

CHAPTER 295
HB 658-FN – FINAL VERSION

29Jan2014... 2342h
25Mar2014... 0977h
04/24/14 1413s
05/15/14 1811s
4Jun2014... 1922CofC
4Jun2014... 2026EBA

2014 SESSION

13-0003
01/10

HOUSE BILL ***658-FN***

AN ACT relative to registration for medical technicians.

SPONSORS: Rep. Copeland, Rock 19; Rep. Schlachman, Rock 18; Rep. Roberts, Ches 4;
Rep. Sherman, Rock 24; Rep. Nigrello, Rock 16; Rep. P. Schmidt, Straf 19;
Rep. Haefner, Hills 37; Rep. St. James, Rock 13; Rep. Coffey, Hills 25;
Rep. D. Hooper, Straf 16; Sen. Fuller Clark, Dist 21; Sen. Stiles, Dist 24

COMMITTEE: Executive Departments and Administration

AMENDED ANALYSIS

This bill establishes the board of registration of medical technicians which shall be administratively attached to the department of health and human services. This bill requires persons employed as medical technicians to register with the board. The bill also requires licensed health care facilities employing such technicians to ensure that they are registered in accordance with this chapter.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fourteen

AN ACT relative to registration for medical technicians.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 295:1 New Chapter; Board of Registration of Medical Technicians. Amend RSA by inserting
2 after chapter 328-H the following new chapter:

CHAPTER 328-I

BOARD OF REGISTRATION OF MEDICAL TECHNICIANS

5 328-I:1 Definitions. In this chapter:

6 I. “Board” means the board of registration of medical technicians.

7 II. “Commissioner” means the commissioner of the department of health and human
8 services.

9 III. “Department” means the department of health and human services.

10 IV. “Health care facility” means health care facilities licensed under RSA 151.

11 V. “Medical establishment” means a setting where health care services are provided to
12 patients, including, but not limited to, the office of a physician, dentist, naturopath, advanced
13 practice registered nurse, optometrist, podiatrist, or a clinic, laboratory, or place not licensed under
14 RSA 151.

15 VI. “Medical technician” means a health care worker who is not licensed or registered by a
16 New Hampshire regulatory board and who assists licensed health care professionals in the
17 diagnosis, treatment, and prevention of disease. For the purposes of this chapter, medical
18 technicians shall be limited to health care workers with access to controlled substances and with
19 access to or contact with patients in a health care facility or in a medical establishment.

20 328-I:2 Board, Membership, Terms, Administrative Attachment.

21 I. There shall be a board of registration of medical technicians consisting of 5 members. The
22 members shall be:

23 (a) The commissioner, or designee.

24 (b) Four members appointed by the governor with the consent of the council as follows:

25 (1) Three licensed health care providers, one of whom shall have experience

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1 supervising medical technicians and one of whom shall be a licensed physician.

2 (2) One public member, who shall be a person who is not, and never was, a member
3 of a health care profession or the spouse of any such person, and who does not have, and never has
4 had, a material financial interest in either the provision of medical services or an activity directly
5 related to health care.

6 II. The members under subparagraph (b) shall be appointed to a term of 5 years. The
7 commissioner shall serve coterminous with his or her term of office. No member shall serve more
8 than 2 consecutive terms.

9 III. Appointed members of the board shall receive \$50 for each day actually engaged in the
10 duties of the board and shall be reimbursed for all actual travel necessarily incurred in carrying out
11 the provisions of this chapter.

12 IV. The board shall be an administratively attached agency, under RSA 21-G:10, to the
13 department. In addition, the board shall be subject to the provisions of RSA 126-A:10-a.

14 328-I:3 Powers and Duties of the Board. The board shall:

15 I. Accept applications for certificates of registration under this chapter, and approve or deny
16 such applications.

17 II. Renew certificates of registration.

18 III. Suspend or revoke certificates of registration upon the grounds listed in RSA 328-I:9,
19 and conduct hearings regarding the denial, suspension, revocation, and renewal of certificates as
20 provided in RSA 328-I:11.

21 IV. Accept written complaints against registrants, conduct necessary investigations upon
22 such written complaints, and resolve complaints.

23 V. Publicize the complaint procedure.

24 VI. Adopt rules pursuant to RSA 328-I:4.

25 VII. Maintain a database of registered medical technicians and share all information
26 received with other licensing boards or advisory committees within this state, and with appropriate
27 boards out of state and with any law enforcement entity, as allowed by RSA 91-A and in accordance
28 with RSA 328-I:11, I.

29 VIII. Post a list of registrants and their status on its website.

30 IX. Prepare reports on any matter within the scope of this chapter.

31 X. Establish late fees and fees for transcribing and transferring records and other services.

32 328-I:4 Rulemaking. The board shall adopt rules, pursuant to RSA 541-A, relative to:

33 I. The registration application form and content, and the registration application
34 procedures.

35 II. The application form, content, and procedure for a renewal or reinstatement of a
36 registration to work as a medical technician.

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- 1 III. The establishment of fees required under RSA 328-I:3, X.
- 2 IV. The conduct of investigations and hearings, in accordance with RSA 328-I:11.
- 3 V. Procedures for notice and hearing prior to denial, suspension, or revocation of a
4 registration, and the imposition of administrative fines.
- 5 VI. Procedures for the handling and resolving complaints.
- 6 VII. Procedures for the approval or denial of an application.
- 7 VIII. Procedures for suspension or revocation of a registration.
- 8 IX. Procedures for appeal of decisions made pursuant to the provisions of this chapter and
9 rules adopted pursuant to this chapter.
- 10 X. Procedures for sharing information with other in-state boards, out-of-state boards and
11 law enforcement entities.
- 12 328-I:5 Registration of Medical Technicians Required.
- 13 I. A person engaging in work as a medical technician in New Hampshire shall be registered
14 in accordance with this chapter.
- 15 II. Any person who is not registered as a medical technician under this chapter, advertises
16 himself or herself as being a medical technician, practices as a medical technician, or engages in
17 such acts after receiving notice that such person's registration has been revoked shall be guilty of a
18 misdemeanor.
- 19 III. The board, after hearing and upon making an affirmative finding under paragraph II,
20 that the person is engaged in unlawful practice, may take action in any one or more of the following
21 ways:
- 22 (a) A cease and desist order in accordance with paragraph IV.
- 23 (b) The imposition of an administrative fine not to exceed \$50,000.
- 24 (c) The imposition of an administrative fine for continuation of unlawful practice in the
25 amount of \$1,000 for each day the activity continues after notice from the board that the activity
26 shall cease.
- 27 (d) The denial or conditional denial of a license application, application for renewal, or
28 application for reinstatement.
- 29 IV. The board is authorized to issue a cease and desist order against any person or entity
30 engaged in unlawful practice. The cease and desist order shall be enforceable in superior court.
- 31 V. The attorney general, the board, or the prosecuting attorney of any county or
32 municipality where the act of unlawful practice takes place may maintain an action to enjoin any
33 person or entity from continuing to do acts of unlawful practice. The action to enjoin shall not
34 replace any other civil, criminal, or regulatory remedy. An injunction without bond is available to
35 the board.
- 36 VI. In addition, every health care facility and medical establishment employing medical

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1 technicians, shall ensure that such technicians are registered in compliance with this chapter. Any
2 health care facility violating this paragraph shall be subject to appropriate fines and penalties
3 pursuant to RSA 151.

4 328-I:6 Initial Registration; Application, Fees.

5 I. The board may register any person who submits a completed application. The fee for
6 registration under this chapter shall be \$110.

7 II. Completed applications shall include:

8 (a) Payment of the non-refundable registration fee;

9 (b) Reports of any pending criminal charges, criminal convictions, plea agreements in
10 lieu of convictions, or complaints made to or dispositions made by licensing, certification, or
11 registration boards.

12 (c) A complete set of fingerprints and a notarized criminal history record release form
13 pursuant to RSA 328-I:7.

14 (d) The applicant's work history over the last 10 years.

15 III. All applications shall include at a minimum, the applicant's name, social security
16 number, place and date of birth, place of employment in New Hampshire and the home address and
17 shall be duly signed and verified. Applications shall be available for public inspection.

18 IV. Upon approval of the application by the board, the applicant shall be registered as a
19 medical technician for 2 years. Such registration shall take effect within 90 days after the filing of
20 such completed application.

21 V. Any medical technician who changes his or her name, place or status of employment in
22 New Hampshire, or residence shall notify the board in writing within 30 days. For failure to report
23 such a change within 30 days, the board may suspend the medical technician's registration.

24 328-I:7 Criminal History Record Checks.

25 I. Every applicant for initial registration or reinstatement shall submit to the board a
26 notarized criminal history record release form, as provided by the New Hampshire division of state
27 police, which authorizes the release of his or her criminal history record, if any, to the board.

28 II. The applicant shall submit with the release form a complete set of fingerprints taken by a
29 qualified law enforcement agency or an authorized employee of the department of safety. In the
30 event that the first set of fingerprints is invalid due to insufficient pattern, a second set of
31 fingerprints shall be necessary in order to complete the criminal history records check. If, after 2
32 attempts, a set of fingerprints is invalid due to insufficient pattern, the board may, in lieu of the
33 criminal history records check, accept police clearances from every city, town, or county where the
34 person has lived during the past 5 years.

35 III. The board shall submit the criminal history records release form and fingerprint form to
36 the division of state police which shall conduct a criminal history records check through its records

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1 and through the Federal Bureau of Investigation. Upon completion of the records check, the division
2 of state police shall release copies of the criminal history records to the board.

3 IV. The board shall review the criminal record information prior to making a registration
4 decision and shall maintain the confidentiality of all criminal history records received pursuant to
5 this section.

6 V. The applicant shall bear the cost of a criminal history record check.

7 328-I:8 Renewal of Registration. Certificates of registration issued under this chapter shall be
8 subject to renewal every 2 years and shall expire unless renewed in the manner prescribed by the
9 board. The fee for renewal of certificates of registration shall be \$110. Certificates of registration for
10 medical technician shall be renewed upon the payment of the renewal fee.

11 328-I:9 Refusal to Issue or Renew Certificate; Return of Certificate.

12 I. The board may deny the application for registration or refuse to issue a renewal thereof if
13 it is determined after hearing that such applicant or registrant:

14 (a) Has made a material false statement or concealed or omitted a material fact in
15 connection with his or her application for registration;

16 (b) Had a registration issued under this chapter suspended previously;

17 (c) Has been convicted of a felony under the laws of the United States or any state or any
18 offense involving moral turpitude;

19 (d) Has willfully or repeatedly failed to comply with any other provision of this chapter
20 or any rules adopted by the board; or

21 (e) Is a habitual user of drugs or intoxicants.

22 II. Upon the suspension or revocation of a certificate of registration by the board and the
23 issuance of a notice thereof, the registrant shall within 5 days, not including Sundays and holidays,
24 deliver to the board the certificate of registration. If surrendered by mail, the certificate of
25 registration shall be sent by registered or certified mail, postmarked no later than 3 days, not
26 including Sundays and holidays, following notice of suspension or revocation. Failure to return a
27 certificate of registration which has been revoked or suspended hereunder within the prescribed time
28 shall constitute a misdemeanor.

29 328-I:10 Disciplinary Action; Remedial Proceedings.

30 I. The board is authorized to undertake investigations and disciplinary proceedings upon:

31 (a) The board's initiative.

32 (b) A written complaint made by any person complaining that a registrant has
33 committed an act of misconduct and specifying the nature of the misconduct.

34 (c) A written complaint made by any person that a person is engaged in unauthorized
35 practice.

36 (d) Notification by a licensing or certifying agency of this state that a registrant has been

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1 disciplined by that agency.

2 (e) Notification by the regulatory authority of another domestic or foreign jurisdiction
3 that a registrant has been disciplined in that jurisdiction.

4 (f) A report made pursuant to the obligation to report imposed by this chapter.

5 II. The board may undertake non-disciplinary remedial proceedings (a) upon its own
6 initiative or (b) upon written complaint of any person which charges that a person registered by the
7 board is afflicted with a condition as set forth in paragraph VI and which specifies the grounds
8 therefor.

9 III. Every facility administrator, or designee, for any licensed hospital, health clinic,
10 ambulatory surgical center, or other health care facility within the state shall report to the board
11 any disciplinary or adverse action, within 30 days after such action is taken, including situations in
12 which allegations of misconduct are settled by voluntary resignation without adverse action, against
13 a person registered by the board. Disciplinary or adverse action shall include the requirement that a
14 registrant undergo counseling or be subject to any policy with regard to disruptive behavior.

15 IV. In cases involving imminent danger to life or health, the board may order suspension of
16 a license pending hearing for a period of no more than 120 days. In such cases, the basis for the
17 board's finding of imminent danger to life or health shall be reduced to writing and combined with a
18 hearing notice which complies with RSA 328-I:11. A licensee may be allowed additional time to
19 prepare for a hearing, but any additional time for preparation shall result in an extension of license
20 suspension commensurate with the additional time extended.

21 V. The board, after hearing, may take disciplinary action against any person registered by it
22 upon finding that the person:

23 (a) Has knowingly provided false information during any application for registration or
24 employment, whether by making any affirmative statement which was false at the time it was made
25 or by failing to disclose any fact material to the application.

26 (b) Is a habitual user of drugs or intoxicants.

27 (c) Has engaged in dishonest or unprofessional conduct, or has negligently or
28 intentionally injured a patient while practicing as a medical technician or performing such ancillary
29 activities.

30 (d) Has willfully or repeatedly violated any provision of this chapter or any substantive
31 rule of the board.

32 (e) Has been convicted of a felony under the laws of the United States or any state.

33 VI. The board may take non-disciplinary remedial action against any person registered by it
34 upon finding that the person is afflicted with physical or mental disability, disease, disorder, or
35 condition deemed dangerous to the public health. Upon making an affirmative finding, the board,
36 may take non-disciplinary remedial action:

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1 (a) By suspension, limitation, or restriction of a registration for a period of time as
2 determined reasonable by the board.

3 (b) By revocation of registration.

4 (c) By requiring the person to submit to the care, treatment, or observation of a
5 physician, counseling service, health care facility, professional assistance program, or any
6 combination thereof which is acceptable to the board.

7 (d) By requiring the person to practice under the direction of a physician in a public
8 institution, public or private health care program, or private practice for a period of time specified by
9 the board.

10 VII. The board, upon making an affirmative finding under paragraph V, may take
11 disciplinary action in any one or more of the following ways:

12 (a) By reprimand.

13 (b) By suspension, limitation, or restriction of a registration or probation for a period of
14 time as determined reasonable by the board.

15 (c) By revocation of registration.

16 (d) By requiring the person to submit to the care, treatment, or observation of a
17 physician, counseling service, health care facility, professional assistance program, or any
18 combination thereof which is acceptable to the board.

19 (e) By assessing administrative fines in amounts established by the board which shall
20 not exceed \$3,000 per offense, or, in the case of continuing offenses, \$300 for each day that the
21 violation continues, whichever is greater.

22 VIII. The board may issue a non-disciplinary confidential letter of concern to a registrant
23 advising that, the board believes the medical technician should modify or eliminate certain practices,
24 and that continuation of the activities which led to the information being submitted to the board may
25 result in action against the registrant's registration. This letter shall not be released to the public or
26 any other licensing authority, except that the letter may be used as evidence in subsequent
27 disciplinary proceedings by the board.

28 IX. Disciplinary or non-disciplinary remedial action taken by the board under this section
29 may be appealed to the supreme court under RSA 541.

30 X. No civil action shall be maintained against the board or any member of the board or its
31 agents or employees with regard to any action or activity taken in the performance of any duty or
32 authority established by this chapter. No civil action shall be maintained against any organization
33 or its members or against any other person for or by reason of any good faith statement, report,
34 communication, or testimony to the board or determination by the board in relation to proceedings
35 under this chapter.

36 XI. The board shall send all notices of hearing, and notices of suspension or revocation of

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1 registration to the department of health and human services and the department of safety.

2 XII. Allegations of professional misconduct or other violations of this chapter enforceable by
3 the board shall be brought within 6 years from the time the board could reasonably have discovered
4 the act, omission, or failure complained of, except that conduct which resulted in a criminal
5 conviction or in a disciplinary action by a relevant licensing authority in another jurisdiction may be
6 considered by the board without time limitation in making registration or disciplinary decisions if
7 the conduct would otherwise be a ground for discipline under this chapter. The board may also
8 consider registrant conduct without time limitation when the ultimate issue before the board
9 involves a pattern of conduct or the cumulative effect of conduct which becomes apparent as a result
10 of conduct which has occurred within the 6-year limitation period prescribed by this paragraph.

11 XIII. When an investigation of a complaint against a registrant is determined to be
12 unfounded, the board shall dismiss the complaint and explain in writing to the complainant and the
13 registrant its reason for dismissing the complaint. The board shall destroy all information collected
14 during the course of the investigation after 6 years. The board shall retain a record only noting that
15 an investigation was conducted and that the board determined the complaint to be unfounded. For
16 the purpose of this paragraph, a complaint shall be deemed to be unfounded if it does not fall within
17 the jurisdiction of the board, does not relate to the actions of the registrant, or is determined by the
18 board to be frivolous.

19 328-I:11 Investigations; Procedure for Complaints; Hearings; Judicial Review.

20 I. The board may investigate possible misconduct by registrants and applicants for
21 registration, as well as the unauthorized practice under this chapter and other matters within the
22 scope of this chapter. Board investigations and the information gathered in such investigations,
23 including information provided to the board under RSA 328-I:10, I and III and paragraphs III and V,
24 shall be exempt from the public disclosure provisions of RSA 91-A, except to the extent such
25 information may later become the subject of a public disciplinary hearing. The board may disclose
26 information acquired in an investigation to law enforcement or health licensing agencies in this state
27 or any other jurisdiction, or in response to specific statutory requirements or court orders.

28 II. No certificate of registration shall be suspended or revoked until after a hearing before
29 the board, which shall be held in accordance with RSA 541-A, and upon written notice mailed to the
30 registrant by certified or registered mail. If, when a notice of hearing is mailed to a registrant at the
31 address shown in the records of the board, such a registrant fails to attend such hearing, then the
32 board may suspend his or her registration without a hearing pending his or her attendance at such
33 hearing.

34 III. Upon the denial of an application for a certificate of registration, the board shall grant a
35 hearing to an applicant therefor upon receipt of a request for a hearing made within 30 days after
36 the applicant is notified of denial. The board shall have the power to require the attendance of

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1 witnesses and issue subpoenas duces tecum in the conduct of such hearing.

2 IV. If a certificate of registration is revoked or suspended or an application is denied, no
3 such certificate shall be issued to such former registrant or applicant for at least 6 months, or
4 thereafter, except in the discretion of the board.

5 V. The applicant or registrant may be heard in person or by counsel. The board shall notify
6 the applicant of the time and place of the hearing. The board shall have the power to subpoena any
7 person in this state, or document, record or other relevant evidence, and administer an oath to and
8 take the testimony of any such person or cause his or her deposition to be taken.

9 328-I:12 Civil Claims. Any person injured by the actions of a person engaged as a medical
10 technician in violation of any of the provisions of this chapter may bring a civil action to recover
11 damages suffered by reason of the violation.

12 328-I:13 Administrative Fines. The board after notice and hearing, pursuant to rules adopted
13 under RSA 541-A, may impose an administrative fine in an amount which shall not exceed \$3,000
14 per offense, or, in the case of continuing offenses, \$300 for each day that the violation continues,
15 whichever is greater, upon any person who violates any provision of this chapter or rules adopted
16 under this chapter. Rehearings and appeals from a decision of the board shall be in accordance with
17 RSA 541. Any administrative fine imposed under this section shall not preclude the imposition of
18 further penalties or administrative actions under this chapter.

19 328-I:14 Investigative Costs. For any order issued in resolution of a disciplinary proceeding by
20 the board, where the board has found misconduct sufficient to support disciplinary action, including
21 but not limited to a violation of this chapter or an administrative rule adopted under this chapter,
22 the board may require the registrant who is the subject of such finding to pay the board a sum not to
23 exceed the reasonable cost of investigation and prosecution of the proceeding. This sum shall not
24 exceed \$5,000. This sum may be imposed in addition to any otherwise authorized administrative
25 fines levied by the board as part of the penalty. The investigative and prosecution costs shall be
26 assessed by the board and any sums recovered shall be credited to the board's fund and disbursed by
27 the board for any future investigations of complaints and activities that violate this chapter or rules
28 adopted under this chapter.

29 328-I:15 Annual Report. The board shall make an annual report commencing on November 1,
30 2016 relative to the conduct of activities under this chapter to the speaker of the house of
31 representatives, the president of the senate, and the governor and council.

32 295:2 New Section; Verification of Medical Technician Registration. Amend RSA 151 by
33 inserting after section 3-c the following new section:

34 151:3-d Verification of Medical Technician Registration. Every facility administrator, or
35 designee, for any health care facility licensed under this chapter shall verify with the board of
36 registration of medical technicians established under RSA 328-I:2, prior to employing a medical

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1 technician, as defined in RSA 328-I:1, VI, that such medical technician is registered with the board.

2 295:3 Health Facility Licensure; Report of Disciplinary Action. Amend RSA 151:6-b to read as
3 follows:

4 151:6-b Report of Disciplinary Action. Every facility administrator, or designee, for any health
5 care facility licensed under this chapter shall report to the board of medicine [~~or~~], the board of
6 nursing, **or the board of registration of medical technicians** any disciplinary or adverse action
7 taken against a licensee **or registrant** of the board. Such report shall be made within 30 days after
8 such action is taken. Actions reported shall only involve misconduct sufficient to support
9 disciplinary proceedings by the board and shall include all situations in which allegations of
10 misconduct are settled by voluntary resignation without adverse action.

11 295:4 Board of Registration of Medical Technicians; Staggered Terms. The members of the
12 board of registration of medical technicians as inserted by section 1 of this act shall serve staggered
13 terms as follows: the public member shall be appointed to a term of 2 years and the health care
14 providers shall be appointed to terms of 3, 4, and 5 years.

15 295:5 Applicability. Persons who are currently practicing as medical technicians as defined by
16 RSA 328-I as inserted by section 1 of this act shall have 90 days after the effective date of this act to
17 comply with the provisions of RSA 328-I.

18 295:6 Effective Date. This act shall take effect October 1, 2014.

19
20 Approved: August 1, 2014

21 Effective Date: October 1, 2014