

Military Spouse License Transfer Options

DELAWARE LAW

29 Del.C. § 8735

§ 8735. Division of Professional Regulation

(a) The Division of Professional Regulation shall have the powers, duties and functions set forth in this section. The Division shall be responsible for the administrative, ministerial, budgetary, clerical and exclusive investigative functions (including but not limited to the appointment, removal, compensation and duties of employees) as provided by law of the following commissions, boards and agencies, with the exception that the Secretary of State shall not be precluded from entering into a memorandum of understanding with the Secretary of the Department of Health and Social Services for the purpose of allowing employees of the Department of Health and Social Services to function as inspectors, investigators and administrative support for the Board of Pharmacy:

- (1) Board of Accountancy as set forth in Chapter 1 of Title 24;
- (2) Board of Landscape Architecture as set forth in Chapter 2 of Title 24;
- (3) Board of Architects as set forth in Chapter 3 of Title 24;
- (4) Board of Podiatry as set forth in Chapter 5 of Title 24;
- (5) Board of Chiropractic as set forth in Chapter 7 of Title 24;
- (6) Licensing of deadly weapons dealers as set forth in Chapter 9 of Title 24;
- (7) State Board of Dentistry and Dental Hygiene as set forth in Chapter 11 of Title 24;
- (8) Board of Electrical Examiners as set forth in Chapter 14 of Title 24;
- (9) Commission on Adult Entertainment Establishments as set forth in Chapter 16 of Title 24;
- (10) Board of Medical Licensure and Discipline as set forth in Chapter 17 of Title 24;



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(11) Board of Nursing as set forth in Chapter 19 of Title 24;

(12) Board of Occupational Therapy Practice as set forth in Chapter 20 of Title 24;

(13) Board of Examiners in Optometry as set forth in Chapter 21 of Title 24;

(14) Board of Pharmacy as set forth in Chapter 25 of Title 24;

(15) Examining Board of Physical Therapists and Athletic Trainers as set forth in Chapter 26 of Title 24;

(16) Board of Professional Land Surveyors as set forth in Chapter 27 of Title 24;

(17) Real Estate Commission as set forth in Chapter 29 of Title 24;

(18) Board of Mental Health and Chemical Dependency Professionals as set forth in Chapter 30 of Title 24;

(19) Board of Funeral Services as set forth in Chapter 31 of Title 24;

(20) Board of Veterinary Medicine as set forth in Chapter 33 of Title 24;

(21) Board of Examiners of Psychologists as set forth in Chapter 35 of Title 24;

(22) Board of Geologists as set forth in Chapter 36 of Title 24;

(23) Board of Examiners of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers as set forth in Chapter 37 of Title 24;

(24) Board of Clinical Social Work Examiners, as set forth in Chapter 39 of Title 24;



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(25) Board of Cosmetology and Barbering as set forth in Chapter 51 of Title 24;

(26) Board of Examiners of Nursing Home Administrators as set forth in Chapter 52 of Title 24;

(27) Board of Pilot Commissioners as set forth in Chapter 1 of Title 23;

(28) Committee of Dietetics/Nutrition as set forth in Chapter 38 of Title 24;

(29) Board of Massage and Bodywork, as set forth in Chapter 53 of Title 24;

(30) Board of Charitable Gaming as set forth in Chapter 15 of Title 28;

(31) Board of Plumbing Examiners, as set forth in Chapter 18 of Title 24;

(32) Council on Real Estate Appraisers as set forth in Chapter 40 of Title 24;

(33) Manufactured Home Installation Board as set forth in Chapter 44 of Title 24; and

(34) Board of Home Inspectors as set forth in Chapter 41 of Title 24.

(b) The Division of Professional Regulation shall have the powers, duties and functions related to the regulation of amateur and professional boxing and combative sports entertainment as set forth in Chapter 1 of Title 28.

(c) The Division of Professional Regulation, with the approval of the Secretary of State, shall establish, for all commissions, boards and agencies and activities administered pursuant to this section, such appropriate fees as shall approximate and reasonably reflect all costs necessary to defray the expenses of each such board or commission, or of the Division on behalf of such board or commission. There shall be a separate fee charged for each service or activity, but no fee shall be charged for a purpose not specified in the appropriate chapter of the Delaware Code. No application fee shall be combined with any other fee or charge. At the beginning of each calendar year the Division of Professional Regulation, or any other state agency acting in its behalf, shall compute for



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each separate service or activity, the appropriate fees for each agency. All revenue generated by any of the activities performed by or on behalf of the boards or commissions listed in this chapter shall be deposited in an appropriated special fund account in the Division of Professional Regulation. These funds shall be used to fund all costs necessary to defray the expenses of each board or commission or of the Division on behalf of such board or commission, up to the budget authority for any fiscal year or portion thereof.

(d) The Division of Professional Regulation shall have the following powers, duties, and functions relating to the administration of examinations for all boards, commissions, and other agencies listed in this section:

(1) To designate, approve, arrange for and contract for an examination site, for each examination held by such agency;

(2) To deposit all fees received for testing into a special account to be used for the sole purpose of covering the costs of all agency examinations, including test validation;

(3) To pay examination services and other expenses directly related to the administration of examinations;

(4) To review, approve and execute all contracts for examination services;

(5) Review and approve, subject to review by the Joint Legislative Oversight and Sunset Committee, the content and validity of any examination written, developed, or used by a board or commission listed in this section;

(6) Supervise the administration and proctoring of all tests for all boards and commissions;

(7) To contract for a treatment provider for licensed persons, provided however that such treatment provider shall not be employed by or under contract with any professional organization representing licensees regulated by the Division of Professional Regulation or any board in Title 24; and

(8) Permit potential complainants access to an Investigator with the Division of Professional Regulation to discuss issues or concerns regarding their reports or complaints.



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(e) The Division of Professional Regulation shall establish a uniform policy for the reimbursement of expenses for members of all boards and commissions listed in this section, which policy shall be set forth in the Division's rules and regulations. In establishing this policy, the Director of Professional Regulation may consider the limits of available appropriations and the need to allocate travel funds for board and commission representation at appropriate national or regional meetings of state professional regulatory boards. In addition to the rate of compensation established in the Delaware Code for each board or commission, each member of a board or commission listed in this section may receive reimbursement or partial reimbursement for necessary expenses to attend meetings. Such expenses shall not exceed the mileage rate paid to state employees, per mile actually traveled, or the cost of public transportation and no more than \$10 per meeting for all other miscellaneous expenses.

(f) The Division of Professional Regulation shall establish policies governing the appropriate times, locations and notice for meetings and public hearings of all boards and commissions listed in this section so as to promote public participation. Such policies shall be set forth in the rules and regulations of the Division. Meetings and hearings may only take place in facilities approved by the Division.

(g) The Director of Professional Regulation shall ensure that all regulatory actions taken by boards and commissions listed in this section are in conformance with the Administrative Procedures Act [§ 10101 et seq. of this title] and the Freedom of Information Act [§ 10001 et seq. of this title]. The Director shall review and approve all legal notices, public notices and agendas for conformance with these requirements.

(h) The following procedure shall be followed for the investigation of complaints against licensees of boards, agencies and commissions listed in subsection (a) of this section and otherwise regulated by the Division of Professional Regulation:

(1) Any person who desires to file a complaint against any licensee regulated by a board, commission or agency covered pursuant to this chapter must do so in writing.

(2) The complaint shall state the name of the licensee and sufficient facts as determined by the Division which allegedly constitute the basis for the written complaint. If any of these elements are missing in the written complaint, the Division of Professional Regulation may, in its discretion, sua sponte dismiss the complaint.

(3) The complaint shall be filed with the Director of the Division. The Director shall, within 15 days of the receipt of the complaint, fill out a complaint card, assign a complaint number and log the complaint in the Division of Professional Regulation's records. A record of the complaint shall be kept



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with the Division for a period of 5 years. The Division shall also assign an investigator employed by the Division to investigate the complaint after this procedure is complied with.

(4) The Division of Professional Regulation shall thereafter mail a copy of the complaint to the licensee named in the complaint at the licensee's address of record in the Division's files. The Division of Professional Regulation may, in its discretion, withhold the name of the complainant. The named licensee, if the licensee chooses, may file an answer to the complaint within 20 calendar days with the Division.

(5) The Division shall, thereafter, provide a copy of the complaint to the board, commission or agency which regulates the named licensee in the complaint. The board, agency, or commission shall maintain a record of the same.

(6) The Division of Professional Regulation shall suspend its investigation and withhold from the respondent reports of unlicensed practice or misconduct if a request to do so is made in writing by the Delaware Department of Justice or a federal law-enforcement authority due to the potential effects of such conduct on a pending criminal investigation. Such written request shall suspend any duty to investigate, advise the complainant or respondent, provide a copy of the complaint to the board, commission or agency which regulates the named licensee, or undertake any other duties that would interfere with the ability of law enforcement to investigate the allegations successfully. The suspension shall remain in effect until the Delaware Department of Justice or federal law enforcement informs the Executive Director in writing that action by the Division of Professional Regulation will not interfere with a pending law-enforcement investigation.

(7) At the board, agency or commission's next regularly scheduled meeting, it may assign a board member to assist the Division with the investigation of the complaint. This board member shall maintain strict confidentiality of the facts of the investigation and shall not discuss any issue of fact or law of the investigation with any other board member or the public. In addition, if a hearing is held, the investigating board member shall excuse himself or herself as a board member but may otherwise assist in the presentation of the complaint before the board.

(8) The investigator assigned by the Division of Professional Regulation shall direct the investigation of the complaint but shall maintain contact with the investigating board member regarding the investigation. The investigator shall issue a final report at the conclusion of the investigator's investigation. The report shall list the evidence reviewed, the witnesses interviewed and cite the law or regulation alleged to have been violated and the facts to support such finding. The report shall contain a written recommendation to either prosecute or dismiss the complaint approved by the Director of the Division of Professional Regulation.



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(9) The Director of the Division of Professional Regulation may forward the complaint and written report to the Department of Justice for review by a Deputy Attorney General. If deemed warranted, the Deputy Attorney General may file a formal written complaint against the named licensee with the board, commission or agency which regulates the licensee and request a hearing before the board, commission or agency. If the Deputy Attorney General assigned to the case recommends not to prosecute or otherwise not file a formal complaint, the Deputy Attorney General shall notify the Director of Professional Regulation in writing.

(10) If the Deputy Attorney General assigned to the case recommends dismissal or no prosecution, the Division shall, thereafter, dismiss the complaint which shall constitute a final order. The Division shall, thereafter, file a copy of the Attorney General's recommendation and an investigator's report with the board, commission or agency which regulates the licensee for informational purposes only.

(11) The Division Director or the Division Director's designee is empowered to issue subpoenas for named respondents, witnesses, documents, physical evidence or any other source of evidence needed during the investigation of the complaint and/or for a public hearing on the complaint. If the party or person subpoenaed fails to comply, the Division may compel compliance with said subpoena by filing a motion to compel in the Superior Court which shall have jurisdiction. The Superior Court may order costs, attorney's fees and/or a civil fine not to exceed \$1,000 if the motion to compel is granted.

(i) This chapter does not preclude a commission, board or agency under the jurisdiction of this section from, if its enabling legislation so provides, revoking or immediately suspending a practitioner's license if the board finds the health, welfare and safety of the public is in immediate or imminent danger.

(j) This chapter shall supersede any provisions of any commission, board or agency's procedures named in this section, except the Board of Medical Licensure and Discipline, for handling complaints against practitioners prior to July 20, 1989.

(k) The Division of Professional Regulation shall provide at least once every fiscal year training to members appointed to the regulatory boards listed in subsection (a) of this section. The training shall outline the legal responsibilities of board members to protect the health, safety and welfare of the general public.

(l) The provisions of §§ 516(g) and 2216 of Title 13 and § 547 of Title 30 shall supersede any provisions of this section to the contrary and any provisions or procedures, by statute or regulation, of any commission, board or agency named in this section with respect to matters involving any applicant or licensee under § 516(g) or § 2216 of Title 13 and § 547 of Title 30. Upon receipt of



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notification from the Family Court pursuant to § 516(g) of Title 13, or notice from the Director of the Division of Child Support Services pursuant to § 2216 of Title 13 or notice from the Director of the Division of Revenue pursuant to § 547 of Title 30 regarding a licensee or applicant, the Director of the Division of Professional Regulation shall forthwith suspend, or deny to such licensee or applicant the issuance or renewal of, any license, permit, certificate, approval, registration or other similar form of permission or authorization to practice or engage in any profession, occupation or business of any commission, board or agency named in this section (but not including any license issued on behalf of a nonprofit applicant by the Board of Charitable Gaming as set forth in Chapter 15 of Title 28).

(m) The Social Security number of the applicant shall be included on the application for issuance or renewal of any license, permit, certificate, approval, registration or other similar form of permission or authorization to practice or engage in any profession, occupation or business of any commission, board or agency named in this section (but not including any license issued on behalf of a nonprofit applicant by the Board of Charitable Gaming as set forth in Chapter 15 of Title 28).

(n) Unless otherwise provided by law, any Board within the Division of Professional Regulation may adopt through its rules and regulations the Voluntary Treatment Option for Chemically Dependent or Impaired Professionals for the treatment of chemically dependent or impaired persons regulated by such Board. The Voluntary Treatment Option for Chemically Dependent or Impaired Professionals shall be available to a regulated professional of a participating Board, provided the regulated professional has not committed any offense, other than the status of being chemically dependent or impaired, which otherwise constitutes a ground for discipline under applicable laws governing the regulated professional. The participating Board may defer and ultimately take no disciplinary action with regard to an eligible chemically dependent or impaired regulated professional who voluntarily signs an agreement, in a form satisfactory to the participating Board, agreeing to the terms and conditions specified in the Voluntary Treatment Option. The Board, where it deems appropriate, may proceed with disciplinary action with regard to a disciplinary offense alleged to have occurred prior to the professional's entry into the Voluntary Treatment Option. Any person regulated by a participating Board may refer himself/herself into this Voluntary Treatment Option. Any member of the public, or member of the participating professions regulated by the Division of Professional Regulation, may make a written report, signed by the complainant, of chemical dependency or impairment affecting any person regulated by a participating Board within the Division of Professional Regulation to the appropriate Board chairperson, that Board chairperson's designate, or designates, or directly to the Director of the Division of Professional Regulation or the Director's designate. Failure to provide such a report may be considered grounds for disciplinary action against a regulated professional so failing to report, if such grounds for disciplinary action are provided in the participating Board's statutes, rules or regulations. When a report is received indicating that a regulated professional of a participating Board may be chemically dependent or impaired, the Boards or Commissions subject to this Voluntary Treatment Option for Chemically Dependent or Impaired Professionals shall follow the following procedures:



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(1) If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or the Director's designate of the report. If the Director of Professional Regulation receives the report, the Director shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.

(2) The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform that individual in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give that individual the opportunity to enter the Voluntary Treatment Option.

(3) In order for the individual to participate in the Voluntary Treatment Option, the individual shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate or designates.

(4) A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or the Director's designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or the Director's designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

(5) Failure to cooperate fully with the participating board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his or her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection (h) of this section.

(6) The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:



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a. Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.

b. Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or the Director's designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or the Director's designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

c. Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.

d. Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program or programs. In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this paragraph (n)(6)d. shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.

e. Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or such chairperson's designate or designates or to the Director of the Division of Professional Regulation or such Director's designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

f. Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.

(7) The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.



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(8) The participating Board's chairperson, that chairperson's designate or designates or the Director of the Division of Professional Regulation or that Director's designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

(9) If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.

(10) Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.

(11) Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have that person's confidentiality protected if the matter is handled in a nondisciplinary matter.

(12) Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have that professional's confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

(o) The Secretary of State shall, notwithstanding any law to the contrary, also have the power to establish specific biennial renewal dates for professional licensure registration of Title 23 and Title 24 professional licensing boards in such manner as to promote the efficient administration of professional licensure renewal throughout each biennial period, and to provide for the imposition of licensure and related fees in accordance with § 2320(c) of this title.

(p) Continuation and issuance of licenses and permits for deployed active duty, activated Reserve and National Guard military personnel.--

(1) Notwithstanding any provision of Title 24 to the contrary, all licenses and permits issued by boards and commissions administered by the Division of Professional Regulation ("Division") pursuant to subsection (a) of this section, shall not expire for a qualifying person as defined in paragraph (p)(7) of this section herein, as follows:



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a. For 180 days after the date the qualifying person returns from active deployment, if continuing education credits are not a requirement of the license or permit renewal; or

b. For 270 days after the date the qualifying person returns from active deployment, if continuing education credits are a requirement of a license or permit renewal.

(2) A qualifying person who held or holds a valid license or permit at the time of deployment, which license or permit does not require continuing education requirements, who wishes to renew said license or permit, shall submit to the appropriate board or commission, the required documentation and information necessary, as required by Title 24, for renewal of the same type of permit or license within 90 days after the qualifying person has returned from active deployment.

(3) A qualifying person who held or holds a valid license or permit at the time of deployment, which license or permit has continuing education requirements, who wishes to renew said license or permit, shall submit to the appropriate board or commission the required documentation, including proof of having met the continuing education requirements and information necessary, as required by Title 24, for the same type of permit or license, for renewal within 180 days after the qualifying person has returned from active deployment.

(4) A qualifying person selected for active deployment may apply for a license or permit expiration extension prior to deployment, as allowed by paragraphs (p)(2) and (3) of this section herein. Should a qualifying person hold a license or permit which would have expired during the qualifying person's period of deployment, said qualifying person may apply to renew said license or permit as allowed by paragraphs (p)(2) and (3) of this section herein. The intent to extend or renew such permit or license shall be made by the qualifying person to the Division on a form stipulated by the Division, accompanied by a copy of official deployment documents, or other official verification acceptable to the Division.

(5) The protection from license or permit expiration provided under this subsection does not void or limit the obligations of the qualifying person to meet all requirements of licensure, as required in the section or sections of Title 24 applicable to the profession or professions for which the license or permit is sought.

(6) Notwithstanding any provision of Title 24 to the contrary, all boards and commissions administered by the Division pursuant to subsection (a) of this section shall accept the military training, education, or experience of a qualifying person so long as such training, education, or experience is substantially equivalent to the requirements established by law and regulations of the



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respective board or commission and the applicant complies with all other requirements for licensure, including, without limitation, any requirement for examination.

(7) As used in this section, “qualifying person” means an individual who is a member of the active duty military, a member of the National Guard, a member of the military reserve, retired military, or a military veteran.

(q) Notwithstanding any provision of Title 24 to the contrary, a qualifying person, as defined in paragraph (p)(7) of this section, or the spouse of a qualifying person, may apply for reinstatement of any license or permit issued by boards and commissions administered by the Division of Professional Regulation (“Division”) pursuant to subsection (a) of this section within 2 years of the lapse or expiration of any such license or permit. The qualifying person or the spouse of a qualifying person shall submit to the appropriate board or commission the documentation and information necessary, as required by Title 24, for reinstatement of the same permit or license and pay all applicable fees. An application to reinstate such license or permit shall be made by the qualifying person or the spouse of a qualifying person to the Division on a form designated by the Division, accompanied by a copy of official verification that he or she is a qualifying person or the spouse of a qualifying person and that the qualifying person is assigned to a duty station in this State acceptable to the Division. This subsection shall not apply to a license or permit that was suspended or revoked unless said license or permit was reinstated prior to its lapse or expiration.

(r) Notwithstanding any provision of Title 24 to the contrary, a qualifying person, as defined in paragraph (p)(7) of this section or the spouse of a qualifying person, may apply for a provisional license or permit issued by boards and commissions administered by the Division of Professional Regulation (“Division”) pursuant to subsection (a) of this section, effective for a period up to 6 months during the pendency of an application for a permit or license by endorsement or reciprocity pursuant to Title 24. A provisional license issued under this subsection expires 6 months from the date of issuance and cannot be renewed. The qualifying person or the spouse of a qualifying person shall submit to the appropriate board or commission the documentation and information necessary, as required by Title 24, for endorsement or reciprocity of the same permit or license and pay all applicable fees. An application to receive such provisional license or permit shall be made by the qualifying person or the spouse of a qualifying person to the Division on a form designated by the Division, accompanied by a copy of official verification that he or she is a qualifying person or the spouse of a qualifying person, and that the qualifying person is assigned to a duty station in this State acceptable to the Division. The qualifying person or the spouse of a qualifying person must be the holder of an active license or permit in good standing in another State, District of Columbia, or territory of the United States in which the requirements for licensure or certification are substantially similar to this State, with no unresolved complaint, review procedure, or disciplinary proceeding.

(s) The Division of Professional Regulation may investigate complaints of unauthorized practice of the professions governed by the boards, agencies and commissions named in subsection (a) of this



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section. The Division may issue citations for unlicensed practice discovered during an investigation into a complaint of unlicensed practice, a complaint otherwise under investigation, or an inspection as follows:

(1) Upon discovery of the unlicensed practice of a profession or the unlicensed operation of any facility governed by the boards, agencies and commissions named in subsection (a) of this section, the Division may issue a citation to the person engaging in the unlicensed practice of the profession, or the owner, operator, manager or person otherwise responsible for any facility that is operating without a license or permit required by such board, agency or commission.

(2) The citation shall be prepared on a form approved by the Director of the Division and shall clearly state the violation or violations and the penalty. The penalty for the first occurrence of unlicensed practice by an individual or unlicensed operation of a facility shall be no more than \$250.

(3) Any person or facility cited may, within 30 days of the issuance of the citation, admit such violation and remit payment of the penalty to the Division or deny such violation and request a hearing to contest the citation. Denials and requests for hearing must be made within 10 days of the issuance of the citation. Failure to deny and request a hearing within 10 days of any citation will be deemed an admission of the violation. Any admitted violations may be referred to appropriate law-enforcement agencies, including the Delaware Department of Justice, for criminal prosecution.

(4) Any person or facility who either admits, or after a hearing is found guilty of, engaging in unlicensed practice may be fined up to \$1,000 per day for every day such unlicensed practice occurs after such admission or finding.

(5) The Division will not issue a license or permit to any applicant with unpaid penalties issued pursuant to this paragraph (s).

(6) The Division of Professional Regulation shall notify the Department of Finance of any person who admits or is found to have engaged in the unlicensed practice of a profession and who the Division has reason to believe should have had a business or occupational license to conduct business.

(t) The Division shall, upon receiving a complaint involving potential criminal conduct, immediately report the complaint to appropriate law-enforcement agencies, including the Delaware Department of Justice.



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(u) The Division shall subscribe to and maintain a subscription to a national licensing data-bank reporting service in order to receive proactive notification of all disciplinary actions taken against medical licensees in states outside Delaware. Upon receipt of a disciplinary notification concerning an individual who is certified by the Board of Medical Licensure and Discipline, the Division may take the appropriate steps for investigation and, if appropriate, referral to the Department of Justice.

(v)(1) There is hereby created within the Department of State the full-time position of hearing officer. With respect to case decisions arising under Title 29, Chapter 101, subchapter III, the hearing officers shall have:

a. All powers and duties conferred or imposed upon such hearing officers by law or by the Rules of Procedure for any board or commission under Titles 23, 24, and 28;

b. The power to administer oaths and affirmations;

c. The power to hear and determine any prehearing matter pending before any board or commission under Titles 23, 24, and 28. In such circumstances, the hearing officer's decision has the same authority as a decision of the board or commission and is subject to judicial review on the same basis as a decision of the board or commission;

d. The power to conduct hearings, including any evidentiary hearings. The testimony or evidence so taken or received shall have the same force and effect as if taken or received by the board or commission. Upon completion of such hearing or the taking of such testimony and evidence, the hearing officer shall submit to the board or commission findings and recommendations thereon. The findings of fact made by a hearing officer on a complaint are binding upon the board or commission. The board or commission may not consider additional evidence. When the proposed order is submitted to the board or commission, a copy shall be delivered to each of the other parties, who shall have 20 days to submit written exceptions, comments and arguments concerning the conclusions of law and recommended penalty. The board or commission shall make its final decision to affirm or modify the hearing officer's recommended conclusions of law and proposed sanctions based upon the written record.

(2) Hearing officers shall be appointed by the Secretary of State and shall serve for a term of 5 years; provided however, that the initial hearing officers may be appointed to terms shorter than 5 years, but not less than 3 years, to ensure staggered term expirations. Appointees shall be residents of the State, shall be duly admitted to practice law before the Supreme Court of this State and shall not engage in the practice of law nor any business, occupation or employment inconsistent with the expeditious, proper and impartial performance of their duties. Individuals appointed as hearing



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officers under this section shall take the oath or affirmation prescribed by article XIV, § 1 of the Delaware Constitution before they enter upon the duties of their office.

(3) Reappointments shall be at the discretion of the Secretary of State.

(4) The removal of a hearing officer by the Secretary of State during the term of appointment may be made for just cause. For the purposes of this subsection only, “just cause” shall be defined as including, but not limited to, reduction in force, inefficiency or unsatisfactory performance of duties.

(w) Any board, commission, committee or council listed in subsection (a) of this section shall have the authority to delegate to the Director or his or her designee the authority to issue permits and licenses administratively using specific criteria agreed upon by each such entity and the Director.

