**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE “PHYSICIAN TRANSPARENCY ACT” BY ADDING ARTICLE 3, TO CHAPTER 47, TITLE 40 SO AS TO REQUIRE PHYSICIANS SEEKING LICENSURE TO SUBMIT INFORMATION PERTAINING TO, AMONG OTHER THINGS, PRIOR LICENSES HELD, DISCIPLINARY ACTION TAKEN AGAINST THE PHYSICIAN, ANY AGREEMENT TO TEMPORARILY CEASE OR RESTRICT THE PHYSICIAN’S PRACTICE OF MEDICINE, ACTIONS AFFECTING CLINICAL PRIVILEGES, CRIMINAL CONVICTIONS, AND FINAL JUDGMENTS OR SETTLEMENTS RESULTING FROM A MALPRACTICE ACTION; TO REQUIRE THE BOARD OF MEDICAL EXAMINERS TO MAKE THIS INFORMATION AND TYPES OF COMPLAINTS FILED AGAINST A PHYSICIAN AVAILABLE TO THE PUBLIC ON THE BOARD’S WEBSITE; TO PROVIDE THAT FAILURE TO PROVIDE THIS INFORMATION OR PROVIDING FALSE INFORMATION IS CONSIDERED MISCONDUCT AND THE BOARD MAY NOT ISSUE, RENEW, OR REINSTATE THE LICENSE OF THE PHYSICIAN; TO PROVIDE THAT ALL HEARINGS BEFORE THE BOARD REGARDING COMPLAINTS AGAINST PHYSICIANS MUST BE OPEN TO THE PUBLIC, THAT HEARING SCHEDULES MUST BE POSTED ON THE BOARD’S WEBSITE, THAT A COMPLAINANT HAS THE RIGHT TO MAKE A PUBLIC STATEMENT IN A HEARING BEFORE THE BOARD, AND THAT THE BOARD SHALL INFORM A COMPLAINANT OF THESE RIGHTS.

Whereas, the General Assembly finds that the people of this State need to be fully informed about the past practices of persons practicing medicine in this State in order to make informed decisions when choosing a medical care provider and determining whether to proceed with a particular regimen of care recommended by a medical care provider; and

Whereas, the purpose of this act is to provide transparency to the public regarding the competency of persons engaged in the practice of medicine in this State to assist citizens in making informed health care decisions; and

Whereas, the General Assembly further finds and declares that it is important to make information about persons engaged in the practice of medicine available to the public in a manner that is efficient, cost effective, and maintains the integrity of the information, and to that end, the General Assembly encourages persons to file the required information with the State Board of Medical Examiners electronically, to the extent possible; and

Whereas, according to the Federation of Medical Boards, medicine is a regulated profession because of the potential harm to the public if an incompetent or impaired physician is licensed to practice. State medical practices acts are intended to protect the public from the unprofessional, improper, unlawful, fraudulent, or incompetent practice of medicine; and

Whereas, Public Citizen, a national nonprofit public interest organization that annually ranks state medical boards, ranked South Carolina as the worst state when it comes to disciplining doctors. This organization further stated the lack of doctor discipline in many states equates with a lack of patient protection for those patients whose physicians would have been disciplined in states with better enforcement of their state medical practice acts, thereby continuing to allow doctors to endanger the lives and health of some of their residents because of inadequate discipline. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 47, Title 40 of the 1976 Code is amended by adding:

“Article 3

Physician Profiles

Section 40-47-405. This article may be cited as the ‘Physician Transparency Act’.

Section 40‑47‑410. For purposes of this article:

(1) ‘Board’ means the State Board of Medical Examiners responsible for the licensing and regulation of physicians.

(2) ‘Complainant’ means the person who made a complaint against a physician to the board.

(3) ‘Complaint’ means a grievance submitted to the board against a physician licensed by the board.

(4) ‘Disciplinary action’ means a formal action or sanction taken by the board following the determination that a violation of Article 1 has occurred.

(5) ‘Disciplinary order’ means the documentation of a disciplinary action taken by the board, which includes the reason for the action and the action taken.

(6) ‘Physician’ means a doctor of medicine or a doctor of osteopathic medicine licensed by the South Carolina Board of Medical Examiners.

Section 40‑47‑420. (A) The board shall require a person applying for a license to practice medicine in this State, or renewing, reinstating, or reactivating a license, to report to the board, in a form and manner determined by the board, certain information, including, but not limited to:

(1) the person’s full name, including any known past or present aliases;

(2) current address of record and address and telephone number of the person’s current primary practice setting;

(3) information pertaining to any license to practice medicine, active or inactive, held by the person at any time, including the license number, type, status, original issue date, last renewal date, and expiration date;

(4) any board certifications and specialty board certifications, if applicable;

(5) any affiliations with hospitals or health care facilities;

(6) any business ownership interests;

(7) information pertaining to any employment contracts with any entities;

(8) any official or formal disciplinary action, including confidential actions or letters of censure, taken against the person by the board, or by a board or licensing agency of any other state or country, including any board action restricting, suspending, or revoking the person’s medical license. The person shall provide a copy of the action or order to the board at the time the application is made;

(9) any agreement or stipulation, whether voluntary or confidential, entered into between the board, or a board or licensing agency of any other state or country and the person, whereby the person agreed to temporarily cease or restrict his or her practice of medicine, including a copy of the agreement, stipulation, or order;

(10) any and all involuntary limitations or probationary status on or reduction, nonrenewal, denial, revocation, or suspension of the person’s medical staff membership or clinical privileges at any hospital, health care facility, or health maintenance organization. The board shall develop a form for reporting this information that includes, but is not limited to:

(a) the name of the facility or entity that took the action;

(b) the date the action was taken;

(c) the type of action taken, including any terms and conditions of the action;

(d) the duration of the action; and

(e) whether the person has fulfilled the terms or conditions of the action, if applicable;

(11) any disciplinary order or action by the United States Drug Enforcement Administration, the United States Food and Drug Administration, Medicare, or the state Medicaid program;

(12) any final criminal conviction or guilty plea or plea of nolo contendere resulting from the commission or alleged commission of a felony or certain misdemeanors as defined by the board, in any jurisdiction, including a copy of the final conviction or plea;

(13) any final judgment against, settlement entered into by, or arbitration award paid on behalf of the person for medical malpractice in any state or country. The board shall develop a form for reporting this information that includes, but is not limited to:

(a) whether the action was resolved by a final judgment against, settlement entered into by, or arbitration award paid on behalf of the person;

(b) the date of the judgment, settlement, or arbitration award;

(c) the location or jurisdiction in which the action occurred or was resolved;

(d) the court in which the final judgment was ordered, the mediator that aided in the settlement, if applicable, or the arbitrator that granted the arbitration award, if applicable; and

(e) an accurate and complete description of the person’s action or conduct that was the basis of the medical malpractice claim; and

(14) any refusal by an issuer of medical malpractice insurance to issue a medical malpractice insurance policy to the person due to past claims experience, including an accurate and complete description of the reason provided by the issuer for refusing to issue the policy to the person. The person shall provide a copy of the refusal to the board at the time the application is made.

(B) A person licensed by the board shall ensure that the information required by this section is current and shall report any updated information and provide copies of the required documentation to the board within thirty days after the date of the change in information, unless otherwise determined by the board in regulation, to ensure that the information provided to the public is as accurate as possible.

(C) The board shall verify the information provided by the person to ensure that the information provided to the public is accurate. The board also shall routinely check other sources of information available to ensure that the person did not omit any information, including, but not limited to, criminal background sources, the National Practitioner Data Bank, Centers for Medicare and Medicaid Services, and the state Medicaid and Children’s Health Insurance programs, and once verified, add that information to the physician’s profile.

(D) The information provided and forms completed by the person pursuant to subsection (A) is a public record and is not confidential.

Section 40‑47‑430. The board shall make the information specified in Section 40‑47‑420 and Section 40‑47‑450 readily available to the public on the board’s website in a profile for each licensed physician. The website must allow the public to search the information by physician’s name, license number, board certification, specialty area, or hospital or health care facility affiliation. The board shall update the website at least monthly and shall indicate on the website the date when the information was last updated. Upon request, the board shall make information regarding specific physicians available to the public by mail, email, or facsimile.

Section 40‑47‑440. Wilful failure to provide information as required by this article and in accordance with board regulations or knowingly providing false information is considered misconduct subject to sanctions provided for in Section 40‑47‑110. The board may not issue a license to a person or renew, reinstate, or reactivate the license of a physician who has engaged in this misconduct or who has failed to provide accurate information or who has failed to comply with a board order issued pursuant to this article.

Section 40‑47‑450. (A) Complaints filed with the board about physicians are public information but must have the names and identifying information of patients and complainants deleted.

(B) The board shall create categories to describe the types of complaints received against physicians which may include, but are not limited to, unprofessional conduct, failure to practice the standard of care, and billing complaints. The board shall add to each physician profile the number of each type of complaint filed with the board regarding the physician.

(C) The complainant or his or her representative must be interviewed in the course of investigation of each complaint against a physician.

Section 40‑47‑460. (A) All proceedings and hearings before the board regarding complaints against physicians must be open to the public. Documentation of these proceedings and hearings are matters of public record.

(B) A schedule of proceedings and hearings, including the names of physicians whose complaints are being considered, must be publicly posted on the board’s website.

(C) A complainant or a representative of the complainant has a right to make a public statement in proceedings or hearings before the board regarding his or her complaint and to be questioned by the board regarding his or her complaint. The board has the right to determine a reasonable amount of time to be allowed for complainant statements and to set time restrictions in advance.

(D) At the time the medical board acknowledges receiving a complaint against a physician, the medical board shall notify the complainant, in writing, of the location of the public posting of the schedule of hearings and proceedings and of the complainant’s rights and restrictions during medical board investigations, including, but not limited to, the right to be interviewed in the course of the investigation, the right to be present at proceedings and hearings, the right to make a public statement, and any time limitations or other restrictions on speaking.

Section 40‑47‑470. A person licensed by the board shall provide an email address or facsimile number, which must not be made available to the public and which must be used for the purpose of expediting the dissemination of information to licensed physicians, including information about a public health emergency.

Section 40‑47‑480. The board may promulgate regulations as necessary to a carry out the provisions of this chapter.

Section 40‑47‑490. Administration and enforcement of this article must be funded from fees collected pursuant to Article 1.”

SECTION 2. This act takes effect July 1, 2010.

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