she is a respiratory care practitioner or knowingly allows himself or herself to be represented as a respiratory care practitioner shall be fined not less than $500 nor more than $2,000 or imprisoned not more than 1 year, or both.

(c) The Office of the Attorney General is charged with the enforcement of this subchapter.".

Section 2. Amend §4904, Title 16 of the Delaware Code by striking from subsections (a) and (b) the phrase "subsection (b) of §1703" where it appears in each of those subsections and by substituting in lieu thereof in each place the phrase "§1702(8)".

Section 3. Amend §9705(b), Title 16 of the Delaware Code by striking the phrase "§1703(e)(7)" and by substituting in lieu thereof the phrase "Subchapter VI".

Section 4. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and, to that end, the provisions of this Act are declared to be severable.

Section 5. This Act becomes effective 60 days after its enactment into law.

SYNOPSIS

This bill reorganizes and revises the Medical Practices Act pursuant to the recommendations of the Joint Sunset Committee as follows:

1. SUBCHAPTER I. GENERAL PROVISIONS
Section 1701 contains the purpose of the Medical Practices Act.
Section 1702 lists the definitions used in the chapter, including "physician" and the "practice of medicine".

Section 1703 lists the exceptions that pertain to the practice of medicine, such as persons providing medical services in an emergency situation; healthcare and certain other professions or occupations which are otherwise licensed, e.g., nurses, veterinarians, dental hygienists, and pharmacists; and persons who heal by spiritual means.

2. SUBCHAPTER II. THE BOARD OF MEDICAL PRACTICE

Section 1710 describes the composition of the Board of Medical Practice and the requirements for membership.

Section 1711 describes the organization of the Board and its meeting requirements.

Section 1712 defines a quorum and describes special voting requirements.

Section 1713 lists the powers and the duties of the Board, including those pertaining to emergency medical technicians, and addresses Board members' immunity from lawsuits; nondiscrimination in certification, licensing, disciplining, or otherwise performing the powers or duties of office; and continuing education regulations.

Section 1714 addresses fees for services and activities provided by the Division of Professional Regulation and the Board of Medical Practice, including application fees, licensing fees, and renewal fees.

Section 1715 requires that the Division of Professional Regulation keep registers of applications and licenses issued for Chapter 17 professions and occupations, and maintain records of Board meetings, Board rules and regulations, complaints, hearings, and other records as the Board determines.

3. SUBCHAPTER III. CERTIFICATE TO PRACTICE MEDICINE; REGISTRATION OF CERTIFICATE; RENEWAL OF REGISTRATION

Section 1720 lists the extensive requirements for certification to practice medicine.

Section 1721 describes the professional examination required for certification.

Section 1722 allows waiver of the professional examination under 4 specific circumstances.

Section 1723 addresses the issuance of certificates to practice, renewal procedures, and the requirements for reactivating a certificate to practice after being on an inactive status, including Board regulations for continuing education or re-examination.

Section 1725 allows the Board to issue a temporary certificate to practice medicine, not to exceed 3 months, while a person's application for certification to practice medicine is pending.

Section 1726 requires that the Board's Executive Director make available to the Director of the Division of Public Health the name and address of each person to whom a certificate to practice medicine is issued and the date of issuance.

Section 1727 allows a physician in Delaware to consult with a physician in another state, even though the out-of-state physician isn't certified to practice medicine in Delaware.

4. SUBCHAPTER IV. DISCIPLINARY REGULATION; PROCEEDINGS OF THE BOARD

Section 1730 requires a physician to report to the Board of Medical Practice if he or she is treating another physician and believes that the physician being treated may be unable to practice medicine with reasonable skill or safety. It also requires a physician to report him- or herself to the Board if any change in hospital privileges resulting from disciplinary action is taken against him or her by the hospital, as well as to report any disciplinary action taken against him or her by a medical society. Finally, this section requires a physician to report to the Board all information concerning medical malpractice claims against him or her settled or adjudicated to final judgment.

Section 1731 defines unprofessional conduct and inability to practice medicine, along with sanctions, requirements, or conditions to continue or to resume the practice of medicine. It also provides immunity to a person who reports problems in good faith.

Section 1731A. outlines procedures for reporting unprofessional conduct or inability to practice medicine. While any person may report, certain individuals and entities must report. Upon receiving a report, the Board must acknowledge receiving the report and investigate the situation.

This section also requires malpractice insurance carriers and insured physicians to inform the Board of final judgments, settlements, or awards against insured physicians. Physicians not covered by insurance must self-report such information.

Section 1731B. addresses voluntary counseling of physicians in lieu of formal disciplinary action for minor violations. It also addresses confidential letters of concern, which are sent to physicians when acts or omissions are not violations, but are nonetheless matters of concern to the Board.

Sections 1732 and 1733 describe how the Board's Executive Director investigates and processes complaints, with the assistance of legal services provided by the Office of the Attorney General.

Section 1734 describes the formal hearing procedure, including appeals, transcripts, rights of the physician-respondent, written decisions and orders of the Board, and the filing of disciplinary action reports to data banks by the Executive Director.

Section 1735 describes the disciplinary sanctions which the Board may impose if a physician engages in unprofessional conduct.

Section 1736 explains how a physician can appeal to Superior Court a finding by the Board of unprofessional conduct.

Section 1737 confirms that release of records by the Board is governed by the Freedom of Information Act.

Section 1738 allows the Board to temporarily suspend (up to 60 days) a physician's certificate to practice medicine pending a hearing if the Board reasonably believes that the physician's action or behavior presents a clear and immediate danger to public health.

5. SUBCHAPTER V. MISCELLANEOUS PROVISIONS

Section 1760 is the Uniform Determination of Death Act, which contains standards for a person certified to practice medicine to pronounce a person dead, in accordance with accepted medical standards.

Section 1761 describes the procedures for a physician or the estate of a physician to use for discontinuing a medical practice and transferring patient files.

Section 1762 requires physician and healthcare institutions that treat certain conditions, such as stab wounds and bullet wounds, to report such information to the police.

Section 1763 requires a physician who treats a person who is subject to loss of consciousness to report the person's name, age, and address to the Division of Motor Vehicles, unless the person's infirmity is under sufficient control to permit him or her to drive safely.

Section 1766 lists penalties for various violations of the chapter and directs to Attorney General or a deputy attorney general to enforce the chapter.

Section 1767 relieves a physician of liability for civil damages if he or she renders emergency medical care at the scene of an emergency and acts in good faith and without gross or wanton negligence.

Section 1768 gives immunity to a variety of individuals and entities who carry out the statutory duties of the Medical Practices Act in good faith and without gross or wanton negligence.

This section also declares that, unless otherwise provided, the records and proceedings of various committees and organizations covered in the Medical Practices Act are confidential; they are not public records, are not available for court subpoena, and are not subject to discovery.

Section 1769 requires a physician to disclose the laboratory costs of tests or test series and certain other information on bills to patients or to third-party payors.

Section 1769A. requires that written and verbal warnings be given to pregnant patients relating to the dangerous effects of alcohol, cocaine, marijuana, heroin, and other narcotics on a pregnancy.

6. SUBCHAPTER VI. PHYSICIAN ASSISTANTS

Section 1770 describes the composition and general duties of the Regulatory Council for Physician Assistants. The Board of Medical Practice determines the specific functions of the Council.

Section 1770A. defines "physician assistant (PA)", "supervision of physician assistants", and "delegated medical acts".

Section 1771 lists a physician's duties in the supervision of a physician assistant.

Section 1772 lists numerous acts that a physician assistant is prohibited from performing.

Section 1773 directs the Board, in conjunction with the Regulatory Council for Physician Assistants, to adopt regulations regarding permissible activities of physician assistants (PAs); to define the licensing of PAs; and to suspend, revoke, or restrict the licenses of PAs or otherwise discipline PAs for engaging in unprofessional conduct.

Section 1774 allows the Board to grant a temporary license to a person who is registered to take and takes the next scheduled national certifying exam. Such a licensee may not have a prescriptive practice and may not treat a patient without the direct supervision of his or her supervising physician.

Section 1774A. allows the Board to waive licensing requirements for specific reasons.

Section 1774B. addresses fees for physician assistant licensing and license renewal.

Section 1774C. allows the Board to apply the procedure or action prescribed for physicians in the practice of medicine to physician assistants, if a procedure or action is not specifically prescribed for PAs, but would be useful or necessary for the regulation of PAs.

7. SUBCHAPTER VII. RESPIRATORY CARE PRACTITIONERS

Section 1775 describes the composition and general duties of the Respiratory Care Advisory Council.

Section 1776 defines "respiratory care practitioner (RCP)" and "respiratory care", and describes the work performed by RCPs.

Section 1777 contains the requirements for RCP licensure by the Board, as well as the waiving of licensure requirements for specific reasons. The section also provides for temporary licensure under specific circumstances. Finally, it addresses disciplinary action for unprofessional conduct.

Section 1777A. allows the Board to apply the procedure or action prescribed for physicians in the practice of medicine to respiratory care practitioners, if a procedure or action is not specifically prescribed for RCPs, but would be useful or necessary for the regulation of RCPs.

Section 1778 addresses fees for licensing RCPs and for license renewal.

Section 1779 designates penalties for practicing respiratory care without a license.

8. Sections 2 and 3 of the bill are technical changes which designate new internal citations in the Code caused by the reorganization of the Medical Practices Act.

9. Section 4 of the bill is a severability clause.

10. Section 5 of the bill states that the provisions of the bill will become effective 60 days after the bill's enactment into law.