

Amendment to HB 518

1 Amend the title of the bill by replacing it with the following:

2
3 AN ACT relative to the administration of occupations by the office of professional licensure
4 and certification.
5

6 Amend the bill by replacing all after the enacting clause with the following:

7
8 1 Office of Professional Licensure and Certification; Definitions; Establishment. RSA 310:2, I is
9 repealed and reenacted to read as follows:

10 I. In this chapter, and as appropriate when used in any chapter listed in paragraph II:

11 (a) "Board" shall mean a board, council, commission, committee, or other regulatory body
12 with jurisdiction over professions listed in paragraph II.

13 (b) "Expire" shall mean a license has not been renewed within the term of the license
14 from the date of issuance in accordance with RSA 310:8. An individual with an expired license may
15 not practice until their license has been reinstated, or they have applied for and received a new
16 license to practice.

17 (c) "Investigation" shall mean procedures for investigation of allegations and complaints
18 of misconduct in accordance with RSA 310:9.

19 (d) "Good standing" as applied to licensure shall mean a license that is active and has
20 not been suspended, revoked, surrendered, conditioned, or restricted in any way.

21 (e) "Lapse" when referring to licenses shall mean a license that has been expired for one
22 or more years. A licensee may no longer reinstate a lapsed license and must apply for a new license.

23 (f) "License" shall have the same meaning as license under RSA 541-A,:1, XIII, and
24 include licenses, certifications, or registrations required to practice a regulated profession, and shall
25 include apprentice registrations, or those licensed pursuant to RSA 332-G:14.

26 (g) "Office" or "OPLC" shall mean the office of professional licensure and certification.

27 (h) "Reinstate" means reactivation of a license for an individual whose license has
28 expired, and has not yet lapsed, or the reactivation of a license to an individual who was unable to
29 practice because of license revocation.

30 (i) "Renewal" shall mean the continuation of an existing license in accordance with RSA
31 310:8.

32 2 Establishment of Fees. Amend RSA 310:5, I to read as follows:

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1 I. The executive director of the office of professional licensure and certification shall
2 establish and collect all license~~[-, certification, and -]~~, renewal, **and reinstatement** fees, as well as
3 any necessary administrative fees for each **license type and** professional regulatory board
4 administered by the office. Such fees shall be sufficient to produce estimated revenues up to 125
5 percent of the total operating expenses for the office, as determined by averaging the operating
6 expenses for the office for the previous 2 fiscal years. ***If the office denies the issuance of a***
7 ***license, renewal, or reinstatement to any applicant, any fee shall be retained as an***
8 ***application fee. A licensee possessing a license in good standing may, if to the best of the***
9 ***licensee's knowledge the licensee is not the subject of an ongoing investigation or***
10 ***disciplinary action, surrender their license and receive a pro-rated refund in accordance***
11 ***with rules adopted by the office pursuant to RSA 541-A.***

12 3 License Renewals; Lapse. RSA 310:8 is repealed and reenacted to read as follows:

13 310:8 License Renewals and Reinstatements; Expiration and Lapse.

14 I. The executive director of the office of professional licensure and certification shall issue
15 licenses, as set forth in RSA 310:4, to applicants meeting the eligibility requirements as defined in
16 statute, and rules adopted by each individual board.

17 II. Licenses shall be valid for 2 years from the date of issuance except for those apprentices
18 licensed for one year in accordance with rules adopted pursuant to 541-A, provided that timely and
19 complete application for license renewal by eligible applicants shall continue the validity of the
20 licenses being renewed until the office has acted on the renewal application.

21 III. Applicants shall submit completed applications for renewal, the renewal fee, and any
22 supporting documents required for renewal on or before the expiration of the license. Licenses shall
23 expire when completed renewal applications, renewal fee, and supporting documents have not been
24 filed by the expiration of the license and the holders of an expired license are not authorized to
25 practice until the licenses have been reinstated. Expired licenses shall lapse one year from
26 expiration. Holders of expired licenses shall not be able to renew, but shall be eligible to reinstate
27 licenses by submitting an application and meeting the eligibility requirements as defined in statute,
28 and rules adopted by each individual board.

29 IV. The office of professional licensure and certification shall provide licensees notice of the
30 need to complete their renewal applications at least 2 months before the date of expiration of their
31 license. Failure to receive notice shall not relieve any licensee of the obligation to renew their
32 license, comply with the rules of the office, the rules of the board, or this section. Timeliness of
33 submission of renewal applications shall be evidenced by the date stamp of receipt, or for
34 applications submitted electronically the electronic time stamp of submission.

35 V. Upon the request of a licensee who is a member of any reserve component of the armed
36 forces of the United States or the national guard and is called to active duty, the office of
37 professional licensure and certification shall place the person's license on inactive status. The

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license may be reactivated within one year of the licensee's release from active status by payment of the renewal fee and with proof of completion of the most current continuing education requirement unless still within the renewal period.

4 Disciplinary Proceedings. Amend RSA 310:10 to read as follows:

310:10 Disciplinary Proceedings; Non-Disciplinary Remedial Proceedings.

I. Disciplinary proceedings shall be open to the public in accordance with RSA 91-A. All non-disciplinary remedial proceedings shall be exempt from the provisions of RSA 91-A, except that the board shall disclose any final remedial action that affects the status of a license, including any non-disciplinary restrictions imposed. The docket file for each such proceeding shall be retained in accordance with the retention policy established by the office of professional licensure and certification.

II. Boards shall conduct disciplinary and non-disciplinary remedial proceedings in accordance with procedural rules adopted by the executive director.

III. The office shall employ sufficient administrative prosecutors qualified by reason of education, competence, and relevant experience to serve as hearing counsel in all disciplinary **and non-disciplinary** proceedings before the boards.

IV. The office shall employ sufficient personnel qualified by reason of education, competence, and relevant experience to serve as presiding officer in all disciplinary or non-disciplinary remedial ~~proceedings~~ **matters** before the boards **including disciplinary proceedings, non-disciplinary proceedings, the order of an immediate suspension of a license pursuant to RSA 310:12, IV, and unlicensed practice hearings held pursuant to RSA 310:13**. The presiding officer shall have the authority to preside ~~at such hearing~~ **on such matters**, ~~and~~ to issue oaths or affirmations to witnesses, rule on questions of law and other procedural matters, and issue final orders based on factual findings of the board.

V. ~~The presiding officer~~ In disciplinary and non-disciplinary remedial proceedings, **including those held pursuant to RSA 310:10, RSA 310:12, IV, and RSA 310:13, the presiding officer** may issue subpoenas for persons, relevant documents, and relevant materials in accordance with the following conditions:

(a) Subpoenas for persons shall not require compliance in less than 48 hours after receipt of service.

(b) Subpoenas for documents and materials shall not require compliance in fewer than 15 days after receipt of service.

(c) Service shall be made on licensees and certified individuals by certified mail to the address on file with the office or by hand and shall not entitle them to witness or mileage fees.

(d) Service shall be made on persons who are not licensees or certified individuals in accordance with the procedures and fee schedules of the superior court, and the subpoenas served on

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1 them shall be annotated "Fees Guaranteed by the New Hampshire Office of Professional Licensure
2 and Certification."

3 VI. In carrying out disciplinary or non-disciplinary remedial proceedings, ***including those***
4 ***held pursuant to RSA 310:10, RSA 310:12, IV, and RSA 310:13***, the presiding officer, as defined
5 in RSA 541-A, shall have the authority to hold pre-hearing conferences, which shall be exempt from
6 the provisions of RSA 91-A; to administer oaths and affirmations; and, to render legal opinions and
7 make conclusions of law.

8 VII. Boards shall be the triers of fact in all disciplinary and non-disciplinary remedial
9 proceedings, and shall determine sanctions, if any.

10 VIII. At any time before or during disciplinary or non-disciplinary remedial proceedings,
11 complaints may be dismissed or disposed of, in whole or in part:

12 (a) By written settlement agreement approved by the board, provided that any
13 complainant shall have the opportunity, before the settlement agreement has been approved by a
14 board, to comment on the terms of the proposed settlement; or

15 (b) Through an order of dismissal for default, for want of jurisdiction, or failure to state a
16 proper basis for disciplinary action.

17 IX. Disciplinary action taken by the board at any time, and any dispositive action taken
18 after the issuance of a notice of public hearing, shall be reduced to writing and made available to the
19 public. Such decisions shall not be public until they are served upon the parties, in accordance with
20 rules adopted by the executive director.

21 X. Except as otherwise provided by RSA 541-A:30, the board shall furnish the respondent at
22 least 15 days' written notice of the date, time and place of a hearing. Such notice shall include an
23 itemization of the issues to be heard, and, in the case of a disciplinary hearing, a statement as to
24 whether the action has been initiated by a written complaint or upon the board's own motion, or
25 both. If a written complaint is involved, the notice shall provide the complainant with a reasonable
26 opportunity to intervene as a party.

27 XI. Neither the office nor the boards shall have an obligation or authority to appoint
28 attorneys or pay the fees of attorneys representing licensees or witnesses during investigations or
29 disciplinary or non-disciplinary remedial proceedings.

30 XII. No civil action shall be maintained against the office or the board, or any member of the
31 board, office, or its agents or employees, against any organization or its members, or against any
32 other person for or by reason of any statement, report, communication, or testimony to the board or
33 determination by the board or office in relation to proceedings under this chapter.

34 XIII. For matters involving individuals identified in mental health records, testimony by
35 client or patients shall be handled with utmost regard for the privacy and protection of their identity
36 from public disclosure.

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1 (a) A client or patient who is not a complainant shall not be compelled to testify at a
2 hearing.

3 (b) If a client or patient who is not a complainant testifies at a hearing, the identity of
4 the individual shall be screened from the public view and knowledge, although the respondent and
5 attorneys shall be within the view of the client patient. The board may view the client or patient.
6 The public's access to view or information that would identify the client or patient shall be restricted.
7 The hearing may be closed to the public for the duration of the client or patient's testimony, at the
8 board's discretion.

9 (c) If a complainant client or patient requests the privacy safeguards in subparagraph
10 (b), the presiding officer may make such accommodations.

11 ***XIV. In any proceeding held pursuant to RSA 310 or RSA 541-A, a board may direct***
12 ***that evidence be received solely by a presiding officer who, in addition to exercising the***
13 ***authority given to the presiding officer under RSA 310 and RSA 541-A, shall be charged***
14 ***with making findings of fact, determining appropriate sanctions or action, or denying or***
15 ***accepting settlement agreements.***

16 ***XV. In instances where a board cannot meet quorum, the executive director, or***
17 ***designee, may initiate proceedings held pursuant to RSA 310 or RSA 541-A and direct that***
18 ***evidence be received solely by the presiding officer who, in addition to exercising the***
19 ***authority given to the presiding officer under RSA 310 and RSA 541-A, shall be charged***
20 ***with making findings of fact, determining appropriate sanctions or action, or denying or***
21 ***accepting settlement agreements.***

22 5 Licensing Proceedings. Amend RSA 310:11 to read as follows:

23 310:11 Licensing Proceedings.

24 I. Boards shall conduct licensing proceedings in accordance with procedural rules adopted by
25 the executive director.

26 II. If ~~[a board denies]~~ a license ***is denied*** following a licensing proceeding, its final decision
27 shall be issued in accordance with RSA 541-A:35.

28 III. ~~[In carrying out licensing proceedings, the board shall have the authority to:~~

29 ~~(a) Hold pre-hearing conferences exempt from the provisions of RSA 91-A;~~

30 ~~(b) Appoint a board member or other qualified person as presiding officer; and~~

31 ~~(c) Administer, and authorize an appointed presiding officer to administer, oaths and~~
32 ~~affirmations.]~~ ***The office shall employ sufficient personnel qualified by reason of education,***
33 ***competence, and relevant experience to serve as presiding officer in all licensing***
34 ***proceedings before the boards. The presiding officer shall have the authority to preside at***
35 ***such hearing and to issue oaths or affirmations to witnesses, rule on questions of law and***
36 ***other procedural matters, and issue final orders based on factual findings of the board.***

1 IV. Neither the office nor the boards shall have an obligation or authority to appoint or pay
2 the fees of attorneys representing licensees, certified individuals, or witnesses during investigations
3 or adjudicatory proceedings.

4 V. Licensing proceedings shall be open to the public in accordance with RSA 91-A.

5 ***VI. The presiding officer, as defined in RSA 541-A, shall have the authority to: hold***
6 ***pre-hearing conferences, which shall be exempt from the provisions of RSA 91-A;***
7 ***administer oaths and affirmations; and render legal opinions and make conclusions of***
8 ***law. The boards shall be the triers of fact.***

9 ***VII. In any proceeding held pursuant to RSA 310 or RSA 541-A, a board may direct***
10 ***that evidence be received solely by a presiding officer who, in addition to exercising the***
11 ***authority given to the presiding officer under RSA 310 and RSA 541-A, shall be charged***
12 ***with making findings of fact, determining appropriate sanctions or action, or denying or***
13 ***accepting settlement agreements.***

14 ***VIII. In instances where a board cannot meet quorum, the executive director, or***
15 ***designee, may initiate proceedings held pursuant to RSA 310 or RSA 541-A and direct that***
16 ***evidence be received solely by the presiding officer who, in addition to exercising the***
17 ***authority given to the presiding officer under RSA 310 and RSA 541-A, shall be charged***
18 ***with making findings of fact, determining appropriate sanctions or action, or denying or***
19 ***accepting settlement agreements.***

20 6 Sanctions; Disciplinary Actions. Amend RSA 310:12, I to read as follows:

21 ***I. In addition to any grounds provided by any board's practice act, misconduct***
22 ***sufficient to support disciplinary proceedings brought by a board shall include:***

23 ***(a) The practice of fraud or deceit in procuring or attempting to procure a***
24 ***license to practice under this chapter.***

25 ***(b) Conviction of any crime, provided that no board shall take disciplinary***
26 ***action against a licensee because of a conviction of a crime in and of itself. A board may***
27 ***only discipline a licensee because of a conviction after:***

28 ***(1) Considering the nature of the crime, and any information provided as to***
29 ***the current circumstances of the convicted person, including but not limited to their***
30 ***rehabilitation, completion of the criminal sentence, amount of time that has passed since***
31 ***the conviction or release, testimonials, employment history, and employment aspirations;***
32 ***and***

33 ***(2) Determining, by clear and convincing evidence, that:***

34 ***(A) The conviction has a substantial and direct relationship to the***
35 ***occupation, trade, vocation, profession, or business for which the person has applied for or***
36 ***obtained state recognition; and***

1 ***(B) Disciplining the licensee based upon that conviction serves the***
2 ***purpose of protecting public safety.***

3 ***(c) Unfitness or incompetency to practice the profession or any particular***
4 ***aspect or specialty thereof as evidenced by negligent or willful acts performed in a manner***
5 ***inconsistent with the health, safety, or wellbeing of any person.***

6 ***(d) Any unprofessional conduct, or dishonorable conduct unworthy of, and***
7 ***affecting the practice of, the profession.***

8 ***(e) Addiction to the use of alcohol or other habit-forming drugs to a degree***
9 ***which renders the person unfit to practice their profession.***

10 ***(f) Mental or physical incompetency to practice the profession.***

11 ***(g) Willful or repeated violation of the provisions of the applicable practice act,***
12 ***any related statutory obligations, or any administrative rule adopted thereunder.***

13 ***I-a.*** Upon ~~making~~ an affirmative finding that a licensee has committed professional
14 misconduct, boards may take disciplinary action in any one or more of the following ways:

15 (a) By reprimand.

16 (b) By suspension of a license for a period of time as determined reasonable by the board.

17 (c) By revocation of license.

18 (d) By placing the licensee on probationary status. The board may require the person to
19 submit to any of the following:

20 (1) Regular reporting to the board concerning the matters which are the basis of the
21 probation.

22 (2) Continuing professional education until a satisfactory degree of skill has been
23 achieved in those areas which are the basis of probation.

24 (3) Submitting to the care, counseling, or treatment of a physician, counseling
25 service, health care facility, professional assistance program, or any comparable person or facility
26 approved by the board.

27 (4) Practicing under the direct supervision of another licensee for a period of time
28 specified by the board.

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

32 7 Sanctions; Costs; Emergencies. Amend RSA 310:12, IV to read as follows:

33 IV. In cases involving imminent danger to public health, safety, or welfare, a board may
34 order immediate suspension of a license or certification pending an adjudicative proceeding before
35 the board to determine if the suspension should remain in place pending final adjudication of the
36 matter, and which shall commence not later than 10 working days after the date of the order
37 suspending the license unless the licensee or certified individual agrees in writing to a longer period.

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1 In such cases of immediate danger, the board shall comply with RSA 541-A:30. ***When determining***
2 ***whether to emergently suspend a license, the board shall act as fact finder and the***
3 ***presiding officer shall make conclusions of law.***

4 8 Unlicensed Practice. Amend RSA 310:13 to read as follows:

5 310:13 Unlicensed Practice. Whoever, not being licensed or otherwise authorized to practice
6 according to the laws of this state, advertises oneself as engaging in a profession licensed [~~or~~
7 ~~certified~~] by the office of professional licensure and certification, engages in activity requiring
8 professional licensure, or in any way holds oneself out as qualified to do so, or calls oneself a licensed
9 professional, or whoever does such acts after receiving notice that such person's license to practice
10 has been suspended or revoked, is engaged in unlawful practice. ***The office may, for purposes of***
11 ***verifying licensure, request to see the license of anyone who advertises oneself as engaging***
12 ***in a profession licensed by the office, engages in activity requiring professional licensure,***
13 ***or in any way holds oneself out as qualified to do so, or calls oneself a licensed***
14 ***professional, or whoever does such acts after receiving notice that such person's license to***
15 ***practice has been suspended or revoked, at the place of business, or where such business is***
16 ***being conducted, of such individual.*** After providing notice and opportunity to be heard ***in***
17 ***accordance with RSA 310:10,*** and upon making an affirmative finding of unlawful practice, the
18 board may impose a fine not to exceed the amount of any gain or economic benefit that the person
19 derived from the violation, or up to \$10,000 for each offense, whichever amount is greater. Each
20 violation of unlicensed or unlawful practice shall be deemed a separate offense. The board, the
21 state's attorney general, or a prosecuting attorney of any county or municipality where the act of
22 unlawful practice takes place may maintain an action to enjoin any person or entity from continuing
23 to do acts of unlawful practice. The action to enjoin shall not replace any other civil, criminal, or
24 regulatory remedy. An injunction without bond is available to any board.

25 9 Rehearings. Amend RSA 310:14, I to read as follows:

26 I. Any person who has been denied a license or certification by the office or a board ***without***
27 ***a hearing*** shall have the right to a [~~rehearing~~] ***hearing*** before the appropriate board. Requests for
28 a [~~rehearing~~] ***hearing*** shall be made in writing to the appropriate board within 30 days of receipt of
29 the original final decision.

30 ***I-a. Any person who has been denied a license or certification by the office or board***
31 ***after a hearing shall have the right to petition in writing for a rehearing within 30 days of***
32 ***receipt of the original final decision.***

33 10 Effective Date. This act shall take effect 60 days after its passage.

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AMENDED ANALYSIS

This bill makes various changes to the administrative statutes of the office of professional licensure and certification including definitions, lapse and reinstatement of licenses, disciplinary proceedings, and sanctions.